R123. Auditor, Administration.
R123-5. Requirements for Accounting Services of Political Subdivisions and Governmental Nonprofit Corporations.
R123-5-1. Authority.

1. As required by Section 51-2a-301, this rule provides the guidelines, qualifications criteria, and procurement procedures for accounting services for those entities required by Section 51-2a-201 to report to the Office.

R123-5-2. Definitions.

1. "Office" means the Office of the State Auditor.

2. "Auditor" means a certified public accountant licensed to conduct audits in the state and includes any certified public accounting firm as defined by Section 58-26a-102.

3. "Accounting services" means a financial audit, a state compliance audit, or an agreed-upon procedures engagement provided by an auditor.

a. "Financial audit" means an audit as defined in Section 51-2a-102(2).

b. "State compliance audit" means an engagement provided by an auditor in accordance with the compliance audit guide maintained by the Office.

c. "Agreed-upon procedures engagement" means an engagement provided by an auditor in accordance with Attestation Standards established by the AICPA, Government Auditing Standards (GAS) issued by the Comptroller General of the United States, and the guide for agreed-upon procedures for local government entities developed by the Office.

4. "Political subdivision" means all municipalities, counties, school districts, local and special service districts, interlocal organizations, and any other entity established by a local governmental unit that receives tax exempt status for bonding or taxing purposes. "Political subdivision" does not include state entities.

5. "State entity" means any state agency, state office, or any other governmental unit of the state. State entity includes a governmental entity for which the state exercises majority control or for which one or more state officials collectively exercise majority control.

6. "Governmental nonprofit corporation" means any governmental nonprofit corporation as that term is defined by Section 11-13a-102.

R123-5-3. Reporting Standards and Requirements.

1. The audits of all entities required to have an audit made by Section 51-2a-201 shall be performed in accordance with Government Auditing Standards most recently published and issued by the Comptroller General of the United States.

2. The Office shall adopt and maintain a compliance audit guide containing those fiscal laws and compliance requirements for state funds distributed to, and expended by, political subdivisions and governmental nonprofit corporations. This compliance audit guide may specify:

a. the general compliance requirements applicable to all political subdivisions and governmental nonprofit corporations, and the audit requirements applicable to general compliance requirements,

b. the format for the auditor's statement expressing positive assurance with state fiscal laws identified by the Office, and

c. those items related to internal controls and other financial issues which shall be included in the auditor's letter to management that must be filed with the Independent Auditor's Report in accordance with the compliance audit guide maintained by the Office.

3. All entities required to have an audit made by Section 51-2a-201 shall have performed the financial audit and a state compliance audit in accordance with the compliance audit guide maintained by the Office.

4. The guidelines, criteria, procedures, and reporting requirements for all accounting and compliance reports required to be submitted to the Office are posted on the Office's website.

R123-5-4. Procurement of Accounting Services.

1. Unless otherwise specified by the Office, the decision to retain an entity's auditor rests with the governing body of the entity. However, the auditor providing the accounting services must meet the peer review and continuing education requirements of Government Auditing Standards issued by the Comptroller General of the United States. In addition, the auditor must satisfy the periodic workpaper review performed by the Office. The entity must competitively procure accounting services through the following matter at least every five years:

a. The entity shall distribute a "request for proposal" to all auditors who meet the qualification criteria set by the procuring organization and who are interested in submitting a proposal for the accounting services. As a minimum, the request for proposal shall contain the following:

(i) the name and address of the entity requesting the accounting services and its designated contact person,

(ii) the entity for which the accounting services are to be performed, the scope of services to be provided, and specific reports, etc. to be delivered,

(iii) the period(s) pertaining to the accounting services,

(iv) the format in which the proposals should be prepared,

(v) the date and time proposals are due,

(vi) the criteria to be used in evaluating the proposal,

(vii) the relative weight to be assigned to each criteria in R123-5-4(a)(vi), and

(viii) The overall weight of the cost criteria in relation to other evaluation criteria.

b. The entity must consider proposals from any interested and qualified auditor in the state, which may include the auditor currently performing the entity's accounting services. Notice shall be given to potential auditors through invitation and by notice as described in Section 63G-6a-112(2). To promote competition, it is recommended that at least three auditors participate in proposing for the accounting services. If the entity fails to receive three qualified proposals, prior to awarding the contract the entity shall notify the Office, and the entity shall provide 5 business days for the submission of additional proposals. The Office may direct the entity to revise and reissue its request for proposal whenever the Office deems the procurement process was not competitive.

c. The entity may reject any and all competitive proposals but must document the justification for each rejection. The entity may reissue its request for proposal at any time prior to the awarding of a contract for accounting services.

d. Management of the entity may not participate in the evaluation of proposals for accounting services.

R123-5-5. Responsibility for Quality of Accounting Services.

1. The governing body of each political subdivision or governmental nonprofit corporation is responsible to ensure that the political subdivision or governmental nonprofit corporation obtains a quality review of its financial records.

2. The governing body may appoint an audit committee with the responsibility of making recommendations to the governing body for selection of an auditor, ensuring that the auditor meets qualification requirements, and ensuring that the auditor complies with professional standards.

3. If the governing body appoints a separate audit committee, then the governing body shall review the recommendations of the audit committee and make the selection of the auditor.

4. The audit committee will report its assessment of the auditor's compliance with professional standards to the governing body.

5. The auditor shall report the results of the accounting services to the governing body.

6. The governing body shall respond to the specific recommendations included in the auditor's letter to management. This response shall be remitted with the audited financial statements or agreed-upon procedures report to the Office.

KEY: accounting services, accounting reports, auditing, governmental nonprofit corporations
November 7, 2019 51-2a-201
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R137. Career Service Review Office, Administration.
R137-1. Grievance Procedure Rules.
R137-1-1. Authority and Purpose of Rule for Grievance Procedures.

(1) The authority for the rule on these grievance procedures is found at Section 67-19a-203.

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

R137-1-2. Definitions.

Terms defined in Section 63G-4-103 of the Utah Administrative Procedures Act (UAPA) are incorporated by reference within this rule. In addition, other terms which are used in this rule are defined below:

"Abandonment of Grievance" means either the voluntary withdrawal of a grievance or the failure by an employee to properly pursue a grievance through these grievance procedures.

"Administrative Review of the File" means an informal adjudicative proceeding according to Subsection 67-19a-403(3)(b).

"Administrator" means the person appointed under Subsection 67-19a-201(2)(b).

"Affidavit" means a signed and sworn statement offered for consideration in connection with a grievance proceeding.

"Affirmative Defense" means a responsive answer asserting facts in addition to those alleged that are legally sufficient to rebut asserted allegations.

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

"Appointing Authority" means the officer, board, commission, person or group of persons authorized to make appointments on personnel/human resource management matters in their respective agency.

"Burden of Moving Forward" means a party's obligation to present evidence on a particular issue at a particular time. The burden of moving forward may shift back and forth between the parties based on certain legal principles.

"Burden of Proof" means the obligation to prove affirmatively a fact or set of facts at issue between two parties.

"CSRO" means the agency of state government that statutorily administers these grievance procedures according to Sections 67-19a-101 through 67-19a-501.

"Closing Argument" means a party's final summation of evidence and argument, which is presented at the conclusion of the hearing.

"Consolidation" means the combining of two or more grievances involving the same controversy for purposes of holding a joint hearing, proceeding, or administrative review.

"Continuance" means an authorized postponement or adjournment of a hearing until a later date, whether the date is specified or not.

"Declaratory Order" means a ruling that is explanatory in purpose; it is designed to clarify what before was uncertain or doubtful. A declaratory order constitutes a declaration of rights between parties to a dispute and is binding as to both present and future rights. It is an administrative interpretation or explanation of a right, statute, order or other legal matter under a statute, rule, or an order.

"Default" means an omission of or untimely failure to take or perform a required act in the processing of a grievance. It is the failure to discharge an obligation which results in a forfeiture.

"Deposition" means a form of discovery in which testimony of a witness is given under oath, subject to cross-examination, and recorded in writing, prior to the hearing.

"Discovery" means the prehearing process whereby one party may obtain from the opposing party, or from other individuals or entities, information regarding the witnesses to be called, the documents and exhibits to be used at the hearing, and the facts and information about the case.

"Evidentiary Hearing" means a proceeding of relative formality, though much less formal than a trial, in which witnesses may be heard and evidence is presented and considered. Specific issues of fact and of law are tried. Afterwards, ultimate conclusions of fact and of law are set forth in a written decision or order.

"Excusable Neglect" means harmless error, mistake, inadvertence, surprise, a failure to discover evidence that, through due diligence, could not have been discovered in time to meet the applicable time period, misrepresentation or misconduct by the employer, or any other reason justifying equitable relief.

"Extraordinary Circumstances" means factors not normally incident to or foreseeable during an administrative proceeding. It includes circumstances beyond a party's control that normal prudence and experience could not foresee, anticipate or provide for.

"File" means to submit a document, grievance, or other written, printed, or electronic information to the CSRO as prescribed by these rules.

"Filing Date" means the day that a document, grievance, petition, or other paper is recorded as received by the CSRO.

"Grievance Procedures" mean the grievance and appeal procedures codified at Sections 67-19a-101 through 67-19a-501 and promulgated through this rule.

"Grievant" means the person or party advancing one or more issues as a petitioner through these grievance procedures.

"Group Grievance" means a grievance submitted and signed by two or more aggrieved employees. The term does not include "class action."

"Hearing" means the opportunity to be heard or present evidence in an administrative proceeding.

"Hearing Officer" means an impartial trier of facts appointed by the CSRO administrator and assigned to decide a particular grievance.

"Hearsay Evidence" means evidence not based upon a witness's personal knowledge as a direct observer of an event. Rather, hearsay evidence stems from the repetition of what a witness heard another person say. Hearsay's value rests upon the credibility of the declarant. Hearsay is a statement made outside of the hearing that is offered as evidence of the truth of matters asserted in the hearing.

"Initial Hearing" means a hearing conducted by the administrator to make an initial determination regarding timeliness, authority, jurisdiction, direct harm, standing and eligibility to advance a grievance.

"Issuance" means the date on which a decision, order or ruling is signed and dated; it is not the date of mailing, or the date of the mailing certificate, nor the postal date. Date of issuance is the date specified according to Subsection 63G-4-401, of the UAPA.

"Joint Hearing" means the uniting of two or more grievances involving the same, similar, or related circumstances or issues to conduct a single hearing; also see "Consolidation."

"Jurisdiction" means the legal right and authority to hear and decide issues and controversies.

"Management Representative" means a person of managerial or supervisory status who is not subject to exclusion. Legal counsel is not included within the meaning of the term.

"Motion" means a request offered verbally or in writing for a ruling or to take some action.

"Motion to Dismiss" means a motion requesting that a grievance or appeal be dismissed because it does not state a claim for which the CSRO provides a remedy, or is in some other way legally insufficient.

"Notice" and "Notification" mean a proper written notice to the parties involved in a grievance procedural hearing or

conference, setting forth date, time, location, and the issue to be considered.

"Pleadings" mean the formal written allegations of the parties that set forth their respective claims and defenses.

"Presiding Hearing Officer" means either the Administrator or designated Level 4 hearing officer.

"Pro Se" means in one's own behalf. A person is represented pro se in an administrative proceeding when acting without legal counsel or other representation.

"Quash" means to cancel, annul, or vacate.

"Relevant" means directly applying to the matter in question; pertinent, germane. It is evidence that tends to make the existence of any facts more probable or certain than they would be without the evidence; and tending to prove the precise fact at issue.

"Remand" means to send back, as for further deliberation and judgment, to the presiding official or other tribunal from which a grievance was appealed.

"Standard of Proof" means the evidentiary standard, which in CSRO adjudications is the substantial evidence standard.

"Stay" means a temporary suspension of a case or of some designated proceeding within the case. A stay is different than a continuance or extension of time and can only be granted when agreed to by the parties and when the administrator or assigned hearing officer finds a stay necessary for judicial economy and the interest of justice.

"Submit" means to commit to the discretion of another; to present for determination.

"Subpoena" means a formal legal document issued under authority to compel the appearance of a witness at an administrative proceeding, the disobedience of which may be punishable as a contempt of court.

"Subpoena Duces Tecum" means a formal legal document issued under authority to compel specific documents, books, writings, papers, or other items.

"Substantial Evidence" means evidence possessing something of substance and relevant consequence, and which furnishes substantial basis of fact from which issues tendered can be reasonably resolved. It is evidence that a reasonable mind might accept as adequate to support a conclusion, but is less than a preponderance.

"Summary Judgment" means a ruling made upon motion by a party or the presiding hearing officer when there is no dispute as to either material fact or inferences to be drawn from undisputed facts, or if only a question of law is involved. The motion may be directed toward all or part of a claim or defense.

"Transcript" means an official verbatim written record of an adjudicative proceeding or any part thereof, which has been recorded and subsequently transcribed by a certified court reporter.

"UAPA" means the Utah Administrative Procedures Act found at Sections 63G-4-102 through 63G-4-601.

"Withdraw" means to recall or retract a grievance from further consideration under these grievance procedures.

"Witness Fee" means an appearance fee and may also include a mileage rate established by statutory provision pursuant to Section 78B-1-119.

"Working Days" means for purposes of the time periods for filing a grievance, advancing an appeal or responding to an employee's grievance or appeal, all days except Saturdays, Sundays and recognized State holidays.

R137-1-3. Classification Jurisdiction.

The CSRO and the CSRO hearing officers have no jurisdiction over classification and reclassification grievances, appeals, and complaints nor over position schedule assignments, according to Section 67-19-31 and Subsections 67-19a-202(1)(a) and 67-19a-302(3), and Section R477-3-5.

R137-1-4. Complaints From Applicants.

(1) A public applicant for a position with the state's work force has no standing to submit a grievance and is precluded from using these grievance procedures, according to Subsection 67-19-16(6).

(2) A public applicant who alleges a violation of a legally prohibited practice based upon race, color, sex, pregnancy, childbirth, or pregnancy-related conditions, age, if the individual is 40 years of age or older, religion, national origin, or disability, is directed to Section R137-1-5 of these grievance procedures.

R137-1-5. Discrimination: Legally Prohibited Practices.

(1) Discrimination Claims. Claims alleged to be based upon a legally prohibited practice as set forth in Section 34A-5-106, including employment discrimination on the basis of race, color, sex, pregnancy, childbirth, or pregnancy-related conditions, age, if the individual is 40 years of age or older, religion, national origin, or disability, are not admissible under these grievance procedures. The CSRO and CSRO hearing officers have no jurisdiction over the preceding claims.

(2) Processing Discrimination Complaints. A public applicant, a probationary employee, a career service employee, or an exempt employee who alleges a violation of a legally prohibited practice pursuant to Section 34A-5-106, may file a timely complaint with the individual's respective department head. If the individual is not satisfied with the department head's decision, or if the decision is not rendered within ten working days after submission of the complaint, the individual may then file a complaint with the Utah Anti-discrimination Division pursuant to Section 67-19-32.

(3) Filing Discrimination Complaints. Employees and applicants desiring to file a legally prohibited discrimination complaint may contact the Utah Anti-Discrimination Division.

R137-1-6. Filing Procedure.

The submission of correspondence, pleadings, grievance materials, and legal documents is subject to the following provisions:

(1) Filing/Receipt. Filings with the CSRO are deemed filed on the date actually received. The date on which papers are received is regarded as the date of filing.

(2) Time Periods. All filings must be electronically submitted to the Career Service Review Office, csro@utah.gov, within the time limits prescribed either by law, by these rules, or by order of the administrator or by the designated CSRO hearing officer.

(a) All filing dates are based upon the CSRO's working days.

(b) Filings must be signed or electronically signed by the filing party or by the filing party's authorized representative.

(c) Filings are to contain the name, business address, telephone number, and email address of the filing party or filing party's representative. Notices shall be served upon the party or party's representative at the email address provided by the filing party.

(d) Copies of all filings shall be served upon the opposing party or party's representative, with notice of service given to the administrator.

R137-1-7. Subpoenas.

Subsection 63G-4-205(2) of the UAPA is incorporated by reference.

(1) Subpoena Power. Pursuant to Subsection 67-19a-204(2)(a)(ii), the administrator may issue subpoenas to witnesses and may obtain documents or other evidence in conjunction with any inquiry, investigation, hearing, or other proceedings.

(a) The aggrieved employee has the right to require the

production of books, papers, records, documents and other items pertinent to the facts at issue that are within the control of the agency against which the grievance is lodged, and which are not held to be protected or privileged by law. Affidavits and ex parte statements offered during a hearing may be received and considered by the CSRO hearing officer.

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

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

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

(2) Service of Subpoenas. Service of subpoenas shall be made by the CSRO by E-mail, unless the CSRO is requested to deposit the subpoena properly addressed and postage prepaid, with the U.S. Postal Service, or to send it by State Mail and Distribution Services, or to send it by facsimile transmission, or in any combination.

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

(4) Quashing. Subsection 67-19a-204(2)(a)(iii) governs the quashing of subpoenas by the administrator.

R137-1-8. Notice, Service, Issuance and Distribution.

(1) Service by the Parties. The parties to a proceeding shall serve upon each other one copy of all pleadings filed with the administrator. Service of a pleading may be made by any of the following: personal delivery, U.S. Postal Service, postage prepaid, State Mail and Distribution Services, facsimile, or E-mail.

(a) Pleadings must be accompanied by a certificate of service or an affidavit of mailing, indicating how, where, when and to whom service is being made.

(b) It is the duty of a party or person or their representative to notify the administrator and the opposing party or representative in writing of any changes in names, addresses, or telephone numbers.

(2) Service of Subpoena. Service of subpoenas shall be executed in accordance with Section R137-1-7(2) above.

(3) Issuance of Decisions and Orders. A CSRO decision, order, ruling or other document shall be considered issued on the date that it is signed by its CSRO originator, rather than on other dates such as the date it is mailed, postmarked, received or distributed.

(a) All notices, decisions, orders and rulings by the administrator or by a CSRO hearing officer are to be distributed to the counsel or representatives of record and upon any person appearing pro se.

(b) The CSRO will retain the original notice, decision, order or ruling with the record of the proceedings. Distribution of a CSRO notice, decision, order or ruling is accomplished when any of the following occurs:

(i) deposit postage prepaid with the U.S. Postal Service,

(ii) deposit with State Mail and Distribution Services,

(iii) personal delivery,

(iv) facsimile transmission, or

(v) E-mail transmission.

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

R137-1-9. Hearing Dates, Continuance/Extension of Time.

(1) Once the administrator has made an initial determination that the CSRO has authority to review or decide a grievance or appeal, for grievances filed under Sections 67-19a-202(1) and 67-19a-202(2), the administrator shall set a date for an evidentiary Level 4 hearing that is:

(a) within 30 days of the administrator's determination; or

(b) if agreed to by the parties, no more than 150 days from the administrator's determination date.

(2) Notwithstanding Subsection (1), after the evidentiary hearing date has been set, each party may be granted one continuance or extension of time for the hearing, provided there are extraordinary circumstances justifying such continuance or extension. A party desiring an extension of time or a continuance of the evidentiary hearing shall file a written request with the administrator or appointed hearing officer.

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

(b) In considering a request for continuance, the administrator or the appointed CSRO hearing officer shall take into account:

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

(ii) whether the request is based on extraordinary circumstances.

(3) Inattention or lack of preparation does not constitute extraordinary circumstances justifying a continuance or extension of time of the evidentiary hearing.

R137-1-10. Eligibility to Grieve.

(1) Standing. Only executive branch career service employees and reporting employees alleging retaliatory action, as defined by Subsections 67-19a-101(3) and 67-19a-101(10), may use these grievance procedures.

(a) Pursuant to Subsection 67-19-16(6) and Section 67-19a-301, the CSRO has no jurisdiction over grievance petitions filed by probationary employees, public applicants, exempt employees, noncareer service employees, public employees of the state's political subdivisions, public employees covered by other grievance systems, or employees of state institutions of higher education.

(2) Questionable Standing. Where a question or dispute exists whether an employee qualifies to use these grievance procedures, such controversies must be resolved through application of R137-1-17 by the administrator. The administrator's determination shall be final and subject to review only in the Utah Court of Appeals.

(3) Class Action. Pursuant to Subsection 67-19a-401(8), class action grievances will not be admissible for consideration by the CSRO under these grievance procedures.

(4) Group Grievance. A group grievance is admissible provided that each aggrieved employee signs the grievance, according to Subsections 67-19a-401(8)(a) and (b).

R137-1-11. Issues Appealable to Level 4.

All grievances shall be reviewed to determine:

(1) Whether the matters or issues raised in a grievance fall within the CSRO's limited jurisdiction as set forth in Subsections 67-19a-202(1), 67-19a-202(2), and 67-19a-202(3), or

(2) Whether any issues or components of a grievance were satisfactorily resolved at an earlier step in the grievance procedures. Matters or issues resolved at an earlier step in the grievance procedures may not be advanced to the CSRO.

R137-1-12. Employees' Rights.

(1) Representation. The state does not provide legal counsel or representation to aggrieved employees nor pay the fees for an employee's representation. Also, Subsection 67-19a-406(4)(a) precludes the CSRO from awarding fees or costs to an employee's attorney or representative. Pursuant to Subsection 67-19a-402.5(6)(a), an appellate court may award costs and attorney fees, accrued at the appellate court level, to a prevailing employee in a retaliatory action grievance.

(2) Pro Se Status. A party or person to a grievance proceeding may appear pro se. When a party or person appears pro se, the party or person is entitled to request the issuance of subpoenas, directly examine and cross-examine witnesses, make opening and closing statements, submit documentary evidence, summarize testimony, and in all respects fully present one's own case.

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

R137-1-13. Automatic Processing, Waiver, Excusable Neglect, Abandonment of Grievance, Default, Transfer and Stay.

(1) Automatic Processing. An agency's failure to reply in writing to an aggrieved employee's grievance within the prescribed time period automatically grants the aggrieved employee the right to advance the grievance to the next step of these grievance procedures listed in Section 14 (below). Pursuant to Subsection 67-19a-401(2), the parties may mutually agree to waive or extend steps 1, 2, or 3 or extend the statutory time period for those steps. Waivers of the statutory time periods by agency management and the aggrieved employee must be in writing and submitted to the administrator.

(2) Waiver. When the administrator finds that a grievance is one that an agency cannot resolve because of the nature of the grievance, the matter may be waived in writing to a higher level. Steps 1, 2, or 3 may be waived, but not step 4. Any waiver agreed to between the parties must be in writing, dated and submitted to the administrator according to Subsection 67-19a-401(2) and (3).

(3) Excusable Neglect. The standard of excusable neglect may be offered as a defense to lack of timeliness in filing or processing a grievance, or for not appearing at a scheduled proceeding. An employee may file a motion for an enlargement of the time limits for filing or processing a grievance consistent with Section 67-19a-401 (6)(a).

(a) The administrator or appointed CSRO hearing officer shall determine the applicability of the excusable neglect standard when offered as a defense to lack of timeliness or not appearing at a scheduled proceeding.

(b) All questions are to be resolved at the original level of occurrence.

(4) Abandonment of Grievance. In the event the administrator or CSRO hearing officer determines that a grievance claim has been withdrawn, abandoned, or otherwise neglected beyond either the established time lines or a reasonable period, the matter no longer qualifies for further processing through these grievance procedures. When withdrawal is intended, it should be accomplished in writing.

(5) Default. An employee who defaults in processing a grievance forfeits further rights granted by these rules and under Section 63G-4-209 of the UAPA, which is incorporated by reference.

(6) Transfer. The administrator may administratively transfer a grievance from the aggrieved employee's department to another, more appropriate department to respond as necessary to serve the ends of justice and fairness.

(7) Stay. Upon written request, the administrator or the CSRO hearing officer may grant a stay of a decision, order, ruling, remedy, or proceeding. However, stays may be granted only when agreed to by the parties and when the administrator or assigned hearing officer finds a stay necessary for judicial economy and the interest of justice.

R137-1-14. Grievance Procedure Levels.

Persons acting on grievances pursuant to Sections 67-19a-402, and in accordance with these rules, shall conduct their filings through the following levels of increasing accountability:

Level 1; A written grievance shall be submitted to the employee's immediate supervisor. A standard grievance form is available from the CSRO. Once submitted, the written grievance is a formal complaint necessitating a response. At all levels of procedure, the parties must comply with the time periods outlined in Sections 67-19a-401 and 67-19a-402. If a supervisor is the subject of a grievance or complaint, the employee may proceed directly to Level 2.

Level 2; If the grievance is not resolved at Level 1, the employee may advance their grievance to the agency or division director (or director's designee) at Level 2. If an agency or division director is the subject of a grievance or complaint, the employee may proceed directly to Level 3.

Level 3; If the grievance is not resolved at Level 2, the employee may advance their grievance to the department head, executive director, or commissioner (or director's designee) at Level 3.

Level 4; If the grievance is not resolved at Level 3, the employee may advance their grievance to the CSRO at Level 4. For grievances filed under Sections 67-19a-202(1) and 67-19a-202(2), the CSRO provides an evidentiary de novo hearing, conducted before a CSRO hearing officer. When the CSRO receives a request for administrative review of an abusive conduct investigation filed under Section 67-19a-202(3), no evidentiary hearing is required.

The purpose of the levels is to curtail employees from having to submit their grievances to persons not specified in the above steps or levels. Only the above-listed persons (or their designated representatives) in agency management are authorized to respond to state employees' grievances. Grievances by a reporting employee alleging retaliatory action filed under Section 67-19a-202(2) and requests for the CSRO to review the findings of an abusive conduct investigation filed under Section 67-19a-202(3) are not subject to Levels 1-3 and may be filed directly with the CSRO.

R137-1-15. Procedure for Appealing Disciplinary Action Imposed by Department Head.

(1) An aggrieved employee who has been demoted or dismissed by their respective department head (i.e., executive director or commissioner) may appeal the department head's action directly to the CSRO at the evidentiary step 4 level.

(a) An appeal from discipline imposed by the department head is distinguishable from a grievance.

(b) A grievance is filed at step 1 and proceeds through steps 2 and 3.

(c) When an appeal from discipline imposed by a department head occurs at the step 3 level, it may be appealed directly to the CSRO.

(2) When appealed to the CSRO, the appeal must be filed within 30 working days from the date an aggrieved employee receives written notification from the department head who imposed the disciplinary action.

R137-1-16. Procedure for Appealing Reduction in Force or Abandonment of Position.

An aggrieved employee may appeal a reduction in force or abandonment of position according to the following:

(1) Upon receiving the department head's final, written decision, the employee may appeal from a reduction in force by filing a written appeal within 20 working days of receipt of the decision with the CSRO.

(2) An employee separated from employment for abandonment of position may appeal the department head's final written decision by filing a written appeal with the CSRO within 20 working days of receipt of the decision.

R137-1-17. Initial Review by Administrator.

When an employee advances a grievance to the CSRO or directly appeals a department head's decision to the CSRO, the administrator shall make an initial determination of whether the CSRO has authority to review or decide the grievance or appeal. In order to make this determination, the administrator may hold an initial adjudicative hearing in accordance with Subsections 67-19a-403(2), 67-19a-402.5(2)(b)(i) and Section 63G-4-206 or conduct an informal adjudicative review of the file in accordance with Subsections 67-19a-403(2), 67-19a-402.5(2)(b)(ii) and Section 63G-4-202 which are incorporated by reference.

(1) Procedural Issues. The administrator shall make an initial determination of the following: timeliness, direct harm, jurisdiction, standing, eligibility of the issues to be advanced, and any other procedural matters or jurisdictional controversies according to Sections 67-19a-402.5, 67-19a-403 and 67-19a-404.

(2) Determination. The administrator has authority to determine which types of grievances may be heard at Level 4. Those types of grievances found to have been resolved at a lower level or those that do not qualify for advancement to Level 4 are precluded from further consideration in any grievance submitted for CSRO consideration.

(3) Preclusion. Those types of actions not listed in Sections 67-19a-202(1), 67-19a-202(2) or 67-19a-202 (3) are precluded from advancement to Level 4. For grievances filed under Section 67-19a-202(1), if the CSRO does not have jurisdiction at Level 4, the matter shall be deemed final at Level 3 according to Section 67-19a-302(3).

(4) Reconsideration. A written request for reconsideration may be filed with the administrator. It must be filed within 20 days from the date the administrator issues a decision regarding whether the CSRO has authority to review or decide a grievance or appeal. Section 63G-4-302 of the UAPA is incorporated by reference. The written reconsideration request must contain specific reasons why a reconsideration is warranted with respect to the factual findings and legal conclusions of the hearing decision or administrative review of the file decision. New or additional evidence may not be considered.

(5) Judicial Review.

(a) The aggrieved employee or the responding agency may appeal the administrator's initial adjudicative hearing decision and final agency action to the Utah Court of Appeals within 30 calendar days from the date of issuance according to Subsection 63G-4-401(3)(a) and Section 63G-4-403 of the UAPA, which are incorporated by reference.

(b) A decision reached by the CSRO upon administrative review of the findings resulting from an abusive conduct investigation under Section 67-19a-501 is final and not subject to appeal.

(c) A decision reached by the CSRO in reviewing a retaliatory action grievance from a reporting employee, as defined by Subsections 67-19a-10110 and 67-19a-10111,may be appealed to the Utah Court of Appeals.

(6) Summary Judgment. The administrator or the (Presiding Officer, Utah Code Ann. Section 63G-4-103(1)(h)(i)) hearing officer may, pursuant to an administrative review of the procedural facts and circumstances of a grievance case, summarily dispose of a case on the ground that:

(a) the matter is untimely;

(b) the grievant has failed to appear at the properly scheduled date, time, and place pursuant to written notice;

(c) the grievant lacks standing;

(d) the grievant has withdrawn or otherwise abandoned the grievance;

(e) the grievant has not been directly harmed;

(f) the issue grieved does not qualify to be advanced beyond step 3; or

(g) the requested remedy or relief exceeds the scope of these grievance procedures.

(7) Transcription and Transcript Fees. If a party appeals the administrator's initial adjudicative hearing decision to the Utah Court of Appeals, the appealing party is responsible for having the CSRO's recording transcribed by a certified court reporter and for paying all transcription costs and any transcript fees. The CSRO does not participate in the payment of these fees when appeals are taken to the appellate court. See Utah Rules of Appellate Procedure, Rule 11, and Section 63G-4-403(3), regarding transcript costs from formal adjudications under the UAPA.

R137-1-18. Procedural Matters.

The provisions under this section pertain to initial administrative and Level 4 proceedings before the CSRO.

(1) Purpose. A formal adjudicative proceeding provides a fair and impartial opportunity for the parties to be heard and to present their evidence. The adjudicative process allows the CSRO administrator or the CSRO hearing officer to be completely informed about the case. After having considered the parties' evidence, the CSRO administrator or the CSRO hearing officer may then render a proper determination based upon all of the facts, circumstances, and applicable laws, rules and policies.

(2) Types of Adjudications. For purposes of Section 63G-4-202 of the UAPA:

(a) All initial administrative and Level 4 adjudications at the CSRO are formal adjudicative proceedings. Sections 63G-4-205 through 63G-4-209, 63G-4-401 and 63G-4-403 through 63G-4-405 of the UAPA are incorporated by reference within this rule and are applicable to these adjudicative proceedings.

(3) Rules of Evidence/Procedure Inapplicable. The technical rules of evidence and the formal rules of civil procedure as observed in the courts of law are inapplicable to these grievance procedure proceedings, except for the rules of privilege as recognized by law and those specific references to the rules of evidence and procedure as set forth in the UAPA.

(4) Expelling. The presiding CSRO hearing officer may clear the proceeding of witnesses not under examination and may exclude any unruly or disruptive person. The hearing officer may also expel any persons whose presence is antagonistic, oppressive, intimidating or appears to have a chilling effect on the witness under examination.

(5) Presentation of Case. Each party is given the opportunity to make an opening statement and to present evidence. After the evidence is closed, each party may offer a closing argument. The moving party may offer one rebuttal. Continuous rebuttal is not permissible.

(6) Objections.

(a) When an objection is made as to the admissibility of evidence, the presiding CSRO hearing officer shall note the objection for the record and make a ruling or take the objection under advisement to be ruled upon later.

(b) The presiding CSRO hearing officer has discretion to exclude inadmissible evidence and to order that cumulative or repetitive evidence be discontinued.

(c) A party objecting to the introduction of evidence must state the precise grounds of the objection at the time such evidence is offered.

(7) Marking Exhibits. All exhibits shall be numerically marked and labeled in the order received into evidence, unless previously marked and labeled.

(8) Motion to Dismiss. The administrator or CSRO hearing officer may, upon a party's motion or upon their own motion, dismiss the grievance or appeal before the CSRO.

(9) Consolidation of Grievances. Grievances of the same or of a sufficiently similar context may be consolidated by the administrator for purposes of conducting a single or joint hearing.

(10) Standard of Proof. In all CSRO adjudicative proceedings, the standard of proof is the substantial evidence standard according to Subsections 67-19a-406(2) and 67-21-3.5.

(11) Hearsay Evidence. Hearsay evidence is admissible in CSRO formal adjudicative proceedings as qualified by Subsection 63G-4-208(3) of the UAPA which is incorporated by reference.

(12) Discovery. The following rule provisions satisfy Section 63G-4-205 of the UAPA on discovery.

(a) Discovery shall be limited to that which is relevant and nonprivileged, and for which each party has a substantial, demonstrable need for supporting their respective claims or defenses.

(b) At the discretion and approval of the administrator or appointed CSRO hearing officer, parties to a dispute may obtain discovery. The CSRO administrator or hearing officer has discretion to entertain discovery motions on a case-by-case basis regarding the following:

(i) production of documents, records and things under Utah Rule 34 of Civil Procedure; and

(ii) depositions only when a proposed witness is unavailable for giving testimony at a scheduled hearing.

(c) No other form of discovery is permitted.

(d) Witness lists and copies of exhibits shall be offered by each party to the opposing party and to the CSRO hearing officer during a prehearing/scheduling conference, unless the exchange is scheduled for a later date.

(i) Each party's list of witnesses shall contain a brief statement describing the nature of the proposed testimony to be offered by each witness.

(ii) A party may not surprise the opposing party with a witness or an exhibit at the hearing which was not made known by a scheduled exchange date, unless the witness or exhibit is in direct rebuttal to admitted opposing evidence. Also refer to R137-1-7(1)(c).

(13) Page Limitation.

(a) Unless otherwise specified by the CSRO, written motions, pleadings, briefs, and memoranda for all CSRO proceedings may not exceed 10 typed, double-spaced 8-1/2 x 11 inch pages, exclusive of any statement of facts. Reply briefs may not exceed five pages.

(b) An application for an exception to the above-stated page limitation provisions must be timely filed in writing, and not more than five double-spaced 8-1/2 x 11 inch pages in a 12-point font. The applicant party has the burden to offer sufficient justification for requests to exceed the page limitations.

(c) The CSRO may weigh all requests to exceed the page limitations based upon the reasonableness and necessity of such requests in light of each case and its circumstances. The CSRO does not automatically grant exceptions simply on the basis of a request.

R137-1-19. Witnesses.

(1) Availability of State Employees to Testify. An agency shall be responsible for making available any of its employees who are subpoenaed to testify in a hearing.

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

(b) Nondisruption. The parties and their representatives, the administrator and the CSRO hearing officer shall make every effort to avoid disruption to the operation of state government in the calling of state employees to testify in hearings under these grievance procedures.

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

(d) Excessive Witnesses. If the number of witnesses requested by a party is excessive, the administrator or the CSRO hearing officer may require the party to justify the request or face denial of part or all of the request.

(e) Witness Fees and Mileage Fees. A witness fee and a mileage fee are available to nonstate employees and to state employees who use nonworking hours if their presence is required in a grievance proceeding as a witness according to Section 78B-1-119. The CSRO reserves the right to determine on an individual case basis whether it will authorize a travel fee, and to what extent, for an out-of-state witness called by a party.

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

(3) Exclusion/Sequestering of Witnesses.

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

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

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

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

R137-1-20. Public Hearings.

A CSRO hearing is open to the public unless there are reasonable grounds to justify an executive session for either part or all of a hearing. This provision does not apply to witnesses who are being called to testify according to R137-1-19.

(1) Closing Hearings. All grievance procedure hearings shall be open to the public except as follows:

(a) The administrator or the CSRO hearing officer may close either a portion or an entire hearing based upon reasonable grounds.

(b) A Level 4 hearing may be closed in part or in its entirety when the proceeding involves discussion about a state employee's character, professional competence, or physical or mental health according to Subsection 52-4-205(1)(a) of the Open and Public Meetings statute.

(2) Sealing Evidence. The administrator or the CSRO hearing officer may seal the record when appropriate according to Subsection 67-19a-406(4)(c).

(3) Media Presence. All hearings at Level 4 are open to the media, unless closed pursuant to R137-1-20(1) above. However, television cameras are not permitted at Level 4 proceedings.

(4) Distribution of Decisions. Once the grievance process, including all administrative appeals, has been completed and if the agency's decision was sustained, the administrator may

provide copies of legal decisions, orders, and rulings to the public upon request. Portions of or entire legal decisions and orders may be withheld if deemed to be legally privileged or protected under the state's Government Records Access and Management Act (GRAMA), or if the record is sealed according to the Open and Public Meetings statute.

R137-1-21. The Level 4 Adjudicatory Procedures.

(1) Authority of the CSRO Hearing Officer/Presiding Officer. The CSRO hearing officer/presiding officer is authorized to:

(a) serve as the presiding officer at Level 4 hearings as set forth at Subsection 63G-4-103(1)(h)(i) of the UAPA;

(b) maintain order, ensure the development of a clear and complete record, rule upon offers of proof, receive relevant evidence, and assign the burden of proof according to Subsection 67-19a-406(2);

(c) set reasonable limits on repetitive and cumulative testimony and sequester any witness whose later testimony might be colored by the testimony of another witness or any person whose presence might have a chilling effect on another testifying witness;

(d) rule on any motions, discovery requests, exhibit lists, witness lists and proposed findings;

(e) require the filing of memoranda of law and the presentation of oral argument with respect to any question of law;

(f) compel testimony and order the production of evidence and the appearance of witnesses;

(g) admit evidence that has reasonable and probative value; and

(h) reopen the evidentiary record.

(2) Conduct of Hearings. A hearing shall be confined to those issues related to the subject matter presented in the original grievance statement.

(a) An evidentiary proceeding may not be allowed to develop into a general inquiry into the policies and operations of an agency.

(b) An evidentiary proceeding is intended solely to receive evidence that either refutes or substantiates specific claims or charges. A proceeding may not be used as an occasion for irresponsible accusations, general attacks upon the character or conduct of the employing agency, agency management, or other employees. A hearing may not be used as a forum for making derogatory assertions having no bearing on the claims or specific matters under review.

(3) Level 4 Hearing. An evidentiary Level 4 hearing shall be recorded according to Section 67-19a-406 and held de novo, with both parties being granted full administrative process as follows:

(a) The CSRO hearing officer shall first make factual findings based solely on the evidence presented at the hearing without deference to any prior factual findings of the agency. The CSRO hearing officer shall then determine whether:

(i) the factual findings made from the evidentiary Level 4 hearing support, by substantial evidence, the allegations made by the agency or the appointing authority, and

(ii) the agency has correctly applied relevant policies, rules, and statutes.

(b) When the CSRO hearing officer determines in accordance with the procedures set forth above that the evidentiary Level 4 factual findings support the allegations of the agency or the appointing authority, then the CSRO hearing officer must determine whether the agency's decision, including any disciplinary sanctions imposed, is excessive, disproportionate or otherwise constitutes an abuse of discretion. In making this latter determination, the CSRO hearing officer shall give deference to the decision of the agency or the appointing authority. If the CSRO hearing officer determines that the agency's penalty is excessive, disproportionate or constitutes an abuse of discretion, the CSRO hearing officer shall determine the appropriate remedy.

(4) Discretion. Upon commencement, the CSRO hearing officer shall announce that the hearing is convened and is being held on the record. The CSRO hearing officer shall note appearances for the record and note the party having the burden of moving forward first.

(5) Closing the Record. After all testimony, documentary evidence, and arguments have been presented, the CSRO hearing officer shall close the record and terminate the proceeding, unless one or both parties agree to submit a posthearing brief or memoranda of law within a specified time.

(6) Posthearing Briefs. When posthearing briefs or memoranda of law are scheduled to be submitted, the record shall remain open until the briefs or memoranda are exchanged and received by the CSRO hearing officer and incorporated into the record, or until the time to receive these submissions has expired. After receipt of posthearing documents, or upon the expiration of the time to receive posthearing documents, the case is then taken under advisement, and the period commences for the issuance of the written decision.

(7) Findings of Fact, Conclusions of Law. After closing the record, the CSRO hearing officer shall write a decision containing findings of fact and conclusions of law according to Section 67-19a-406 and Section 63G-4-208 of the UAPA, which is incorporated by reference. When the CSRO hearing officer's decision and order is filed with the administrator it then becomes the decision and order of the Level 4 hearing.

(8) Distribution of Decisions. The administrator shall distribute copies of the Level 4 decision and order to the persons, parties and representatives of record.

(9) Past Work Record. In those proceedings where a disciplinary penalty is at issue, the past employment record of the employee is relevant for purposes of either mitigating or sustaining the penalty when substantial evidence supports an agency's allegations.

(10) Compliance and Enforcement. State agencies, department heads, division directors and officials are expected to comply with decisions and orders issued by the CSRO hearing officer. Enforcement measures available to the CSRO include:

(a) petitioning the governor, who may remove his appointed state officers with or without cause, and with respect to those who can only be removed for cause, refusal to obey a lawful order may constitute sufficient cause for removal;

(b) a mandamus order to compel the official to obey the order;

(c) the charge of a Class A misdemeanor according to Section 67-19-29; and

(d) seeking enforcement of a legal decision, order or ruling through civil enforcement in the district court according to Subsection 63G-4-501(1) of the UAPA which is incorporated by reference.

(11) Rehearings. Rehearings are not permitted.

(12) Reconsideration.

(a) Section 63G-4-302 of the UAPA is incorporated by reference within this rule, and requests for reconsideration of an Level 4 decision will be conducted in accordance with that section, except for the time period which is stated below.

(b) The written reconsideration request must contain specific reasons why a reconsideration is warranted with respect to the factual findings and legal conclusions of the Level 4 decision. The same CSRO hearing officer shall decide the propriety of a reconsideration. A request for reconsideration is filed with the administrator. To be timely the written request for reconsideration shall be filed within twenty days after the Level 4 decision is issued as provided at Section 63G-4-302.

(13) Appeal to the Utah Court of Appeals. To appeal to

the Utah Court of Appeals, a party must file with the court within 30 calendar days from the date of issuance of the Level 4 decision and final agency action according to Sections 63G-4-401 and 63G-4-403 of the UAPA, which are incorporated by reference. The dates of mailing, postmarking and receipt are not applicable to filing with the court.

(14) Transcript Fee. The party petitioning the Utah Court of Appeals for a review must bear all costs of transcript production for the Level 4 decision. The CSRO may not share any cost for a transcript or transcription of the Level 4 hearing.

R137-1-22. Declaratory Orders.

This rule provides a procedure for the submission and review of requests for and disposition of declaratory rulings pertaining to the applicability of statutes, administrative rules, and orders either governing or issued by the administrator, the previous Career Service Review Board or a CSRO hearing officer. Section 63G-4-503 of the UAPA is incorporated by reference.

(1) Applicability. The applicability of a declaratory order refers to the determination of whether a statute, rule, or order should be applied, and if so, how the law should be applied to the facts.

(2) Petition Procedure. Any person or agency with proper standing may petition for a declaratory ruling.

(a) The petition must be addressed and delivered to the CSRO.

(b) The petition shall be date-stamped upon receipt in the CSRO.

(3) Petition Form. The petition shall:

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

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

(c) describe the circumstances in which applicability is to be reviewed;

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

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

(f) be signed by the petitioner.

(4) Petition Review and Disposition. As appropriate the administrator:

(a) shall review and consider the petition;

(b) shall prepare a declaratory ruling, stating:

(i) the applicability or nonapplicability of the statute, rule, or order at issue;

(ii) the reasons for the applicability or nonapplicability of the statute, rule, decision or order; and

(iii) any requirements imposed on a petitioning person or agency, or any other person according to the ruling; and

(c) may:

(i) interview the petitioner or the agency representative;

(ii) hold a public hearing on the petition;

(iii) consult with legal counsel or the Attorney General; or

(iv) take any action that the administrator deems necessary to provide the petition with an adequate review and due consideration.

(5) Time Period and Issuance. The administrator shall prepare the declaratory ruling without unnecessary delay. The CSRO shall issue a copy of the ruling to the petitioner by depositing it with the U.S. Postal Service, postage prepaid, or by depositing it with State Mail and Distribution Services, by faxing it or E-mailing it, as appropriate. In the event of a necessary delay, the CSRO must issue a notice of progress to the petitioner within 30 days of receipt of the petition.

(6) Records. The CSRO shall retain the petition and the original of the declaratory ruling in its records.

(7) Statutory Construction. Questions requiring the construction of statutory provisions may be submitted to the Attorney General for a formal or informal letter opinion.

(8) Refusal. The administrator may refuse to issue a declaratory order if the question in issue is one that is being contested in a case currently before the CSRO.

R137-1-23. Procedure for Filing a Request for Administrative Review of an Abusive Conduct Investigation.

(1) Under Section 67-19a-202(3), an employee may file a request for administrative review of the findings of an abusive conduct investigation.

(2) A Request for Administrative Review of an Abusive Conduct Investigation may be filed directly with the CSRO within 10 days after the date on which the employee receives notification of the investigative findings.

KEY: grievance procedures, reconsiderations

November 7, 2019	**34A-5-106**
Notice of Continuation July 11, 2016	**67-19-16**
	67-19-30
	67-19-31
	67-19-32
	67-19a et seq.
	63G-4 et seq.

R151. Commerce, Administration.
R151-55. Regulatory Sandbox Program Rule.
R151-55-1. Title.

This rule shall be known as the "Regulatory Sandbox Program Rule".

R151-55-2. Authority - Purpose.

This rule governs adjudicative proceedings under Title 13, Chapter 55, Regulatory Sandbox Program, and is authorized by Utah Code Subsection 13-1-6(2).

R151-55-3. Adjudicative Proceedings.

(1) Informal Proceeding. Adjudicative Proceedings before the Department of Commerce under Title 13, chapter 55, Regulatory Sandbox Program are designated as informal adjudicative proceedings.

(2) Applicable Rules. In addition to Title 63G, Chapter 4, Administrative Procedures Act, any adjudicative proceedings under the Regulatory Sandbox Program shall be conducted in accordance with this rule and with the Department of Commerce Administrative Procedures Act Rule, R151-4.

(3) Hearings. Hearings will not be held in proceedings under the Regulatory Sandbox Program.

(4) Presiding Officer. The Regulatory Sandbox Program Manager is designated as the presiding officer in Regulatory Sandbox Program proceedings.

KEY: Regulatory Sandbox Program, informal proceedings, adjudicative proceedings
November 8, 2019 13-1-6(2)

R156. Commerce, Occupational and Professional Licensing.
R156-9. Funeral Service Licensing Act Rule.
R156-9-101. Short title.

This rule shall be known as the "Funeral Service Licensing Act Rule".

R156-9-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 9, as defined or used in this rule:

(1) "Contract" means a guaranteed preneed funeral arrangement contract.

(2) "Funeral service establishment" is defined in Subsection 58-9-102(18).

(3) "Guaranteed product contract" means a contract wherein goods or services are selected which will be provided at the time of need for the consideration specified in the contract regardless of the market price at the time of need.

(4) "Recipient of goods and services" is synonymous with "beneficiary" as defined in Subsection 58-9-102(2), and is used herein to avoid confusion with various common meanings of the term "beneficiary".

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 9, is further defined in accordance with Subsection 58-1-203(1)(e) in Section R156-9-502.

R156-9-103. 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 9.

R156-9-104. 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.

R156-9-302a. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(1)(d) and 58-1-301(3), the qualifications for licensure in Subsections 58-9-302(1)(g), 58-9-302(2)(e), 58-9-302(4)(e) and 58-9-306(6) and (7) are defined, clarified, or established as follows:

(1) An applicant for licensure as a funeral service director shall pass:

(a) the National Board Examinations (science and art sections) of the Conference of Funeral Service Examining Boards, which may be taken while the individual is enrolled in an approved funeral service school; and

(b) the Utah Funeral Service Director Law and Rule Examination, with a score of at least 75%.

(2) An applicant for licensure as a funeral service intern or funeral service director by endorsement shall pass the Utah Funeral Service Director Law and Rule Examination, with a score of at least 75%.

(3) An applicant for licensure as a preneed sales agent shall pass the Utah Preneed Funeral Arrangement Sales Agent Law and Rule Examination, with a score of at least 75%.

(4) An individual who fails the Utah Funeral Service Director Law and Rule Examination, or the Utah Preneed Funeral Arrangement Sales Agent Law and Rule Examination, may retake the failed examination:

(a) no more than three times within a three month period; and

(b) no earlier than three months following any failure thereafter.

R156-9-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 9 is established by rule in Section R156-1-308a.

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

R156-9-304. Continuing Professional Education - Funeral Service Directors.

In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b) and Section 58-9-304, the continuing education requirements for funeral service directors are established as follows:

(1) Continuing professional education ("CPE") shall consist of 20 hours of qualified continuing professional education in each preceding two-year period of licensure or expiration of licensure.

(2) If a renewal period is shortened or extended to effect a change of renewal cycle or if an initial license is granted for a period of less than two years, the CPE hours required for that period shall be increased or decreased proportionately.

(3) The standards for qualified CPE are:

(a) College classes, seminars, or workshops sponsored by professional associations in areas related to funeral service will generally qualify for CPE if the education contributes to the professional competence and knowledge of the funeral service director and if the program complies with the standards set forth under Subsection (b).

(b) CPE programs shall meet the following standards:

(i) the course shall be formally organized and be primarily instructional;

(ii) the sponsor shall prepare an outline of the course which shall be retained for a minimum of four years following the presentation;

(iii) the sponsor shall list the hour rating of the course in the course outline. One hour of CPE shall be credited for each 50 minute period of instruction;

(iv) the sponsor shall record and keep an accurate record of course attendance including the date, place, and the name of the licensed funeral service directors attending the course; and

(v) the sponsor shall issue a certificate of completion listing the time, date, place, name of licensee, number of hours of CPE completed and the course title.

(c) Formal correspondence or other individual study programs which require registration shall provide evidence of satisfactory completion including test results and meet all other requirements of this section.

(d) Each semester hour of college credit shall equal 15 hours of CPE. A quarter hour shall equal ten hours of CPE.

(e) Licensees who teach qualified CPE courses shall receive two CPE hours for each hour teaching. However, no teaching credit shall be granted for participation in a panel discussion.

(f) A licensee may earn up to eight hours for volunteer service as a subject-matter expert in the review and development of funeral service licensing exams, and for volunteer service on committees or in leadership roles in any state, national, or international organization for the development and improvement of the funeral service professions.

(4) Upon written request from the licensee, the Board may waive the requirement for CPE as provided in Section R156-1-308d.

(5) The licensee is responsible to ensure that the program will qualify for CPE. Each licensee shall keep an accurate record of CPE on forms supplied by the Division. The records shall be maintained for a minimum of four years after the end of the renewal cycle for which the CPE is due.

(6) The Division in collaboration with the Board shall perform random audits to determine if the licensee is in compliance with the CPE requirements. If audited, or upon request by the Division, the licensee is responsible to submit documentation of compliance with CPE requirements.

R156-9-401. Facility/Staff Requirements.

(1) The funeral service establishment is responsible for the maintenance and safe operation of equipment used in funeral services and to insure that the facility is in compliance with the local or state health, fire and life safety codes. All funeral service establishments shall be kept and maintained in a clean and sanitary condition, and all refrigeration units, embalming tables, sinks, receptacles, instruments, and other appliances used in embalming, cremation, or alkaline hydrolysis of dead human bodies shall be thoroughly cleansed and disinfected.

(2) The funeral service director is responsible to comply with the standards established by the Occupational Safety and Health Administration for the Federal Government and for the State of Utah.

(3) A funeral establishment or a number of funeral establishments under one management shall contain:

(a) a preparation room equipped with tile, cement, or composition floor, necessary drainage and ventilation. Every preparation room shall be provided with proper and convenient receptacles for refuse, bandages, cotton and other waste materials and supplies. All refuse, bandages, cotton, and other waste materials shall be destroyed in a sanitary manner, in accordance with health regulations.

(b) necessary instruments, supplies and proper protective clothing for the preparation and embalming of dead human bodies for burial, transportation, or other disposition.

(4) The care and preparation of the body for burial or other disposition of all human dead bodies shall be strictly private. No one shall be allowed in the embalming room while a dead body is being embalmed, except the licensed embalmer, intern, staff, public officials in the discharge of their duties and upon request, members of the immediate family of the deceased.

R156-9-402. Duties and Responsibilities of a Funeral Service Director in Supervision of Funeral Service Interns, Preneed Funeral Arrangement Sales Agents and Unlicensed Staff.

The duties and responsibilities of a supervising funeral service director include:

(1) being professionally responsible for the acts and practices of the supervisee;

(2) being engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(3) being available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training;

(4) monitoring the performance of the supervisee for compliance with laws, standards, and ethics applicable to the funeral service profession, including the Utah Vital Statistics Rules of the Utah Department of Health;

(5) submitting appropriate documentation to the Division with respect to all work completed by the funeral service intern evidencing the performance of the supervisee during the period of supervised training, including the supervisor's evaluation of the supervisee's competence in the practice of the funeral service profession. This report shall be submitted to the Division within 30 days after the supervisor-supervisee relationship is terminated or within 30 days after the supervisee has completed 2000 hours of supervised experience in a period exceeding one year, performed 50 embalmings, and has satisfactorily completed all the duties and functions of an intern throughout the entire internship period;

(6) supervising not more than one funeral service intern at any given time unless approved by the Board and Division;

(7) being physically present and directly supervising, or ensuring that another funeral director directly supervises all duties and functions completed by a funeral service intern throughout the entire internship period;

(8) being responsible for and signing all preneed and at need funeral contracts sold by persons under supervision;

(9) assuring each supervisee is appropriately licensed as a funeral service intern or preneed funeral arrangement sales agent prior to beginning the supervision;

(10) notifying the Division of beginning or ending of association or employment of a preneed sales agent with the funeral service establishment within ten days. Notification shall be made on forms provided by the Division; and

(11) assuring that the supervision requirements are met as required in Section 58-9-307.

R156-9-403. Death Registration - Removal of Body - Transportation and Preservation of Dead Human Bodies.

(1) A funeral service director licensed in another state may enter the state of Utah for the purpose of transporting a dead human body to another state without being in violation of Title 58, Chapter 9. However, the person shall comply with the Utah Vital Statistics Rules of the Utah Department of Health and any other statute or rule regulated by the Utah Department of Health.

(2) All licensed funeral service directors, who release a dead human body to such persons, are responsible to insure that the out of state persons and their staff comply with the Utah Vital Statistics Rules of the Utah Department of Health.

R156-9-502. Unprofessional Conduct.

"Unprofessional conduct" as defined in Title 58, Chapters 1 and 9, is further defined in accordance with Subsection 58-1-203(1)(e) to include:

(1) violating the ethical standards of the profession;

(2) failing to comply with laws and rules established by any local, state, federal or other authority regarding funeral services, preneed contracts, health, safety, sanitation, regarding funeral establishments or transportation or handling of dead human bodies, or disclosure requirements to purchasers or prospective purchasers of funeral services or preneed contract;

(3) failing to comply with any provision of the Title 58, Chapter 9, Funeral Service Licensing Act or this Funeral Service Licensing Act Rule;

(4) failing to comply with the disclosure requirements of the Federal Trade Commission;

(5) failing to accurately report and record information required by law to be reported on a death certificate;.

(6) solicitation or the direct or indirect offer to pay a commission for the procurement of dead human bodies;

(7) failing to comply with the Utah Vital Statistics Rules as promulgated by the Utah Department of Health;

(8) selling preneed funeral arrangements by a preneed funeral arrangement sales agent when the sales agent is not associated with or employed by a funeral service establishment;

(9) selling a preneed funeral arrangement when the preneed funeral arrangement sales agent has not obtained approval to do so from the funeral service establishment and the contract is not approved by the supervising funeral director;

(10) selling an insurance policy to fund a preneed funeral arrangement contract naming a funeral service establishment as beneficiary, prior to executing the underlying preneed funeral arrangement contract;

(11) selling a preneed funeral arrangement without executing an approved preneed funeral arrangement contract within ten working days following the sale;

(12) failing to notify the Division of the beginning or ending of association or employment of a preneed funeral arrangement sales agent;

(13) exercising undue influence over a consumer thereby requiring or causing the consumer to purchase goods or services beyond those the consumer desires or needs;

(14) collecting or receiving money from the sale of an insurance policy funding a preneed funeral arrangement contract unless the person is collecting or receiving the money as a licensed insurance agent or broker;

(15) violating Title 31A, Chapter 23a, containing the fiduciary duties of a trustee with respect to money collected or received as a licensed insurance agent or broker;

(16) receiving a death benefit payment of life insurance proceeds beyond the funeral service establishment's insurable interest in the recipient of goods and services specified in a preneed contract, unless the excess is promptly returned to the insurance company or paid to those entitled to the funds;

(17) converting a preneed funeral arrangement funded by money placed in trust to insurance except as provided by this rule;

(18) failing to provide guaranteed goods and services at time of need in accordance with the terms of a preneed funeral arrangement contract;

(19) retaining life insurance proceeds of a policy purchased to fund funeral arrangements but not accompanied by a preneed funeral arrangement contract, unless the licensee provides an equivalent value of funeral goods and services;

(20) failing to report known violations of governing law or rules to the Division and to appropriate law enforcement or other appropriate agencies; and

(21) failing to handle, remit or deposit funds received in payment for a preneed funeral arrangement contract by placing the funds in trust or remitting the funds to an insurance carrier as is required by the contract terms and conditions and by all laws and rules regulating the sale of preneed funeral arrangements and insurance and annuity policies.

R156-9-604. Affiliation of Licensed Sales Agent with Licensed Funeral Service Establishment.

(1) When a licensed sales agent enters association with a licensed funeral service establishment and such association is not currently registered with the Division under the provisions of Subsection 58-9-302(3)(d), or this subsection, the licensed funeral service establishment shall file a notice of association with the Division on forms provided by the Division within ten days after commencement of association.

(2) The licensed funeral service establishment shall provide the licensed sales agent with a copy of the notice filed with the Division.

(3) If a notice of association is not filed by the licensed funeral service establishment within ten days after association, the sales agent may not represent the licensed funeral service establishment with respect to any preneed funeral arrangement until such notice is filed.

R156-9-605. Licensure of Persons Selling Preneed Funeral Arrangements to be Funded by Proceeds from Insurance or Annuity Policy.

(1) The following persons are engaged in the sale of a preneed funeral arrangement and are required to be licensed as a funeral service establishment or sales agent:

(a) any person who sells or represents that they will or intend to sell specific funeral goods or services;

(b) any person who represents that goods or services will be provided by a specific funeral establishment;

(c) any person who represents that specified amount of money will purchase defined funeral goods or services; or

(d) any person who represents that payment for funeral goods or services to be provided at some future date shall be accomplished through the purchase of a life insurance policy or annuity policy.

(2) Any person who sells or represents that they will or intend to sell an insurance or annuity policy which will provide a certain benefit at time of death, represents that such benefit will be available to pay for funeral arrangements and no reference is made to specific funeral goods or services, to the cost of specific funeral goods or services, or to the services of a specific funeral service establishment, is not engaged in the sale of a preneed funeral arrangement and is not required to be licensed as a funeral service establishment or preneed sales agent.

(3) Nothing in this section shall be interpreted to affect or modify any requirement under state law regarding licensure of persons engaged in the sale of insurance or annuity policies.

R156-9-606. Preneed Funeral Arrangement Contracts Funded by Insurance or Annuity Policy.

(1) The beneficiary designation on any insurance or annuity policy sold to fund a preneed funeral arrangement contract shall be a contingent designation using such wording as "as their interests may appear under a funeral arrangement contract" with information identifying the funeral arrangement contract, or other substantially equivalent beneficiary designation language.

(2) Monies received by a licensee in payment for an insurance or annuity policy sold to fund a preneed funeral arrangement contract shall be handled in accordance with the contractual terms and conditions of the policy and the insurance laws applicable to the policy.

R156-9-607. Contract Forms - Division Model.

In accordance with Subsection 58-9-302(3)(e), a funeral service establishment shall ensure that if any amendments are made to any form of contract or agreement that is filed with its application for licensure, the amendments meet the requirements of Section 58-9-701 before that contract or agreement is used in any marketing or sale of preneed funeral arrangements.

R156-9-608. Contract Notice Regarding Medicaid.

The following notice shall appear in all preneed contracts:

"Notice: Under Federal regulations, a Medicaid recipient whose preneed contract is revoked, canceled, or mutually rescinded may become ineligible for Medicaid benefits. Before permitting or causing your preneed agreement to be revoked, canceled or rescinded, you should seek the advice of an attorney or a Medicaid representative."

R156-9-609. Retention of Completed or Terminated Contracts.

Contracts shall be maintained for a period of five years after the contracts have been serviced and obligations of the funeral service establishment have been completed, or after the contracts have been otherwise terminated. The contracts shall be filed and maintained with a copy of the death certification or burial transit permit with respect to those contracts for which services have been provided, and with sufficient documentation to clearly identify the basis for termination of otherwise terminated.

R156-9-610. Use of Funds in Trust Account to Purchase Insurance or Annuity Policy.

A funeral service establishment may convert a contract funded by monies held in trust with a contract funded by the proceeds from an insurance or annuity policy provided:

(1) the buyer consents in writing to the conversion after full disclosure of the consequences of the transaction in writing by the funeral service establishment;

(2) the buyer's consent is given without coercion, threat, concealment of material fact, undue influence, or other prejudicial influence inconsistent with the buyer's best interest;

(3) the funeral service establishment uses all monies held in the individual trust account, including interest, as premium for the purchase of the life insurance or annuity policy, unless

otherwise directed in writing by the buyer;

(4) the new preneed funeral arrangement contract must be in writing and must provide for goods and services which at least equal to those required of the funeral service establishment under the original contract, and

(5) the new contract meets all requirements of Title 58, Chapter 9, and this rule.

R156-9-611. Conversion of Trust Accounts Under Prior Law Prohibited.

Conversion of funds held in trust which was established under any prior law regulating preneed funeral arrangements, may not be converted to a trust under the provisions of current statute and rules, but shall continue to be held in trust under the terms and conditions of the predecessor law. However, the funeral service establishment is required to file reports with the Division as required under this rule.

R156-9-612. Prohibition Against Provider Accepting Payment in a Form Other Than Cash, Cash Equivalents, or Negotiable Instruments.

A funeral service establishment may accept in payment for a preneed funeral arrangement contract only cash, cash equivalents, or negotiable instruments which are readily convertible to cash.

R156-9-613. Funeral Service Establishment Expenditure of Earnings from Trust Account.

(1) In accordance with Subsection 58-9-704(1), earnings of a preneed funeral arrangement trust account shall be available to the funeral service establishment for expenditure toward reasonable trustee expenses of administering a trust account, not to exceed the lesser of the earnings remaining in the trust account or 1% of the entire trust account, plus any amounts necessary to pay taxes incurred on the entire trust account's earnings.

(2) In accordance with Subsection 58-9-704(2), earnings of an individual account within the trust shall be available to the funeral service establishment for expenditure toward other authorized reasonable funeral service establishment expenses incurred against the individual account, not to exceed earnings totaling 30% of the sales amount of the respective preneed funeral arrangement contract.

(3) Remaining earnings of individual accounts within the trust shall, except as provided in Subsection 58-9-704(3), remain in each individual account within the trust to pay by account, the costs of providing the goods and services required under respective preneed funeral arrangement contracts.

R156-9-614. Maximum Life Insurance Proceeds Payable to Funeral Service Establishment.

(1) Preneed life insurance proceeds payable to a funeral service provider shall not exceed the funeral service establishment's insurable interest in the recipient of goods and services which, by definition, shall not exceed the funeral service establishment's current retail price for the goods and services provided, as determined by the funeral service establishment's price list in effect at the recipient of goods and service's death.

(2) Excess preneed life insurance proceeds not paid to the funeral service establishment shall be returned to the owner of the life insurance policy or his heirs and beneficiaries unless otherwise designated by the owner or his heirs and beneficiaries.

R156-9-615. Reporting Requirements.

(1) In accordance with Sections 58-9-504 and 58-9-706, each funeral service establishment shall maintain an annual report at the establishment which shall be subject to Division audit at anytime. The annual report shall be maintained in a format set forth by the Division and shall include:

(a) a statement of compliance certifying:

(i) that all payments received from the sale of contracts have been:

(A) placed in the funeral service establishment's trust account in accordance with Section 58-9-702 and administered in accordance with Sections 58-9-703 through 58-9-705 and this rule; or

(B) submitted to the insurance company whose insurance or annuity policy funds the contract;

(ii) that complete and accurate information concerning the preneed funeral arrangements by the funeral service establishment or the funeral service establishment's sales agent was furnished or made available to the independent certified public accountant who prepared the report of agreed upon procedures; and

(iii) that the annual report is complete and accurate;

(b) at least one of the following reports which reconciles balances in all trust accounts and insurance policies to those in the annual report:

(i) a report from a bank trust department;

(ii) a report from a licensed insurance company; or

(iii) an accounting report on forms available from the Division, completed by an independent certified public accountant (CPA) licensed pursuant to Title 58, Chapter 26a, which report indicates the procedures used and agreed upon by the CPA and the funeral service establishment.

(c) an exhibit listing preneed contracts sold prior to April 29, 1991, funded by money, 75% of which is required to be maintained in the name of the contract buyer in the funeral service establishment's trust account as provided in Section 58-9-703, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services and buyer if different, and balance due; the individual trust account number and amount trusted; and the trust earnings, earnings used, and trust balance;

(d) an exhibit listing preneed contracts sold after April 28, 1991, funded by money, 100% of which is required to be maintained in the name of the contract buyer in the funeral service establishment's trust account as provided in Section 58-9-703, which shall include at a minimum the information required under subsection (c);

(e) an exhibit listing preneed contracts funded by money placed in trust which were serviced, revoked, rescinded, or amended since the last reporting period, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services and buyer if different; the individual trust account number and trust balance at the recipient of goods and service's death; the date the contract was closed; and an explanation regarding any preneed contract closed but not serviced;

(f) an exhibit listing preneed contracts sold after April 28, 1991, funded in whole or in part by insurance, which shall include at a minimum: the contract number, date, amount, recipient of goods and services and buyer if different; the insurance company; the policy number, policy holder, and face amount; and

(g) an exhibit listing preneed contracts funded by insurance which were serviced, revoked, rescinded, or otherwise amended since the last reporting period, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services, and buyer if different; the insurance company; the policy number and policy holder; the policy proceeds; the date the contract was closed; and an explanation regarding any preneed contract closed but not serviced.

R156-9-616. Maximum Revocation Fee.

If a buyer revokes or defaults under a guaranteed preneed funeral arrangement contract, the funeral service establishment

may retain a revocation fee from the trust corpus, not to exceed 25% of the amount received from the sale of the contract and trust earnings thereupon, provided the revocation fee is clearly identified in the contract.

R156-9-617. Goods and Services Not Provided - Refund.

If goods or services selected in the preneed contract are not provided at the time of need, the amount paid for those goods and services and any unexpended earnings thereupon will be distributed to the preneed contract buyer or the buyer's representative or in their absence, the buyer's heirs and beneficiaries.

KEY: funeral industries, licensing, funeral service directors, preneed funeral arrangements

November 21, 2019	**58-1-106(1)(a)**
Notice of Continuation April 26, 2016	**58-1-202(1)(a)**
	58-9-504

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) "Area of need" as used in Subsection 58-17b-612(1)(b)(i) means:

(a) a remote-rural hospital, as defined in Section 26-21-13.6;

(b) a county of the fourth, fifth, or sixth class, as classified in Section 17-50-501; or

(c) any area where a demonstration of need is approved by the Division in collaboration with the Board, based on any factors affecting the access of persons in that area to pharmacy resources.

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

(6) "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.

(7) "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.

(8) "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.

(9) "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.

(10) "Co-licensed partner" means a person that has the right to engage in the manufacturing or marketing of a co-licensed product.

(11) "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.

(12) "Community pharmacy" as used in Subsection 58-17b-625(3)(b) means a class A pharmacy as defined in Subsection 58-17b-102(10).

(13) "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.

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

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

(16) "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.

(17) "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."

(18) "DMP" means a dispensing medical practitioner licensed under Title 58, Chapter 17b, Part 8.

(19) "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(12);

(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.

(20) "DMPIC" means a dispensing medical practitioner licensed under Title 58, Chapter 17b, Part 8 who is designated by a dispensing medical practitioner clinic pharmacy to be responsible for activities of the pharmacy.

(21) "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.

(22) "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.

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

(24) "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.

(25) "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.

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

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

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

(29) "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.

(30) "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.

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

(32) "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.

(33) "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".

(34) "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.

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

(36) "Mail service retail pharmacy" means a retail pharmacy located in Utah that dispenses primarily through mailing or shipping.

(37) "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".

(38) "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.

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

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

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

(42) "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.

(43) "Normal distribution channel" means a chain of custody for a prescription drug that goes directly, by drop shipment as defined in Subsection (20), 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.

(44) "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).

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

(46) "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.

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

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

(49) "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.

(50) "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.

(51) "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).

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

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

(54) "Refill" means to fill again.

(55) "Remote dispensing pharmacist-in-charge" or "RDPIC" means the PIC of a remote dispensing pharmacy. The RDPIC shall be the PIC of the remote dispensing pharmacy's supervising pharmacy.

(56) "Remote dispensing pharmacy" means a Class A or Class B pharmacy located in Utah that serves as the originating site where a patient receiving services through a telepharmacy system is physically located and the practice of telepharmacy occurs, pursuant to Section R156-17b-614g.

(57) "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.

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

(59) "Retail pharmacy" as defined in Subsection 58-17b-102(67), is further clarified to mean a pharmaceutical facility that dispenses primarily to walk-in customers, and if applicable may deliver.

(60) "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.

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

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

(63) "Supervising pharmacy" means the Class A or Class B pharmacy responsible for overseeing the operation of a remote dispensing pharmacy, and whose PIC is the RDPIC for the remote dispensing pharmacy, pursuant to Section R156-17b-614g.

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

(65) "Telepharmacy system" means a telecommunications and information technologies system that monitors the preparation and dispensing of prescription drugs and provides for related drug review and HIPAA-compliant patient counseling services using:

(a) asynchronous store and forward transfer as defined in Subsection 26-60-102(1);

(b) synchronous interaction as defined in Subsection 26-60-102(6); or

(c) still image capture.

(66) "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.

(67) "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.

(68) "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.

(69) "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.

(70) 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.

(71) "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.

(72) "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.

(73) "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, RDPIC, 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, RDPIC, or DMPIC and responsible party for the pharmacy to be used for self-audits or pharmacy alerts initiated by the Division. The PIC, RDPIC 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-106. Clarification of Use of Shall or May.

As used in Title 58, Chapters 1 and 17b or this rule, the use of "shall" and "may" is clarified as follows:

(1) "May" is permissive, and is used when granting a right, privilege, or power, or indicating any discretion to act.

(2) "Shall creates a legal duty or obligation on the part of the subject. The statute or rule is mandating that the person act as required by the statute or rule, and the person has no discretion to act differently.

(3) When used negatively:

(a) "may not" is prohibitory, and absolutely prohibits the subject of the statute or rule from performing a particular act; it annihilates discretion; and

(b) "shall not" is a construction not used in drafting Utah statute or rule.

R156-17b-203. Advisory Pharmacy Compounding Education Committee Created - Membership - Duties.

(1) In accordance with Subsection 58-1-203(1)(f) and Section R156-1-205, there is created the Advisory Pharmacy Compounding Education Committee ("Committee").

(2) The Committee shall be composed of seven members, who shall be diversified between retail pharmacy, hospital pharmacy, and other pharmacy specialties deemed pertinent by the Division in collaboration with the Board. All members shall have experience and knowledge of least one USP Chapter, USP <795>, USP <797>, or USP <800>.

(3) The Board shall nominate Committee members for appointment in accordance with R156-1-205, and if possible at least six months prior to the date of cessation of service.

(4) The Committee's duties and responsibilities shall be to address pharmacy compounding issues, including:

(a) monitoring current and proposed federal standards and USP standards for pharmacy compounding;

(b) reviewing and making recommendations regarding pharmacy compounding education and training;

(c) reviewing and making recommendations regarding pharmacy compounding laws and rules; and

(d) any other pharmacy compounding issues as assigned by the Division in collaboration with the Board.

(5) The Committee shall meet at least once per calendar quarter, and as may be directed by the Board with the concurrence of the Division.

(6)(a) The Committee shall annually designate one of its members to act as chair and another member to act as vice chair, on a calendar year basis. The Committee shall elect its chair and vice chair at a meeting conducted in the last quarter of the calendar year.

(b) The chair, vice chair, or their designee shall attend at least one Board meeting per calendar quarter to report the Committee's activities and recommendations to the Division and the Board.

R156-17b-302. Pharmacy Licensure Classifications - Pharmacist-in-Charge, Remote Dispensing Pharmacist-in-Charge, or Dispensing Medical Practitioner-In-Charge Requirements.

In accordance with Section 58-17b-302, the classification of pharmacies is clarified as follows:

(1) A Class A pharmacy includes all retail operations located in Utah. A Class A pharmacy requires a PIC or RDPIC. Examples of Class A pharmacies include:

(a) retail pharmacies;

(b) mail service retail pharmacies; and

(c) remote dispensing pharmacies.

(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, RDPIC, 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;

(i) dispensing medical practitioner clinic pharmacies; and

(j) remote dispensing 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 service 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) The Division shall convert all pharmacy licenses to the appropriate classification 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:
(a) 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; and
(b) may serve as an RDPIC.
(8) A PIC, RDPIC, or DMPIC shall comply with 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 the applicant meets one of the following education criteria:
(a) current admission in a college of pharmacy accredited by the ACPE, by written verification from a 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. Qualifications for 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 Utah 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 Utah 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 Pharmacist Licensure - Additional Authorization to Test.

(1) In accordance with Subsection 58-1-303(1), the Division may issue a temporary pharmacist license to a person who meets all qualifications for licensure as a pharmacist in Utah except for the passing of the required examination, if the applicant:

(a) is:

(i) 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 Utah MJPE examinations;

(c) submits evidence of having secured employment in Utah 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 Utah license that includes 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. Qualifications for Licensure - Pharmacist by Endorsement.

In accordance with Subsections 58-17b-303(3) and 58-1-301(3), an applicant for licensure as a pharmacist by endorsement shall:

(1) apply through the "Licensure Transfer Program" administered by NABP;

(2) have obtained sufficient continuing education credits to maintain a license to practice pharmacy in the state of practice; and

(3) 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 (NAPLEX 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 in one or more of the following topics:

(i) disease state management/drug therapy;

(ii) AIDS therapy;

(iii) general pharmacy;

(iv) patient safety; or

(v) immunizations;

(c) one hour of pharmacy law or ethics;

(d) if engaging in the administration of immunizations or vaccines as defined in Section R156-17b-621, two hours in immunizations or vaccine-related topics, which hours may be counted as part of the 15 hours required under Subsection (1)(b);

(e) if engaging in the administration of prescription drugs or devices as defined in Section R156-17b-621 or R156-17b-625, two hours in topics related to the administration of those prescription drugs or devices; and

(f) if dispensing a self-administered hormonal contraceptive in accordance with Title 26, Chapter 62, Family Planning Access Act as defined in R156-17b-621b, 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;

(ii) one hour of pharmacy law or ethics; and

(iii) if engaging in the administration of immunizations or vaccines as defined in Section R156-17b-621, two hours in immunizations or vaccine-related topics.

(b) Current PTCB or ExCPT certification shall fulfill all CE requirements for a pharmacy technician, except for immunization/vaccine-related topic hours that may be required under Subsection (2)(a)(iii).

(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 are ACPE accredited 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, 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:

TABLE

FINE SCHEDULE

VIOLATION	FIRST OFFENSE	SUBSEQUENT OFFENSE
58-1-501(1)(a)	$ 500 - $ 2,000	$ 2,000 - $10,000
58-1-501(1)(b)	$ 500 - $ 2,000	$ 2,000 - $10,000
58-1-501(1)(c)	$ 500 - $ 1,000	$ 1,000 - $ 5,000
58-1-501(1)(d)	$ 500 - $ 1,000	$ 1,000 - $ 5,000
58-1-501(1)(e)	$ 100 - $ 2,000	$ 2,000 - $10,000
58-1-501(1)(f)(i)(A)	$ 500 - $ 2,000	$ 2,000 - $10,000
58-1-501(2)(m)(i)	$ 500 - $ 2,000	$ 2,000 - $10,000
58-1-501(1)(f)(i)(B)	$ 500 - $ 2,000	$ 2,000 - $10,000
58-1-501(2)(m)(ii)	$ 500 - $ 2,000	$ 2,000 - $10,000
58-1-501(2)(a)	$ 100 - $ 2,000	$ 2,000 - $10,000
58-1-501(2)(b)	$ 500 - $ 2,000	$ 2,000 - $10,000
58-1-501(2)(c)	$ 500 - $ 2,000	$ 2,000 - $10,000
58-1-501(2)(d)	$ 100 - $ 500	$ 200 - $ 1,000
58-1-501(2)(e)	$ 100 - $ 500	$ 200 - $ 1,000
58-1-501(2)(f)	$ 100 - $ 500	$ 200 - $ 1,000
58-1-501(2)(g)	$ 500 - $ 2,000	$ 2,000 - $10,000
58-1-501(2)(h)	$ 100 - $ 500	$ 200 - $ 1,000
58-1-501(2)(i)	$ 100 - $ 500	$ 200 - $ 1,000
58-1-501(2)(j)	$ 100 - $ 500	$ 200 - $ 1,000
58-1-501(2)(k)	$ 100 - $ 1,000	$ 500 - $ 2,000
58-1-501(2)(l)	$ 100 - $ 500	$ 200 - $ 1,000
58-1-501(2)(n)	$ 500 - $ 2,000	$ 2,000 - $10,000
58-1-501.5	$ 500 - $ 2,000	$ 2,000 - $10,000
R156-1-501(1)	$ 500 - $ 2,000	$ 2,500 - $10,000
R156-1-501(2)	$ 500 - $ 2,000	$ 2,500 - $10,000
R156-1-501(3)	$ 500 - $ 2,000	$ 2,500 - $10,000
R156-1-501(4)	$ 500 - $ 2,000	$ 2,500 - $10,000
R156-1-501(5)	$ 500 - $ 2,000	$ 2,500 - $10,000
R156-1-501(6)	$ 500 - $ 2,000	$ 2,500 - $10,000
58-17b-501(1)	$ 500 - $ 2,000	$ 5,000
58-17b-501(2)	$ 100 - $ 1,000	$ 500 - $ 2,000
58-17b-501(3)(a)	$ 500 - $ 2,000	$ 2,000 - $10,000
58-17b-501(3)(b)	$ 500 - $ 2,000	$ 2,000 - $10,000
58-17b-501(4)	$ 1,000 - $ 5,000	$10,000
58-17b-501(5)	$ 100 - $ 500	$ 200 - $ 1,000
58-17b-501(6)	$ 500 - $ 2,000	$ 2,000 - $10,000
58-17b-501(7)	$ 500 - $ 2,000	$ 2,000 - $10,000
58-17b-501(8)	$ 500 - $ 2,000	$ 2,500 - $10,000
58-17b-501(9)	$ 500 - $ 1,000	$ 1,500 - $ 5,000
58-17b-501(10)	$ 500 - $ 2,000	$ 2,500 - $10,000
58-17b-501(11)	$ 500 - $ 2,000	$ 2,500 - $10,000
58-17b-501(12)	$ 1,000 - $ 5,000	$10,000
58-17b-501(13)	$ 100 - $ 500	$ 1,000 - $ 2,500
58-17b-502(1)(a)	$ 500 - $ 2,000	$ 2,500 - $10,000
58-17b-502(1)(b)	$ 2,500 - $ 5,000	$ 5,500 - $10,000
58-17b-502(1)(c)	$ 1,000 - $ 5,000	$10,000
58-17b-502(1)(d)	$ 500 - $ 2,000	$ 2,500 - $10,000
58-17b-502(1)(e)	$ 1,000 - $ 5,000	$10,000
58-17b-502(1)(f)	$ 500 - $ 2,000	$ 2,500 - $10,000
58-17b-502(1)(g)	$ 500 - $ 2,000	$ 2,500 - $10,000
58-17b-502(1)(h)	$ 100 - $ 500	$ 500 - $ 1,000
58-17b-502(1)(i)	$ 500 - $ 2,000	$ 2,000 - $10,000
58-17b-502(1)(j)	$ 100 - $ 500	$ 500 - $ 1,000
58-17b-502(1)(k)	$ 100 - $ 500	$ 2,000 - $10,000
58-17b-502(1)(l)	$ 100 - $ 500	$ 500 - $ 1,000
58-17b-502(1)(m)	$ 500 - $ 1,000	$ 2,500 - $ 5,000
58-17b-502(1)(n)	$ 100 - $ 500	$ 500 - $ 1,000
58-17b-502(1)(o)	$ 100 - $ 500	$ 500 - $ 1,000
R156-17b-502(1)	$ 250 - $ 500	$ 2,000 - $10,000
R156-17b-502(2)(a)	$ 250 - $ 500	$ 500 - $ 750
R156-17b-502(2)(b)	$ 500 - $ 2,000	$ 2,500 - $10,000
R156-17b-502(3)	$ 100 - $ 500	$ 500 - $ 1,000
R156-17b-502(4)	$ 50 - $ 100	$ 200 - $ 300
R156-17b-502(5)	$ 100 - $ 200	$ 200 - $ 500
R156-17b-502(6)	$ 500 - $ 1,000	$ 2,000 - $10,000
R156-17b-502(7)	$ 500 - $ 2,000	$ 2,000 - $10,000
R156-17b-502(8)	$ 100 - $ 250	$ 300 - $ 500
R156-17b-502(9)(a)	$ 50 - $ 100	$ 250 - $ 500
R156-17b-502(9)(b)	$ 250 - $ 500	$ 750- $ 1,000
R156-17b-502(10)	$ 500 - $ 2,000	$ 2,000 - $10,000
R156-17b-502(11)	$ 100 - $ 500	$ 500 - $ 1,000
R156-17b-502(12)(a)	$ 100 - $ 250	$ 500 - $ 2,500
R156-17b-502(12)(b)	$ 250 - $ 1,000	$ 500 - $ 5,000
R156-17b-502(13)(a)	$ 50 - $ 100	$ 250 - $ 500
R156-17b-502(13)(b)	$ 250 - $ 500	$ 1,000 - $ 2,000
R156-17b-502(14)(a)	$ 500 - $2,500	$ 5,000 - $10,000
R156-17b-502(14)(b)	$ 2,000 per occurrence	
R156-17b-502(15)	double original penalty, up to $10,000	
R156-17b-502(16)	$ 500 - $2,000	$ 2,000 - $10,000
R156-17b-502(17)	$ 1,000 - $5,000	$10,000
R156-17b-502(18)	$ 500 - $2,500	$ 5,000 - $10,000
R156-17b-502(19)	$ 100 - $500	$ 200 - $ 1,000
R156-17b-502(20)	$ 100 - $500	$ 200 - $ 1,000
R156-17b-502(21)	$ 100 - $500	$ 200 - $ 1,000
R156-17b-502(22)	$ 500 - $2,000	$ 2,000 - $10,000
R156-17b-502(23)(a)	$ 100 - $300	$ 500 - $ 1,000
R156-17b-502(23)(b)	$ 250 - $500	$ 500 - $ 1,250
R156-17b-502(24)	$ 100 - $500	$ 500 - $ 1,000
R156-17b-502(25)	$ 500 - $2,000	$ 2,500 - $10,000
R156-17b-502(26)	$ 500 - $2,000	$ 2,500 - $10,000
58-37-8	$ 1,000 - $5,000	$ 5,000 - $10,000
R156-37-502(1)(a)	$ 500 - $2,000	$ 2,500 - $10,000
R156-37-502(1)(b)	$ 500 - $2,000	$ 2,500 - $10,000
R156-37-502(2)	$ 500 - $2,000	$ 2,500 - $10,000
R156-37-502(3)	$ 500 - $2,000	$ 2,500 - $10,000
R156-37-502(4)	$ 500 - $2,000	$ 2,500 - $10,000
R156-37-502(5)	$ 500 - $2,000	$ 2,500 - $10,000
R156-37-502(6)	$ 500 - $2,000	$ 2,500 - $10,000
R156-37-502(7)	$ 500 - $2,000	$ 2,500 - $10,000
R156-37-502(8)	$ 500 - $2,000	$ 2,500 - $10,000
Any other conduct that constitutes Unprofessional or Unlawful conduct	$ 100 - $ 500	$ 200 - $ 1,000

R156-17b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) violating any provision of the American Pharmaceutical Association (APhA) Code of Ethics for Pharmacists, October 27, 1994, which is hereby incorporated by reference;

(2)(a) failing to comply with the USP-NF Chapter 795 if applicable to activities performed;

(b) failing to comply with the USP-NF Chapter 797, if applicable to activities performed;

(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)(a) violating the laws and rules regulating operating standards in a pharmacy discovered upon inspection by the Division;

(b) after discovery upon inspection by the Division of violation of laws and rules regulating operating standards in a pharmacy, failing to comply within the time established 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)(a) as a pharmacist, practicing pharmacy with an inappropriate pharmacist to pharmacy intern ratio established by Subsection R156-17b-606(1)(d) or pharmacist to pharmacy technician trainee ratio as established by Subsection R156-17b-601(5);

(b) as a pharmacy, practicing pharmacy with an inappropriate pharmacist to pharmacy intern ratio established by Subsection R156-17b-606(1)(d) or pharmacist to pharmacy technician trainee ratio as established by Subsection R156-17b-601(5);

(13)(a) as a pharmacist, allowing any unauthorized persons in the pharmacy;

(b) as a pharmacy, allowing any unauthorized persons in the pharmacy;

(14)(a) as a pharmacist, failing to offer to counsel any person receiving a prescription medication;

(b) as a pharmacy, 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)(a) as a pharmacist, 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;

(b) as a pharmacy, 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;

(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; and

(26) failing to comply with the operating standards for a remote dispensing pharmacy as established in Section R156-17b-614g.

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, including refill authorizations;

(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;

(k) receiving new prescription drug orders when communicating telephonically or electronically, if the original information is recorded so the pharmacist may review the prescription drug order as transmitted, including accepting new prescription drug orders saved 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 may not:

(a) receive a new prescription or medication order, except as described in Subsection (1)(k);

(b) clarify a prescription or medication order from a prescriber;

(c) perform a drug utilization review;

(d) perform final review of a prescribed drug prepared for dispensing;

(e) dispense a drug; or

(f) counsel a patient with respect to a prescription drug.

(3) A pharmacy technician may administer vaccines and emergency medications pursuant to delegation by a pharmacist under the Vaccine Administration Protocol: Standing Order to Administer Immunizations and Emergency Medications, adopted March 26, 2019, by the Division in collaboration with the Utah State Board of Pharmacy and Utah Physicians Licensing Board, as posted on the Division website, if the pharmacy technician:

(a) has completed the initial training required by Section R156-17b-621;

(b) is under "direct", on-site supervision by the delegating pharmacist as defined in R156-1-102a(4)(a); and

(c) for each renewal cycle after the initial training, has completed a minimum of two hours of continuing education in immunization or vaccine-related topics in accordance with R156-17-309.

(4) A pharmacy technician trainee:

(a) shall practice only under the direct supervision of a pharmacist, and in a ratio not to exceed one pharmacy technician trainee to one pharmacist; and

(b) may perform any task in Subsection (1), except performing checks of certain medications prepared for distribution filled or prepared by a technician within a Class B hospital pharmacy as described in Subsection (1)(l).

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-303a.

R156-17b-603. Operating Standards - Pharmacist-In-Charge, Remote Dispensing Pharmacist-in-Charge, or Dispensing-Medical-Practitioner-In-Charge.

(1) The PIC, RDPIC, 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, RDPIC, 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, RDPIC, DMPIC, or responsible party for the pharmacy to be used for self-audits or pharmacy alerts initiated by the Division. The PIC, RDPIC, 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, RDPIC, 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 in 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, RDPIC, or DMPIC assigned to the pharmacy is recorded with the Division and that the Division is notified of a change in PIC, RDPIC, 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, RDPIC, 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, RDPIC, 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 ten days of the closing of the pharmacy, the PIC, RDPIC, 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, RDPIC, or DMPIC cannot provide notification 14 days prior to the closing, the PIC, RDPIC, 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, RDPIC, 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, RDPIC, 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, RDPIC, 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, RDPIC, 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, RDPIC, 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(71)(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(71)(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 pre-filled 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, RDPIC, 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)(a) 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.

(b) Counseling may be provided through a telepharmacy system.

(2) A pharmacy facility shall orally offer to counsel, but is not required to counsel a patient or patient's agent who 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. Documentation shall be maintained for a period of five years, and be available for inspection by the Division within 7-10 business days of the Division's request.

(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 patient's agent or other designated location:

(a) the information specified in Subsection (3) 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) the written information provided in Subsection (6)(b) shall be in the form of patient information leaflets similar to USP-NF patient information monographs or equivalent information.

(7) Patient counseling is not required for patients 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 Schedule II controlled substance, without the authorization of the prescribing practitioner, if:

(a) the quantity of prescription drug dispensed does not exceed a 72-hour supply, unless the packaging is in a great quantity;

(b) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(c) 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, with the effort documented and the documentation available to the Division upon request;

(d) if the prescription was originally filled at another pharmacy:

(i) the patient has the prescription container label, receipt, or other documentation from the other pharmacy that contains the essential information; and

(ii) 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; and

(e) the pharmacist or DMP:

(i) informs the patient or patient's agent at the time of dispensing that the refill is being provided without practitioner authorization, and that authorization is required for future refills;

(ii) informs the practitioner of the emergency refill at the earliest reasonable time;

(iii) maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection; and

(iv) affixes a label to the dispensing container as specified in Section 58-17b-602.

(12) The address specified in Subsection 58-17b-602(1)(b) shall be a physical address, not a post office box.

(13) 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) and (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 - Class A or Class B Pharmacy - General Operating Standards.

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 or amended by additional standards defined in this rule applicable to specific types of Class A and B pharmacies.

(1) The general operating standards include:

(a) 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 may 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;

(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;

(g) be equipped with a lock on any entrances to the facility where drugs are stored; and

(h) have a counseling area to allow for confidential patient counseling, if applicable.

(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 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:

(i) shall be procured from a facility registered with the federal Food and Drug Administration; and

(ii) may 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 shall 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) 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) A pharmacy may not dispense a prescription drug or device to a patient unless a pharmacist or DMP is physically present and immediately available in the facility, or, for a remote dispensing pharmacy, physically present and immediately available in the facility or supervising through a telepharmacy system.

(7) Only a licensed Utah pharmacist, DMP or authorized pharmacy personnel shall have access to the pharmacy when the pharmacy is closed.

(8) The facility or parent company shall maintain a record for not less than five 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.

(9) 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.

(10) 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.

(11) 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.

(12) The pharmacy facility shall maintain a record of suppliers' credit memos for controlled substances.

(13) A copy of inventories required under Section R156-17b-605 shall be made available to the Division when requested.

(14) 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.

(15) 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(40), shall be licensed as Class E pharmacies. All other central prescription processing pharmacies shall be licensed in the appropriate pharmacy license classification.

R156-17b-614g. Operating Standards - Class A or Class B Pharmacy - Remote Dispensing Pharmacy.

In accordance with Subsections 58-17b-102(58), 58-17b-601(1), 58-17b-612(1)(b), and 58-1-301(3), the following operating standards apply to a remote dispensing pharmacy:

(1) A remote dispensing pharmacy shall:

(a) be a Class A or Class B pharmacy;

(b) have a Class A or Class B pharmacy serve as its supervising pharmacy to oversee its operations; and

(c) be located in an area of need as defined in Subsection R156-17b-102(4).

(2) A remote dispensing pharmacy may not perform compounding.

(3) The supervising pharmacy's PIC shall serve as the remote dispensing pharmacy's RDPIC, responsible for all remote dispensing pharmacy operations.

(4) The Division in collaboration with the Board shall review each application for designation of a remote dispensing pharmacy, and grant approval based upon consideration of the totality of conditions and circumstances demonstrated by the application. The application shall be submitted by the proposed supervising pharmacy on a completed form furnished by the Division that includes:

(a) complete identifying information concerning the proposed supervising pharmacy;

(b) complete identifying information concerning the proposed RDPIC;

(c) the proposed address of the remote dispensing pharmacy, with a detailed description of how that location is in an area of need as defined in Subsection R156-17b-102(4);

(d) a description of the physical facilities in which the remote dispensing pharmacy will operate;

(e) a description of the availability of sufficient qualified licensed pharmacy technicians to staff the remote dispensing pharmacy;

(f) a description of the telepharmacy system that will be used for supervision and counseling; and

(g) a copy of the proposed policies and procedures manual for the remote dispensing pharmacy and supervising pharmacy, which shall include:

(i) protecting the confidentiality and integrity of patient information;

(ii) the conditions under which prescription drugs shall be stored, used, and accounted for;

(iii) maintaining records to identify the name(s), initial(s), or identification code(s) and specific activities of each pharmacist and pharmacy technician involved in the dispensing process;

(iv) complying with federal and state law and regulations;

(v) operation of a 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;

(vi) annually reviewing the written policies and procedures and documenting such review;

(vii) requiring monthly in-person inspections of the remote dispensing pharmacy and appropriate documentation by the RDPIC; and

(viii) any additional policies and procedures required by Subsection R156-17b-614f(2) for Central Prescription Processing.

(5) If more than one licensed pharmacy applies for designation of a remote dispensing pharmacy at a similar undesignated location, the Division in collaboration with the Board shall review all of the applications for designation, and if the location is approved, shall approve for licensure the applicant that the Division in collaboration with the Board determine is best able to serve the public interest as identified in this Section.

(6) Staffing and Supervision.

(a) In accordance with Subsections 58-17b-612(1)(b) and (d):

(i) a supervising pharmacist may not supervise more than two remote dispensing pharmacies simultaneously; and

(ii) an RDPIC may not serve as the RDPIC for more than one remote dispensing pharmacy, unless approved by the Division in collaboration with the Board.

(b) Unless a pharmacist is physically present, a remote dispensing pharmacy shall be staffed by no more than two licensed pharmacy technicians.

(c) Each pharmacy technician staffing a remote dispensing pharmacy shall have at least 500 hours of pharmacy technician experience.

(d) At all times that a remote dispensing pharmacy is open and available to serve patients, all pharmacy technicians shall remain under the physical supervision or electronic supervision of a supervising pharmacist from the supervising pharmacy.

(e) Adequate supervision by a supervising pharmacist of a remote dispensing pharmacy shall include maintaining uninterrupted visual supervision and auditory communication with the site, and full supervisory control of the automated system, if applicable. This supervision may not be delegated to any other person.

(7) The supervising pharmacy shall maintain a telepharmacy system that provides for effective video and audio communication between supervising pharmacy personnel and remote dispensing pharmacy personnel and patients, that:

(a) provides an adequate number of views of the entire site;

(b) facilitates adequate pharmacist supervision;

(c) allows the appropriate exchanges of visual, verbal, and written communication for patient counseling and other matters involved in the lawful transaction or dispensing of drugs;

(d) confirms that the drug selected to fill the prescription is the same as indicated on the prescription label and prescription; and

(e) is secure and HIPAA compliant as defined in R156-

17b-102(64).

(8) Each component of the telepharmacy system shall be in good working order. If any component of the system is malfunctioning, the remote dispensing pharmacy shall immediately close to the public and remain closed until system corrections or repairs are completed, unless a pharmacist is present onsite.

(9) The supervising pharmacy shall develop and include in both the supervising pharmacy's and the remote dispensing pharmacy's policies and procedures a plan for continuation of pharmaceutical services by the remote dispensing pharmacy in case of an emergency interruption:

(a) The plan shall address the timely arrival at the remote dispensing pharmacy of necessary personnel, and the delivery to the remote dispensing pharmacy of necessary supplies, within a reasonable period of time following the identification of an emergency need. A supervising pharmacist shall be available onsite at the remote dispensing pharmacy as soon as possible after an emergency, and shall notify the Division in writing if the time exceeds 24 hours.

(b) The plan may provide for alternate methods of continuation of the services of the remote dispensing pharmacy, including personal delivery of patient prescription medications from an alternate pharmacy location or on-site pharmacist staffing at the remote dispensing pharmacy.

(10) Facility.

(a) The remote dispensing pharmacy's security system shall allow for tracking of entries into the remote dispensing pharmacy and the RDPIC shall periodically review the record of entries.

(b) A remote dispensing pharmacy shall display a sign easily visible to the public that informs patients of the following:

(i) that the pharmacy is a remote dispensing pharmacy;

(ii) the location of the supervising pharmacy; and

(iii) that at the patient's request a pharmacist will counsel the patient using audio and video communication systems.

(11) Records and Inspections.

(a)(i) The supervising pharmacy shall maintain records of all orders entered into its information system, including orders entered from the remote dispensing pharmacy.

(ii) Electronic records shall be available to and accessible from both the remote dispensing pharmacy and the supervising pharmacy.

(iii) The original records of the controlled substance prescriptions dispensed from the remote dispensing pharmacy shall be maintained at the remote dispensing pharmacy.

(b) The remote dispensing pharmacy shall retain a recording of surveillance, excluding patient communications, for at least 45 days.

(c) The RDPIC shall over see documented monthly inspections of the remote dispensing pharmacy. Documentation of such inspections shall be kept for five years, and shall include:

(i) maintenance and reconciliation of all controlled substances;

(ii) a perpetual inventory of Schedule II controlled substances;

(iii) temperature logs of the refrigerator and freezer that hold medications; and

(iv) the RDPIC's periodic review of the record of entries into the remote dispensing pharmacy.

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(20)(c) and R156-17b-615, 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) A Class C pharmacy may not be located in the same building as a separately licensed Class A, B, D, or E pharmacy unless:

(i) the separately licensed pharmacy is a third-party logistics provider; or

(ii) the two pharmacies are located in different suites as recognized by the United States Postal Service.

(b) Two Class C pharmacies may be located at the same address in the same suite if the pharmacies:

(i) are under the same ownership;

(ii) have processes and systems for separating and securing all aspects of the operation; and

(iii) 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 Service 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 service 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. Operating Standards - Class E Pharmacy - 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, or 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-617g. Operating Standards - Class E Pharmacy - Third Party Logistics Provider.

(1) A third party logistics provider shall comply with storage practices for facilitating, including:

(a) access to warehouse space of suitable size to facilitate safe operations, including a suitable area to quarantine suspect product;

(b) adequate security; and

(c) written policies and procedures to:

(i) address receipt, security, storage, inventory, shipment, and distribution of a product;

(ii) identify, record, and report confirmed losses or thefts in the United States;

(iii) correct errors and inaccuracies in inventories;

(iv) provide support for manufacturer recalls;

(v) prepare for, protect against, and address any reasonably foreseeable crisis that affects security or operation at the facility, such as a strike, fire, or flood;

(vi) ensure that any expired product is segregated from other products and returned to the manufacturer or reverse distributor;

(vii) maintain the capability to trace the receipt and outbound distribution of a product, and supplies and records of inventory; and

(viii) quarantine or destroy a suspect product if directed to do so by the respective manufacturer, wholesale distributor, dispenser, or an authorized government agency.

(2) A third party logistics provide may not employ at its facility an individual who has been convicted of a felony violation relating to product tampering.

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, Pharmacy Intern, and Pharmacy Technician Administration - Training.

In accordance with Subsections 58-17b-102(53), (56), and (57), and 58-17b-502(1)(i):

(1) A pharmacist or pharmacy intern who will administer a prescription drug or device shall complete the following appropriate training prior to engaging in administration:

(a) current Basic Life Support (BLS) certification;

(b) for injectable drugs, didactic and practical training for administering injectable drugs;

(c) topics related to the specific prescription drug or device that will be administered;

(d) if administering vaccines, current guidelines from the Advisory Committee on Immunization Practices (ACIP) of the U.S. Centers for Disease Control and Prevention (CDC); and

(e) the management of an anaphylactic reaction.

(2) A pharmacy technician who will administer a prescription drug or device shall complete the appropriate training described in Subsections (1)(a), (b), and (e) prior to engaging in administration.

(3) Sources for the appropriate training include:

(a) ACPE approved programs;

(b) curriculum-based programs from an ACPE accredited college of pharmacy, or an ASHP accredited pharmacy technician program;

(c) state or local health department programs; and

(d) other Board recognized providers.

(4) An individual who engages in the administration of prescription drugs or devices shall:

(a) maintain documentation that they obtained their required training; and

(b) for each renewal cycle after their initial training, complete at least two hours of continuing education related to their administration of prescription drugs or devices, in accordance with Section R156-17b-309.

(5) The "Vaccine Administration Protocol: Standing Order to Administer Immunizations and Emergency Medications", adopted March 26, 2019, by the Division in collaboration with

the Utah State Board of Pharmacy and the Utah Physicians Licensing Board, as posted on the Division website, is the guideline or standard for pharmacist administration of vaccines and emergency medications, and for pharmacy intern or pharmacy technician administration pursuant to delegation by a pharmacist.

R156-17b-621a. Operating Standards - Pharmacist Administration of a Long-acting Injectable Drug Therapy - Training.

In accordance with Subsections 58-17b-502(1)(i) and 58-17b-625(2):

(1) Prior to engaging in the administration of a long-acting injectable drug pursuant to Section 58-17b-625, a pharmacist shall successfully complete:

(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 injectable drugs intramuscularly shall:

(a) maintain documentation that they obtained their required training prior to any administration; and

(b) for each renewal cycle after the initial training, successfully complete at least two hours of continuing education related to administering long-acting injectable drugs, in accordance with Section R156-17b-309.

R156-17b-621b. Operating Standards - Pharmacist and Pharmacy Intern Dispensing of a Self-Administered Hormonal Contraceptive - Training.

In accordance with Subsection 58-17b-502(n) and Section 26-64-106:

(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 they obtained their required training 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(18), 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.

The drugs that may be dispensed by a DMP in accordance with Subsection 58-17b-802(1) and Section 58-17b-803 are limited to:

(1) the following cosmetic drugs:

(a) Latisse; and

(b) the injectable weight loss drug human chorionic gonadotropin; and

(2) the legend, non-controlled drugs approved under Section R156-83-306 for prescribing by an online prescriber.

R156-17b-624. Operating Standards. Repackaged or Compounded Prescription Drugs - Sale to a Practitioner for Office Use.

Pursuant to Section 58-17b-624, a pharmacy may repackage or compound a prescription drug for sale to a practitioner for office use provided that it is in compliance with all applicable federal and state laws and regulations regarding the practice of pharmacy, including, but not limited to the Food, Drug, and Cosmetic Act, 21 U.S.C.A 301 et seq.

R156-17b-625. Standards - Reporting and Maintaining Records on the Dispensing of an Opiate Antagonist.

(1) In accordance with Subsections 26-55-105(2)(c) and (d), the pharmacist-in-charge or a responsible corporate officer of each pharmacy licensee that dispenses an opiate antagonist pursuant to a valid standing prescription drug order issued by a physician, shall affirm that the pharmacy licensee has complied with the protocol for dispensing an opiate antagonist as set forth in Section 26-55-105, and shall report, on an annual basis, to the division and to the physician who issued the opiate antagonist standing drug order, the following information:

(a) the total number of single doses of opiate antagonists dispensed during the reporting period; and

(b) the name of each opiate antagonist dispensed, along with the total number of single doses of that particular named opiate antagonist.

(2) Corporations or organizations with multiple component pharmacy licenses may submit one cumulative report for all its component pharmacy licensees. However, that report must contain the information described above for each of the component pharmacy licensees.

(3) Null reporting is not required. If a pharmacy licensee does not dispense an opiate antagonist during any year, that pharmacy licensee is not required to make an affirmation or report to the division.

(4) The annual affirmation and report described above is due to the division and to the physician who issued the standing drug order no later than 15 days following December 31 of each calendar year.

(5) In accordance with Subsection 26-55-105(2)(d), a pharmacy licensee who dispenses an opiate antagonist pursuant to a valid standing prescription order issued by a physician, shall maintain, subject to audit, the following information:

(a) the name of the individual to whom the opiate

antagonist is dispensed;
(b) the name of the opiate antagonist dispensed;
(c) the quantity of the opiate antagonist dispensed;
(d) the strength of the opiate antagonist dispensed;
(e) the dosage quantity of the opiate antagonist dispensed;
(f) the full name of the drug outlet which dispensed the opiate antagonist;
(g) the date the opiate antagonist was dispensed; and
(h) the name of physician issuing the standing order to dispense the opiate antagonist.
(6) The division approves the protocol for the issuance of a standing prescription drug order for opiate antagonists, which is set forth in Subsection 26-55-105(2)(a) through (d) along with the requirements set forth in the foregoing provisions, and the reporting requirements set forth in Sections R156-67-604 and R156-68-604.

R156-17b-904. Criteria for Eligible Prescription Drug - Beyond-use Date or Expiration Date.

The division in collaboration with the board has not established a date later than the beyond use date or the expiration date recommended by the manufacturer for a specific prescription drug.

R156-17b-905. Fees.

As authorized by Subsection 58-17b-905(2)(e), an eligible pharmacy may charge the following handling fees:
(1) Before accepting a prescription drug under the program: $0 - $10; and
(2) Before dispensing a prescription drug under the program: $0 - $5.

R156-17b-907a. Registration Requirements - Eligible Pharmacy.

(1) A pharmacy seeking registration with the division as an eligible pharmacy shall submit an application on a form provided by the division.
(2) The division's form shall at a minimum require the applicant pharmacy to establish that:
(a) the applicant is currently licensed and in good standing with the division;
(b) the applicant agrees to maintain, subject to inspection by the division, written standards and procedures in compliance with Section R156-17b-907c;
(c) the applicant agrees to create and maintain, subject to inspection by the division, a special training program in accordance with Section R156-17b-907e; and
(d) as required by Subsection 58-17b-902(8), the applicant is operated by a county, county health department, a pharmacy under contract with a county health department, the Department of Health, the Division of Substance Abuse and Mental Health, or a charitable clinic.

R156-17b-907b. Formulary.

The formulary established under Subsection 58-17b-907(2) shall include all prescription drugs approved by the federal Food and Drug Administration that meet Section 58-17b-904 criteria, except for:
(1) controlled substances;
(2) compounded drugs; and
(3) drugs that can only be dispensed to a patient registered with the drug's manufacturer per federal Food and Drug Administration requirements.

R156-17b-907c. Standards and Procedures - Eligible Pharmacies.

An eligible pharmacy shall maintain written standards and procedures available for inspection by the division that:
(1) satisfy the requirements of Section 58-17b-907; and
(2) satisfy labeling requirements of Subsections 58-17b-602(5) through (8), and ensure that labels clearly identify the eligible drug was dispensed under the program.

R156-17b-907d. Standards and Procedures - Facilities and Mental Health and Substance Abuse Clients.

(1) In accordance with Subsection 58-17b-907(4)(a), the division shall schedule and facilitate an annual meeting between the Department of Health and eligible pharmacies to establish program standards and procedures for assisted living facilities and nursing care facilities; and
(2) In accordance with Subsection 58-17b-907(4)(b), the division shall schedule and facilitate an annual meeting between the Division of Substance Abuse and Mental Health and eligible pharmacies to establish program standards and procedures for mental health and substance abuse clients.

R156-17b-907e. Special Training Program.

An eligible pharmacy shall:
(1) create and maintain a special training program that its pharmacists and licensed pharmacy technicians shall complete before participating in the program; and
(2) maintain a record for at least two years of all pharmacists and licensed pharmacy technicians that have completed the special training program.

KEY: pharmacists, licensing, pharmacies

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	58-37-1
	58-1-106(1)(a)
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-26a. Certified Public Accountant Licensing Act Rule.
R156-26a-101. Title.

This rule is known as the "Certified Public Accountant Licensing Act Rule".

R156-26a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 26a, as defined or used in this rule:

(1) "Administering organization" means an organization approved by the Division of Occupational and Professional Licensing and the Utah Board of Accountancy which will administer peer reviews in the Peer Review Program.

(2) "Accepted university accreditations" mean the following:

(a) the Association to Advance Collegiate Schools of Business ("AACSB");

(b) the Accreditation Council for Business Schools and Programs ("ACBSP"); or

(c) an institution receiving "regional accreditation", meaning an institution receiving accreditation through:

(i) the Northwest Accreditation Commission ("NAC");

(ii) the North Central Association of Colleges and Schools ("NCA");

(iii) the Middle States Association of Colleges and Schools ("MSA");

(iv) the New England Association of Schools and Colleges ("NEASC");

(v) the Southern Association of Colleges and Schools ("SACS"); or

(vi) the Western Association of Schools and Colleges ("WASC").

(3) "Mobility", a practice privilege included in Section 58-26a-305 regarding exemptions from licensure, is defined and further clarified in Section R156-26a-305.

(4) "Qualified continuing professional education (CPE)" as used in this rule means continuing education that meets the standards set forth in Section R156-26a-303b.

(5) "Standard setting bodies" means any generally recognized accounting standard setting bodies.

(6) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 26a, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-26a-501.

(7) "Year of review" means the calendar year during which a peer review is to be conducted.

R156-26a-103. Authority.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 26a.

R156-26a-104. Organization - Relationship to Rule R156-1.

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

R156-26a-201. Advisory Peer Committees Created - Membership - Duties.

(1) There is created in accordance with Subsection 58-1-203(1)(f) the Education Advisory Committee to the Utah Board of Accountancy, consisting of one full-time faculty member from each of five or more colleges or universities in Utah which has an accredited program as set forth in Subsections R156-26a-302a(1)(a) through (c), a majority of which shall be licensed CPAs.

(2) The Education Advisory Committee shall be appointed and serve in accordance with Section R156-1-205. The duties and responsibilities of the Education Advisory Committee shall include assisting the Division in collaboration with the Board in their duties, functions, and responsibilities and shall include:

(a) advising the Board as to the acceptability of an educational institution;

(b) assisting the Board to make a final determination pursuant to R156-26a-302a(5)(c) of whether an applicant is qualified to sit for the AICPA examination; and

(c) advising the Board regarding proposed changes to rules.

(3) The committee shall consider, when advising the Board of the acceptability of the educational institution, the following:

(a) the institution's accreditation;

(b) the acceptability by other state licensing boards;

(c) the faculty qualifications; and

(d) other educational resources.

(4) There is created in accordance with Subsection 58-1-203(1)(f), the Peer Review Committee to the Utah Board of Accountancy consisting of not more than ten licensed CPAs. The committee shall be appointed and serve in accordance with Section R156-1-205.

(5) The duties and responsibilities of the Peer Review Committee shall be advising the Board on peer reviews matters and shall include:

(a) reviewing the results of peer reviews administered by approved organizations and requiring corrective action of firms with significant deficiencies noted in the review process when considered necessary in addition to those required by the administering organization;

(b) evaluating compliance of CPE programs;

(c) performing random audits to determine compliance with the CPE requirements and the standards for CPE programs;

(d) reviewing complaints and recommending whether certain acts, practices or omissions violate the ethical standards of the profession;

(e) providing technical assistance to the Division; and

(f) serving as expert witnesses at administrative hearings.

R156-26a-302a. Qualifications for CPA Licensure - Education Requirements.

The education requirements for CPA licensure in Subsection 58-26a-302(1)(d) are defined, clarified, or established as follows:

(1) An applicant shall submit transcripts showing completion of course work consisting of a minimum of 150 semester hours (225 quarter hours), and one of the following:

(a) a graduate degree in accounting or taxation from an institution whose business education is accredited by the AACSB or the ACBSP;

(b) a Master of Business Administration degree from an institution whose business education program is accredited by the AACSB or the ACBSP and which includes no less than:

(i) 24 semester hours (36 quarter hours) in upper division or graduate level accounting courses covering the following subjects:

(A) financial accounting;

(B) auditing;

(C) taxation; and

(D) management accounting;

(ii) 15 semester hours (23 quarter hours) graduate level accounting courses covering the following subjects:

(A) financial accounting;

(B) auditing;

(C) taxation; and

(D) management accounting; or

(iii) an equivalent combination of graduate and upper division accounting courses covering the subjects of financial accounting, auditing, taxation, and management accounting, with one hour of graduate level course work being equivalent to 1.6 hours of upper division course work;

(c) a baccalaureate degree in business or accounting from

an institution whose business education program is accredited by the AACSB or the ACBSP, and which includes no less than:

(i) 24 semester hours (36 quarter hours) in upper division or graduate level accounting courses covering at least one course in each of the following subjects:

(A) financial accounting;

(B) auditing;

(C) taxation; and

(D) management accounting; and

(ii) 30 additional hours in graduate or upper division accounting and business courses; or

(d) A baccalaureate or graduate degree from an institution accredited by a regional accrediting body with no less than:

(i) 24 semester hours (36 quarter hours) in non-accounting business or related courses providing a minimum of two semester hours (three quarter hours) in each of the following subjects:

(A) business law;

(B) computers;

(C) economics;

(D) business ethics;

(E) finance;

(F) business statistics and quantitative methods;

(G) written and oral business communications;

(H) business administration such as marketing, production, management, policy or organizational behavior;

(ii) 24 semester hours (36 quarter hours) in upper division or graduate level accounting courses with a minimum of two semester hours (three quarter hours) in each of the following subjects:

(A) auditing;

(B) finance;

(C) managerial or cost;

(D) systems; and

(E) taxes; and

(iii) 30 additional hours in graduate or upper division accounting and business courses.

(2) The Division in collaboration with the Board or the Education Advisory Committee may accept a baccalaureate degree in business or accounting from an institution not having an accepted accreditation as defined in Subsection R156-26a-102(4), if the applicant:

(a) has obtained a graduate degree in accounting from an institution whose business education program is accredited by the AACSB or the ACBSP;

(b)(i) has obtained a graduate degree in taxation or a Master of Business Administration from an institution whose business education program is accredited by the AACSB or the ACBSP; and

(ii) meets the requirements in Subsection R156-26a-302a(1)(b)(i), (ii), or (iii); or

(c)(i) has obtained a graduate degree in accounting, taxation, or a Master of Business Administration from an institution accredited by a regional accrediting body; and

(ii) meets the requirements in Subsection R156-26a-302a(1)(d).

(3) The Division in collaboration with the Board or the Education Advisory Committee may make a written finding for cause that a particular accredited institution or program is not acceptable.

(4) The Division in collaboration with the Board or the Education Advisory Committee may accept education of a person who holds a license as a certified public accountant or equivalent designation in a foreign country, if the applicant has obtained from NASBA verification of compliance with the terms of an agreement for reciprocal licensure between the foreign country and the International Qualifications Appraisal Board of NASBA, which agreement provides the applicant's examinations, education and experience is determined to be substantially equivalent to the Eighth Edition, January 2018 Uniform Accountancy Act licensure requirements or a version of the Uniform Accountancy Act having substantially equivalent requirements.

R156-26a-302b. Qualifications for Licensure - Experience Requirements.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the experience requirements for licensure in Section 58-26a-302 are clarified, or supplemented as follows:

(1) The Division in collaboration with the board may accept experience of a person who holds a license as a certified public accountant or equivalent designation in a foreign country, if the applicant has obtained from NASBA verification of compliance with the terms of an agreement for reciprocal licensure between the foreign country and the International Qualifications Appraisal Board of NASBA, which agreement provides the applicant's examinations, education and experience is determined to be substantially equivalent to the Eighth Edition, January 2018 Uniform Accountancy Act licensure requirements or a version of the Uniform Accountancy Act having substantially equivalent requirements.

R156-26a-302c. Qualifications for Licensure - Examinations.

The examination requirements in Subsection 58-26a-306 are defines, clarified, or established as follows:

(1) In accordance with Subsection 58-26a-306(1)(a), the form of application approved by the Division shall be the application that CPA Examination Services ("CPAES") requires to sit for the AICPA Uniform CPA Examination.

(2) In accordance with Subsection 58-26a-306(1)(b), the fee shall be the fee charged by CPAES. No additional fee shall be due to the Division.

(3) In accordance with Subsection 58-26a-306(1)(c) and (d), the Board designates CPAES as the organization that shall determine whether an applicant has met the education requirements and is approved to sit for the AICPA examinations. However, if an applicant disputes CPAES's determination, the Board shall make the final determination.

(4) In accordance with Subsection 58-26a-306(1)(c), the minimum 120 semester hours (180 quarter hours) of the education requirement that an applicant shall complete before sitting for the AICPA Uniform CPA Examination, shall include completion of at least the following requirements as described in Section R156-26a-302a:

(a) 24 semester hours (36 quarter hours) in upper division or graduate level accounting courses covering the following subjects:

(i) financial accounting;

(ii) auditing;

(iii) taxation; and

(iv) management accounting; and

(b) 24 semester hours (36 quarter hours) in non-accounting business or related courses covering the following subjects:

(i) business law;

(ii) computers;

(iii) economics;

(iv) business ethics;

(v) finance;

(vi) business statistics and quantitative methods;

(vii) written and oral business-related communications; and

(viii) business administration such as marketing, productions, management, policy or organizational behavior.

(5) An applicant for licensure as a certified public accountant shall also pass:

(a) the AICPA Examination of Professional Ethics for

CPAs with a score of at least 90%; and

(b) the Utah (CPA) Laws and Rules Examination with a score of at least 75%.

(6) The Division in collaboration with the Board may accept testing of a person who holds a license as a certified public accountant or equivalent designation in a foreign country, if the applicant has obtained from NASBA verification of compliance with the terms of an agreement for reciprocal licensure between the foreign country and the International Qualifications Appraisal Board of NASBA, which agreement provides the applicant's examinations, education and experience is determined to be substantially equivalent to the Eighth Edition, January 2018 Uniform Accountancy Act licensure requirements or a version of the Uniform Accountancy Act having substantially equivalent requirements.

R156-26a-303a. Renewal Requirements - Peer Review.

(1) General.

In accordance with Subsections 58-1-308(3)(b) and 58-26a-303(2)(b), there is created a peer review requirement as a condition for renewal of licenses issued under the Certified Public Accountant Licensing Act, providing for review of the work products of CPA and CPA firm licensees.

(a) The purpose of the program is to monitor compliance with professional standards.

(b) The program shall emphasize education and may include other remedial actions when non-compliance is found.

(c) If a licensee is unwilling or unable to comply with or intentionally disregards professional standards, the administering organization shall refer the matter to the Division for consultation and determination of appropriate action.

(2) Scheduling of the Peer Review.

(a) A firm's initial peer review shall be assigned a due date to require that the initial review be started no later than 18 months after the date of the issuance of its initial report as defined in Subsection 58-26a-102(20).

(b) At least once every three years a firm engaged in the practice of public accounting shall undergo, at its own expense, a peer review commensurate in scope with its practice.

(c) The administering organization shall assign the year of review.

(d) A portion of the peer review may be performed by a regulatory body if the Board approves the regulatory body as an administering organization. This does not by itself satisfy the peer review requirement unless the other standards as specified in this rule are fulfilled by the regulatory body.

(3) Selection of a Peer Reviewer or inspector in the case of inspections mandated by law or regulatory bodies.

A firm scheduled for peer review shall engage a reviewer qualified to conduct the peer review. Regulatory bodies shall assign inspectors.

(4) Qualifications of a Peer Reviewer and inspectors.

(a) Peer reviewers must provide evidence of one of the two following minimum qualifications to the administering organization:

(i) acceptance as a peer reviewer by the AICPA; or

(ii) compliance with the qualifications required by the AICPA to qualify as a peer reviewer.

(b) Peer reviewers shall be licensed or hold a permit to practice as a CPA in Utah or another state or jurisdiction of the United States.

(c) The administering organization shall approve reviewers for reviews not administered by the AICPA.

(d) Regulatory bodies shall determine the qualifications of inspectors.

(5) Conduct of the Peer Review or inspection. Peer reviews shall be conducted as follows:

(a) Peer reviews shall be conducted according to the "Standards for Performing and Reporting on Peer Reviews" promulgated by the AICPA, effective April 2019, which are hereby incorporated by reference and adopted as the minimum standards for peer reviews of all firms. This section shall not require any firm or licensee to become a member of the AICPA or any administering organization.

(b) The Board may review the standards used by the regulatory body to determine if those standards are sufficient to satisfy all or part of the peer review requirements, or what additional review may be required to meet the peer review requirements under this rule.

(6) If an administering organization finds that a peer review was not performed in accordance with this rule or the peer review results in a pass with deficiencies or fail report, the Peer Review Committee may require remedial action to assure that the review or performance of the CPA or CPA firm being reviewed meets the objectives of the peer review program.

(7) Review of Multi-State Firms.

(a) With respect to a multi-state firm, the Division may accept a peer review based solely upon work conducted outside of this state as satisfying the requirement to undergo peer review under this rule, if:

(i) the peer review is conducted during the year scheduled or rescheduled under R156-26a-303a(2);

(ii) the peer review is performed in accordance with requirements equivalent to those of this state;

(iii) the peer review:

(A) studies, evaluates, and reports on the quality control system of the firm as a whole in the case of system reviews; or

(B) results in an evaluation and report on selected engagements in the case of engagement reviews;

(iv) the firm's internal inspection procedures require that the firm's personnel from another office outside the state perform the inspection of the office located in this state not less than once in each three year period; and

(v) at the conclusion of the peer review, the peer reviewer issues a report equivalent to that required by R156-26a-303a(5) or in the case of an approved regulatory body, a report is issued under their standards.

(b) A multi-state firm seeking approval under R156-26a-303a(7)(a) shall submit an application to the administering organization by February 1 of the year of review establishing that the peer review it proposes to undergo meets all of the requirements of R156-26a-303a(5).

(8) A firm which does not perform services encompassed in the scope of minimum standards as set out in R156-26a-303a(5)(a) or (b) is exempt from peer review and shall notify the Division of the exemption at the time of renewal of its registration. A firm which begins providing these services must commence a peer review within 18 months of the date of the issuance of its initial report as defined in Subsection 58-26a-102(16).

(9) Mergers, Combinations, Dissolutions or Separations.

(a) Mergers or combinations: If two or more firms are merged or sold and combined, the surviving firm shall retain the year of review of the largest firm.

(b) Dissolutions or separations: If a firm is divided, the new firms shall retain the year of review of the former firm. If this period is less than 12 months, a new year shall be assigned so that the review occurs after 12 months of operation.

(c) Upon application to the administering organization and a showing of hardship caused solely by compliance with R156-26a-303a(10), the Division may authorize a change in a firm's year of review.

(10) If a firm can demonstrate that the time established for the conduct of a peer review will create an unreasonable hardship upon the firm, the Division may approve an extension not to exceed 180 days from the date the peer review was originally scheduled, as follows:

(a) A request for extension shall be addressed in writing by

the firm to the Division with a copy to the administering organization responsible for administration of that firm's peer review.

(b) The written request for extension shall be received by both the Division and the administering organization at least 30 days prior to the date of scheduled review or the request will not be considered.

(c) The Division shall inform the administering organization of the approval of any extension.

(11) Retention of Documents Relating to Peer Reviews.

(a) All documentation necessary to establish that each peer review was performed in conformity with peer review standards adopted by the Board, including the peer review working papers, the peer review report, comment letters and related correspondence indicating the firm's concurrence or nonconcurrence, and any proposed remedial actions and related implementation, shall be retained for the relevant administering organization's designated retention period or 120 days, whichever is longer.

(12) Costs and Fees for Peer Review.

(a) All costs associated with firm-on-firm reviews will be negotiated between the firm and the reviewer and paid directly to the reviewer. All costs associated with committee assigned review team (CART) reviews will be set by the administering organization. The administering organization will collect the fees associated with CART reviews and pay the reviewer.

(b) All costs associated with the administration of the review process shall be paid from fees charged to the firms. The fees shall be collected by the administering organization. The schedule of fees shall be included in the administering organization's proposal. The fee schedule shall specify how much is to be paid each year and shall be based on the firm size.

(13) All financial statements, working papers, or other documents reviewed are confidential. Access to those documents shall be limited to being made available, upon request, to the Peer Review Committee or the technical reviewer for purposes of assuring that peer reviews are performed according to professional standards.

R156-26a-303b. Continuing Professional Education (CPE).

The continuing professional education (CPE requirements in Section 58-26a-304 are defined, clarified, or established as follows:

(1) A CPA shall complete at least 80 CPE hours in each two-year licensure cycle ending on December 31 of each even-numbered year, except that no CPE hours are required at a first renewal after initial licensure.

(2) CPE hours shall include at least:

(a) one hour of CPE that covers Title 58, Chapter 26a, the Certified Public Accountant Licensing Act, and Rule R156-26a, the Certified Public Accountant Licensing Act Rule; and

(b) three hours of ethics education that cover one or more of the following areas:

(i) the AICPA Code of Professional Conduct;

(ii) case-based instruction focusing on real-life situational learning;

(iii) ethical dilemmas faced by accounting professionals; or

(iv) business ethics.

(3) A CPA shall maintain current knowledge, skills, and abilities in all areas in which the CPA provides services, in order to provide services in a competent manner. To maintain or to obtain the knowledge, skills, and abilities to competently provide services, a CPA may be required to obtain CPE above and beyond the 80 minimum CPE credits specified in Section 58-26a-304.

(4) The Division incorporates and adopts by reference the AICPA/NASBA Statement on Standards for Continuing Professional Education (CPE) Programs, revised August 2016. These standards have been broadly stated in recognition of the diversity of practice and experience among CPAs. They establish a framework for the development, presentation, measurement, and reporting of CPE programs and thereby help to ensure that CPAs maintain the required knowledge, skills, and abilities necessary to competently provide services and to enable the CPA to provide evidence of meeting the minimum CPE requirements.

(5) Reporting Requirements.

(a) The license renewal deadling and the CPE reporting period deadline shall have the same date of December 31 of even-numbered years.

(b) Except as otherwise authorized by the Division, CPE shall be reported online on the Division website.

(c) A licensee applying for license renewal shall report by December 31 of each even-numbered year, demonstrating completion of at least the minimum number of CPE hours required under Section 58-26a-304 and this Section.

(d) Each person applying for license reinstatement shall report to the Division at the time of application, demonstrating completion of the CPE required under Section R156-26a-307.

(e) If a licensee reports required CPE and renews their license prior to December 31 of an even-numbered year, any additional CPE completed by that licensee through the remainder of the even-numbered year may be reported and carried forward toward the next succeeding CPE reporting period.

(6) Carry Forward Provision.

(a) A licensee who completes more than the required hours of CPE during the reporting period may carry forward up to 40 hours to the next succeeding reporting period.

(b) CPE taken in the current reporting period and CPE hours carried forward from the previous reporting period shall qualify as general CPE hours only for the current reporting period.

(7) Failure to comply with CPE requirements.

(a) A licensee who fails to complete the required minimum CPE by the reporting deadline may not renew their license until the required CPE hours have been completed and reported.

(b) Pursuant to Subsection 58-26-304(4), a licensee may request the Board to waive the requirements or grant an extension for CPE on the basis that the licensee was not able to complete the continuing professional education due to medical or related conditions confirmed by a qualified health care provider.

(i) Such medical confirmation shall include the beginning and ending dates during which the medical condition would have prevented the licensee from completing the CPE, the extent of the medical condition and the effect that the medical condition had upon the ability of the licensee to continue to engage in the practice of accountancy.

(ii) The Board in determining whether the waiver is appropriate shall consider whether or not the licensee continued to be engaged in the practice of accountancy practice on a full or part time basis during the period specified by the medical confirmation.

(iii) Granting a waiver of meeting the minimum CPE hours is not a waiver of a CPA being required to provide services in a competent manner with current knowledge, skill and ability. When medical or other conditions prevent the CPA from providing services in a competent manner, the CPA shall refrain from providing such services.

R156-26a-303c. Renewal Cycle.

In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 26a is established by rule in Section R156-1-308.

R156-26a-303d. Renewal Procedures.

Renewal procedures shall be in accordance with Section R156-1-308.

R156-26a-305. Exemptions from Licensure - Mobility.

The mobility practice privilege included in Section 58-26a-305 is further clarified, defiend, and established as follows:

(1) As used in this section and Section 58-26a-305:

(a) "Mobility" means a practice privilege that generally permits a licensed CPA in good standing rom a substantially equivalent state/jurisdiction where their principal place of business is located, to practice outside of that state/jurisdiction without obtaining another license. CPA mobility is a uniform approach endorsed by the AICPA and NASBA through the AICPA/NASBA Uniform Accountancy Act (UAA), allowing no-notification interstate practice by CPAs whose home jurisdiction or who individually are substantially equivalent where they meet the UAA licensure standard. The individual and firm automatically consent to the jurisdiction of the mobility state, and the mobility state's ability to discipline under the provision is based on the performance of services within the mobility state, whether physically, electronically, or otherwise.

(b) "Individual mobility" means an individual CPA meets the requirements of Subsection 58-26a-305(1)(a) and Section R156-26a-305 to perform services through mobility in Utah. A CPA with individual mobility does not need to obtain a Utah CPA license or otherwise register with the Division.

(c) "Firm mobility" means a CPA firm meets the requirements of Subsection 58-26a-305(1)(a) and Section R156-26a-305 to perform services through mobility in Utah. A CPA firm with firm mobility does not need to obtain a Utah CPA firm license or register with the Division.

(d) "Home jurisdiction", for purposes of Section 58-26a-305 and this Section, means the jurisdiction where a CPA or CPA firm is licensed and their principal place of business is located.

(e) "Mobility tool" means the online tool developed by the AICPA and NASBA to help CPAs and CPA firms understand mobility and determine their eligibility for mobility, available at https://cpamobility.org.

(2) A CPA or CPA firm performing services through mobility in Utah shall hold an active, unrestricted license in good standing in their home jurisdiction. An inactive or restricted CPA or CPA firm license is invalid pursuant to Subsection 58-26a-305(1)(a)(ii)(C).

(3) A CPA performing services through mobility shall only perform the same level of services (attest or non-attest) in the mobility jurisdiction as they are permitted to perform in their home jurisdiction.

(4) A CPA firm not licensed in Utah may perform services through mobility in Utah as a person exempt from licensure pursuant to Subsection 58-26a-305(1)(a), if:

(a) the CPA firm's principal place of business is not in Utah;

(b) the CPA firm holds an active, unrestricted CPA firm license in good standing in its home jurisdiction; and

(c) the CPA firm meets the ownership and peer review requirements of the mobility jurisdiction pursuant to Subsection 58-26a-302(3)(a)(iii) and Subsection R156-26a-303a.

(5) A licensed CPA or CPA firm may obtain information regarding their eligibility for mobility by using the mobility tool at https://cpamobility.org.

R156-26a-307. Reinstatement of Licenses.

(1) An individual who held a Utah license which has expired for failure to renew for nonpayment of fees, or an individual applying for reinstatement from emeritus status, may be relicensed upon satisfactory completion of:

(a) submission of an application on forms supplied by the Division which shall contain information as to why the individual allowed their license to lapse; and

(b) 80 hours of qualified CPE completed within the 12 months preceding the submission of the application for reinstatement, which shall include:

(i) at least 16 hours in accounting or auditing or both; and

(ii) successful completion of the AICPA Professional Ethics for CPAs Examination and the Utah CPA Laws and Rules Examination with minimum scores of at least the minimum score required for initial licensure, which shall count as eight hours of CPE towards the 80 hour requirement.

(2) The requirements in Subsection R156-26-307(1)(b) may be waived if the reinstatement applicant:

(a) has not been practicing within Utah since the expiration of the license being reinstated;

(b) has continuously since the expiration been licensed and practicing in another state; and

(c) demonstrates that the applicant has met all the CPE requirements that would have been applicable in Utah during the time the license was expired in Utah.

(3) The requirements in Subsection R156-26a-307(1)(b) may be waived if:

(a) the applicant failed to renew because of inadvertent failure to pay the renewal fees, to sign application documents, or to meet similar technical application requirements;

(b) the application for reinstatement is filed with the Division within 24 months after expiration date of the license; and

(c) at time of application for reinstatement the applicant demonstrates by proof of attendance at acceptable CPE courses that at all times the applicant was in full compliance with the CPE requirements.

(4) The number of hours required to reinstate a license may not satisfy in whole or part any of the minimum hours of CPE that may be required for subsequent renewal of the license.

R156-26a-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) willfully failing to comply with continuing professional education or fraudulently reporting continuing professional education;

(2) commission of an act or omission that fails to conform to the accepted and recognized standards and ethics of the profession including those stated in the AICPA Code of Professional Conduct, effective December 15, 2014, updated through August 31, 2016, which is hereby incorporated by reference; or

(3) a CPA firm using the name of a person who is not a licensed certified public accountant as part of the CPA firm name, with the exception that a CPA firm may continue to use the name of a former owner who was a CPA but who has retired or is no longer active in the CPA firm.

KEY: accountants, licensing, peer review, continuing professional education

November 7, 2019	**58-26a-101**
Notice of Continuation October 6, 2016	**58-1-106(1)(a)**
	58-1-202(1)(a)

R162. Commerce, Real Estate.
R162-2c. Utah Residential Mortgage Practices and Licensing Rules.
R162-2c-101. Title.

This chapter is known as the "Utah Residential Mortgage Practices and Licensing Rules."

R162-2c-102. Definitions.

(1) The acronym "ALM" stands for associate lending manager.

(2) The acronym "BLM" stands for branch lending manager.

(3) "Certification" means authorization from the division to:

(a) establish and operate a school that provides courses for Utah-specific prelicensing education or continuing education; or

(b) function as an instructor for courses approved for Utah-specific prelicensing education or continuing education.

(4) "Credit hour" means 50 minutes of instruction within a 60-minute time period, allowing for a ten-minute break.

(5) "Control person" is defined in Section 61-2c-102(1)(p).

(6) "Expired license" means a license that is not renewed according to applicable deadlines, but is eligible to be reinstated.

(7) "Individual applicant" means any individual who applies to obtain or renew a license to practice as a mortgage loan originator or lending manager.

(8) "Incentive program" means a program through which a licensed entity may, pursuant to Subsection R162-2c-301b, pay a licensed mortgage loan originator who is sponsored by the entity for bringing business into the entity.

(9) "Instruction method" means the forum through which the instructor and student interact and may be:

(a) classroom: traditional instruction where instructors and students are located in the same physical location;

(b) classroom equivalent: an instructor-led course where the instructor and students may be in two or more physical locations; or

(c) online: instructor and student interact through an online classroom.

(10) "Instructor applicant" means any individual who applies to obtain or renew certification as an instructor of Utah-specific pre-licensing or continuing education courses.

(11)(a) "Lending manager" is defined in Section 61-2c-102(1)(aa).

(b) "Lending manager license" includes:

(i) a principal lending manager license;

(ii) an associate lending manager license; and

(iii) a branch lending manager license.

(12) The acronym "LM" stands for lending manger and includes the following licensing designations:

(a) principal lending manager;

(b) associate lending manager; and

(c) branch lending manager.

(13) "Mortgage entity" means any entity that:

(a) engages in the business of residential mortgage lending;

(b) is required to be licensed under Section 61-2c-201; and

(c) operates under a business name or other trade name that is registered with the Division of Corporations and Commercial Code.

(14) "Nationwide database" means the Nationwide Mortgage Licensing System and Registry.

(15) The acronym "NMLS" stands for Nationwide Mortgage Licensing System.

(16) "Other trade name" means any assumed business name under which an entity does business.

(17) "Personal information" means a person's first name or first initial and last name, combined with any one or more of the following data elements relating to that person when either the name or data element is unencrypted or not protected by another method that renders the data unreadable or unusable:

(a) Social Security number;

(b) financial account number, or credit or debit card number; or

(c) driver license number or state identification card number.

(18) The acronym "PLM" stands for principal lending manager.

(19) "Qualifying individual" means the LM, managing principal, or qualified person who is identified on the MU1 form in the nationwide database as the person in charge of an entity.

(20) "Reapplication" or "reapply" refers to a request for licensure that is submitted after the deadline for reinstatement expires and the license has become terminated.

(21) "Reinstatement" or "reinstate" refers to a request for a licensure that is submitted after the applicable December 31 license expiration date passes and by or before February 28 of the following calendar year.

(22) As used in Subsection R162-2c-201, "relevant information" includes:

(a) court dockets;

(b) charging documents;

(c) orders;

(d) consent agreements; and

(e) any other information the division may require.

(23) "Restricted license" means any license that is issued subject to a definite period of suspension or terms of probation.

(24) "Safeguard" means to prevent unauthorized access, use, disclosure, or dissemination.

(25) "School" means

(a) any college or university accredited by a regional accrediting agency that is recognized by the United States Department of Education;

(b) any community college;

(c) any vocational-technical school;

(d) any state or federal agency or commission;

(e) any nationally recognized mortgage organization that has been approved by the commission;

(f) any Utah mortgage organization that has been approved by the commission;

(g) any local mortgage organization that has been approved by the commission; or

(h) any proprietary mortgage education school that has been approved by the commission.

(26) "School applicant" means a director or owner of a school who applies to obtain or renew a school's certification.

(27) "Terminated license" means a license that was not renewed or reinstated according to applicable deadlines.

R162-2c-201. Licensing and Registration Procedures.

(1) Mortgage loan originator.

(a) To obtain a Utah license to practice as a mortgage loan originator, an individual who is not currently and validly licensed in any state shall:

(i) evidence good moral character pursuant to R162-2c-202(1);

(ii) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);

(iii) evidence financial responsibility pursuant to R162-2c-202(3);

(iv) obtain a unique identifier through the nationwide database;

(v) successfully complete, within the 12-month period prior to the date of application, 15 hours of Utah-specific pre-licensing education as approved by the division;

(vi)(A) successfully complete 20 hours of pre-licensing

education as approved by the nationwide database according to the nationwide database outline for national course curriculum; or

(B) if the individual previously passed the 20-hour national course, obtained a license, and thereafter allowed the license to expire, successfully complete continuing education:

(I) approved by the nationwide database; and

(II) in the number of hours that would have been required to renew the expired license in the year in which the individual allowed the license to expire;

(vii) take and pass the examinations that meet the requirements of Section 61-2c-204.1(4) and that:

(A) are approved and administered through the nationwide database; and

(B) consist of a national test with uniform state content;

(viii) request licensure as a mortgage loan originator through the nationwide database;

(ix) authorize a criminal background check and submit fingerprints through the nationwide database;

(x) authorize the nationwide database to provide the individual's credit report to the division for review;

(xi) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;

(xii) record with the nationwide database a mailing address, if the applicant is not able to accept mail at the physical location or street address that is required to be on record with the nationwide database pursuant to Section 61-2c-106(1)(a);

(xiii) complete, sign, and submit to the division a social security verification form as provided by the division; and

(xiv) pay all fees through the nationwide database as required by the division and by the nationwide database.

(b) To obtain a Utah license to practice as a mortgage loan originator, an individual who is currently and validly licensed in another state shall:

(i) evidence good moral character pursuant to R162-2c-202(1);

(ii) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);

(iii) evidence financial responsibility pursuant to R162-2c-202(3);

(iv) successfully complete, within the 12-month period prior to the date of application, 15 hours of Utah-specific mortgage loan originator prelicensing education;

(v) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;

(vi) record with the nationwide database a mailing address, if the applicant is not able to accept mail at the physical location or street address that is required to be on record with the nationwide database pursuant to Section 61-2c-106(1)(a);

(vii) request licensure as a mortgage loan originator through the nationwide database;

(viii) authorize a criminal background check through the nationwide database;

(ix) authorize the nationwide database to provide the individual's credit report to the division for review;

(x) complete, sign, and submit to the division a social security verification form as provided by the division; and

(xi) pay all fees through the nationwide database as required by the division and by the nationwide database.

(2) Lending manager. To obtain a Utah license to practice as an LM, an individual shall:

(a) evidence good moral character pursuant to R162-2c-202(1);

(b) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);

(c) evidence financial responsibility pursuant to R162-2c-202(3);

(d) provide to the division:

(i) the individual's unique identifier as assigned through the nationwide database;

(ii) evidence that the individual has taken and successfully:

(A) passed the 20-hour national mortgage loan originator prelicensing course; and

(B) passed the mortgage loan originator examination that:

(I) meets the requirements of Section 61-2c-204.1(4);

(II) is approved and administered through the nationwide database; and

(III) consists of a national test with uniform state content;

(C) completed the division approved 40 hour Utah-specific lending manager prelicensing education within the 12-month period prior to the date of application to the division;

(D) applied to the testing contractor designated by the division to sit for the lending manager licensing examination;

(E) paid a nonrefundable examination fee to the testing contractor; and

(F) passed both the state and national (general) components of the licensing examination;

(e) within the 12-month period preceding the date of submission of a lending manager application to the division, successfully:

(i) register in the nationwide database by selecting the "lending manager" license type and completing the associated MU4 form;

(ii) record with the nationwide database a mailing address if the applicant is not able to accept mail at the physical location or street address that is required to be on record with the nationwide database pursuant to Section 61-2c-106(1)(a);

(iii) authorize a criminal background check and submit fingerprints through the nationwide database;

(iv) provide to the division all relevant information regarding "yes" answers to disclosure questions found within the application submitted on the MU4 form;

(v) if applying for an active license, affiliate with a registered Utah mortgage entity;

(vi) authorize the nationwide database to provide the individual's credit report to the division for review;

(vii) pay the lending manager licensing fee as required by the division and by the nationwide database;

(viii) complete, sign, date, and submit to the division:

(A) the Utah lending manager checklist form as found on the division website or the nationwide database;

(B) the two page lending manager application as provided by the testing contractor;

(C) the social security verification forms as provided by the testing contractor; and

(D) a copy of a paid invoice from the nationwide database showing proof of payment of the lending manager license fee.

(f) provide to the division experience documentation forms to evidence that the applicant has satisfied the experience requirement of section 61-2c-206(1)(d) as follows:

(i) during the five-year period preceding the date of submission of a lending manager license application to the division:

(A) three years full-time experience originating first-lien residential mortgages as a mortgage loan originator as defined in Section 61-2c-102(1)(ff):

(I) under a license issued by a state regulatory agency; or

(II) as an employee of a depository institution; and

(B) evidence of having originated a minimum of 45 first-lien residential mortgages; or

(ii) during the five-year period preceding the date of submission of a lending manager license application to the division:

(A) two years full-time experience originating first-lien residential mortgages as defined in Section 61-2c-102(1)(ff):

(I) under a license issued by a state regulatory agency; or
(II) as an employee of a depository institution;
(B) plus one year of full-time equivalent experience from the optional experience equivalency calculation in Subsection R162-2c-501a or the optional experience table in Subsection R162-2c-501b; and
(C) evidence of having originated a minimum of 30 first-lien residential mortgages; or
(iii) during the 12 years preceding the date of submission of a lending manager license application to the division:
(A) ten years of full-time experience providing direct supervision as a loan manager in the residential mortgage industry;
(B) with evidence of having directly supervised during the ten years described in this Subsection no fewer than five licensed or registered loan originators; and
(C) although the five individuals licensed or registered as described in this Subsection may have changed over time, the number of individuals being managed or supervised must have remained at a minimum of five individuals at all times during the ten years described in this Subsection; and
(D) evidence of having personally originated a minimum of 15 first-lien residential mortgages within the past five years.
(g) Failure to document acceptable experience in one of the three methods described in Subsection (f) will result in the denial of the lending manager application. All application fees are nonrefundable.
(h) designate in the nationwide database whether the individual will be acting for the sponsoring entity as:
(i) the principal lending manager;
(ii) an associate lending manager; or
(iii) a branch lending manager.
(i) Deadlines.
(i) If an individual passes one test portion of the lending manager examination but fails the other, the individual may retake and pass the failed portion of the exam within 90 days of the date on which the individual achieves a passing score on the first portion of the exam.
(ii) An application for licensure shall be submitted:
(A) within 90 days of the date on which the individual achieves passing scores on both examination portions; and
(B) within 12 months of the date on which the individual completes the pre-licensing education.
(iii) If any deadline in this Subsection R162-2c-201(2) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.
(3) Mortgage entity.
(a) To obtain a Utah license to operate as a mortgage entity, a person shall:
(i) establish that all control persons meet the requirements for moral character pursuant to R162-2c-202(1);
(ii) establish that all control persons meet the requirements for competency pursuant to R162-2c-202(2);
(iii) register any other trade name with the Division of Corporations and Commercial Code;
(iv) register the entity in the nationwide database by:
(A) submitting an MU1 form that includes:
(I) all required identifying information;
(II) the name of the PLM who, pursuant to Subsection R162-2c-301a(3)(a)(iv), will serve as the entity's qualifying individual;
(III) the name of any LM who, pursuant to Subsection R162-2c-301a(3)(a)(iv), will serve as a branch lending manager;
(IV) the name of any individuals who may serve as control persons;
(V) the entity's registered agent; and
(VI) any other assumed business name or trade name under which the entity will operate;
(B) submitting a license request for any assumed business name listed in the "Other Trade Name" section of the MU1 form; and
(C) creating a sponsorship through the nationwide database that identifies the mortgage loan originator(s) sponsored by the entity;
(v) register any branch office operating from a different location than the entity;
(vi) pay all fees through the nationwide database as required by the division and by the nationwide database;
(vii) provide to the division proof that any assumed business name or other trade name is registered with the Division of Corporations and Commercial Code;
(viii) provide to the division all court documents related to any criminal proceeding not disclosed through a previous application or renewal and involving any control person;
(ix) provide to the division complete documentation of any action taken by a regulatory agency against:
(A) the entity itself; or
(B) any control person; and
(C) not disclosed through a previous application or renewal; and
(x) provide to the division a notarized letter on company letterhead, signed by the owner or president of the entity, authorizing the PLM to use the entity's name.
(b) Restrictions on entity name. No license may be issued by the division to an entity that proposes to operate under a name that closely resembles the name of another entity licensee, or that the division determines might otherwise be confusing or misleading to the public.
(4) Branch office.
(a) To register a branch office with the division, a person shall:
(i) obtain a Utah entity license for the entity under which the branch office will be registered;
(ii) submit to the nationwide database an MU3 form that includes:
(A) all required identifying information; and
(B) the name of the LM who will serve as the branch lending manager;
(iii) create a sponsorship through the nationwide database that identifies the mortgage loan originator(s) who will work from the branch office; and
(iv) pay all fees through the nationwide database as required by the division and by the nationwide database.
(b) A person who registers a branch office pursuant to this Subsection (4) shall ensure that any licensed trade names of the entity that are used from the branch office are listed in the "Other Name" section of the entity MU1 form.
(c)(i) A PLM may not simultaneously serve as a BLM if Subsection R162-2c-301a(3)(a)(iv)(B) applies.
(ii) An individual may not serve as the BLM for more than one branch at any given time.
(5) Licenses not transferable.
(a) A licensee shall not transfer the licensee's license to any other person.
(b) A licensee shall not allow any other person to work under the licensee's license.
(c) If a change in corporate structure of a licensed entity creates a separate and unique legal entity, that entity shall obtain a unique license, and shall not operate under any existing license.
(6) Expiration of test results.
(a) Scores for the LM exam shall be valid for 90 days.
(7) Nonrefundable fees. All fees are nonrefundable, regardless of whether an application is granted or denied.
(8) Other trade names.
(a) The division shall not approve a license for any person operating under an assumed business name that poses a reasonable likelihood of misleading the public into thinking that

the person is:

(i) endorsed by the division, the state government, or the federal government;

(ii) an agency of the state or federal government; or

(iii) not engaged in the business of residential mortgage loans.

(b) A mortgage entity that operates under another trade name shall register the other trade name by including it on the MU1 form and obtaining the required registration.

R162-2c-202. Qualifications for Licensure.

(1) Character. Individual applicants and control persons shall evidence good moral character, honesty, integrity, and truthfulness.

(a) An applicant may not have:

(i) been convicted of, pled guilty to, pled no contest to, pled guilty in a similar manner to, or resolved by diversion or its equivalent:

(A) a felony involving an act of fraud, dishonesty, a breach of trust, or money laundering;

(B) any felony in the seven years preceding the day on which an application is submitted to the division;

(C) in the five years preceding the day on which an application is submitted to the division:

(I) a misdemeanor involving moral turpitude; or

(II) a crime in another jurisdiction that is the equivalent of a misdemeanor involving moral turpitude;

(D) in the three years preceding the day on which an application is submitted to the division, any misdemeanor involving a finding of:

(I) fraud;

(II) misrepresentation;

(III) theft; or

(IV) dishonesty;

(ii) had a license as a mortgage loan originator revoked by a government regulatory body at any time, unless the revocation is subsequently vacated or converted;

(iii) had a professional license or registration, whether issued by a Utah regulatory body or by another jurisdiction, suspended, surrendered, canceled, or denied in the five years preceding the date the individual applies for licensure if the suspension, surrender, cancellation, or denial is based on misconduct in a professional capacity that relates to:

(A) moral character;

(B) honesty;

(C) integrity;

(D) truthfulness; or

(E) the competency to transact the business of residential mortgage loans;

(iv) in the five years preceding the day on which an application is submitted to the division, been the subject of a bar by the:

(A) Securities and Exchange Commission;

(B) New York Stock Exchange; or

(C) Financial Industry Regulatory Authority;

(v) had a permanent injunction entered against the individual:

(A) by a court or administrative agency; and

(B) on the basis of:

(I) conduct or a practice involving the business of residential mortgage loans; or

(II) conduct involving fraud, misrepresentation, or deceit.

(b) An applicant may be denied a license or issued a restricted license for incidents in the applicant's past other than those specified in this Subsection (1)(a) that reflect negatively on the applicant's moral character, honesty, integrity, and truthfulness. In evaluating an applicant for these qualities, the division and commission may consider any evidence, including the following:

(i) criminal convictions or plea agreements, with particular consideration given to convictions or plea agreements relative to charges that involve moral turpitude;

(ii) the circumstances that led to any criminal conviction or plea agreement under consideration;

(iii) past acts related to honesty or moral character, with particular consideration given to any such acts involving the business of residential mortgage loans;

(iv) dishonest conduct that would be grounds under Utah law for sanctioning an existing licensee;

(v) civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;

(vi) court findings of fraudulent or deceitful activity;

(vii) evidence of non-compliance with court orders or conditions of sentencing;

(viii) evidence of non-compliance with:

(A) terms of a diversion agreement still subject to prosecution;

(B) a probation agreement; or

(C) a plea in abeyance; or

(ix) failure to pay taxes or child support obligations.

(2) Competency. Individual applicants and control persons shall evidence competency to transact the business of residential mortgage loans. In evaluating an applicant for competency, the division and commission may consider any evidence that reflects negatively on an applicant's competency, including:

(a) civil judgments, with particular consideration given to any such judgments involving the business of residential mortgage loans;

(b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;

(c) failure of any previous mortgage loan business in which the individual was engaged, as well as the circumstances surrounding that failure;

(d) evidence as to the applicant's business management and employment practices, including the payment of employees, independent contractors, and third parties;

(e) the extent and quality of the applicant's training and education in mortgage lending;

(f) the extent and quality of the applicant's training and education in business management;

(g) the extent of the applicant's knowledge of the Utah Residential Mortgage Practices Act;

(h) evidence of disregard for licensing laws;

(i) evidence of drug or alcohol dependency;

(j) sanctions placed on professional licenses; and

(k) investigations conducted by regulatory agencies relative to professional licenses.

(3) Financial responsibility. Individual applicants shall evidence financial responsibility. To evaluate an applicant for financial responsibility, the division shall:

(a) access the credit information available through the NMLS of:

(i) an applicant for initial licensure, beginning October 18, 2010; and

(ii) a licensee who requests renewal during the 2010 renewal period, unless the licensee's credit report was reviewed in issuing the initial license; and

(b) give particular consideration to:

(i) outstanding civil judgments;

(ii) outstanding tax liens;

(iii) foreclosures;

(iv) multiple social security numbers attached to the individual's name;

(v) child support arrearages; and

(vi) bankruptcies.

(4) Age. An applicant shall be at least 18 years of age.

(5) Minimum education. An applicant shall have a high school diploma, GED, or equivalent education as approved by

the commission.

R162-2c-203. Utah-Specific Education Certification.

(1) School certification.

(a) A school offering Utah-specific education shall certify with the division before providing any instruction.

(b) To certify, a school applicant shall prepare and supply the following information to the division:

(i) contact information, including:

(A) name, phone number, email address, and address of the physical facility;

(B) name, phone number, email address, and address of any school director;

(C) name, phone number, email address, and address of any school owner; and

(D) an e-mail address where correspondence will be received by the school;

(ii) evidence that all school directors and owners meet the moral character requirements outlined in R162-2c-202(1) and the competency requirements outlined in R162-2c-202(2);

(iii) school description, including:

(A) type of school;

(B) description of the school's physical facilities; and

(C) type of instruction method;

(iv) list of the instructor(s), including any guest lecturer(s), who will be teaching each course;

(v) proof that each instructor:

(A) has been certified by the division; or

(B) is exempt from certification under Subsection 203(5)(f);

(vi) statement of attendance requirements as provided to students;

(vii) refund policy as provided to students;

(viii) disclaimer as provided to students; and

(ix) criminal history disclosure statement as provided to students.

(c) Minimum standards.

(i) The course schedule may not provide or allow for more than eight credit hours per student per day.

(ii) The attendance statement shall require that each student attend at least 90% of the scheduled class time.

(iii) The disclaimer shall adhere to the following requirements:

(A) be typed in all capital letters at least 1/4 inch high; and

(B) state the following language: "Any student attending (school name) is under no obligation to affiliate with any of the mortgage entities that may be soliciting for licensees at this school."

(iv) The criminal history disclosure statement shall:

(A) be provided to students while they are still eligible for a full refund; and

(B) clearly inform the student that upon application with the nationwide database, the student will be required to:

(I) accurately disclose the student's criminal history according to the licensing questionnaire provided by the nationwide database and authorized by the division; and

(II) provide to the division complete court documentation relative to any criminal proceeding that the applicant is required to disclose;

(C) clearly inform the student that the division will consider the applicant's criminal history pursuant to R162-2c-202(1) in making a decision on the application; and

(D) include a section for the student's attestation that the student has read and understood the disclosure.

(d) Within ten days after the occurrence of any material change in the information outlined in Subsection (1), the school shall provide to the division written notice of that change.

(2) School certification expiration and renewal. A school certification expires 24 months from the date of issuance and must be renewed before the expiration date in order for the school to remain in operation. To renew, a school applicant shall:

(a) complete a renewal application as provided by the division;

(b) pay a nonrefundable renewal fee;

(c) provide a list of all proposed courses with a projected schedule of days, times, and locations of classes; and

(d) provide the information specified in Subsection 3(c) for Utah-specific course certification for the division's evaluation of each proposed course.

(3) Utah-specific course certification.

(a) A school providing a Utah-specific course shall certify the course with the division before offering the course to students.

(b) Application shall be made at least 30 days prior to the date on which a course requiring certification is proposed to begin.

(c) To certify a course, a school applicant shall prepare and supply the following information:

(i) instruction method;

(ii) outline of the course, including:

(A) a list of subjects covered in the course;

(B) reference to the approved course outline for each subject covered;

(C) length of the course in terms of hours spent in classroom instruction;

(D) number of course hours allocated for each subject;

(E) at least three learning objectives for every hour of classroom time;

(F) instruction format for each subject; i.e, lecture or media presentation;

(G) name and credentials of any guest lecturer; and

(H) list of topic(s) and session(s) taught by any guest lecturer;

(iii) a list of the titles, authors, and publishers of all required textbooks;

(iv) copies of any workbook used in conjunction with a non-lecture method of instruction;

(v) a copy of each quiz and examination, with an answer key; and

(vi) the grading system, including methods of testing and standards of grading.

(d) Minimum standards.

(i) All texts, workbooks, supplement pamphlets and other materials shall be appropriate, current, accurate, and applicable to the required course outline.

(ii) The course shall cover all of the topics set forth in the associated outline.

(iii) The lecture method shall be used for at least 50% of course instruction unless the division gives special approval otherwise.

(iv) A school applicant that uses a non-lecture method for any portion of course instruction shall provide to the student:

(A) an accompanying workbook as approved by the division for the student to complete during the instruction; and

(B) a certified instructor available within 48 hours of the non-lecture instruction to answer student questions.

(v) The division shall not approve an online education course unless:

(A) there is a method to ensure that the enrolled student is the person who actually completes the course;

(B) the time spent in actual instruction is equivalent to the credit hours awarded for the course; and

(C) there is a method to ensure that the student comprehends the material.

(4) Course expiration and renewal.

(a) A prelicensing course expires at the same time the school certification expires.

(b) A prelicensing course certification is renewed automatically when the school certification is renewed.

(5) Education committee.

(a) The commission may appoint an education committee to:

(i) assist the division and the commission in approving course topics; and

(ii) make recommendations to the division and the commission about:

(A) whether a particular course topic is relevant to residential mortgage principles and practices; and

(B) whether a particular course topic would tend to enhance the competency and professionalism of licensees.

(b) The division and the commission may accept or reject the education committee's recommendation on any course topic.

(6) Instructor certification.

(a) Except as provided in this Subsection (6)(f), an instructor shall certify with the division before teaching a Utah-specific course.

(b) Application shall be made at least 30 days prior to the date on which the instructor proposes to begin teaching.

(c) To certify as an instructor of mortgage loan originator prelicensing courses, an individual shall provide evidence of:

(i) a high school diploma or its equivalent;

(ii)(A) at least five years of experience in the residential mortgage industry within the past ten years; or

(B) successful completion of appropriate college-level courses specific to the topic proposed to be taught;

(iii)(A) a minimum of twelve months of full-time teaching experience;

(B) part-time teaching experience that equates to twelve months of full-time teaching experience; or

(C) participation in instructor development workshops totaling at least two days in length; and

(iv) having passed, within the six-month period preceding the date of application, the lending manager licensing examination.

(d) To certify as an instructor of LM prelicensing courses, an individual shall:

(i) meet the general requirements of this Subsection 6(c); and

(ii) meet the specific requirements for any of the following courses the individual proposes to teach.

(A) Management of a Residential Mortgage Loan Office: at least two years practical experience in managing an office engaged in the business of residential mortgage loans.

(B) Mortgage Lending Law: two years practical experience in the field of real estate law; and either:

(I) current active membership in the Utah Bar Association; or

(II) degree from an American Bar Association accredited law school.

(C) Advanced Appraisal:

(I) at least two years practical experience in appraising; and

(II) current state-certified appraiser license.

(D) Advanced Finance:

(I) at least two years practical experience in real estate finance; and

(II) association with a lending institution as a loan originator.

(e) To act as an instructor of NMLS-approved continuing education courses, an individual shall certify through the nationwide database.

(f)(i) To act as an instructor of Division-approved continuing education courses, an individual shall complete the Division certification process at least 30 days prior to engaging in instruction.

(ii) To certify with the Division as an instructor, an applicant shall provide the following:

(A) applicant's name and contact information;

(B) evidence that the applicant meets the competency requirements of Subsection R162-2c-202;

(C) evidence that the applicant has graduated from high school or successfully completed equivalent education;

(D) evidence that the applicant understands the subject matter to be taught, as demonstrated through:

(I) a minimum of two years full-time experience as a mortgage licensee;

(II) college-level education related to the course subject; or

(III) demonstrated expertise in the subject proposed to be taught;

(E) evidence that the applicant has the ability to teach, as demonstrated through:

(F) a minimum of 12 months of full-time teaching experience; or

(I) part-time teaching experience equivalent to 12 months full-time teaching experience;

(II) a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the Division or its representative;

(G) a signed statement agreeing not to market personal sales products;

(H) a signed statement certifying legal presence to work in the state;

(I) any other information the Division requires or requests; and

(J) a nonrefundable application fee.

(g) The following instructors are not required to be certified by the division:

(i) a guest lecturer who:

(A) is an expert in the field on which instruction is given;

(B) provides to the division a resume or similar documentation evidencing satisfactory knowledge, background, qualifications, and expertise; and

(C) teaches no more than 20% of the course hours;

(ii) a college or university faculty member who evidences academic training, industry experience, or other qualifications acceptable to the division;

(iii) an individual who:

(A) evidences academic training, industry experience, or other qualifications satisfactory to the division; and

(B) receives approval from the commission; and

(iv) a division employee.

(h) Renewal.

(i) An instructor certification for Utah-specific prelicensing education expires 24 months from the date of issuance and shall be renewed before the expiration date.

(ii) To renew an instructor certification for Utah-specific prelicensing education, an applicant shall submit to the division:

(A) evidence of having taught at least 20 hours of classroom instruction in a certified mortgage education course during the preceding two years;

(B) evidence of having attended an instructor development workshop sponsored by the division during the preceding two years; and

(C) a renewal fee as required by the division.

(iii) To renew an instructor certification for continuing education, an individual shall certify through the nationwide database.

(i) Reinstatement.

(i) An instructor who is certified by the division may reinstate an expired certification within 30 days of expiration by:

(A) complying with this Subsection (6)(g); and

(B) paying an additional non-refundable late fee.

(ii) Until six months following the date of expiration, an

instructor who is certified by the division may reinstate a certification that has been expired more than 30 days by:

(A) complying with this Subsection (6)(g);

(B) paying an additional non-refundable late fee; and

(C) completing six classroom hours of education related to residential mortgages or teaching techniques.

(7)(a) The division may monitor schools and instructors for:

(i) adherence to course content;

(ii) quality of instruction and instructional materials; and

(iii) fulfillment of affirmative duties as outlined in R162-2c-301a(5)(a) and R162-2c-301a(6)(a).

(b) To monitor schools and instructors, the division may:

(i) collect and review evaluation forms; or

(ii) assign an evaluator to attend a course and make a report to the division.

R162-2c-204. License Renewal, Reinstatement, and Reapplication.

(1) Deadlines.

(a) License renewal.

(i) To renew on time, a person who holds an active license as of October 31 shall renew by December 31 of the same calendar year.

(ii)(A) A person who obtains a license on or after November 1 shall renew by December 31 of the following calendar year.

(B) A person who is not required to renew in the first year of licensure pursuant to this Subsection (1)(a)(ii)(A) shall nevertheless complete, prior to December 31 of the first year of licensure, continuing education as required for renewal pursuant to Subsection R162-2c-204(3)(a) if the individual did not complete the mortgage loan originator national pre-licensing education during the calendar year.

(b) Reinstatement. The deadline to reinstate a license that expires on December 31 is February 28 of the year following the date of expiration.

(c) After the reinstatement deadline passes, a person shall reapply for licensure pursuant to Subsection R162-2c-204(3)(c).

(2) Qualification for renewal.

(a) Character.

(i) Individuals applying to renew or reinstate a license shall evidence that they maintain good moral character, honesty, integrity, and truthfulness as required for initial licensure.

(ii)(A) An individual applying for a renewed license may not have:

(I) a felony that resulted in a conviction or plea agreement during the renewal period; or

(II) a finding of fraud, misrepresentation, or deceit entered against the applicant by a court of competent jurisdiction or a government agency and occurring within the renewal period.

(B) A licensee shall submit a fingerprint background report in order to renew a license every fifth year following the renewal period beginning November 1, 2015.

(iii) The division may deny an individual applicant a renewed license upon evidence, as outlined in Subsection R162-2c-202(1)(b), of circumstances that reflect negatively on the applicant's character, honesty, integrity, or truthfulness and that:

(A) occurred during the renewal period; or

(B) were not disclosed and considered in a previous application or renewal.

(iv) The division may deny an entity applicant a renewed license upon evidence that a control person fails to meet the standards for character, honesty, integrity, and truthfulness required of individual applicants.

(b) Competency.

(i) Individual applicants and control persons shall evidence that they maintain the competency required for initial licensure.

(ii) The division may deny an individual applicant a renewed license upon evidence, as outlined in Subsection R162-2c-202(2), of circumstances that reflect negatively on the applicant's competency and that:

(A) occurred during the renewal period; or

(B) were not disclosed and considered in a previous application or renewal.

(iii) The division may deny an entity applicant a renewed license upon evidence that a control person fails to meet the standard for competency required of individual applicants.

(c) Financial responsibility. A licensee shall submit a credit report in order to renew a license every fifth year following the renewal period beginning November 1, 2015.

(3) Education requirements for renewal, reinstatement, and reapplication.

(a) License renewal.

(i) Except as provided in this Subsection (3)(a)(ii), an individual who holds an active license as of January 1 of the calendar year shall complete, within the calendar year in which the individual's license is scheduled to expire, the following courses, none of which may be duplicative of courses taken in the same or preceding renewal period:

(A) a division-approved course on Utah law, completed annually; and

(B) eight hours of continuing education approved through the nationwide database, as follows:

(I) three hours federal laws and regulations;

(II) two hours ethics (fraud, consumer protection, fair lending issues);

(III) two hours training related to lending standards for non-traditional mortgage products; and

(IV) one hour undefined instruction on mortgage origination.

(C) In addition to other required continuing education, a mortgage loan originator licensed with the State of Utah on or after May 8, 2017, shall, beginning January 1, 2020, complete a division-approved continuing education course for new loan originators prior to their first renewal.

(ii) An individual who completes the mortgage loan originator nationwide pre-licensing education between January 1 and December 31 in their initial license renewal for the renewal period ending December 31 is exempt from the nationwide database continuing education requirements and the division-approved course on Utah law.

(b) Reinstatement. To reinstate an expired mortgage loan originator or lending manager license, an individual shall, by February 28 of the calendar year following the date on which the license expired, complete:

(i) the division-approved course on Utah law specified in Subsection (3)(a)(i)(A);

(ii) eight hours of continuing education:

(A) in topics listed in this Subsection (3)(a)(i)(B); and

(B)(I) approved by the nationwide database as "continuing education" if completed prior to the date of expiration; or

(II) approved by the nationwide database as "late continuing education" if completed between the date of expiration and the deadline for reinstatement; and

(iii) if the new mortgage loan originator continuing education course was required for renewal prior to the expiration of their license, in addition to other required continuing education, a mortgage loan originator licensed with the State of Utah shall complete the division-approved continuing education course for new loan originators prior to reinstatement.

(c) Reapplication.

(i) To reapply for licensure after the reinstatement deadline passes and by or before December 31 of the calendar year following the date on which the license expired, an individual shall complete the division-approved course on Utah law and continuing education requirement outlined in this Subsection

(3)(b).

(ii) To reapply for licensure after the deadline described in this Subsection (3)(c)(i) passes, an individual shall:

(A) complete eight hours of continuing education:

(I) in topics listed in this Subsection (3)(a)(i); and

(II) approved by the nationwide database as "late continuing education"; and

(B) within the 12-month period preceding the date of reapplication, take and pass:

(I) the 15-hour Utah-specific mortgage loan originator pre-licensing education, if the terminated license was a mortgage loan originator license; or

(II) the 40-hour Utah-specific lending manager pre-licensing education and associated examination, if the terminated license was a lending manager license; and

(C) complete the division-approved course on Utah law specified in Subsection (3)(a)(i)(A).

(4) Renewal, reinstatement, and reapplication procedures.

(a) An individual licensee shall:

(i) evidence having completed education as required by Subsection R162-2c-204(3);

(ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database; and

(iii) submit through the nationwide database:

(A) a request for renewal, if renewing or reinstating a license; or

(B) a request for a new license, if reapplying; and

(iv) pay all fees as required by the division and by the nationwide database, including all applicable late fees.

(b) An entity licensee shall:

(i) submit through the nationwide database a request for renewal;

(ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database;

(iii) renew the registration of any branch office or other trade name registered under the entity license; and

(iv) pay through the nationwide database all fees, including all applicable late fees, required by the division and by the nationwide database.

R162-2c-205. Notification of Changes.

(1) An individual licensee who is registered with the nationwide database shall:

(a) enter into the national database any change in the following:

(i) name of licensee;

(ii) contact information for licensee, including:

(A) mailing address;

(B) residential address;

(C) telephone number(s); and

(D) e-mail address(es);

(iii) sponsoring entity; and

(iv) license status (sponsored or non-sponsored); and

(b) pay all change fees charged by the national database and the division.

(2) An entity licensee shall:

(a) enter into the national database any change in the following:

(i) name of licensee;

(ii) contact information for licensee, including:

(A) mailing address;

(B) telephone number(s);

(C) fax number(s); and

(D) e-mail address(es);

(iii) sponsorship information;

(iv) control person(s);

(v) qualifying individual;

(vi) license status (sponsored or non-sponsored); and

(vii) branch offices or other trade names registered under the entity license; and

(b) pay any change fees charged by the national database and the division.

R162-2c-209. Sponsorship.

(1) A mortgage loan originator who is sponsored by an entity may operate and advertise under the name of:

(a) the entity;

(b) a branch office registered under the license of the entity; or

(c) another trade name registered under the license of the entity.

(2) A mortgage loan originator who operates or advertises under a name other than that of the entity by which the mortgage loan originator is sponsored:

(a) shall exercise due diligence to verify that the name being used is properly registered under the entity license; and

(b) shall not be immune from discipline if the individual conducts the business of residential mortgage loans on behalf of more than one entity, in violation of Section 61-2c-209(4)(b)(iii).

(3) An individual who holds a license as a mortgage loan originator may perform loan processing activities regardless of whether:

(a) the individual's license is sponsored by a licensed entity at the time the loan processing activities are performed; or

(b) the individual is employed by a licensed entity.

R162-2c-301a. Unprofessional Conduct.

(1) Mortgage loan originator.

(a) Affirmative duties. A mortgage loan originator who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage loan originator shall:

(i) solicit business and market products solely in the name of the mortgage loan originator's sponsoring entity;

(ii) conduct the business of residential mortgage loans solely in the name of the mortgage loan originator's sponsoring entity;

(iii) remit to any third party service provider the fee(s) that have been collected from a borrower on behalf of the third party service provider, including:

(A) appraisal fees;

(B) inspection fees;

(C) credit reporting fees; and

(D) insurance premiums;

(iv) turn all records over to the sponsoring entity for proper retention and disposal; and

(v) comply with a division request for information within 10 business days of the date of the request.

(b) Prohibited conduct. A mortgage loan originator who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage loan originator may not:

(i) charge for services not actually performed;

(ii) require a borrower to pay more for third party services than the actual cost of those services;

(iii) withhold, without reasonable justification, payment owed to a third party service provider in connection with the business of residential mortgage loans;

(iv) alter an appraisal of real property; or

(v) unless acting under a valid real estate license and not under a mortgage license, perform any act that requires a real estate license under Title 61, Chapter 2f, including:

(A) providing a buyer or seller of real estate with a comparative market analysis;

(B) assisting a buyer or seller to determine the offering price or sales price of real estate;

(C) representing or assisting a buyer or seller of real estate in negotiations concerning a possible sale of real estate;

(D) advertising the sale of real estate by use of any advertising medium;

(E) preparing, on behalf of a buyer or seller, a Real Estate Purchase Contract, addendum, or other contract for the sale of real property; or

(F) altering, on behalf of a buyer or seller, a Real Estate Purchase Contract, addendum, or other contract for the sale of real property.

(c) A mortgage loan originator does not engage in an activity requiring a real estate license where the mortgage loan originator:

(i) offers advice about the consequences that the terms of a purchase agreement might have on the terms and availability of various mortgage products;

(ii) owns real property that the mortgage loan originator offers "for sale by owner"; or

(iii) advertises mortgage loan services in cooperation with a "for sale by owner" seller where the advertising clearly identifies:

(A) the owner's contact information;

(B) the owner's role;

(C) the mortgage loan originator's contact information; and

(D) the specific mortgage-related services that the mortgage loan originator may provide to a buyer; or

(iv) advertises in conjunction with a real estate brokerage where the advertising clearly identifies the:

(A) contact information for the brokerage;

(B) role of the brokerage;

(C) mortgage loan originator's contact information; and

(D) specific mortgage-related services that the mortgage loan originator may provide to a buyer.

(2) Lending manager.

(a) Affirmative duties. A lending manager who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405.

(b) An LM who is designated in the nationwide database as the principal lending manager of an entity shall:

(i) be accountable for the affirmative duties outlined in Subsection (1)(a);

(ii) provide to all sponsored mortgage loan originators and unlicensed staff specific written policies as to their affirmative duties and prohibited activities, as established by:

(A) federal law governing residential mortgage lending;

(B) state law governing residential mortgage lending and including the Utah Residential Mortgage Practices Act; and

(C) administrative rules promulgated by the division under authority of the Utah Residential Mortgage Practices Act;

(iii) if acting as a PLM or BLM, exercise reasonable supervision over all sponsored mortgage loan originators and over all unlicensed staff working from the licensee's office by:

(A) directing the details and means of their work activities;

(B) requiring that they read and agree to comply with the Utah Residential Mortgage Practices and Licensing Act and the rules promulgated thereunder;

(C) requiring that they conduct all residential mortgage loan business in the name of the sponsoring entity; and

(D) prohibiting unlicensed staff from engaging in any activity that requires licensure;

(iv) establish and enforce written policies and procedures for ensuring the independent judgment of any underwriter employed by the PLM's sponsoring entity;

(v) establish and follow procedures for responding to all consumer complaints;

(vi) personally review any complaint relating to conduct by a sponsored mortgage loan originator or unlicensed staff member that might constitute a violation of federal law, state law, or division administrative rules;

(vii) establish and maintain a quality control plan that:

(A) complies with HUD/FHA requirements;

(B) complies with Freddie Mac and Fannie Mae requirements; or

(C) includes, at a minimum, procedures for:

(I) performing pre-closing and post-closing audits of at least ten percent of all loan files; and

(II) taking corrective action for problems identified through the audit process;

(viii)(A) establish, maintain, and enforce written policies and procedures to ensure the independent judgment of any underwriter employed by the sponsoring entity, whether sponsored from the principal entity location or a branch office; and

(B) take corrective action for problems identified through the underwriting process; and

(ix) review for compliance with applicable federal and state laws all advertising and marketing materials and methods used by:

(A) the PLM's sponsoring entity; and

(B) the entity's sponsored mortgage loan originators; and

(ix)(A) actively supervise:

(I) any ALM sponsored by the entity; and

(II) any BLM who is assigned to oversee the mortgage loan origination activities of a branch office; and

(B) remain personally responsible and accountable for adequate supervision of all sponsored mortgage loan originators, unlicensed staff, and entity operations throughout all locations.

(c) An LM who is designated as a branch lending manager in the nationwide database shall:

(i) work from the branch office the LM is assigned to manage;

(ii) personally oversee all mortgage loan origination activities conducted through the branch office; and

(iii) personally supervise all mortgage loan originators and unlicensed staff affiliated with the branch office.

(d) Prohibited conduct. An LM who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. An LM may not engage in any activity that is prohibited for a mortgage loan originator or a mortgage entity.

(3) Mortgage entity.

(a) Affirmative duties. A mortgage entity that fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage entity shall:

(i) remit to any third party service provider the fee(s) that have been collected from a borrower on behalf of the third party service provider, including:

(A) appraisal fees, which shall be remitted no later than 30 days following the date on which the fees are received by the mortgage entity;

(B) inspection fees;

(C) credit reporting fees; and

(D) insurance premiums;

(ii) retain and dispose of records according to R162-2c-302; and

(iii) comply with a division request for information within 10 business days of the date of the request;

(iv)(A) notify the division of the location from which the entity's PLM will work; and

(B) if the entity originates Utah loans from a location where the PLM is not present to oversee and supervise activities related to the business of residential mortgage loans, assign a separate LM to serve as the BLM per Section 61-2c-102(1)(e);

(v) ensure that:

(I) each sponsored mortgage loan originator fulfills the

affirmative duties set forth in this Subsection (1); and

(II) each sponsored LM fulfills the affirmative duties set forth in this Subsection (2); and

(vi) if using an incentive program, strictly comply with Subsection R162-2c-301b.

(b) Prohibited conduct. A mortgage entity shall be subject to discipline under Sections 61-2c-401 through 405 if:

(i) any sponsored mortgage loan originator or LM engages in any prohibited conduct; or

(ii) any unlicensed employee performs an activity for which licensure is required.

(4) Reporting unprofessional conduct.

(a) The division shall report in the nationwide database any final disciplinary action taken against a licensee for unprofessional conduct.

(b) A licensee may challenge the information entered by the division into the nationwide database pursuant to Section 63G-2-603.

(5) School.

(a) Affirmative duties. A school that fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A school shall:

(i) within 15 calendar days of any material change in the information outlined in R162-2c-203(1)(b), provide to the division written notice of the change;

(ii) with regard to the criminal history disclosure required under R162-2c-203(1)(b)(ix),

(A) obtain each student's signature before allowing the student to participate in course instruction;

(B) retain each signed criminal history disclosure for a minimum of two years; and

(C) make any signed criminal history disclosure available to the division upon request;

(iii) maintain a record of each student's attendance for a minimum of five years after enrollment;

(iv) upon request of the division, substantiate any claim made in advertising materials;

(v) maintain a high quality of instruction;

(vi) adhere to all state laws and regulations regarding school and instructor certification;

(vii) provide the instructor(s) for each course with the required course content outline;

(viii) require instructors to adhere to the approved course content;

(ix) comply with a division request for information within 10 business days of the date of the request;

(x) upon completion of the course requirements, provide a certificate of completion to each student; and

(xi) ensure that the material is current in courses taught on:

(A) Utah statutes;

(B) Utah administrative rules;

(C) federal laws; and

(D) federal regulations.

(b) Prohibited conduct. A school that engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. A school may not:

(i) accept payment from a student without first providing to that student the information outlined in R162-2c-203(1)(b)(vi) through (ix);

(ii) continue to operate after the expiration date of the school certification and without renewing;

(iii) continue to offer a course after its expiration date and without renewing;

(iv) allow an instructor whose instructor certification has expired to continue teaching;

(v) allow an individual student to earn more than eight credit hours of education in a single day;

(vi) award credit to a student who has not complied with the minimum attendance requirements;

(vii) allow a student to obtain credit for all or part of a course by taking an examination in lieu of attending the course;

(viii) give valuable consideration to a person licensed with the division under Section 61-2c for referring students to the school;

(ix) accept valuable consideration from a person licensed with the division under Section 61-2c for referring students to a licensed mortgage entity;

(x) allow licensed mortgage entities to solicit prospective mortgage loan originators at the school during class time or during the 10-minute break that is permitted during each hour of instruction;

(xi) require a student to attend any program organized for the purpose of solicitation;

(xii) make a misrepresentation in its advertising;

(xiii) advertise in any manner that denigrates the mortgage profession;

(xiv) advertise in any manner that disparages a competitor's services or methods of operation;

(xv) advertise or teach any course that has not been certified by the division;

(xvi) advertise a course with language that indicates division approval is pending or otherwise forthcoming; or

(xvii) attempt by any means to obtain or to use in its educational offerings the questions from any mortgage examination unless the questions have been dropped from the current bank of exam questions.

(6) Instructor.

(a) Affirmative duties. An instructor who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. An instructor shall:

(i) adhere to the approved outline for any course taught; and

(ii) comply with a division request for information within 10 business days of the date of the request.

(b) Prohibited conduct. An instructor who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. An instructor may not:

(i) continue to teach any course after the instructor's certification has expired and without renewing the instructor's certification; or

(ii) continue to teach any course after the course has expired and without renewing the course certification.

R162-2c-301b. Employee Incentive Program.

(1)(a) Under this Subsection R162-2c-301b, a licensed entity may pay an incentive to a mortgage loan originator who is sponsored by the entity and licensed in:

(i) Utah; or

(ii) another state.

(b) A licensed entity may not pay an incentive to an unlicensed employee.

(2) A PLM or entity that uses an incentive program shall:

(a) prior to paying any incentive to an individual, specifically describe in the individual's contract for employment:

(i) the methodology by which any incentive will be calculated, including the limitation specified in Subsection (2)(b); and

(ii) the circumstances under which an incentive will be paid, including the limitation specified in this Subsection (2)(c); and

(b) limit the dollar amount or value of any single incentive to $300 or less;

(c) limit the sponsored mortgage loan originator to receiving no more than three incentive payments in a calendar year; and

(d)(i) keep complete records of all incentive payments made, including:

(A) borrower name;
(B) property address;
(C) transaction closing date;
(D) date of incentive payment;
(E) name of employee receiving incentive payment; and
(F) amount paid; and
(ii) make such records available to the division for audit or inspection upon request.
(3) Before paying an incentive to a mortgage loan originator who is not licensed in Utah, the PLM or entity shall ensure that the individual did not:
(a) solicit or advertise to the client regarding financing for a Utah property; or
(b) perform any other activity that constitutes the business of residential mortgage loans pursuant to Section 61-2c-102(1)(h).

R162-2c-302. Requirements for Record Retention and Disposal.
(1) Record Retention.
(a) An entity licensed under the Utah Residential Mortgage Practices Act shall maintain and safeguard for the period set forth in Section 61-2c-302 the following records:
(i) application forms, which include, but are not limited to:
(A) the initial 1003 form, signed and dated by the loan originator; and
(B) the final 1003 form, signed and dated by the loan originator;
(ii) disclosure forms;
(iii) truth-in-lending forms;
(iv) credit reports and the explanations therefor;
(v) conversation logs;
(vi) verifications of employment, paycheck stubs, and tax returns;
(vii) proof of legal residency, if applicable;
(viii) appraisals, appraisal addenda, and records of communications between the appraiser and the registrant, licensee, and lender;
(ix) underwriter denials;
(x) notices of adverse action;
(xi) loan approval;
(xii) name and contact information for the borrower in the transaction;
(xiii) pre-qualification and pre-approval letters; and
(xiv) all other records required by underwriters involved with the transaction or provided to a lender.
(b) Records may be maintained electronically if the storage system complies with Title 46 Chapter 04, Utah Uniform Electronic Transactions Act.
(c) A licensed entity shall make all records available to the division pursuant to Section 61-2c-302(3).
(d) An individual who terminates sponsorship with an entity shall turn over to the entity any records in the individual's possession at the time of termination.
(2) Record Disposal. A person who disposes of records at the end of the retention period shall destroy personal information by shredding, erasing, or otherwise making the information indecipherable.
(3) Responsible Party.
(a) If a licensed entity is actively engaged in the business of residential mortgage loans, the PLM is responsible for proper retention, maintenance, safeguarding, and disposal of records.
(b) If a licensed entity ceases doing business in Utah, the control person(s) as of its last day of operation are responsible for proper retention, maintenance, safeguarding, and disposal of records.

R162-2c-401. Administrative Proceedings.
(1) Request for agency action.
(a) If completed in full and submitted in compliance with the rules promulgated by the division, the following shall be deemed a request for agency action under Utah Administrative Procedures Act, Section 63G-4-102, et seq.:
(i) an original or renewal application for a license;
(ii) an original or renewal application for a school certification;
(iii) an original or renewal application for a course certification; and
(iv) an original or renewal application for an instructor certification.
(b) Any other request for agency action shall:
(i) be in writing;
(ii) be signed by the requestor; and
(iii) comply with Utah Administrative Procedures Act, Section 63G-4-201(3).
(c) The following shall not be deemed a request for agency action under Utah Administrative Procedures Act, Section 63G-4-102, et seq., even if submitted in compliance with this Subsection (1)(b):
(i) a complaint against a licensee; and
(ii) a request that the division commence an investigation or a disciplinary action against a licensee.
(2) An adjudicative proceeding conducted subsequent to the issuance of a cease and desist order shall be conducted as a formal adjudicative proceeding.
(3) Other adjudicative proceedings.
(a) All adjudicative proceedings as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be designated as formal or informal in the Division's notice of agency action or notice of proceeding, as applicable. These proceedings shall include:
(i) a proceeding on an original or renewal application for a license;
(ii) a proceeding on an original or renewal application for a school, instructor, or course certification; and
(iii) except as provided in Section 63G-4-502, a proceeding for disciplinary action commenced by the division pursuant to Section 63G-4-201(2) following investigation of a complaint.
(b) A hearing shall be held in an informal adjudicative proceeding only if required or permitted by the Utah Residential Mortgage Practices and Licensing Act or by these rules.
(c) A party to a proceeding may move the presiding officer to convert the proceeding to a formal or informal adjudication pursuant to Utah Code Section 63G-4-202(3).
(4) Hearings not allowed. A hearing may not be held in the following informal adjudicative proceedings:
(a) the issuance of an original or renewed license when the application has been approved by the division;
(b) the issuance of an original or renewed school certification, instructor certification, or course certification when the application has been approved by the division;
(c) 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;
(d) the denial of an application for an original or renewed license on the ground that it is incomplete;
(e) the denial of an application for an original or renewed school, instructor, or course certification on the ground that it does not comply with the requirements stated in these rules; or
(f) a proceeding on an application for an exemption from a continuing education requirement.
(5) Hearings required. A hearing before the commission shall be held in the following circumstances:
(a) a proceeding commenced by the division for disciplinary action pursuant to Section 61-2c-402 and Section

63G-4-201(2);

(b) an appeal of a division order denying or restricting a license; and

(c) an application that presents unusual circumstances such that the division determines that the application should be heard by the commission.

(6) Procedures for hearings in informal adjudicative proceedings.

(a) The division director shall be the presiding officer for any informal adjudicative proceeding unless the matter has been delegated to the chairperson of the commission or an administrative law judge.

(b) All informal adjudicative proceedings shall adhere to procedures as outlined in:

(i) Utah Administrative Procedures Act Title 63G, Chapter 4;

(ii) Utah Administrative Code Section R151-4 et seq.; and

(iii) the rules promulgated by the division.

(c) Except as provided in Subsection 7(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.

(d) In any proceeding under this Subsection, the commission and the division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the commission and the division in conducting the hearing. Any delegation of a hearing to an administrative law judge shall be in writing.

(e) Upon the scheduling of a hearing by the division and at least 30 days prior to the hearing, the division shall, by first class postage pre-paid delivery, mail to the address last provided to the division pursuant to Section 61-2c-106 or Subsection R162-2c-201, as applicable, written notice of the date, time, and place scheduled for the hearing.

(f) Formal discovery is prohibited.

(g) The division may issue subpoenas or other orders to compel production of necessary and relevant evidence:

(i) on its own behalf; or

(ii) on behalf of a party where:

(A) the party 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 the witness.

(h) Upon ordering a licensee to appear for a hearing, the division shall provide to the licensee the information that the division will introduce at the hearing.

(i) The division shall adhere to Title 63G, Chapter 2, Government Records Access and Management Act in addressing a request for information obtained by the division through an investigation.

(j) The division may decline to provide a party with information that it has previously provided to that party.

(k) Intervention is prohibited.

(l) Hearings shall be open to all parties unless the presiding officer closes the hearing pursuant to:

(i) Title 63G, Chapter 4, the Utah Administrative Procedures Act; or

(ii) Title 52, Chapter 4, the Open and Public Meetings Act.

(m) Upon filing a proper entry of appearance with the division pursuant to R151-4-110(1)(a), an attorney may represent a respondent.

(7) Additional procedures for disciplinary proceedings.

(a) The division shall commence a disciplinary proceeding by filing and serving on the respondent:

(i) a notice of agency action;

(ii) a petition setting forth the allegations made by the division;

(iii) a witness list, if applicable; and

(iv) an exhibit list, if applicable.

(b) Answer.

(i) At the time the petition is filed, the presiding officer, upon a determination of good cause, may require the respondent to file an answer to the petition by so ordering in the notice of agency action.

(ii) The respondent may file an answer, even if not ordered to do so in the notice of agency action.

(iii) Any answer shall be filed with the division within thirty days after the mailing date of the notice of agency action and petition.

(c) Witness and exhibit lists.

(i) The division shall provide its witness and exhibit list to the respondent at the time it mails its notice of hearing.

(ii) The respondent shall provide its witness and exhibit list to the division no later than thirty days after the mailing date of the division's notice of agency action and petition.

(iii) Any witness list shall contain:

(A) the name, address, and telephone number of each witness; and

(B) a summary of the testimony expected from each witness.

(iv) Any exhibit list:

(A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and

(B) shall be accompanied by copies of the exhibits.

(d) Pre-hearing motions.

(i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the Department of Commerce shall be made in accordance with those rules.

(ii) The division director shall receive and rule upon any pre-hearing motions.

R162-2c-402. Disciplinary Action.

In reviewing a request to convert a revocation to a suspension pursuant to Section 61-2c-402(4)(a):

(1) The commission may not convert a revocation that was based on a felony conviction involving fraud, misrepresentation, deceit or dishonesty, breach of trust, or money laundering.

(2) The commission may consider converting a revocation that was based on other criminal history, including:

(a) a plea in abeyance, diversion agreement, or similar disposition of a felony charge; and

(b) a misdemeanor offense, regardless of the nature of the charge or the disposition of the case.

R162-2c-501a. Optional Experience Equivalency Calculation.

(1) Thirty months of full-time experience in the following activities shall be considered equivalent to one year of experience as a first-lien residential mortgage loan originator:

(a) loan underwriter;

(b) mortgage loan manager;

(c) loan processor;

(d) certified mortgage prelicensing instructor;

(e) second-lien residential loan originator; and

(f) a licensed mortgage loan originator working as a junior loan officer or assistant loan officer.

(2) An applicant who wishes to receive experience credit under this Subsection R162-2c-501a, but who cannot demonstrate experience equivalent to a full year of first-lien residential mortgage loan origination shall:

(a) be awarded experience credit as deemed appropriate by the division; and

(b) complete the experience requirement through additional experience as a first-lien residential mortgage loan originator, as determined by the division.

R162-2c-501b. Optional Experience Points Table.

TABLE
APPENDIX 3 - OPTIONAL EXPERIENCE TABLE

Professional activity	possible points
(1) Loan underwriter	0.5 pt/month(2)
Mortgage loan manager	0.5 pt/month
(3) Loan processor	0.5 pt/month
(4) Certified mortgage prelicensing instructor	0.5 pt/month
(5) Second-lien residential loan originator	0.5 pt/month
(6) Licensed mortgage loan originator working as a junior loan officer or as an assistant loan officer	0.5 pt/month

KEY: residential mortgage, loan origination, licensing, enforcement
November 6, 2019 61-2c-103(3)
Notice of Continuation March 31, 2015 61-2c-402(4)(a)

R162. Commerce, Real Estate.
R162-2g. Real Estate Appraiser Licensing and Certification Administrative Rules.
R162-2g-101. Authority.

(1) The authority to promulgate rules governing the appraisal industry is granted by Section 61-2g-201(2)(h).

(2) The authority to establish and collect fees is granted by Section 61-2g-202(1).

(3) The authority to exempt specific persons from complying with USPAP standards is granted by Section 61-2g-205(5)(c) within certain limitations as imposed by Section 61-2g-403(1)(c).

R162-2g-102. Definitions.

(1) "Affiliation" means an ongoing business association:

(a) between:

(i) two individuals registered, licensed, or certified under Section 61-2g; or

(ii) an individual registered, licensed, or certified under Section 61-2g and:

(A) an appraisal entity; or

(B) a government agency;

(b) for the purpose of providing an appraisal service; and

(c) regardless of whether an employment relationship exists between the parties.

(2) The acronym "AQB" stands for the Appraiser Qualifications Board of the Appraisal Foundation.

(3) "Board" means the Utah Real Estate Appraiser Licensing and Certification Board.

(4) "Business day" means a day other than:

(a) a Saturday;

(b) a Sunday; or

(c) a federal or state holiday.

(5) The acronym "CAMA" stands for Computer Assisted Mass Appraisal.

(6) "Classification" means the type of license or certification held by an appraiser.

(7) "Day" means calendar day unless specified as "business day."

(8) "Deferral" means the postponement or delay for completion of a continuing education requirement due to active military duty or due to the impacts of a state- or federally-declared disaster as specified in R162-2g-306a.

(9) "Desk review" means review of an appraisal:

(a) including verification of the data; but

(b) not including a physical inspection of the property.

(10) "Distance education" means an education process based on the geographical separation of student and instructor, including:

(a) computer conferencing;

(b) satellite teleconferencing;

(c) interactive audio;

(d) interactive computer software;

(e) Internet-based instruction; and

(f) other interactive online courses.

(11) "Division" means the Division of Real Estate of the Department of Commerce.

(12) "Draft report" means an appraisal report that is distributed prior to being completed, as provided in Subsection R162-2g-502b(1).

(13) "Entity" means:

(a) a corporation;

(b) a partnership;

(c) a sole proprietorship;

(d) a limited liability company;

(e) another business entity; or

(f) a subsidiary or unit of an entity described in this Subsection (13).

(14) "Field review" means review of an appraisal, including:

(a) a physical inspection of the property; and

(b) verification of the data.

(15) "Non-certified education" means a continuing education course offered outside of Utah, but for which a licensee may apply for credit pursuant to R162-2g-307d(4).

(16) "Person" means an individual or an entity.

(17) "Reinstatement" means renewing a license or certification for an additional period after its expiration date has passed, but prior to 12 months after the expiration date.

(18) The acronym "RELMS" stands for Real Estate Licensing and Management System, which is the online database through which individuals registered, licensed, or certified under these rules must submit certain information to the division.

(19) "Renewal" means reissuing a license or certification upon its expiration for an additional period.

(20) "School" means:

(a) an accredited college, university, junior college, or community college;

(b) any state or federal agency or commission;

(c) a nationally recognized real estate appraisal or real estate related organization, society, institute, or association; or

(d) any school or organization approved by the board.

(21) "School director" means an authorized individual in charge of the educational program at a school.

(22) "Supervisory Appraiser" means a state-certified residential appraiser or a state certified general appraiser that directly supervises a trainee.

(23) "Trainee" means a person who is working under the direct supervision of a state-certified residential appraiser or a state-certified general appraiser to earn experience hours for licensure, and who meets the requirements of Subsection R162-2g-302.

(24) "Transaction value" means:

(a) for loans or other extensions of credit, the amount of the loan or extension of credit;

(b) for sales, leases, purchases, and investments in, or exchanges of, real property, the market value of the real property interest involved; and

(c) for the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

(25) The acronym "USPAP" stands for the current edition of the Uniform Standards of Professional Appraisal Practice published by the Appraisal Foundation.

R162-2g-302. Application for Trainee Registration.

(1) Registration required.

(a) An individual who intends to obtain a license to practice as a state-licensed appraiser shall first register with the division as a trainee.

(b) The division and the board shall not award or recognize experience hours toward licensure for any appraisal work that is performed by an individual during a period of time when the individual is not registered as a trainee.

(2) Character. An individual registering with the division as a trainee shall evidence honesty, integrity, and truthfulness.

(a) A trainee applicant shall be denied registration for:

(i) a felony that resulted in:

(A) a conviction occurring within five years of the date of application; or

(B) a jail or prison release date falling within five years of the date of application; or

(ii) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in:

(A) a conviction occurring within three years of the date of application; or

(B) a jail or prison release date falling within three years of the date of application.

(b) A trainee applicant may be denied registration upon consideration of the following:

(i) criminal convictions and pleas entered at any time prior to the date of application;

(ii) the circumstances that led to any criminal convictions or pleas under consideration;

(iii) past acts related to honesty or moral character, with particular consideration given to any such acts involving the appraisal business;

(iv) dishonest conduct that would be grounds under Utah law for sanctioning an existing licensee;

(v) civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;

(vi) court findings of fraudulent or deceitful activity in civil lawsuits;

(vii) evidence of non-compliance with court orders or conditions of sentencing;

(viii) evidence of non-compliance with terms of a probation agreement, plea in abeyance, or diversion agreement; and

(ix) failure to pay taxes or child support obligations.

(3) Competency. An individual registering with the division as a trainee shall evidence competency. In evaluating an applicant for competency, the division and board may consider any evidence, including the following:

(a) civil judgments, with particular consideration given to any such judgments involving the appraisal business;

(b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;

(c) the extent and quality of the applicant's training and education in appraisal;

(d) the extent of the applicant's knowledge of the Utah Real Estate Appraiser Licensing and Certification Act;

(e) evidence of disregard for licensing laws;

(f) evidence of drug or alcohol dependency; and

(g) the amount of time that has passed since any incident under consideration.

(4) Pre-licensing education.

(a) Within the five-year period preceding the date of application, an applicant shall successfully complete 75 classroom hours:

(i) approved by the AQB; and

(ii)(A) certified by the division pursuant to Subsection R162-2g-307c(1)-(3); or

(B) not required to be certified by the division pursuant to Subsection R162-2g-307c(6).

(b) The 75 hours of required education shall include:

(i) 30 hours of appraisal principles;

(ii) 30 hours of appraisal procedures; and

(iii) the 15-hour National USPAP course, or its equivalent.

(c) The15-hour National USPAP Course or its equivalent may not be accepted by the division as qualifying education unless it is:

(i) taught by an instructor who:

(A) is a state-certified residential or state-certified general appraiser; and

(B) has been certified by the AQB; or

(ii) approved as a distance education course by the AQB and International Distance Education Certification Center.

(d) A person who applies for trainee registration on or after January 1, 2015 shall successfully complete the division-approved Supervisory Appraiser and Appraiser Trainee Course:

(i) as taught by a division-approved instructor; and

(ii) within the two-year period preceding the date of application.

(e) Examination. An applicant shall evidence having passed the final examination in all pre-licensing courses.

(5) Application to the division. An applicant shall submit the following to the division:

(a) a completed application as provided by the division;

(b) course completion certificates for the 75 hours of pre-licensing education;

(c)(i) two fingerprint cards in a form acceptable to the division; or

(ii) evidence that the applicant's fingerprints have been successfully scanned at a testing center;

(d) all court documents related to any past criminal proceeding;

(e) complete documentation of any sanction taken against any license in any jurisdiction;

(f) a signed letter of waiver authorizing the division to:

(i) obtain the fingerprints of the applicant;

(ii) review past and present employment records;

(iii) review education records; and

(iv) conduct a criminal background check;

(g) the fee for the criminal background check;

(h) the name of the state-certified appraiser(s) with whom the trainee is affiliated;

(i) the name and business address of any appraisal entity or government agency with which the trainee is affiliated; and

(j) the nonrefundable application fee.

(6) Affiliation with certified appraiser(s). Applicants shall affiliate with at least one supervising certified appraiser and evidence that affiliation by:

(a) identifying each supervising certified appraiser on a form supplied by the division; and

(b) obtaining each supervising certified appraiser's signature on the application.

R162-2g-304a. Application to Sit for the State-Licensed Appraiser Exam.

(1) An applicant to sit for the state-licensed appraiser exam shall provide the following to the division:

(a) completed experience forms, as required by the division:

(i) documenting all experience hours completed by the applicant from the date of trainee registration to the date of application for licensure; and

(ii) evidencing at least 1,000 hours of appraisal experience:

(A) pursuant to Subsection R162-2g-304d;

(B) completed during the time when the applicant was registered with the division as a trainee; and

(C) accrued in no fewer than:

(I) 6 months for applicants submitting experience primarily from Appendices 1 and 2, or

(II) 12 months for applicants submitting experience primarily from appendix 3;

(b) evidence of having successfully completed a state-licensed appraiser pre-licensing required core curriculum as described in Appendix 4, Table 1 and that has been certified by the division pursuant to Subsection R162-2g-307c; and

(c) a nonrefundable application fee.

(2) The pre-licensing curriculum required by Subsection (1)(b) shall be conducted by:

(a) a college or university;

(b) a community or junior college;

(c) a real estate appraisal or real estate related organization;

(d) a state or federal agency or commission;

(e) a proprietary school;

(f) a provider approved by a state certification and licensing agency; or

(g) the Appraisal Foundation or its boards.

(3)(a) Upon determining that the applicant satisfies the education and experience requirements, the division shall issue

to the applicant a form permitting the applicant to register for the examination.

(b) Upon being approved to register for the examination pursuant to this Subsection (3)(a), an applicant shall:

(i) return the examination application form to the testing service designated by the division; and

(ii) pay a nonrefundable examination fee to the testing service designated by the division.

(c) The permission to register to sit for the examination shall be valid for 24 months after issuance.

R162-2g-304b. Application to Sit for the State-Certified Residential Appraiser Exam.

(1) An applicant to sit for the state-certified residential appraiser exam shall provide the following to the division:

(a) completed experience forms, as required by the division, evidencing at least 1,500 hours of total appraisal experience, at least 500 of which:

(i) meet the requirements of Subsection R162-2g-304d;

(ii) are completed during the time when the applicant is licensed as a state-licensed appraiser:

(A) with the division; or

(B) in another state, if licensure was required in that state at the time the appraisal was performed; and

(iii) are accrued in no fewer than:

(A) for applicants submitting experience primarily from appendices 1 and 2, 6 months from the date the applicant received the state-licensed appraiser credential; or

(B) for applicants submitting experience primarily from appendix 3, 12 months from the date the applicant received the state-licensed appraiser credential;

(b) evidence of having completed at least one of the following six education options:

(i) option 1: received a Bachelor's degree or higher in any field of study from an accredited college or university;

(ii) option 2: received an Associate's degree from an accredited college or university in a field of study related to:

(A) Business Administration;

(B) Accounting;

(C) Finance;

(D) Economics; or

(E) Real Estate;

(iii) option 3: successful completion of 30 semester hours of college-level courses that cover each of the following specific topic areas and hours:

(A) English composition (3 semester hours);

(B) micro economics (3 semester hours);

(C) macro economics (3 semester hours);

(D) finance (3 semester hours);

(E) algebra, geometry, or higher mathematics (3 semester hours);

(F) statistics (3 semester hours);

(G) computer science (3 semester hours);

(H) business law or real estate law (3 semester hours); and

(I) two elective courses in: accounting, geography, agricultural economics, business management, or real estate (3 semester hours each);

(iv) option 4: successful completion of at least 30 hours of College Level Examination Program ® (CLEP®) examinations from the following subject matter areas:

(A) College Algebra;

(B) College Composition;

(C) College Composition Modular;

(D) College Mathematics;

(E) Principals of Macroeconomics;

(F) Principals of Microeconomics;

(G) Introductory Business Law; and

(H) Principals of Management

(v) option 5: any combination of option 3 and option 4 that includes all of the topics identified in option 3; or

(vi) option 6: no college-level education is required for appraisers who have held a state-licensed appraiser credential for a minimum of five years and have no record of any adverse, final, and non-appealable disciplinary action affecting the state-licensed appraiser's legal eligibility to engage in appraisal practice within the five years immediately preceding the date of application for a state-certified residential credential;

(c) evidence of having successfully completed a state-certified residential appraiser pre-licensing required core curriculum as described in Appendix 4, Table 1 and that has been certified by the division pursuant to Subsection R162-2g-307c; and

(d) except as provided in this Subsection (4)(a), a nonrefundable application fee.

(2) The pre-licensing curriculum required by Subsection(1)(c) shall be provided by:

(a) a college or university;

(b) a community or junior college;

(c) a real estate appraisal or real estate related organization;

(d) a state or federal agency or commission;

(e) a proprietary school;

(f) a provider approved by a state certification and licensing agency; or

(g) the Appraisal Foundation or its boards.

(3)(a) Upon determining that the applicant satisfies the education and experience requirements, the division shall issue to the applicant a form permitting the applicant to register for the examination.

(b) Upon being approved to register for the examination pursuant to this Subsection (3)(a), an applicant shall:

(i) return the examination application form to the testing service designated by the division; and

(ii) pay a nonrefundable examination fee to the testing service designated by the division.

(c) The permission to register to sit for the examination shall be valid for 24 months after issuance.

(4)(a) A state-licensed appraiser who, within six months of renewing the license, submits an application and consequently qualifies for certification shall not be required to pay the entire application fee but shall instead pay the difference between the renewal fee and the application fee.

(b) A certification that is obtained under this Subsection (4)(a) shall expire on the same date that the license was due to expire prior to the granting of certification.

R162-2g-304c. Application to Sit for the State-Certified General Appraiser Exam.

(1) An applicant to sit for the state-certified general appraiser exam shall provide the following to the division:

(a) completed experience forms, as required by the division, evidencing at least 3,000 hours of total appraisal experience, at least 1,000 of which:

(i) meet the requirements of Subsection R162-2g-304d;

(ii) are completed during the time when the applicant is licensed as a state-licensed appraiser or state-certified residential appraiser:

(A) with the division; or

(B) in another state, if licensure was required in that state at the time the appraisal was performed;

(iii) are accrued in no fewer than:

(A) 12 months from the date the applicant received a state-licensed appraiser credential for applicants submitting experience primarily from appendices 1 and 2, or

(B) 18 months from the date the applicant received a state-licensed appraiser credential for applicants submitting experience primarily from appendix 3; and

(iv) evidence that at least 1,500 experience hours are

derived from non-residential appraisal experience.

(b) evidence of having received a bachelor's degree or higher degree from an accredited college or university;

(c) evidence of having successfully completed a state-certified general appraiser pre-licensing required core curriculum as described in Appendix 4, Table 1 and that has been certified by the division pursuant to Subsection R162-2g-307c; and

(d) except as provided in this Subsection (4)(a), a nonrefundable application fee.

(2) The pre-licensing curriculum required by Subsections (1)(c) shall be provided by:

(a) a college or university;

(b) a community or junior college;

(c) a real estate appraisal or real estate related organization;

(d) a state or federal agency or commission;

(e) a proprietary school;

(f) a provider approved by a state certification and licensing agency; or

(g) the Appraisal Foundation or its boards.

(3)(a) Upon determining that the applicant satisfies the education and experience requirements, the division shall issue to the applicant a form permitting the applicant to register for the examination.

(b) Upon being approved to register for the examination pursuant to this Subsection (3)(a), an applicant shall:

(i) return the examination application form to the testing service designated by the division; and

(ii) pay a nonrefundable examination fee to the testing service designated by the division.

(c) The permission to register to sit for the examination shall be valid for 24 months after issuance.

(4)(a) A state-licensed appraiser or a state-certified residential appraiser who, within six months of renewing the license or certification, submits an application and consequently qualifies for certified general status shall not be required to pay the entire application fee but shall instead pay the difference between the renewal fee and the application fee.

(b) A certification that is obtained under this Subsection (4)(a) shall expire on the same date that the license was due to expire prior to the granting of certified general status.

R162-2g-304d. Experience Hours.

(1)(a) Except as provided in this Subsection (1)(b), appraisal experience shall be measured in hours according to the appraisal experience hours schedules found in Appendices 1 through 3.

(b)(i) An applicant who has experience in categories other than those shown on the appraisal experience hours schedules, or who believes the schedules do not adequately reflect the applicant's experience or the complexity or time spent on an appraisal, may petition the board on an individual basis for approval of the experience as being substantially equivalent to that required for licensure or certification.

(ii) Upon a finding that an applicant's experience is substantially equivalent to that required for licensure or certification, the board may award the applicant an appropriate number of hours for the alternate experience.

(2) General restrictions.

(a) An applicant may not accrue more than 2,000 experience hours in any 12-month period.

(b) The board may not award credit for:

(i) appraisal experience earned more than five years prior to the date of application;

(ii) appraisals that were performed in violation of:

(A) Utah law;

(B) the law of another jurisdiction; or

(C) the administrative rules adopted by the division and the board;

(iii) appraisals that fail to comply with USPAP;

(iv) the performance of an evaluation as defined in the Real Estate Appraiser and Certification Act which does not comply with USPAP;

(v) appraisals of the value of a business as distinguished from the appraisal of commercial real estate;

(vi) personal property appraisals; or

(vii) an appraisal that fails to clearly and conspicuously disclose the contribution made by the applicant in completing the assignment.

(c) At least 50% of the appraisals submitted for experience credit shall be appraisals of properties located in Utah.

(d) With regard to experience hours claimed from the schedules found in Appendices 1 and 2, no more than 25% of the total experience required for licensure or certification may be earned from appraisals where the interior of the subject property is not inspected.

(e) A maximum of 50% of required experience hours may be earned from appraisal of vacant land.

(f) Experience gained for work without a traditional client may qualify for experience hours but cannot exceed 50% of the total experience requirement. Work without a traditional client includes the following:

(i) a client hiring an appraiser for a business purpose; or

(ii) a practicum course so long as the course is approved by the AQB Course Approval Program and, if the course is taught in Utah either live or by distance education, also approved by the division.

(g) An applicant may receive credit only for experience hours actually worked by the applicant and as limited by the maximum experience hours described in these rules.

(3) Specific restrictions applicable to trainees applying for licensure.

(a)(i) A registered trainee may not claim experience hours for any appraisal work performed after January 1, 2015 unless the trainee and the trainee's supervisor(s) have completed the division-approved Supervisory Appraiser and Appraiser Trainee Course prior to performing the work to be claimed.

(ii) A trainee and the trainee's supervisor who signs the experience log shall document on the log the specific duties that the trainee performs for each appraisal.

(b) For each duty performed, the trainee shall be awarded a percentage of the total experience hours that may be awarded for the property type being appraised:

(i) pursuant to the appraisal experience hour schedules found in Appendices 1 through 3; and

(ii) with the following limitations for Appendix 2:

(A) participation in highest and best use analysis: 10% of total hours;

(B) participation in neighborhood description and analysis: 10% of total hours;

(C) property inspection: 20% of total hours, pursuant to this Subsection (3)(c);

(D) participation in land value estimate: 20% of total hours;

(E) participation in sales comparison property selection and analysis: 30% of total hours;

(F) participation in cost analysis: 20% of total hours;

(G) participation in income analysis: 30% of total hours;

(H) participation in the final reconciliation of value: 10% of total hours; and

(I) participation in report preparation: 20% of total hours.

(J) The applicant may claim up to 100% of the total hours allowed for the tasks listed in this Subsection(A) through (I).

(c) In order for a trainee to claim credit for an inspection pursuant to this Subsection (3)(b)(ii)(C):

(i) as to the first 35 residential appraisals or first 20 non-residential appraisals completed, as applicable to the license or

certification being sought, the inspection must include:

(A) exterior measurement of the relatively permanent structures located on the subject property that are designed or intended for support, enclosure, shelter, or protection of persons, animals, or property having a permanent roof supported by columns or walls; and

(B) inspection of the exterior of a property that is used as a comparable in an appraisal; and

(ii) as to appraisals after the first 35 residential appraisals or first 20 non-residential appraisals completed, as applicable to the license or certification being sought, the inspection must satisfy all scope of work requirements.

(d) No more than one-third of the experience hours submitted toward licensure may come from any one of the categories identified in this Subsection (3)(b)(ii).

(4) Specific restrictions applicable to applicants for certification.

(a) An individual who obtained a license from the division through reciprocity shall provide to the division all records necessary for the division to verify that the individual satisfies the experience requirements outlined in these rules.

(b) The board may not award credit:

(i) for any appraisal where the applicant cannot prove more than 50% participation in the:

(A) data collection;

(B) verification of data;

(C) reconciliation;

(D) analysis;

(E) identification of property and property interests;

(F) compliance with USPAP standards; and

(G) preparation and development of the appraisal report; or

(ii) to more than one licensed appraiser per completed appraisal, except as provided in this Subsection (5).

(c)(i) An individual applying for certification as a state-certified residential appraiser shall document at least 75% of the hours submitted from:

(A) the residential experience hours schedule found in Appendix 1; or

(B) the residential portion of the mass appraisal hours schedule found in Appendix 3.

(ii) No more than 25% of the total hours submitted may be from:

(A) the general experience hours schedule found in Appendix 2; or

(B) properties other than 1- to 4-unit residential properties identified in the mass appraisal hours schedule found in Appendix 3.

(d) An individual applying for certification as a state-certified general appraiser shall document at least 1,500 experience hours as having been earned from:

(i) the general experience hours schedule found in Appendix 2; or

(ii) properties other than 1- to 4-unit residential properties identified in the mass appraisal hours schedule found in Appendix 3.

(5) Specific restrictions applicable to mass appraisers.

(a) Single-property appraisals performed under USPAP Standards 1 and 2 by mass appraisers shall be awarded full credit pursuant to Appendices 1 and 2.

(b) Review and supervision of appraisals by mass appraisers shall be awarded credit pursuant to this Subsection (6)(b)-(c).

(c)(i) Mass appraisers and mass appraiser trainees who perform 60% or more of the appraisal work shall be awarded full credit pursuant to Appendix 3.

(ii) Mass appraisers and mass appraiser trainees who perform between 25% and 59% of the appraisal work shall be awarded 50% credit pursuant to Appendix 3.

(iii) Mass appraisers and mass appraisal trainees who perform less than 25% of the appraisal work shall be awarded no credit for the appraisal assignment.

(d) In addition to submitting proof of required experience and samples, randomly selected from the experience log, of work conforming to USPAP Standards 5 and 6:

(i) a state-licensed appraiser applicant whose experience is earned primarily through mass appraisal shall submit proof of having performed at least five appraisals conforming to USPAP Standards 1 and 2 equaling at least 65 experience hours;

(ii) a state-certified residential appraiser applicant whose experience is earned primarily through mass appraisal shall submit proof of having performed at least eight residential appraisals equaling at least 110 experience hours:

(A) conforming to USPAP Standards 1 and 2; and

(B) including at least two of each of the following property types:

(I) vacant residential or agricultural land;

(II) two- to four-unit dwelling;

(III) single-family unit; and

(IV) complex one to four unit residential dwellings; and

(iii) a state-certified general appraiser applicant whose experience is earned primarily through mass appraisal shall submit proof of having performed at least eight appraisals from Appendix 2 conforming to USPAP Standards 1 and 2 equaling at least 300 experience hours.

(e) No more than 200 hours for qualification for a state-licensed credential, 500 hours for a state-certified residential credential, or 1,800 hours for a certified general credential may be earned from any combination of appraisal assignments related to:

(i) property improvement inspection;

(ii) land segregation (division);

(iii) CAMA data entry; and

(iv) sale ratio study.

(f)(i) Mass appraisal of property with a personal property component of less than 50% of value shall be awarded full credit pursuant to Appendix 3 for the type of property appraised.

(ii) Mass appraisal of property with a personal property component of 50% to 75% of value shall be awarded 50% credit pursuant to Appendix 3 for the type of property appraised.

(iii) Mass appraisal of property with a personal property component greater than 75%, but less than 100%, shall be awarded 25% credit pursuant to Appendix 3 for the type of property appraised.

(iv) Mass appraisal of property with no real property component shall be awarded no credit.

(g) The appraisals submitted for review pursuant to this Subsection (5)(d) shall be selected from the applicant's most recent work.

(6) Special circumstances - condemnation appraisals, review appraisals, supervision of appraisers, other real estate experience, and government agency experience.

(a) Condemnation appraisals. A condemnation appraisal shall be awarded an additional 50% of the hours normally awarded for the appraisal if the condemnation appraisal includes a before-and-after appraisal because of a partial taking of the property.

(b) Review appraisals.

(i) Review appraisals shall be awarded experience credit when the appraiser performs technical reviews of appraisals prepared by employees, associates, or others, provided the appraiser complies with USPAP Standards 3 and 4 when the appraiser is required to comply with the rule.

(ii) Except as provided in this Subsection (6)(e)(i), the following credit shall be awarded for review of appraisals:

(A) desk review: 30% of the hours that would be awarded if a separate written review appraisal report were prepared, up to a maximum of 500 hours; and

(B) field review: 50% of the hours that would be awarded if a separate written review appraisal report were prepared, up to a maximum of 500 hours.

(c) Supervision of appraisers. Except as provided in this Subsection (6)(e)(i), supervision of appraisers shall be awarded 20% of the hours that would be awarded to the appraisal, up to a maximum of 500 hours.

(d) Other real estate experience acceptable for certification.

(i) Provided that an applicant demonstrates to the satisfaction of the board that the applicant has the ability to arrive at a fair market value of property and to properly document value conclusions, the following activities may be used to satisfy up to 50% of the experience required for certification:

(A) preliminary valuation estimates;

(B) range of value estimates or similar studies;

(C) other real estate-related experience gained by:

(I) bankers;

(II) builders;

(III) city planners and managers; or

(IV) other individuals.

(ii) A comparative market analysis by an individual licensed under Section 61-2f et seq. may be granted up to 100% experience credit toward certification if:

(A) the analysis conforms with USPAP Standards Rules 1 and 2; and

(B) the individual demonstrates to the board that the individual uses similar techniques as appraisers to value properties and effectively utilize the appraisal process.

(iii) Except as provided in this Subsection (6)(e)(i), no more than 50% of the total experience required for certification may be earned through any combination of experience described in this Subsection (6)(b)-(d).

(e) Government agency experience.

(i) An individual who obtains experience hours in conjunction with investigation by a government agency is not subject to the hour limitations of this Subsection (6).

(ii) In addition to submitting proof of required experience, an applicant whose experience is earned primarily in conjunction with investigations by government agencies and through review of appraisals, with no opinion of value developed, shall submit proof of having complied with USPAP Standards 1 and 2 in performing appraisals as follows:

(A) if applying for state-licensed appraiser with experience reviewing residential appraisals, five appraisals of one-unit dwellings;

(B) if applying for state-certified residential appraiser with experience reviewing residential appraisals, eight appraisals of one-unit dwellings; and

(C) if applying for state-certified general appraiser with experience reviewing appraisals of property types listed in Appendix 2, at least eight appraisals of property types identified in Appendix 2.

(7) The board, at its discretion, may request the division to verify the claimed experience by any of the following methods:

(a) verification with the clients;

(b) submission of selected reports to the board; and

(c) field inspection of reports identified by the applicant at the applicant's office during normal business hours.

R162-2g-304e. Experience Review Committee.

(1) The board may appoint a committee to review the experience claimed by applicants for licensure or certification.

(2) The committee shall:

(a) review each application for completion of the experience hours required for licensure or certification;

(b) correspond with applicants concerning submissions, if necessary; and

(c) make recommendations to the division and the board for licensure or certification approval or disapproval.

(3) The committee shall be composed of appraisers selected from among the following categories:

(a) residential appraisers;

(b) commercial appraisers;

(c) farm and ranch appraisers;

(d) right-of-way appraisers; and

(e) mass appraisers.

(4) The chairperson of the committee shall be appointed by the board.

(5) Meetings may be called upon:

(a) the request of the chairperson; or

(b) the written request of a quorum of committee members.

(6) If the board denies the application on the recommendation of an experience review committee member, the applicant may, within thirty days after the denial, make a written request for board review of the applicant's experience, stating specific grounds upon which relief is requested. The board shall thereafter consider the request and issue a written decision.

R162-2g-304f. Final Application for Licensure or Certification.

(1) Within 90 days after successfully completing the exam for licensure or certification, the applicant shall return to the division:

(a) a report from the testing service indicating successful completion of the exam within 24 months of the date on which the applicant obtains authorization to sit for the exam;

(b) an application form as required by the division and including:

(i) the applicant's business, home, and e-mail addresses;

(ii) the name and business address of any appraisal entity or government agency with which the applicant is affiliated; and

(iii) if the applicant is applying for certification, the fee for the federal registry.

(2)(a) A post office box without a street address is unacceptable as a business or home address.

(b) An applicant may designate any address to be used as a mailing address.

R162-2g-306a. Renewal and Reinstatement of a Registration, License, or Certification.

(1)(a) A registration, license, or certification is valid for two years and expires unless it is renewed according to this Subsection R162-2g-306a before the expiration date printed on the registration, license, or certificate.

(b) It shall be grounds for disciplinary sanction if, after an individual's registration, license, or certification has expired, the individual continues to perform work for which the individual is required to be registered, licensed, or certified.

(2)(a) To timely renew a registration, license, or certification, an applicant shall, prior to the expiration date of the registration, license, or certification, submit to the division:

(i) a completed renewal application as provided by the division;

(ii)(A) evidence that the continuing education requirements listed in this Subsection (2)(b) have been completed; or

(B) evidence sufficient to enable the Division, in its sole discretion, to determine that a deferral of continuing education is appropriate due to the applicant's having been currently or recently:

(I) assigned to active military duty; or

(II) impacted by a state- or federally-declared natural disaster; and

(iii) the applicable non-refundable renewal fee.

(b) The continuing education required under this

Subsection (2)(a)(ii)(A) shall be completed during the two-year period preceding the date of application and shall include:

(i)(A) the 7-hour National USPAP Update Course, taught by an instructor or instructors, at least one of whom is a state-certified appraiser in good standing and is USPAP certified by the AQB; or

(B) equivalent education, as determined through the course approval program of the AQB; and

(ii)(A) 21 additional hours of continuing education:

(I) certified by the division for the appraisal industry at the time the courses are taught (see Appendix 4, Table 2 for a list of continuing education topics); or

(II) not required to be certified, pursuant to Subsection R162-2g-307d(3); or

(B) if the renewal applicant is also working toward certification, 21 hours of pre-licensing education credit applicable to the certification being sought.

(iii) An appraiser may earn continuing education credit for attendance at one meeting of the Board in each continuing education two-year cycle provided:

(A) the meeting is open to the public;

(B) the meeting is a minimum of two hours in length;

(C) the total credit for attendance at the meeting is limited to a maximum of seven hours; and

(D) the division verifies attendance to ensure that the appraiser attends the meeting for the required period of time.

(c)(i) A trainee who registered with the division prior to January 1, 2015 shall complete the Supervisory Appraiser and Appraiser Trainee course by or before December 31, 2014.

(ii) A registered trainee may count the Supervisory Appraiser and Appraiser Trainee course toward the continuing education requirement of this Subsection (2)(b)(ii)(A) during any renewal cycle in which the trainee completes the course.

(d)(i) An appraiser who supervises a trainee identified in Subsection (2)(c)(i) shall complete the Supervisory Appraiser and Appraiser Trainee course by or before December 31, 2014.

(ii) A supervising appraiser may count the Supervisory Appraiser and Appraiser Trainee course toward the continuing education requirement of Subsection (2)(b)(ii)(A) during any renewal cycle in which the appraiser completes the course.

(3)(a) In order to renew on time, an applicant shall complete continuing education hours by the 15th day of the month in which the registration, license, or certification expires.

(b) An applicant who complies with this Subsection (3)(a), but whose credits are not banked by the education provider pursuant to Subsection R162-2g-502a(5)(c), may obtain credit for the course(s) taken by:

(i) submitting to the division the original course completion certificates; and

(ii) filing a complaint against the provider.

(4) A license, certification, or registration may be renewed for a period of 30 days after the expiration date upon payment of a late fee in addition to the requirements of this Subsection (2).

(5)(a) After the 30-day period described in this Subsection (4) and until six months after the expiration date, an individual may reinstate an expired license, certification, or registration by:

(i) complying with this Subsection (2);

(ii) paying a late fee; and

(iii) paying a reinstatement fee.

(b) After the six-month period described in this Subsection (5)(a) and until one year after the expiration date, an individual may reinstate an expired license, certification, or registration by:

(i) complying with this Subsection (2);

(ii) paying a late fee;

(iii) paying a reinstatement fee; and

(iv) completing 24 hours of additional continuing education as approved by the division.

(c)(i) An individual who does not reinstate an expired license, certification, or registration within 12 months of the expiration date shall:

(A) reapply with the division as a new applicant;

(B) retake and pass the 15-hour USPAP course; and

(C) retake and pass any applicable licensing or certification examination.

(ii) An individual reapplying under this Subsection (4)(c)(i) shall receive credit for previously credited pre-licensing education if:

(A) it was completed within the five-year period prior to the date of reapplication; and

(B) it was either:

(I) completed after January 1, 2008; or

(II) certified by the division and the AQB prior to January 1, 2008, as approved, qualified pre-licensing education.

(6) If the division receives renewal documents in a timely manner, but the information is incomplete, the appraiser or trainee may be extended a 15-day grace period to complete the application.

(7) Renewal after deferment of continuing education due to active military service or the impacts of a state- or federally-declared disaster.

(a) An appraiser or trainee who is unable to complete the continuing education requirements to renew a registration, license, or certification due to active military service or because the individual has been impacted by a state- or federally-declared disaster may:

(i) submit a timely application for renewal pursuant to Subsection (2)(a)(ii)(B); and

(ii) request that the application for renewal be conditionally approved, with the expiration date of the applicant's registration, license, or certification extended pursuant to this Subsection (7)(b), pending the completion of the continuing education requirement.

(b) Upon the division's approving a deferral of continuing education, the expiration date of the applicant's registration, license, or certification shall be extended 90 days, during which time the applicant shall:

(i) complete the continuing education required for the renewal; and

(ii) submit proof of the continuing education to the division.

R162-2g-306b. Notification of Changes.

(1) An individual registered, licensed, or certified under these rules shall notify the division of any status change, including the following:

(a) creation or termination of an affiliation, except as provided in this Subsection (2);

(b) change of name; and

(c) change of business, home, mailing, or e-mail address.

(2) An individual is not required to report the creation or termination of an affiliation that:

(a) facilitates a single transaction; and

(b) is not part of an ongoing business association.

(3) Notification procedure.

(a) To report a change of name, an individual shall complete a paper change form and attach to it official documentation such as a:

(i) marriage certificate;

(ii) divorce decree; or

(iii) driver license.

(b)(i) To report a change in affiliation or address, and individual shall complete and submit an electronic change form through RELMS.

(ii) A post office box without a street address is unacceptable as a business or home address. Any address may be designated as a mailing address.

(c) All change forms shall be accompanied by a

nonrefundable processing fee.

(4) Deadlines and effective dates.

(a)(i) An individual shall comply with the notification requirements outlined in this Subsection R162-2g-306b within ten business days of making a status change.

(ii) If a deadline for notification falls on a day when the division is closed, the deadline shall be extended to the next business day.

(b) Status changes are effective on the date the properly executed forms and appropriate fees are received by the division.

R162-2g-307a. General Education Criteria Applicable to All Pre-Licensing Education and Continuing Education.

(1) A class hour is 60 minutes of which at least 50 minutes are instruction attended by the student.

(2) The prescribed number of class hours includes time for examinations.

(3) Experience may not be substituted for education, and education may not be substituted for experience.

R162-2g-307b. School Certification.

(1) Application. A school requesting certification shall:

(a) submit an application form as prescribed by the division, including:

(i) name, telephone number, email address, and address of:

(A) the school;

(B) the school director; and

(C) all owners of the school; and

(ii) as to each school director or owner, disclosure of criminal history and adverse regulatory actions;

(b) provide a description of:

(i) the type of school; and

(ii) the school's physical facilities;

(c) provide a statement outlining the:

(i) number of quizzes and examinations in each course offered;

(ii) grading system, including methods of testing and standards of grading;

(iii) requirements for attendance; and

(iv) school's refund policy.

(2) Standards for operation.

(a) All courses shall be taught in an appropriate classroom facility and not in a private residence, except for a course approved for distance education.

(b) A school shall teach the approved course of study as outlined in the state-approved outline.

(c) At the time of registration, a school shall provide to each student:

(i) the statement described in this Subsection (1)(c);

(ii) a copy of the qualifying questionnaire that the student will be required by the division to answer as part of the pre-licensing or precertification examination; and

(iii) a criminal history disclosure statement.

(d) A school shall require each student to attend 100% of the scheduled class time in order to earn credit for the course.

(e)(i) A school may not award credit to any student who fails the final examination.

(ii) A student who fails a school final examination must wait three days before retesting and may not retake the same final examination.

(iii) A student who fails a final examination a second time must wait two weeks before retesting and may not retake either exam that the student previously failed.

(iv) A student who fails a final exam a third time shall fail the course.

(f) A school may not allow a student to challenge a course or any part of a course by taking an exam in lieu of attendance.

(g) Credit hours.

(i) For a course that is taught outside of a college or university setting, one credit hour may be awarded for 50 minutes of instruction within a 60-minute period, allowing for a ten-minute break.

(ii) For a course that is taught in a college or university setting:

(A) one quarter hour is equivalent to 10 credit hours; and

(B) one semester hour is equivalent to 15 credit hours.

(iii) A school may not award more than eight credit hours per day per student.

(3) A school shall report to the division within 10 calendar days of:

(a) any change in the information provided pursuant to this Subsection (1)(a)(i); and

(b) a school director or owner being convicted, or entering a plea in abeyance or diversion agreement, as to a criminal offense, excluding class C misdemeanors.

(4)(a) A school certification is valid for two years from the date of issuance.

(b) To renew a school certification, an individual shall, prior to the date of expiration:

(i) submit a properly completed application as provided by the division; and

(ii) pay a nonrefundable applicable fee.

R162-2g-307c. Pre-licensing Course Certification.

(1) To certify a pre-licensing course, an applicant shall, at least 30 days prior to the course being taught, submit a completed application as required by the division, including:

(a) a course outline, including:

(i) a description of the course;

(ii) the length of time to be spent on each subject area, broken into segments of no more than 30 minutes each; and

(iii) three to five learning objectives for every three hours;

(b) a description of any method of instruction that will be used other than lecture method, including:

(i) webinar;

(ii) satellite broadcast; or

(iii) other form of distance education;

(c) copies of at least three final examinations administered in the course and the answer keys that will be used to determine if a student passes the course;

(d) the school procedure for maintaining the security of the final exams and answer keys;

(e) the titles, authors, and publishers of all required textbooks;

(f)(i) the instructor(s) who will teach each class; and

(ii) evidence that each instructor is:

(A) certified by the division;

(B) qualified to serve as a guest lecturer; or

(C) a college or university faculty member who has academic training or appraisal experience satisfactory to the division and the board;

(g) a nonrefundable applicable fee; and

(h) a signed statement agreeing that the course provider will, within 10 business days of completing the class, upload to the division the following information:

(i) course name;

(ii) course certificate number assigned by the division;

(iii) date the course was taught;

(iv) number of credit hours; and

(v) name and license number of each student receiving education credit.

(2) Standards for approval of traditional classroom courses. Each course shall:

(a) meet the minimum standards set forth in the state-approved course outline governing the course, including minimum hourly requirements;

(b) be approved through the AQB course approval

program;

(c) allow a maximum of 10% of the required class time for testing, including review test and final examination;

(d) use texts, workbooks, supplement pamphlets, and other materials that are appropriate and current in their application to the required course outline.

(3) Standards for approval of distance education

(a) A distance education course shall:

(i) comply with this Subsection (2);

(ii) provide interaction between the student and instructor;

(iii) include a written examination personally proctored by an official approved by the presenting entity;

(iv) meet the course delivery requirements established by the AQB and the International Distance Education Certification Center; and

(v) offer at least 15 credit hours.

(b) A distance education course offered by a college or university may be deemed acceptable to meet the credit hour requirement if the course content is approved by:

(i) the AQB;

(ii) a state licensing jurisdiction; or

(iii) a college or university that:

(A) offers distance education programs in other disciplines; and

(B) is approved or accredited by:

(I) the Commission on Colleges;

(II) a regional or national accreditation association; or

(III) an accrediting agency that is recognized by the United States Secretary of Education.

(4) Within 10 business days after the occurrence of any material change in a course that could affect approval, the school shall give the division written notice of the change.

(5) A course certification is valid for no more than 24 months.

(6) Credit for non-certified pre-licensing education.

(a) Division certification is not required for a pre-licensing course that is offered by a school, as defined in Subsection R162-2g-102(17) as long as:

(i) the course content:

(A) meets the minimum standards set forth in the Utah state-approved course outline; and

(B) is approved by the AQB course approval program;

(ii) the course provides at least 15 credit hours, including examination(s);

(iii) a closed-book, closed-note final examination is administered at the end of each course;

(iv) students are not allowed to earn credit from the course provider by challenge examination without first attending the course;

(v) credit is not awarded for duplicate or highly comparable classes;

(vi) where multiple classes are offered, they represent a progression in a student's knowledge; and

(vii) in order to receive credit, a student is required to:

(A) attend 100% of the scheduled class hours;

(B) complete all required exercises and assignments; and

(C) pass the course final examination.

(b) Hourly credit for a course taken from a professional appraisal organization shall be granted according to the division approved list.

(c) An applicant who wishes to be awarded credit for non-certified pre-licensing education shall:

(i) provide to the division a list of the cours(es) taken, including:

(A) course title(s);

(B) name(s) of the sponsoring organization(s);

(C) number of classroom hours completed;

(D) date(s) of course completion; and

(E) evidence that the cours(es) meet the requirements of:

(I) the AQB; and

(II) if distance education, the International Distance Education Certification Center;

(ii) request review of the course by the division and board;

(iii) establish that the criteria outlined in this Subsection (6)(a) are met;

(iv) attest on a notarized affidavit that the courses have been completed as documented; and

(v) if requested by the division, provide proof of completion of the courses in the form of certificates, transcripts, report cards, letters of verification, or similar proof.

(7) Supervisory Appraiser and Appraiser Trainee Course. In order to obtain certification of the supervisory appraiser and appraiser trainee course, a course provider shall:

(a) comply with this Subsection (1); and

(b) sign a written attestation agreeing to provide a paper copy of the course manual to each attendee.

R162-2g-307d. Continuing Education Course Registration and Certification.

(1) The division and the board may not award continuing education credit for a course that is taught in Utah to registered, licensed, or certified appraisers unless the course is registered or certified prior to its being taught.

(2) To certify a continuing education course, an applicant shall, at least 30 days prior to the course being taught, submit a completed application as required by the division, including:

(a) name and contact information of the course sponsor and the entity through which the course will be provided;

(b) description of the physical facility where the course will be taught;

(c) the proposed number of credit hours for the course;

(d) identification of whether the method of instruction will be traditional education or distance education;

(e) title of the course;

(f) statement defining how the course will meet the objectives of continuing education by increasing the licensee's knowledge, professionalism, and ability to protect and serve the public;

(g) course outline including:

(i) a description of the subject matter covered in each 15-minute segment; and

(ii) a minimum of one learning objective for every hour of class time;

(h) the name and certification number of each certified instructor who will teach the course;

(i) copies of all materials that will be distributed to the participants;

(j) the procedure for pre-registration;

(k) the tuition or registration fee and a copy of the cancellation and refund policy;

(l) except for courses approved for distance education, the procedure for taking and maintaining control of attendance during class time;

(m) sample of the completion certificate;

(n) signed statement agreeing that the course provider will, within 10 business days of completing the class, upload to the division the following information:

(i) course name;

(ii) course certificate number assigned by the division;

(iii) date the course was taught;

(iv) number of credit hours; and

(v) names and license numbers of all students receiving continuing education credit;

(o) signed statement agreeing not to market personal sales products; and

(p) other information the division might require.

(3) Standards for approval of a certified course.

(a)(i) A distance education course shall:

(A) provide interaction between the student and instructor; and

(B) include a written examination that requires a student to demonstrate mastery and fluency.

(ii) The division may approve a distance education course offered by a college or university if the college or university:

(A) offers distance education programs in other disciplines; and

(B)(I) is accredited by the Commission on Colleges or a regional accreditation association; or

(II) is approved by the International Distance Education Certification Center.

(b) The course topic must be AQB-approved.

(c) The procedure for taking and maintaining control of attendance shall be more extensive than having the students sign a class roll.

(d) The completion certificate shall allow for entry of:

(i) licensee's name;

(ii) type of license;

(iii) license number;

(iv) date of course;

(v) name of the course provider;

(vi) course title;

(vii) course certification number and expiration date;

(viii) credit hours awarded; and

(ix) signatures of the course sponsor and the licensee.

(e) A real estate appraisal-related field trip that is submitted for continuing education credit may not include transit time to or from the field trip location as part of the credit hours awarded.

(4) Non-certified continuing education credit. Except as provided in Subsection R162-2g-307d(1), the board may award continuing education credit on a case-by-case basis for the following:

(a) up to one-half of an individual's continuing education credit requirement for:

(i) participation, other than as a student, in appraisal educational processes and programs; or

(ii) teaching, program development, authorship of textbooks, or similar activities that are determined by the board to be equivalent to obtaining continuing education;

(b) service as a member of the experience review committee, or the technical advisory panel, if approved by the board and offered in accordance with AQB standards as a:

(i) practicum course under this Subsection (3)(a); or

(ii) course under this Subsection (3)(b); and

(c) completion of any course that:

(i) meets the continuing education objectives of increasing the licensee's knowledge, professionalism, and ability to protect and serve the public; and

(ii) is taught outside the state of Utah.

(5) Standards for approval of a registered course.

(a) A professional appraisal education organization may register a special event for continuing education, subject to the following conditions:

(i) the professional appraisal education organization shall submit a one-time application and registration fee to the division to register the organization as a qualified continuing education course provider and the special event for continuing education;

(ii) the division may grant approval of the special event based on the demonstrated experience of the professional appraisal education organization in providing, monitoring, and supervising quality professional course offerings.

(b) The registered organization is solely responsible for and accountable to the division:

(i) for the selection of appraisal instructors who are subject matter experts and industry qualified in the course(s) or segment of the course(s) they teach;

(ii) to ensure that:

(A) course instructors have subject matter expertise in the content area they are instructing; and

(B) the course content of classes taught by both appraiser and non-appraiser course instructors is directly industry pertinent, relevant, and beneficial to and enhances the professional skills of the attending appraisers, and promotes the protection and wellbeing of the industry and the general public;

(iii) to monitor the attendance of each appraiser during the presentation of the course by taking and maintaining a list of attendees actually present during the presentation to ensure that an appraiser actually attends each CE course segment before providing a CE certificate or CE credit to the appraiser; and

(iv) to ensure that the registered course complies with the general criteria applicable to continuing education set forth in sections R162-2g-307a and R162-2g-307b.

(6)(a) The special event registered course may last for a maximum of seven consecutive days.

(b) The special event registered course is a single, one-time event and may not be repeated unless the professional appraisal education organization submits to the division an application and registration fee and receives division approval for a subsequent, single, one-time event.

(c) A professional appraisal education organization shall submit a separate course application for each course taught at the special event, however, only a single application fee is required to be paid to the division for each special event.

(d) The division maintains a fee schedule based on the total number of CE hours awarded for a CE course. The application and registration fee for a special event course is the fee from the division fee schedule.

R162-2g-307e. Instructor Certification for Pre-licensing Education.

(1) To certify as a pre-licensing education instructor, an individual shall:

(a) evidence that the applicant meets the character and competency requirements outlined in Subsection R162-2g-302(2)-(3);

(b) submit a completed application as provided by the division;

(c) demonstrate knowledge of the subject matter to be taught as evidenced by:

(i) current, active licensure or certification as applicable to the pre-licensing course proposed to be taught;

(ii) a minimum of five years active experience in appraising; and

(iii)(A) college or other appropriate courses specific to the topic proposed to be taught; or

(B) other experience acceptable to the board in the topic proposed to be taught;

(d) if the individual proposes to teach a course in USPAP, evidence that the individual is an AQB-certified USPAP instructor; and

(e) pay a nonrefundable application fee.

(2) A pre-licensing instructor certification is valid for 24 months from the date of issuance.

(3) To renew a pre-licensing instructor certification, an individual shall:

(a) submit a completed application, as provided by the division;

(b) evidence having taught at least 20 hours of in-class instruction in certified course(s) during the preceding term of certification;

(c) evidence having attended a real estate instructor development workshop sponsored or approved by the division during the preceding two years; and

(d) pay a nonrefundable application fee.

(4)(a) To reinstate an expired pre-licensing instructor certification within 30 days following the expiration date, an

individual shall:
(i) comply with this Subsection (3); and
(ii) pay a nonrefundable late fee.
(b) To reinstate an expired pre-licensing instructor certification after 30 days and within six months following the expiration date, an individual shall:
(i) comply with this Subsection (3);
(ii) pay a nonrefundable reinstatement fee; and
(iii) submit proof of having completed six classroom hours of education related to real estate appraisal or teaching techniques.
(c) After a pre-licensing instructor certification has been expired for six months, an individual is required to apply as an original applicant and obtain a new certification.
(5) A certified instructor shall comply with the reporting requirements of Section 61-2g-306(3).

R162-2g-307f. Instructor Certification for Continuing Education.
(1) Except for the limited circumstances provided for in Section R162-2g-307d for special continuing education events conducted by a professional appraisal education organization, a continuing education course that is required to be certified shall be taught by a certified instructor.
(2) To obtain a continuing education instructor certification, and individual shall, at least 30 days prior to the date on which instruction is proposed to begin:
(a) evidence that the applicant meets the character and competency requirements outlined in Subsection R162-2g-302(2)-(3);
(b) submit a completed application form, as provided by the division;
(c) evidence:
(i) at least three years of full-time experience in the course subject;
(ii) college-level education related to the course subject; or
(iii) a combination of experience and education acceptable to the division;
(d) evidence:
(i) at least 12 months of full-time teaching experience;
(ii) part-time teaching experience equivalent to 12 months of full-time teaching experience; or
(iii) attendance at the division's Instructor Development Workshop;
(e) provide a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the division or its representative;
(f) provide a signed statement agreeing not to market personal sales products;
(g) provide any other information the division requires; and
(h) pay a nonrefundable application fee.
(3) A continuing education instructor certification is valid for two years.
(4) To renew a continuing education instructor certification, an individual shall, prior to the date of expiration:
(a) submit a completed renewal application, as provided by the division;
(b)(i) evidence having taught a minimum of 12 continuing education credit hours during the past term of certification; or
(ii) provide a written explanation outlining the reason for not meeting the requirement having taught 12 continuing education credit hours and provide evidence satisfactory to the division that the applicant maintains an appropriate level of expertise; and
(c) pay a nonrefundable renewal fee.
(5)(a) To reinstate an expired continuing instructor certification within 30 days following the expiration date, an individual shall:
(i) comply with Subsection (4); and
(ii) pay a nonrefundable late fee.
(b) To reinstate an expired continuing instructor certification after 30 days and within six months following the expiration date, an individual shall:
(i) comply with Subsection (4); and
(ii) pay a nonrefundable reinstatement fee;
(c) After a continuing instructor certification has been expired for six months, an individual is required to apply as an original applicant and obtain a new certification.

R162-2g-308. Application for a Six-Month Temporary Permit.
(1) A non-resident of this state who is licensed or certified in another state and who wishes to apply for a six-month temporary permit to perform one or more specific appraisal assignments in Utah shall:
(a) evidence that each specific appraisal assignment is covered by a contract to provide appraisals;
(b) submit an application as provided by the division and including the following:
(i) name of the client;
(ii) specific property address(es) to be appraised;
(iii) type(s) of property being appraised; and
(iv) estimated time to complete each assignment;
(c) complete and submit a qualifying questionnaire as provided by the division;
(d) sign an irrevocable consent to service authorizing the division to receive service of any lawful process on behalf of the applicant in any non-criminal proceeding arising out of the applicant's practice as an appraiser in this state;
(e) pay a nonrefundable application fee in the amount established by the division; and
(f) provide the starting date of the appraisal assignment for which the temporary permit is being sought.
(2)(a) A non-resident is limited to two temporary permits per calendar year, each of which may be extended one time for an additional six-month period if the assignment(s) for which the permit is issued have not been completed within the original six-month term of the temporary permit.
(b) A temporary permit may be extended by submitting the forms required by the division.

R162-2g-310. Application for Licensure or Certification Through Reciprocity.
An individual who is licensed or certified as an appraiser by another state may be licensed or certified in Utah by reciprocity on the following conditions:
(1) The applicant shall provide evidence that:
(a) the state in which the applicant is licensed requires appraisal pre-licensing education that is:
(i) approved by that state; and
(ii) substantially equivalent in number to the hours required for the license or certification for which the applicant is applying in Utah;
(b) the applicant's pre-licensing education included either:
(i) the 15-hour National USPAP Course; or
(ii) equivalent education as determined through the course approval program of the AQB; and
(c) the applicant has passed an examination that has been approved by the AQB for the license or certification for which the applicant is applying.
(2) The applicant shall:
(a) obtain and study the Utah Real Estate Appraiser Licensing and Certification Act and the rules promulgated thereunder; and
(b) sign an attestation that the applicant understands and will abide by both the statute and the rules.
(3) If the applicant resides outside of the state of Utah, the

applicant shall sign an irrevocable consent to service authorizing the division to receive service of any lawful process on behalf of the applicant in any noncriminal proceeding arising out of the applicant's practice as an appraiser in this state.

(4) The board may not issue a license or certification to an applicant who has been convicted of a criminal offense involving moral turpitude relating to the applicant's ability to provide services as an appraiser.

R162-2g-311. Scope of Authority.

(1) Trainees.

(a) An individual who has properly qualified as a trainee pursuant to Subsection R162-2g-302 may perform appraisal-related duties within the competence and scope of authority of the state-certified supervisory appraiser as follows:

(i) participating in property inspections;

(ii) measuring or assisting in the measurement of properties;

(iii) performing appraisal-related calculations;

(iv) participating in the selection of comparable properties for an appraisal assignment;

(v) making adjustments to comparable properties; and

(vi) drafting or assisting in the drafting of an appraisal report.

(b) The trainee may have more than one supervisory appraiser.

(c) The supervising appraiser shall be responsible to determine the point at which a trainee is competent to participate in each of the activities identified in this Subsection (1)(a), within the following limitations:

(i) As to a minimum of the trainee's first 35 inspections of residential properties:

(A) the trainee shall be accompanied and supervised by a state-certified appraiser;

(B) both the interior and the exterior of the properties shall be inspected; and

(C) the appraisal report shall comply with the requirements of Subsection R162-2g-502a(1)(g).

(ii) After the trainee's first 35 inspections, the supervising appraiser shall determine whether the trainee has demonstrated sufficient competency to continue making inspections of residential properties without being accompanied by the supervising appraiser.

(iii) As to the trainee's first 20 inspections of non-residential properties:

(A) the trainee shall be accompanied and supervised by a state-certified general appraiser;

(B) both the interior and the exterior of the properties shall be inspected; and

(C) the appraisal report shall comply with the requirements of Subsection R162-2g-502a(1)(g).

(d) A trainee may not:

(i) solicit or accept an assignment on behalf of anyone other than:

(A) the trainee's supervisor; or

(B) the supervisor's appraisal firm;

(ii) sign an appraisal report or discuss an appraisal assignment with anyone other than:

(A) the appraiser responsible for the assignment;

(B) state enforcement agencies;

(C) third parties as may be authorized by due process of law; and

(D) a duly authorized professional peer review committee.

(e) The following are not subject to the scope of authority limitations of this Subsection (1):

(i) full-time elected county assessors; and

(ii) any person performing an appraisal for the purposes of establishing the fair market value of real estate for the assessment roll.

(2) State-licensed appraisers. In a federally-related transaction, state-licensed appraisers may appraise:

(a) non-complex one- to four-residential units having a transaction value of less than $1,000,000;

(b) complex one- to four- residential units having a transaction value of less than $250,000; and

(c) vacant or unimproved land that is utilized for one- to four-family purposes, or for which the highest and best use is one- to four-family purposes, so long as net income capitalization analysis is not required by the terms of the assignment.

(3) State-licensed appraisers and state-certified residential appraisers may not perform appraisals of the following:

(a) subdivisions for which:

(i) a development analysis/appraisal is necessary; or

(ii) a discounted cash flow analysis is required by the terms of the assignment; and

(b) vacant land if the highest and best use of the land is for five or more one- to four-family units.

R162-2g-502a. Standards of Conduct and Practice.

(1) Affirmative duties in general. A person registered, licensed, or certified by the division shall:

(a) if employing an unlicensed assistant who is not registered as a trainee pursuant to Subsection R162-2g-302:

(i) actively supervise the unlicensed assistant; and

(ii) ensure that the assistant performs only clerical duties, including:

(A) typing research notes or reports completed by a trainee or an appraiser;

(B) taking photographs of properties; and

(C) obtaining copies of public records;

(b) except as provided in Subsection (2):

(i) comply with the current edition of USPAP; and

(ii) observe the advisory opinions of USPAP;

(c) in order to authorize another individual to sign an appraisal report on behalf of the individual who completes the report:

(i) grant authority to the signer in writing;

(ii) limit the signing authority to a specific property address;

(iii) explicitly disclose within the appraisal report that the signer is authorized by the appraiser to sign the report on the appraiser's behalf;

(iv) attach a copy of the written permission required pursuant to this Subsection (1)(c)(i) to the report; and

(v) ensure that the signer signs the appraiser's name, followed by the word "by," and then followed by the signer's own name;

(d) if using a digital signature in place of a handwritten signature, ensure that:

(i) the software program that generates the digital signature has a security feature; and

(ii) no one other than the appraiser has control of the signature;

(e) retain a photocopy or other exact copy of each report as it is provided to the client, including the appraiser's signature;

(f) analyze and report the sales and listing history of the subject property for the three years preceding the appraisal if such information is available to the appraiser from a multiple listing service, listing agent(s), property owner, or other verifiable source(s);

(g)(i) include in each appraisal report a statement indicating whether or not the subject property was inspected as part of the appraisal process; and

(ii) if any inspections were done, include the following information concerning each inspection:

(A) the names of all appraisers and trainees who participated in the inspection;

(B) whether the inspection was an exterior inspection only or both an exterior and an interior inspection; and

(C) the date that the inspection was performed; and

(h) unless Subsection (2)(b) applies, respond within ten business days to division notification:

(i) of a complaint against the individual; or

(ii) that information is needed from the individual.

(2) Exceptions.

(a) An individual is exempt from complying with all provisions of USPAP when acting in an official capacity as:

(i) a division staff member or employee;

(ii) a member of the experience review committee as appointed and approved by the board;

(iii) a member of the technical review panel as appointed and approved by the board;

(iv) a hearing officer;

(v) a member of a county board of equalization;

(vi) an administrative law judge;

(vii) a member of the Utah State Tax Commission; or

(viii) a member of the board.

(b) If a deadline for response under this Subsection (1)(h) falls on a day when the division is closed, the deadline shall be extended to the next business day.

(c) When performing an evaluation as defined in the Real Estate Appraiser and Certification Act, an appraiser trainee or a licensed or certified appraiser is exempt from complying with Standards 1 through 3 of USPAP.

(3) A trainee shall:

(a) using forms provided by the division, maintain a separate log of experience hours for each supervising appraiser with whom the trainee works; and

(b) include in each log the following information for each appraisal:

(i) file number;

(ii) report date;

(iii) subject address;

(iv) client name;

(v) type of property;

(vi) report form number or type;

(vii) number of work hours;

(viii) description of work performed by the trainee; and

(ix) scope of the review and supervision of the supervising appraiser.

(4)(a) A supervisory appraiser shall delegate to a trainee only such duties as the trainee is authorized to perform under Subsection R162-2g-311(1).

(b) A supervisory appraiser shall directly train and supervise the trainee in the performance of assigned duties by:

(i) critically observing and directing all aspects of the appraisal process;

(ii) accepting full responsibility for the appraisal and the contents of the appraisal report by signing and certifying the appraisal complies with USPAP; and

(iii) reviewing and signing the trainee appraisal reports.

(c) A supervisory appraiser shall personally inspect:

(i) each property that is appraised with a trainee until the supervisory appraiser determines the trainee is competent to inspect the property in accordance with the competency rule of USPAP for the property type, and the trainee has performed at least:

(A) 35 residential inspections as provided in Subsection R162-2g-311(1)(c)(i); and

(B) 20 non-residential inspections as provided in Subsection R162-2g-311(1)(b)(ii); and

(ii) any property for which the appraisal report scope of work or certification requires appraiser inspection.

(d) A supervisory appraiser shall be state-certified and in good standing with the division for a period of at least three years prior to being eligible to become a supervisory appraiser.

(e) An appraiser may not act as a supervisory appraiser if the appraiser has been subject to a disciplinary action in any jurisdiction:

(i) within the three year period preceding the date on which the appraiser proposes to act as a supervisor; and

(ii) where the supervisory appraiser's legal eligibility to engage in the appraisal practice was impacted or impaired.

(f) A supervisory appraiser subject to a disciplinary action will be considered to be in good standing three years after the successful completion or termination of the sanction imposed against the appraiser.

(g) A supervisory appraiser shall comply with the competency rule of USPAP for the property type and geographic location for which the trainee appraiser is being supervised.

(h) Although a trainee is permitted to have more than one supervisory appraiser, a supervisory appraiser may not supervise more than three trainees at one time, unless a division program provides for progress monitoring, supervisory certified appraiser qualifications, and supervision and oversight requirements for supervisory appraisers.

(i) An appraisal experience log shall be maintained jointly by the supervisory appraiser and the trainee. It is the responsibility of both the supervisory appraiser and the trainee to ensure the experience log is accurate, current, and complies with division requirements.

(5) A school or continuing education provider shall:

(a) maintain a record of each student's attendance for a minimum of five years after the student enrolls;

(b) display the certification number of all continuing education courses in advertising and marketing;

(c) upload course completion information as to each student who provides the school or continuing education provider the student's name according to division records and the student's license number:

(i) within 10 days after the end of a course offering; and

(ii) to the database specified by the division;

(d) upon request of the division, substantiate any claim made in advertising or marketing;

(e) within 15 calendar days of any material change in the information outlined in R162-2g-307b(1), provide to the division written notice of the change;

(f) with regard to the criminal history disclosure required under R162-2g-307b(2)(c)(iii):

(i) obtain each student's signature before allowing the student to participate in course instruction;

(ii) retain each signed criminal history disclosure for a minimum of two years; and

(iii) make any signed criminal history disclosure available to the division upon request;

(g) maintain a high quality of instruction;

(h) adhere to all state laws and administrative rules regarding school and instructor certification;

(i) provide the instructor(s) for each course with the required course content outline;

(j) require instructors to adhere to the approved course content;

(k) comply with a division request for information within 10 business days of the date of the request; and

(l) verify that the material is current in any course taught on:

(i) Utah statutes;

(ii) Utah administrative rules;

(iii) Federal laws; and

(iv) Federal regulations.

(6) An instructor shall adhere to the approved outline for any course taught.

R162-2g-502b. Prohibited Conduct.

(1) An individual registered, licensed, or certified by the division may not:

(a) release to a client a draft report of a one- to four-unit residential real property;

(b) release to a client a draft report of a property other than a one- to four-unit residential real property unless:

(i) the first page of the report prominently identifies the report as a draft;

(ii) the draft report is signed by the appraiser; and

(iii) the appraiser complies with USPAP in the preparation of the draft report;

(c) affix a signature to an appraisal report by means of a signature stamp; or

(d) sign a blank or partially completed appraisal report that will be completed by anyone other than the appraiser who has signed the report;

(e) sign an appraisal report containing a statement indicating that an appraiser has inspected a property if the appraiser has not inspected the property; or

(f) split appraisal fees with any person who is not a state-licensed or state-certified appraiser, except that a supervising appraiser may pay a trainee reasonable compensation proportionate to the lawful services actually performed by the trainee in connection with appraisals.

(2) A trainee may not:

(a) solicit a client to address an engagement letter directly to the trainee; or

(b) accept payment for appraisal services from anyone other than:

(i) the trainee's supervisor; or

(ii) an appraisal or government entity with which the trainee is affiliated.

(3) A supervising appraiser may not:

(a) sign a report that is completed in response to an engagement letter that is addressed to a trainee;

(b) sign an appraisal report as the supervising appraiser without having given adequate supervision to the trainee, appraiser, or assistant being supervised.

(4) A state-licensed appraiser may not place a seal on an appraisal report or use a seal in any other manner likely to create the impression that the appraiser is a state-certified appraiser.

(5) A school may not:

(a) in advertising and marketing:

(i) make a misrepresentation about any course of instruction;

(ii) make statements or implications that disparage the dignity and integrity of the appraisal profession;

(iii) disparage a competitor's services or methods of operation;

(iv) as to a continuing education course, use language that indicates division approval is pending or otherwise forthcoming;

(b) attempt by any means to obtain or use the questions on the state licensure or certification exam unless those questions have been dropped from the current exam bank;

(c) accept payment from a student without first providing to that student the information outlined in R162-2g-307b(2)(c);

(d) continue to operate after the expiration date of the school certification without renewing;

(e) continue to offer a course after its expiration date without renewing;

(f) allow an instructor whose instructor certification has expired to continue teaching;

(g) allow an individual student to earn more than eight credit hours of education in a single day;

(h) award credit to a student who has not complied with the minimum attendance requirements;

(i) allow a student to obtain credit for all or part of a course by taking an examination in lieu of attending the course;

(j) give valuable consideration to a person licensed with or certified by the division under Section 61-2g for referring students to the school;

(k) accept valuable consideration from a person licensed with or certified by the division under Section 61-2g for referring students to a licensed or certified appraiser; or

(l) require a student to attend any program organized for the purpose of solicitation.

(6) A continuing education provider may not:

(a) in advertising and marketing:

(i) make a misrepresentation about any course of instruction;

(ii) make statements or implications that disparage the dignity and integrity of the appraisal profession; or

(iii) as to a continuing education course, use language that indicates division approval is pending or otherwise forthcoming;

(b) continue to offer a course after its expiration date without renewing;

(c) allow an instructor whose instructor certification has expired to continue teaching;

(d) allow an individual student to earn more than eight credit hours of education in a single day;

(e) award credit to a student who has not complied with the minimum attendance requirements; or

(f) allow a student to obtain credit for all or part of a course by taking an examination in lieu of attending the course.

(7) An instructor may not:

(a) continue to teach any course after the course has expired and without renewing the course certification; or

(b) continue to teach any course after the individual's certification has expired and without renewing the instructor certification.

R162-2g-504. Administrative Proceedings.

(1) Formal adjudicative proceedings. An adjudicative proceeding conducted subsequent to the issuance of a cease and desist order or other emergency order shall be conducted as a formal adjudicative proceeding.

(2) Informal adjudicative proceedings.

(a) An adjudicative proceeding as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be conducted as an informal adjudicative proceeding.

(b) A hearing shall be held in an informal adjudicative proceeding only if required or permitted by the Utah Real Estate Appraiser Licensing and Certification Act or by these rules.

(3)(a) A hearing before the board will be held in:

(i) a proceeding conducted subsequent to the issuance of a cease and desist order or other emergency order;

(ii) a case where the division seeks to deny an application for original or renewed registration, licensure, or certification for failure of the applicant to meet the criteria of good moral character, honesty, integrity or truthfulness;

(iii) a case where the division seeks disciplinary action pursuant to Sections 61-2g-501 and 502 against a trainee or an appraiser; and

(iv) an appeal from an automatic revocation under Section 61-2g-302(2)(d), if the appellant requests a hearing.

(b) If properly requested by the applicant, a hearing will be held before the board to consider an application:

(i) that is denied by the division on the grounds that the instructor's attestation to upstanding moral character is false;

(ii) for an initial appraiser license or certification that is denied by the board on the recommendation of the experience review committee; and

(iii) for a temporary permit that is denied by the division for any reason.

(c) A hearing is not required and will not be held in the following informal adjudicative proceedings:

(i) the issuance, renewal, or reinstatement of a trainee

registration or an appraiser license or certification by the division;

(ii) the issuance or renewal of an appraisal course, school, or instructor certification;

(iii) the issuance of any interpretation of statute, rule or order, or the issuance of any written opinion or declaratory order determining the applicability of a statute, rule or order, when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the division; and

(iv) the denial of renewal or reinstatement of a trainee registration or an appraiser license or certification for failure to complete any continuing education required by statute or rule; and

(v) the denial of an application for an original or renewed school, instructor, or course certification on the ground that it does not comply with the requirements stated in these rules.

(4)(a) Request for agency action. The following applications shall be deemed a request for agency action:

(i) registration as a trainee;

(ii) licensure or certification as an appraiser;

(iii) certification of a course, school, or instructor; and

(iv) issuance of a temporary permit.

(b) Any other request for agency action shall be in writing, signed by the requestor, and shall contain the following:

(i) the names and addresses of all persons to whom a copy of the request for agency action is being sent;

(ii) the agency's file number or other reference number, if known;

(iii) the date of mailing of the request for agency action;

(iv) a statement of the legal authority and jurisdiction under which the agency action is requested, if known;

(v) a statement of the relief or action sought from the division; and

(vi) a statement of the facts and reasons forming the basis for relief or agency action.

(c) A complaint against a trainee, an appraiser, or the holder of a temporary permit requesting that the division commence an investigation or a disciplinary action is not a request for agency action.

(5) Procedures for hearings in informal adjudicative proceedings.

(a) All informal adjudicative proceedings shall adhere to procedures as outlined in:

(i) Utah Administrative Procedures Act Title 63G, Chapter 4;

(ii) Utah Administrative Code Rule R151-4 et seq.; and

(iii) the rules promulgated by the division.

(b) Except as provided in this Subsection (6)(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.

(c) In any proceeding under this Subsection R162-2g-504, the board and division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the board and the division in conducting the hearing. Any delegation of a hearing to an administrative law judge shall be in writing.

(d)(i) Upon the scheduling of a hearing by the division and at least 30 days prior to the hearing, the division shall, by first class postage-prepaid delivery, mail written notice of the date, time, and place scheduled for the hearing, to the respondent at the address last provided to the division pursuant to Subsection R162-2g-306b.

(ii) The notice shall set forth the matters to be addressed in the hearing.

(e) Formal discovery is prohibited.

(f) The division may issue subpoenas or other orders to compel production of necessary evidence:

(i) on its own behalf; or

(ii) on behalf of a party where the party:

(A) makes a written request;

(B) assumes responsibility for effecting service of the subpoena; and

(C) bears the costs of the service, any witness fee, and any mileage to be paid to a witness.

(g) Upon ordering a licensee to appear for a hearing, the division shall provide to the licensee the information that the division will introduce at the hearing.

(h) Intervention is prohibited.

(i) Hearings shall be open to all parties unless the presiding officer closes the hearing pursuant to:

(i) Title 63G, Chapter 4, the Utah Administrative Procedures Act; or

(ii) Title 52, Chapter 4, the Open and Public Meetings Act.

(j) Upon filing a proper entry of appearance with the division pursuant to Utah Administrative Code Section R151-4-110(1)(a), an attorney may represent a party.

(6) Additional procedures for disciplinary proceedings.

(a) The division shall commence a disciplinary proceeding by filing and serving on the respondent:

(i) a notice of agency action;

(ii) a petition setting forth the allegations made by the division;

(iii) a witness list, if applicable; and

(iv) an exhibit list, if applicable.

(b) Answer.

(i) At the time the petition is filed, the presiding officer, upon a determination of good cause, may require the respondent to file an answer to the petition by so ordering in the notice of agency action.

(ii) The respondent may file an answer, even if not ordered to do so in the notice of agency action.

(iii) Any answer shall be filed with the division no later than 30 days following the mailing date of the notice of agency action pursuant to this Subsection (6)(a).

(c) Witness and exhibit lists.

(i) Where applicable, the division shall provide its witness and exhibit lists to the respondent at the time it mails its notice of agency action.

(ii) Any witness list shall contain:

(A) the name, address, and telephone number of each witness; and

(B) a summary of the testimony expected from the witness.

(iii) Any exhibit list:

(A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and

(B) shall be accompanied by copies of the exhibits.

(iv)(A) The presiding officer, upon a determination of good cause, may require a respondent to file a witness and exhibit list.

(B) Failure to comply with a requirement to file a witness and exhibit list may result in the exclusion of any witness or exhibit not disclosed.

(d) Pre-hearing motions.

(i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the Department of Commerce shall be made in accordance with those rules.

(ii) The division director shall receive and rule upon any pre-hearing motions.

R162-2g-601. Appendices.

Appendix 1. Residential Experience Hours Schedule. The hours shown in the following schedule shall be awarded to form appraisals. Fifteen hours may be added to the hours shown if the appraisal is a narrative appraisal instead of a form appraisal.

TABLE

Property Type	Hours that may be earned

(a) one-unit dwelling, above-grade:
(i) living area less than 4,000 square feet, including a site — Up to 10 hours (Expected avg hrs 7.5)

Part 1

Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Exterior Inspection	0.5
Interior Inspection	0.5
Market Conditions	0.75
Land Value Estimate	0.5
Improvement Cost Estimate	0.5
Income Value Estimate	2.5
Sales Comparison Value Estimate	2.5
Final Reconciliation	0.25
Appraisal Report Preparation	1.75
Restricted Appraisal Report Preparation	0.5

(ii) living area 4,000 square feet or more, including a site — Up to 10 hours

Part 2

Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Exterior Inspection	0.75
Interior Inspection	0.75
Market Conditions	0.75
Land Value Estimate	0.75
Improvement Cost Estimate	0.75
Income Value Estimate	3.0
Sales Comparison Value Estimate	3.0
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5

(b) multiple one-unit dwellings in the same subdivision or condominium project, which dwellings are substantially similar:
(i) 1-25 dwellings — 7 hours per dwelling, up to a maximum of 42 hours
(ii) over 25 dwellings — 70 hours maximum
(c) two to four-unit dwelling

Part 3

Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Exterior Inspection	0.5
Interior Inspection	0.5
Market Conditions	0.75
Land Value Estimate	0.5
Improvement Cost Estimate	0.5
Income Value Estimate	3.0
Sales Comparison Value Estimate	3.0
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5

(d) employee relocation counsel reports completed on currently accepted Employee Relocation Counsel form — Up to 10 hours
(e) residential lot, 1-4 unit — Up to 7 hours

Part 4

Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Site Inspection	0.25
Market Conditions	0.75
Sales Comparison Value Estimate	1-3
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5

(f) multiple lots in the same subdivision, which lots are substantially similar
(i) 1-25 lots — 5 hours per lot, up to a maximum of 30 hours
(ii) Over 25 lots — 50 hours maximum
(g) small parcel of less than 20 acres — up to 6.5 hours

Part 5

Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Site Inspection	0.25
Market Conditions	0.75
Sales Comparison Value Estimate	1-3
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5

(h) vacant land, 20-640 acres — 20-40 hours, per board decision
(i) recreational, farm, or timber acreage suitable for a house site:
(i) up to 10 acres — 10 hours
(ii) 10 acres or more — 15 hours
(j) all other unusual structures or acreage which are much larger or more complex than typical properties — 5-35 hours, per board decision
(k) review of residential appraisals with no opinion of value developed as part of the review performed in conjunction with investigations by government agencies — 10-50 hours

Appendix 2. General Experience Hours Schedule. All appraisal reports claimed for property types identified in sections (a) through (k) of the following schedule shall be narrative appraisal reports. Experience hours listed in this schedule may be increased by 50% for unique and complex properties if the applicant notes the number of extra hours claimed on the appraiser experience log submitted by the applicant, and if the applicant maintains in the workfile for the appraisal an explanation as to why the extra hours are claimed.

TABLE

Property Type	Hours that may be earned
(a) Apartment buildings:	
(i) 5-100 units	40 hours
(ii) over 100 units	50 hours
(b) hotel or motels:	
(i) 50 units or fewer	30 hours
(ii) 51-150 units	40 hours
(iii) over 150 units	50 hours
(c) nursing home, rest home, care facilities:	
(i) fewer than 80 beds	40 hours
(ii) 80 beds or more	50 hours
(d) industrial or warehouse building:	
(i) smaller than 20,000 square feet	30 hours
(ii) 20,000 square feet or more, single tenant	40 hours
(iii) 20,000 square feet or more, multiple tenants	50 hours
(e) office buildings:	
(i) smaller than 10,000 square feet	30 hours
(ii) 10,000 square feet or more, single tenant	40 hours
(iii) 10,000 square feet or more, multiple tenants	50 hours
(f) entire condominium projects, using income approach to value:	
(i) 5- to 30-unit project	30 hours
(ii) 31- or more-unit project	50 hours
(g) retail buildings:	
(i) smaller than 10,000 square feet	30 hours
(ii) 10,000 square feet or more, single tenant	40 hours
(iii) 10,000 square feet or more, multiple tenants	50 hours
(h) commercial, multi-unit, industrial, or other nonresidential use acreage:	
(i) 1 to less than 100 acres	20-40 hours
(ii) 100 acres or more, income approach to value	50-60 hours
(i) all other unusual structures or assignments that are much larger or more complex than the properties described in (a) to (h) herein.	5 to 100 hours per board decision
(j) entire subdivisions or planned unit developments (PUDs):	

(i) 1- to 25-unit subdivision or PUD	30 hours	
(ii) over 25-unit subdivision or PUD	50 hours	
(k) feasibility or market analysis	5 to 100 hours, each per board decision, up to a maximum of 500 hours	
(l) farm and ranch appraisals:	Form	Narrative
(i) irrigated cropland, pasture other than rangeland:		
(A) 1 to less than 11 acres	10 hrs	15 hrs
(B)11-less than 40 acres	12.5 hrs	20 hrs
(C)40-less than 160 acres	15 hrs	25 hrs
(D)160-less than 1280 acres	25 hrs	40 hrs
(E) 1280 acres or more	40 hrs	50 hrs
(ii) dry farm:		
(A) 1 to less than 1280 acres	15 hrs	25 hrs
(B) 1280 acres or more	20 hrs	40 hrs
(m) Improvements on properties other than a rural residence, maximum 10 hours:		
(i) dwelling	5 hrs	5 hrs
(ii) shed	2.5 hrs	2.5 hrs
(n) cattle ranches		
(i) 0-200 head	15 hrs	20 hrs
(ii) 201-500 head	25 hrs	30 hrs
(iii) 501-1000 head	30 hrs	40 hrs
(iv) more than 1000 head	40 hrs	50 hrs
(o) sheep ranches		
(i) 0-2000 head	25 hrs	30 hrs
(ii) more than 2000 head	35 hrs	45 hrs
(p) dairy, including all improvements except a dwelling		
(i) 0-100 head	20 hrs	25 hrs
(ii) 101-300 head	25 hrs	30 hrs
(iii) more than 300 head	30 hrs	35 hrs
(q) orchards		
(i) up to 50 acres	30 hrs	40 hrs
(ii) more than 50 acres	40 hrs	50 hrs
(r) rangeland/timber		
(i) 0-640 acres	20 hrs	25 hrs
(ii) more than 640 acres	30 hrs	35 hrs
(s) poultry		
(i) 0-100,000 birds	30 hrs	40 hrs
(ii) more than 100,000 birds	40 hrs	50 hrs
(t) mink		
(i) 0-5000 cages	30 hrs	35 hrs
(ii) more than 5000 cages	40 hrs	50 hrs
(u) fish farm	40 hrs	50 hrs
(v) hog farm	40 hrs	50 hrs
(w) review of appendix 2 appraisals with no opinion of value developed as part of the review, performed in conjunction with investigations by government agencies	20-100 hours	

Appendix 3. Mass Appraisal Experience Hours Schedule.

TABLE

Property Type	Hours that may be earned
(a) one-unit dwelling, above-grade living area less than 4,000 square feet:	
Part 1	
Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Exterior Inspection	0.5
Interior Inspection	0.5
CAMA Data Input and Review	0.5
Market Conditions	0.75
Land Value Estimate	0.5
Improvement Cost Estimate	0.5
Income Value Estimate	2.5
Sales Comparison Value Estimate	2.5
Final Reconciliation	0.25
Appraisal Report Preparation	1.75
Restricted Appraisal Report Preparation	0.5
(b) one-unit dwelling, above-grade living area area 4,000 square feet or more:	
Part 2	
Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Exterior Inspection	0.75
Interior Inspection	0.75
CAMA Data Input and Review	0.5
Market Conditions	0.75
Land Value Estimate	0.75
Improvement Cost Estimate	0.75
Income Value Estimate	3.0
Sales Comparison Value Estimate	3.0
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5
(c) two to four unit dwelling:	
Part 3	
Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Exterior Inspection	0.5
Interior Inspection	0.5
CAMA Data Input and Review	0.5
Market Conditions	0.75
Land Value Estimate	0.5
Improvement Cost Estimate	0.5
Income Value Estimate	3.0
Sales Comparison Value Estimate	3.0
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5
(d) commercial and industrial buildings, depending on complexity:	
Part 4	
Task	Hours
Highest and Best Use Analysis	0.25
Neighborhood Description	0.5
Exterior Inspection	0.5-4.5
Interior Inspection	0.5-9.5
CAMA Data Input and Review	0.5
Market Conditions	1.5
Land Value Estimate	2.0
Improvement Cost Estimate	2.0
Income Value Estimate	2-15
Sales Comparison Value Estimate	2-15
Final Reconciliation	0.5
Appraisal Report Preparation	1-10
Restricted Appraisal Report Preparation	0.5
(e) agricultural and other improvements, depending on complexity:	
Part 5	
Task	Hours
Highest and Best Use Analysis	0.25-0.5
Neighborhood Description	0.5
Exterior Inspection	0.25-0.5
Interior Inspection	0.5-1
CAMA Data Input and Review	0.5
Market Conditions	0.75
Land Value Estimate	0.5-1
Improvement Cost Estimate	0.5-1
Income Value Estimate	1-3
Sales Comparison Value Estimate	1-3
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5
(f) vacant land, depending on complexity:	
Part 6	
Task	Hours
Highest and Best Use Analysis	0.25-0.5
Neighborhood Description	0.5
Site Inspection	0.25
Land Segregation	0.25
CAMA Data Input and Review	0.5
Inspection	0.25-2.25
Market Conditions	0.75
Income Value Estimate	1-3
Sales Comparison Value Estimate	1-3
Final Reconciliation	0.25
Appraisal Report Preparation	2.0
Restricted Appraisal Report Preparation	0.5

(g) land valuation guideline (development):	
(i) 25 or fewer parcels	10 hours
(ii) 26 to 500 parcels	30 hours
(iii) over 500 parcels	25 additional hours for each 500 parcels, up to a maximum of 125 hours for each guideline
(h)land valuation guideline (update):	
(i) 25 or fewer parcels	1 hour
(ii) 26 to 500 parcels	3 hours
(iii) over 500 parcels	2.5 additional hours for each 500 parcels, up to a maximum of 12.5 hours for each guideline
(i) assessment/sales ratio study, data collection, verification, sample inspection, analysis, conclusion, and implementation:	
(i) base study of 100 reviewed sales	125 hours
(ii) additional increments of 100 sales	25 additional hours for each 100 additional sales, up to a maximum of 375 hours for each study
(j) multiple regression model, development and implementation:	
(i) fewer than 5,000 parcels	100 hours
(ii) additional increments of 500 parcels	5 additional hours for each additional 500 parcels, up to a maximum of 375 hours for each regression model
(k) industry depreciation study and analysis	5 to 40 hours
(l) reviews of "land value in use" in accordance with U.C.A. Section 59-2-505:	
(i)office review only	0.25 hours
(ii) field review	0.5 hours
(m) natural resource properties, depending on complexity:	
(i) sand and gravel	1-20 hours per site
(ii) mine	1-110 hours
(iii) oil and gas	1-50 hours per site
(n) pipelines and gas distribution properties, depending on complexity	10-40 hours
(o) telephone and electrics properties, depending on complexity	5-80 hours
(p) airline and railroad properties, depending on complexity	10-80 hours
(q) appraisal review/audit, depending on complexity	2.5-125 hours
(r) capitalization rate study	10 to 100 hours
(s) mineral pricing study	10 to 100 hours
(t) effective tax rate study	10 to 100 hours
(u) Ad valorem centrally assessed property tax appeal preparation	5 to 125 hours

Appendix 4. Appraiser Education.

TABLE 1

Required Core Curriculum

Trainee Appraiser	
Basic Appraisal Principles	30 Hours
Basic Appraisal Procedures	30 Hours
15-Hour national USPAP Course or its Equivalent	15 Hours
Trainee Appraiser Education Requirements	75 Total Hours
Licensed Appraiser	
Basic Appraisal Principles	30 Hours
Basic Appraisal Procedures	30 Hours
15-Hour national USPAP Course or its Equivalent	15 Hours
Residential Market Analysis and Highest and Best Use	15 Hours
Residential Appraiser Site Valuation and Cost Approach	15 Hours
Residential Sales Comparison and Income Approaches	30 Hours
Residential Report Writing and Case Studies	15 Hours
Licensed Residential Education Requirements	150 Total Hours
Certified Residential	
Basic Appraisal Principles	30 Hours
Basic Appraisal Procedures	30 Hours
15-Hour national USPAP Course or its Equivalent	15 Hours
Residential Market Analysis and Highest and Best Use	15 Hours
Residential Appraiser Site Valuation and Cost Approach	15 Hours
Residential Sales Comparison and Income Approaches	30 Hours
Residential Report Writing and Case Studies	15 Hours
Statistics, Modeling and Finance	15 Hours
Advanced Residential Applications and Case Studies	15 Hours
Appraisal Subject Matter Electives (May include hours over minimum shown above in other modules)	20 Hours
Certified Residential Education Requirements	200 Total Hours
Certified General*	
Basic Appraisal Principles	30 Hours
Basic Appraisal Procedures	30 Hours
15-Hour national USPAP Course or its Equivalent	15 Hours
*General Appraiser Market Analysis and Highest and Best Use	30 Hours
Statistics, Modeling and Finance	15 Hours
*General Sales Comparison and Income Approaches	30 Hours
*General Appraiser Site Valuation and Cost Approach	30 Hours
General Appraiser Income Approach	60 Hours
*General Appraiser Report Writing and Case Studies	30 Hours
Appraisal Subject Matter Electives (May include hours over minimum shown above in other modules)	30 Hours
Certified General Education Requirements	300 Total Hours

*The four Certified General courses identified with an asterisk * may substitute for the equivalent four Licensed Appraiser or Certified Residential courses when a candidate provides proof of completion of these courses when applying for a Licensed or Certified Residential appraisal credential.

TABLE 2

Continuing Education Topics (Division Certification Required)

(1) Ad valorem taxation
(2) Arbitration, dispute resolution
(3) Courses related to the practice of real estate appraisal or consulting
(4) Development cost estimating
(5) Ethics and standards of professional practice, USPAP
(6) Land use planning, zoning
(7) Management, leasing, timesharing
(8) Property development, partial interests
(9) Real estate law, easements, and legal interests
(10) Real estate litigation, damages, condemnation
(11) Real estate financing and investment
(12) Real estate appraisal related computer applications
(13) Real estate securities and syndication
(14) Developing opinions of real property value in appraisals that also include personal property and/or business value
(15) Seller concessions and impact on value
(16) Energy efficient items and "green building" appraisals

KEY: real estate appraisals, school certification, instructor certification, education options

November 5, 2019	**61-2g-201(2)(h)**
Notice of Continuation August 18, 2016	**61-2g-202(1)**
	61-2g-205(5)(c)
	61-2g-307(3)
	61-2g-401(5)

R162. Commerce, Real Estate.
R162-57a. Timeshare and Camp Resort Rules.
R162-57a-1. Title and Authority.

(1) This section shall be known as the "Timeshare and Camp Resort Rules."

(2) The authority to make rules for the timeshare and camp resort industries is granted to the division director by Section 57-19-3.

R162-57a-2. Definitions.

(1) "Affiliation" means an employment or independent contractor relationship between a salesperson and a developer.

(2) "Amendment" means a change to an original registration as to information submitted pursuant to Subsection R162-57a-5(3)(j)-(y).

(3) "Annual report" means information submitted to the division in order to renew a project registration, including the following:

(a) the number of intervals, memberships, or other interests sold since the registration was issued or last renewed;

(b) the total number of intervals, memberships, or other interests sold since the date of initial registration;

(c) the number of intervals, memberships, or other interests reacquired by foreclosure or similar proceeding that had previously been reported as sold;

(d) the total number of registered but unsold intervals, memberships, or other interests as of the date of the annual report; and

(e) the total number of intervals, memberships, or other interests that have been registered.

(4) The acronym "ATR" means ARELLO Timeshare Registry, which is the online database system through which developers may register projects with the division.

(5) "Business day" means a day other than a:

(a) Saturday;

(b) Sunday; or

(c) state or federal holiday.

(6) "Common promotional plan" means a plan whereby multiple timeshare or camp resort interests, whether in the same location or not, are advertised and/or offered for disposition without the ownership of the interests being differentiated or distinguished.

(7) "Common facilities" means areas and amenities within a project to which all purchasers share an equal right of access and use.

(8) "Consolidation" means the registration of additional interests in a project for which the director has previously issued a registration.

(9) "Day" means calendar day unless specified as "business day."

(10) "Direct sales presentation" means a meeting in which a salesperson provides information about project(s) or interest(s) to one or more prospective purchasers.

(11) "Entity" means:

(a) a corporation;

(b) a limited liability company;

(c) a partnership;

(d) a company;

(e) an association;

(f) a joint venture;

(g) a business trust;

(h) a trust; or

(i) another organization.

(12) "Expired registration" means a project or salesperson registration that may not be used to advertise, offer, or sell interests because the holder of the registration failed to renew it by or before the expiration date.

(13) "Notice of defect" means a written communication from the director informing an applicant that the applicant must submit additional information to clarify, complete, or correct an application for:

(a) registration;

(b) consolidation; or

(c) renewal.

(14) "Person" means an individual or an entity.

(15) "Personal information" means data that may be used to identify or contact a prospective purchaser, including:

(a) name;

(b) home or business address;

(c) home, business, or cell telephone number; and

(d) e-mail address.

(16) "Prospective purchaser" means a person who:

(a) attends a sales presentation;

(b) communicates with a developer or salesperson in order to obtain information about a project;

(c) provides personal information to a developer or salesperson; or

(d) is solicited by a developer or salesperson through any type of advertisement.

(17) "Property report" means a document that includes:

(a) disclosures required pursuant to Section 57-19-11;

(b) a cover sheet as generated and provided by the division; and

(c) a receipt generated by the division.

(18) "Public offering statement" has the same meaning as "property report."

(19) "Registration" means:

(a) as to a project, division approval of the project as being suitable for the advertisement, offering, and sale of interests; and

(b) as to a salesperson, division approval for the salesperson to engage in the advertisement, offering, and sale of interests.

(20) "Reinstatement period" means a 30-day period following the expiration of registration during which a person may reinstate an expired registration by submitting all required renewal materials and paying applicable fees.

(21) The acronym "RELMS" means Real Estate License Management System, which is the online forum through which registered salespersons may submit forms and information to the division.

(22) "Renewal" means extending a registration for an additional period on or before the date the registration expires.

(23) "Supplement" means a change in the information submitted pursuant to Subsection R162-57a-5(3)(a)-(i).

(24) "Temporary permit" means authorization from the division for a developer to engage in the advertisement, offering, and sale of interests for a period not to exceed 30 days.

R162-57a-5. Project Registration.

(1) Registration required.

(a) A person may not engage in the advertisement, offering, or sale of interests unless:

(i) the project is properly registered with the division pursuant to Section 57-19 et seq. and these rules; and

(ii) each individual who will engage in offering or selling interests is registered as salesperson pursuant to Section 57-19 et seq. and these rules.

(b)(i) A project is not considered registered until the developer seeking registration obtains from the division:

(A) a complete property report, approved by the division; and

(B) an order of registration.

(ii) In accordance with Section 57-19-6, the division shall provide the developer a property report cover sheet and receipt if 30 business days after the date of application, the division has not:

(A) denied the application; or

(B) notified the applicant of a defect in the registration application.

(iii) A salesperson is not considered registered until the individual receives a registration from the division.

(c) Absent the issuance of a property report or registration, acceptance by the division of a registration fee does not authorize a person to engage in the advertisement, offering, or sale of interests.

(2) Registration procedure. A developer shall submit all information required under Subsection (3) to the division:

(a) through the ATR; or

(b) if the developer obtains advance permission from the division, directly to the division.

(3) Required Information. A developer shall submit to the division:

(a) property report pursuant to Section 57-19-11 and Subsection R162-57a-11;

(b) as to each officer, partner, director, and owner of the developer:

(i) as applicable, documentation of any disciplinary or adverse licensing action taken against a professional license held by the individual in any jurisdiction;

(ii)(A) a statement of the type and extent of any financial interest the individual has in the project; and

(B) an explanation of any options the individual may exercise to acquire additional financial interest in the project;

(iii) as applicable, court records from any criminal proceeding taken against the individual in any jurisdiction, regardless of whether the proceeding was resolved by:

(A) conviction;

(B) plea in abeyance;

(C) diversion agreement;

(D) sentence of confinement; or

(E) dismissal; and

(iv) as applicable, documentation of any bankruptcy filing by:

(A) the individual; or

(B) an entity in which the individual has held:

(I) an ownership interest; or

(II) a position as a manager, officer, or director;

(c) evidence that the developer is registered in good standing with the Utah Division of Corporations;

(d) corporate resolution naming a resident agent to act on behalf of the developer;

(e) copy of the current articles of incorporation or other instrument creating the developer entity;

(f) copy of the current bylaws of the developer entity;

(g)(i) states or jurisdictions in which the developer has filed an application for registration or similar document;

(ii) copy of the property report or other disclosure document required to be given to purchasers by any jurisdiction in which the project is registered or the developer is otherwise authorized to advertise, offer, or sell interests;

(iii) full documentation of any adverse order, judgment, or decree entered in connection with the project by any regulatory authority in any jurisdiction;

(h) name of any salesperson who will offer or sell interests in the project;

(i) name of the individual who will be responsible for directly supervising the salesperson(s) offering or selling interests in the project;

(j) legal description of the property upon which the project is located;

(k) statement, generated or updated within the 30-day period preceding the date of application, of the condition of the title to the property upon which the project is located, including encumbrances;

(l)(i) copy of any instrument by which the developer acquired interest in the project; or

(ii) if the developer does not hold fee title to the property, evidence that the developer is legally entitled to use the property, as follows:

(A) if the property is situated within Utah:

(I) a title opinion from a title insurer licensed in Utah; or

(II) an opinion letter from an independent, third party attorney actively licensed in Utah;

(B) if the property is situated outside of Utah:

(I) a title opinion from a title insurer licensed where the property is situated; or

(II) an opinion letter from an independent, third party attorney who is actively licensed to practice in the jurisdiction where the property is situated; and

(C) if the property is located in a jurisdiction such as a foreign country where property title opinions are issued by parties other than title companies and attorneys, other evidence of title as specified and approved by the director;

(m) copy of any instrument creating a lien, easement, restriction, or other encumbrance affecting the project, including any recording data, but redacted as to the consideration paid upon acquisition of the project;

(n) statement of the zoning and other governmental regulations affecting the use of the project;

(o) existing and proposed taxes or special assessments that affect the project;

(p)(i) copies of the instruments that will be delivered to a purchaser to evidence the purchaser's interest in the project; and

(ii) copies of the contracts and other agreements that a purchaser will be required to agree to or sign;

(q) topograhic map and accompanying statement describing the general topography and physical characteristics of the project, including:

(i) terrain;

(ii) soil conditions;

(iii) flood control; and

(iv) climate;

(r) copy of any:

(i) recorded declaration of condominium;

(ii) recorded covenants, conditions, and restrictions (CCRs); and

(iii) instrument governing the project and incorporating all covenants of the grantor or lessor;

(s) copy of any plan to create an association for project owners;

(t) narrative description of the promotional plan for the disposition of the project;

(u) statement disclosing any inducement that will be offered in connection with the advertisement, offering, or sale of interests in the project;

(v) map showing:

(i) the location of the interests and other improvements on the property;

(ii) the relation of the project to existing streets, roads, and other off-site improvements; and

(iii) the relation of the project to factors that might negatively impact the quiet enjoyment of an interest;

(w)(i) statement of improvements and amenities to be installed that have not been completed;

(ii) schedule for completion;

(iii) evidence that the developer has obtained all necessary permits; and

(iv) if the city or county in which the property is located does not require means of assurance that all improvements and amenities referred to in the application will be completed, copies of:

(A) escrow or trust agreements;

(B) performance bonds; or

(C) other documentation to evidence that adequate financing is available and arrangements have been made for the

installation of all streets, sewers, electricity, gas, water, telephone, drainage, and other improvements;

(x)(i) provisions for maintenance to both existing and planned improvements and amenities; and

(ii) estimated cost of such maintenance to purchasers;

(y) description of any corrective work that must be performed on or relating to the project before particular interests are suitable for use;

(z) completed application as required by the division; and

(aa) a nonrefundable registration fee.

(4) The director may waive production of an item required pursuant to Subsection (3) if the developer shows that the item is not necessary to fulfill the purposes of Section 56-19 et seq.

(5) Consolidation.

(a) An application for consolidation shall be prepared and submitted in the same format as an application for initial registration.

(b) Where there is no change in the information submitted by the developer for the initial registration, the documents required by Subsection (3) may be incorporated by reference to documents on file with the division.

(c) An incomplete application for consolidation shall be treated as provided in Subsection (6).

(d) New inventory added to a project through consolidation is subject to inspection by the division.

(6) Notice of defect.

(a) If an application is incomplete, or otherwise fails to comply with Section 57-19 et seq. or these rules, the director shall send a notice of defect to the developer or the developer's legal representative specifying:

(i) what additional information is required to cure the defect; and

(ii) the deadline by which the division must receive the additional information.

(b) After receipt of a notice of defect, the developer may not offer units to the public:

(i) until the defect is cured and a registration obtained; or

(ii) without obtaining a temporary permit pursuant to Section 57-19-6(3) and Subsection (8).

(c)(i) If the additional information is not received by the division by the deadline specified in the notice of defect, the director may deny the registration.

(ii) An order of denial may be appealed pursuant to Section 57-19-17.

(7) Standards for approval.

(a) The director may not approve an application for registration of a project unless:

(i) the documents submitted pursuant to Subsection (3) meet the requirements of Section 57-19 et seq. and these rules; and

(ii) the developer demonstrates the ability to convey or cause to be conveyed the interests offered for disposition.

(b) The division may not issue a project registration to a developer that has an officer, partner, director, or owner who has:

(i) been prosecuted for a felony that resulted in a:

(A) conviction within the five-year period preceding the date of application;

(B) plea agreement within the five-year period preceding the date of application; or

(C) jail or prison release date falling within the five-year period preceding the date of application; or

(ii) been prosecuted for a misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in a:

(A) conviction within the three-year period preceding the date of application; or

(B) jail or prison release date falling within the three-year period preceding the date of application.

(c) If the director determines that a registration application and supporting documentation meet the criteria for registration, the division shall issue:

(i) an order of registration designating the form of the property report that the developer is required to provide to a prospective purchaser pursuant to Section 57-19-11;

(ii) a property report cover sheet, which the developer shall attach to the property report as its first page; and

(iii) a receipt for property report, which the developer shall attach to the property report as its last page.

(8) Temporary permit.

(a) To apply for a temporary permit, a person shall:

(i) make application by submitting a written request to the director;

(ii) comply with Section 57-19-6(3); and

(iii) pay all fees required for registration.

(b) A temporary permit issued by the director is valid for a period of 30 days from the date of issue.

(c) A temporary permit may not be renewed.

(9) Notification of changes.

(a) A developer whose project is registered under Section 57-19 et seq. shall report to the division within 10 business days any change in:

(i) the developer's contact information;

(ii) the disclosures required under Section 57-19-11;

(iii) the information provided under this Subsection (3), including changes in salespersons employed or contracted to advertise, offer, or sell interests in the project;

(iv)(A) the bankruptcy of an entity controlled or owned by the developer that engages in the advertisement, offering, or sale of interests; and

(B) if the developer is an individual, the filing of a personal bankruptcy;

(v) the suspension, revocation, surrender, cancellation, or denial or a professional license or professional registration issued to the developer, whether the license or registration is issued by this state or another jurisdiction;

(vi) the entry of a cease and desist order, a temporary or permanent injunction, or a regulatory action:

(A) against the developer by a court or a government agency; and

(B) based on:

(I) conduct or a practice involving the advertisement, offering, or sale of interests; or

(II) conduct involving fraud, misrepresentation, or deceit; and

(vii) a finding of fraud, misrepresentation, or deceit entered against the developer in a judicial or administrative proceeding instituted by a purchaser and arising out of or relating to:

(A) the advertising or sale of an interest;

(B) disclosures required under Section 57-19-11; or

(C) rescission rights.

(b) If a deadline for notification falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

(10) Amendment and supplement to initial registration.

(a) To submit an amendment to a registration, a developer shall:

(i) complete an amendment filing through the ATR; or

(ii) obtain prior permission from the division to submit the information by mail.

(b) To submit a supplement to a registration, a developer shall:

(i) complete a courtesy filing through the ATR; or

(ii) obtain prior permission from the division to submit the information by mail.

(c) Pursuant to Section 57-19-8(4), the certification of a class in a class-action lawsuit against a developer on the basis of the developer's advertising, selling, or managing a project or

interest requires the filing of an amendment.

R162-57a-8. Restrictions on Proposed Advertising.

(1) Advertising that promotes gifts and other awards in connection with attending a sales presentation shall:

(a) disclose any conditions precedent to the receipt of the gift or other award; and

(b) if receipt of a specific advertised gift or other award is not guaranteed by virtue of attendance at the sales presentation, state the odds of any attendee's chance of receiving the gift or other award.

(2) A substitute gift, inducement, or award:

(a) shall be equal in value or use to the gift, inducement, or award that was originally promised; and

(b) may not burden the recipient with additional travel expense in order to receive the value of the gift, inducement, or award.

R162-57a-9. Renewal and Reinstatement of Project Registration.

(1) Project registration renewal. To renew a registration of a project, a person shall submit to the division, no later than the expiration date set forth on the order of registration:

(a) an annual report;

(b)(i) an updated property report, with changes underlined in red; or

(ii) a statement that no changes have occurred in the property report that is on record with the division;

(c) a description of any change in the information provided in the application for registration;

(d) documentation of any judicial proceeding or regulatory investigation instituted by complaint of a purchaser against the developer and arising out of or relating to:

(i) the advertising or sale of an interest;

(ii) disclosures required under Section 57-19-11;

(iii) rescission rights;

(iv) fraud; or

(v) misrepresentation of interests represented by the registration; and

(e) a nonrefundable renewal fee.

(2) Reinstatement.

(a) To reinstate an expired project registration, a person shall submit to the division, no later than 90 calendar days following the expiration of the registration:

(i) all materials required for a timely renewal; and

(ii) a nonrefundable late fee.

(b) A registration that is expired more than 90 days may not be renewed or reinstated. To obtain a registration, a person shall apply as a new applicant.

R162-57a-11. Disclosure Required.

(1) The disclosures required by Section 57-19-11 and submitted to the division as part of the application for project registration shall be:

(a)(i) reproduced on good quality white paper 8-1/2 by 11 inches in size;

(ii) typed in a font no smaller than 10-point type, except that financial statements or other statistical or tabular matter may be set in type as small as 8-point type; and

(iii) organized into reasonably short paragraphs or sections with appropriate captions or headings to identify each paragraph or section; or

(b) if acceptable to the director, approved by another state.

(2)(a) Upon approving the developer's disclosures, the division shall supply to the developer:

(i) a cover sheet, which the developer shall use as the first page of the property report; and

(ii) a receipt for property report, which the developer shall use as the last page of property report.

(b)(i) The developer shall provide a copy of the complete property report, reproduced in a manner that allows all text to remain visible and legible, not obscured by shading or watermarks, to each prospective purchaser prior to obtaining the prospective purchaser's signature on a contract for purchase of an interest.

(ii) The developer shall, in connection with an offer to sell an interest, provide a notice of the purchaser's right to cancel described in Section 57-19-12, reproduced in a manner that allows all text to remain visible and legible, not obscured by shading or watermarks, to each prospective purchaser:

(A) at the beginning of a direct sales presentation; or

(B) if the prospective purchaser does not attend a direct sales presentation, at the same time the developer obtains the prospective purchaser's personal information.

R162-57a-13. Unprofessional Conduct.

(1) Developer.

(a) Affirmative duties. A developer or an individual designated by the developer shall:

(i) actively supervise project salesperson(s) to ensure compliance with Section 57-19 et seq. and these rules;

(ii) provide the complete property report to each prospective purchaser pursuant to Subsection R162-57a-11(2)(b)(i);

(iii) obtain a signed receipt for property report from a prospective purchaser prior to:

(A) executing a purchase agreement; or

(B) receiving any item of value toward the purchase of an interest; and

(iv)(A) clearly inform a purchaser of the purchaser's right to rescind the agreement if, during the rescission period mandated by Section 57-19-12, the purchaser expresses a desire to terminate a contract or agreement entered into by the purchaser; and

(B) ensure compliance with this Subsection (iv)(A) by:

(I) all subsidiaries of the developer;

(II) all persons affiliated with the developer; and

(III) all persons affiliated with a subsidiary of the developer.

(b) Prohibited conduct. A developer is subject to discipline if the developer or an affiliated person:

(i) makes a misrepresentation or material omission in a document submitted to the division; or

(ii) fails to comply with an order of the division.

(2) Salesperson. A salesperson shall comply with:

(a) Section 57-19 et seq.;

(b) these rules; and

(c) this Subsection (1)(a)(ii)-(iv).

R162-57a-15. Application for Registration of Project Sales Persons.

(1) An individual applying for registration as a project salesperson shall provide the following information to the division:

(a) identifying information, including:

(i) full legal name;

(ii) date of birth; and

(iii) social security number;

(b) contact information, including:

(i) home address;

(ii) home telephone and cell telephone numbers;

(iii) mailing address;

(iv) e-mail address;

(v) sales office location and e-mail address;

(vi) sales office telephone number; and

(vii) name of developer or an individual designated by the developer who will supervise the applicant pursuant to Subsection R162-57a-13(1)(a).

(c)(i) disclosure as to whether the individual has ever been licensed or registered in a real estate-related profession; and

(ii) documentation of any adverse regulatory action on such license or registration, including:

(A) denial;

(B) restriction, including probation;

(C) suspension;

(D) revocation; or

(E) fine;

(d) disclosure as to whether the individual has ever resigned or surrendered a real estate-related license or registration, or allowed such a license or registration to expire, while under investigation or while action was pending against the individual by a government agency;

(e) information as to any disciplinary action pending against the individual at the time of application by any real estate, professional, or occupational licensing agency;

(f) documentation of any criminal investigation proceeding against the individual at the time of application;

(g) complete documentation of any past criminal offense, including:

(i) charge(s) filed;

(ii) plea(s) entered;

(iii) case disposition; and

(iv) terms of sentencing;

(h) complete documentation of any past civil judgment entered against the person in a case brought on allegations involving fraud, misrepresentation, or deceit;

(i) completed five-year employment history form as provided by the division;

(j) affidavit stating whether the individual has ever been terminated from employment on an allegation of theft, fraud, or dishonesty; and

(k) a nonrefundable application fee.

(2) An application for registration as a project salesperson shall be signed by:

(a) the applicant; and

(b)(i) the developer with which the salesperson is affiliated; or

(ii) the developer's authorized representative pursuant to Subsection R162-57a-13(1)(a).

(3) Standards for approval. The director may not issue a salesperson registration to any individual who:

(a) submits an incomplete application;

(b) has been prosecuted for a felony that resulted in a:

(i) conviction within the five-year period preceding the date of application;

(ii) plea agreement within the five-year period preceding the date of application; or

(iii) jail or prison release date falling within the five-year period preceding the date of application; or

(c) has been prosecuted for a misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in a:

(i) conviction within the three-year period preceding the date of application; or

(ii) jail or prison release date falling within the three-year period preceding the date of application.

(4) Notification of changes.

(a) A registered salesperson shall inform the division within ten days of:

(i) any change in the individual's legal name;

(ii) any change in the individual's contact information pursuant to Subsection (1)(b);

(iii) as to a criminal offense, whether prosecuted in Utah or in another jurisdiction:

(A) a conviction;

(B) the entry of a plea in abeyance;

(C) a diversion agreement; or

(D) any other agreement under which a criminal charge is held in suspense for a period of time.

(b) To notify the division of a name change, an individual shall:

(i) complete and submit a paper change form; and

(ii) attach to the form official documentation such as a:

(A) marriage license;

(B) divorce decree;

(C) driver license; or

(D) court order.

(c) To notify the division of a change in contact information, an individual shall submit a change form:

(i) by mail or fax, until such time as RELMS is configured to accommodate timeshare salespersons; and

(ii) through RELMS, once the system is configured to accommodate timeshare salespersons.

(d) To notify the division of proceedings in a criminal case, an individual shall:

(i) send to the division a cover letter explaining the circumstances under which charges were brought; and

(ii) attach all available documentation, including:

(A) charging documents;

(B) police reports; and

(C) court dockets.

(5) Renewal and reinstatement.

(a) A salesperson registration expires two years following the date the registration is approved by the division.

(b) To renew a salesperson registration, an individual shall submit to the division, no later than the date on which the individual's registration expires:

(i) a completed renewal application as required by the division; and

(ii) a nonrefundable fee.

(c) To reinstate an expired salesperson registration, and individual shall submit to the division, no later than 30 days following the date on which the individual's registration expires:

(i) all materials required for a timely renewal; and

(ii) a nonrefundable late fee.

(d) An application that is expired more than 30 days may not be renewed. To obtain a registration, an individual shall apply as a new applicant.

R162-57a-17. Administrative Procedures.

The following matters shall be decided by the director through an informal adjudicative proceeding, with no hearing permitted:

(1) issuance of an initial registration;

(2) renewal or reinstatement of an existing registration;

(3) denial of any application for registration; and

(4) a request:

(a) to amend a property report;

(b) for consolidation of a registration;

(c) for waiver of, or exemption from, registration requirements; and

(d) for a temporary permit pending registration with the division.

R162-57a-26. Exemptions.

(1) The following sales are essentially noncommercial and, therefore, exempt from the requirements of Section 57-19, et seq. by operation of law:

(a) the bulk sale of interests by a developer to another person who will become the developer of the project;

(b) after a project has been sold out and its registration with the division has expired, the resale of interests that are foreclosed by the developer or the developer's successor-in-interest, so long as:

(i) no more than ten interests in the project are foreclosed and resold over the life of the project; and

(ii) the foreclosed interests are not offered with interests in

other projects as part of a common promotional plan;

(c) the resale by a lender of foreclosed interests, so long as the lender does not foreclose more than ten interests in the project over the life of the project;

(d) the sale, to a person who has previously purchased an interest in a project, of additional interests in the same project, provided that the person is timely provided with a valid property report at the time of the original purchase; and

(e) the sale of a purchaser's individual interest on a for-sale-by-owner basis.

(2)(a) A person who believes a sale not specifically delineated in Subsection (1) is essentially non-commercial shall apply to the division for an order of exemption.

(b) An exemption granted under this Subsection (2)(a) is valid for a period of one year and expires unless renewed through reapplication.

KEY: timeshare, camp resort, registration, professional conduct
November 5, 2019 57-19-3
Notice of Continuation April 21, 2017 57-19-5 through 57-19-26

R277. Education, Administration.
R277-317. Incentives for National Board Certification.
R277-317-1. 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) Section 53F-5-202, which requires the Board to make rules to specify procedures and timelines for reimbursing educators for the cost to attain or renew a National Board certification; and

(d) Section 53F-2-521, which requires the Board to implement a salary supplement for National Board-certified teachers.

(2) The purpose of this rule is to specify procedures and timelines for:

(a) reimbursements to educators under Section 53F-5-202; and

(b) applications for the salary supplement under Section 53F-2-521.

R277-317-2. Definitions.

(1) "Eligible educator" means an educator who holds a current National Board certification attained or renewed:

(a) after July 1, 2016; and

(b) while employed as an educator by an LEA in Utah.

(2) "Local education agency" or "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(3) "National Board certification" means the same as that term is defined in Section 53E-6-102.

(4) "National Board-certified teacher" or "board-certified teacher" has the same meaning as defined in Subsection 53F-2-521(1)(b).

R277-317-3. Salary Supplement for National Board-Certified Teachers.

(1) The Superintendent shall allocate funds for salary supplements to board-certified teachers in accordance with Subsection 53F-2-521(3).

(2) The Superintendent shall maintain an online application system for board-certified teachers and make it available to educators no later than October 1 each school year.

(3) An applicant for the Board-certified salary supplement shall apply to the Superintendent by April 30.

(4)(a) If an applicant is denied funds under this rule, the applicant may submit a written appeal to the Superintendent prior to June 1.

(b) An appeal under Subsection (4)(a) is limited to the following issues:

(i) whether the applicant is a board-certified teacher;

(ii) whether the applicant was assigned to teach at a Title I school during the school year at issue; or

(iii) whether the Superintendent's initial denial was inconsistent with Section 53F-2-521 or this Rule R277-317; or

(iv) whether the Superintendent's initial denial was based on inaccurate or missing information.

(c) The Superintendent may designate a panel of at least two Board staff members to review an appeal made under Subsection (4)(a) and make a recommendation to the Superintendent.

(i) A panel designated in accordance with Subsection (5)(c) shall make a recommendation in accordance with the provisions of Section 53F-2-504 or this Rule R277-318.

(ii) The panel shall make a recommendation on an appeal within 30 days of receipt of the written appeal.

(5) The Superintendent shall issue a ruling on an appeal within 15 days of receipt of the panel's recommendation.

(6) The decision of the Superintendent on an appeal is the final Board administrative action.

R277-317-4. Grants for National Board Certification.

(1) The Superintendent shall establish and maintain an online application system through which an educator may apply for a grant to pay for fees and costs to pursue or renew a National Board certification.

(2) An applicant for a grant under Subsection (1) shall pay a registration fee to the National Board for Professional Teaching Standards or "NBPTS" prior to submitting the application.

(3) The Superintendent shall pay a grant under Subsection (1) directly to NBPTS.

(4)(a) To receive a grant under Subsection (1), an educator shall submit an application through the application system, including all information required by Section 53F-5-202.

(b) The Superintendent shall accept applications from July 1 through December 1 annually.

(c) The Superintendent shall establish an expedited process for educators seeking to begin the National Board certification program in 2020.

(5) The Superintendent may not award a grant under this Section to an educator with a currently suspended license.

(6)(a) The Superintendent shall annually determine the number of new grant awards available based on:

(i) legislative appropriations;

(ii) estimated costs under Section R277-317-3;

(iii) encumbered costs for grants previously awarded under this section; and

(iv) costs associated with obtaining national board certification.

(b) The Superintendent shall publish the number of new grants available by October 15 annually.

(c) If the number of applicants exceeds the number of available grant awards, the Superintendent shall randomly choose grant recipients from all complete applications.

(7) In order for an educator to receive a grant under this section, the Superintendent shall require the educator to attest that the educator will not accept payment of National Board certification costs covered under the grant from any other party.

(8) A grant recipient shall notify the superintendent as soon as possible if:

(a) the individual discontinues pursuit of national board certification;

(b) the individual becomes ineligible to receive a grant under this section;

(c) the individual becomes ineligible to pursue national board certification under rules established by the National Board for Professional Teaching Standards; or

(d) the individual requests approval for an amendment to the individual's application plan.

KEY: national board certification, grants, salary supplements

November 8, 2019 **Art X Sec 3**
53E-3-401(4)
53F-5-202
53F-2-521

R277. Education, Administration.
R277-404. Requirements for Assessments of Student Achievement.
R277-404-1. 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) Section 53E-4-302, which directs the Board to adopt rules for the administration of statewide assessments; and

(d) Subsection 53G-6-803(9)(b), which requires the Board to adopt rules to establish a statewide procedure for exempting a student from taking certain assessments.

(2) The purpose of this rule is to:

(a) provide consistent definitions; and

(b) assign responsibilities and procedures for the administration of statewide assessments, as required by state and federal law.

R277-404-2. Definitions.

(1) "Benchmark reading assessment" means the Board approved literacy assessment that is administered to a student in grade 1, grade 2, and grade 3 at the beginning, middle, and end of year.

(2) "College readiness assessment" means the:

(a) same as that term is described in Section 53E-4-305; and

(b) American College Testing exam, or ACT.

(3) "English Learner" or "EL student" means a student who is learning in English as a second language.

(4) "English language proficiency assessment" means the World-class Instructional Design and Assessment (WIDA) Assessing Comprehension in English State-to-State (ACCESS), which is designed to measure the acquisition of the academic English language for an English Learner student.

(5) "Family Educational Rights and Privacy Act of 1974" or "FERPA," 20 U.S.C. 1232g, means a federal law designed to protect the privacy of students' education records.

(6) "High school assessment":

(a) means the same as that term is described in Section 53E-4-304;

(b) means the "Utah Aspire Plus"; and

(c) includes the Utah Aspire Plus assessment of proficiency in:

(i) English;

(ii) math;

(iii) science; and

(iv) reading.

(7) "National Assessment of Education Progress" or "NAEP" means the national achievement assessment administered by the United States Department of Education to measure and track student academic progress.

(8) "State required assessment" means an assessment described in Subsection 53G-6-803(9)(a).

(9) "Standards Assessment":

(a) means the same as that term is described in Subsection 53E-4-303(2)(a); and

(b) means the "Readiness Improvement Success Empowerment" or "RISE";

(c) for each school year, includes one writing prompt from the writing portion of the RISE English language arts assessment for grades 5 and 8.

(10) "Statewide assessment" means the:

(a) the same as that term is defined in Subsection 53E-4-301(2);

(b) Utah alternative assessment; and

(c) English language proficiency assessment.

(11) "Section 504 accommodation plan" means a plan:

(a) required by Section 504 of the Rehabilitation Act of 1973; and

(b) designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

(12)(a) "Utah alternate assessment" means an assessment instrument:

(i) for a student in special education with a disability so severe the student is not able to participate in a statewide assessment even with an assessment accommodation or modification; and

(ii) that measures progress on the Utah core instructional goals and objectives in the student's IEP.

(b) "Utah alternate assessment" means:

(i) for science, the Utah Alternate Assessment (UAA); and

(ii) for English language arts and mathematics, the Dynamic Learning Maps (DLM).

(13) "Utah eTranscript and Record Exchange" or "UTREx" means a system that allows:

(a) an LEA and the Superintendent to electronically exchange an individual detailed student record; and

(b) electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service.

R277-404-3. Incorporation of Standard Test Administration and Testing Ethics Policy by Reference.

(1) This rule incorporates by reference the Standard Test Administration and Testing Ethics Policy, June 6, 2019, which establishes:

(a) the purpose of testing;

(b) the statewide assessments to which the policy applies;

(c) teaching practices before assessment occurs;

(d) required procedures for after an assessment is complete and for providing assessment results;

(e) unethical practices;

(f) accountability for ethical test administration;

(g) procedures related to testing ethics violations; and

(h) additional resources.

(2) A copy of the Standard Test Administration and Testing Ethics Policy is located at:

(a) https://www.schools.utah.gov/assessment?mid=1104&tid=5; and

(b) the Utah State Board of Education - 250 East 500 South, Salt Lake City, Utah 84111.

R277-404-4. Superintendent Responsibilities.

(1) The Superintendent shall facilitate:

(a) administration of statewide assessments; and

(b) participation in NAEP, in accordance with Subsection 53E-4-302(1)(b).

(2) The Superintendent shall provide guidelines, timelines, procedures, and assessment ethics training and requirements for all statewide assessments.

(3) The Superintendent shall designate a testing schedule for each statewide assessment and publish the testing window dates on the Board's website before the beginning of the school year.

R277-404-5. LEA Responsibilities - Time Periods for Assessment Administration.

(1)(a) Except as provided in Section (1)(b) and R277-404-7 an LEA shall administer statewide assessments to all students enrolled in the grade level or course to which the assessment applies.

(b) A student's IEP team, English Learner team, or Section 504 accommodation plan team shall determine an individual student's participation in statewide assessments consistent with the Utah Participation and Accommodations Policy.

(2) An LEA shall develop a plan to administer statewide assessments.

(3) The plan shall include:

(a) the dates that the LEA will administer each statewide assessment;

(b) professional development for an educator to fully implement the assessment system;

(c) training for an educator and an appropriate paraprofessional in the requirements of assessment administration ethics; and

(d) training for an educator and an appropriate paraprofessional to use statewide assessment results effectively to inform instruction.

(4) An LEA shall submit the plan to the Superintendent by September 15 annually.

(5) At least once each school year, an LEA shall provide professional development for all educators, administrators, and assessment administrators concerning guidelines and procedures for statewide assessment administration, including educator responsibility for assessment security and proper professional practices.

(6) LEA assessment staff shall use the Standard Test Administration and Testing Ethics Policy in providing training for all assessment administrators and proctors.

(7) An LEA may not release state assessment data publicly until authorized to do so by the Superintendent.

(8) An LEA educator or trained employee shall administer statewide assessments consistent with the testing schedule published on the Board's website.

(9) An LEA educator or trained employee shall complete all required assessment procedures prior to the end of the assessment window defined by the Superintendent.

(10)(a) If an LEA requires an alternative schedule with assessment dates outside of the Superintendent's published schedule, the LEA shall submit the alternative testing plan to the Superintendent by September 15 annually.

(b) The alternative testing plan shall set dates for assessment administration for courses taught face-to-face or online.

R277-404-6. School Responsibilities.

(1) An LEA may not prohibit a student from enrolling in an honors, advanced placement, or International Baccalaureate course:

(a) based on a student's score on a state required assessment; or

(b) because the student was exempted from taking a state required assessment.

(2) An LEA and school shall require an educator, assessment administrator, and proctor to individually sign a document provided by the Superintendent acknowledging or assuring that the educator administers statewide assessments consistent with ethics and protocol requirements.

(3) An educator and assessment administrator shall conduct assessment preparation, supervise assessment administration, and certify assessment results before providing results to the Superintendent.

(4) An educator, assessment administrator, and proctor shall securely handle and return all protected assessment materials, where instructed, in strict accordance with the procedures and directions specified in assessment administration manuals, LEA rules and policies, and the Standard Test Administration and Testing Ethics Policy.

R277-404-7. Student and Parent Participation in Student Assessments in Public Schools; Parental Exclusion from Testing and Safe Harbor Provisions.

(1) As used in this section, "penalize" means to put in an unfavorable position or at an unfair disadvantage.

(2)(a) A parent is primarily responsible for a child's education and has the constitutional right to determine which aspects of public education the child participates in, including assessment systems.

(b) Parents may further exercise their inherent rights to exempt their children from a state required assessment without further consequence by an LEA.

(3)(a) A parent may exercise the right to exempt their child from a state required assessment.

(b) Except as provided in Subsection (3)(c), an LEA may not penalize a student who is exempted from a state required assessment under this section.

(c) If a parent exempts the parent's child from the basic civics test required in Sections 53E-4-205 and R277-700-8, the parent's child is not exempt from the graduation requirement in Subsection 53E-4-205(2), and may not graduate without successfully completing the requirements of Sections 53E-4-205 and R277-700-8.

(4)(a) To exercise the right to exempt a child from a state required assessment under this provision and ensure the protections of this provision, a parent shall:

(i) fill out:

(A) the Parental Exclusion from State Assessment Form provided on the Board's website; or

(B) an LEA specific form as described in Subsection (4)(b); and

(ii) submit the form:

(A) to the principal or LEA either by email, mail, or in person; and

(B) on an annual basis; and

(C) except as provided in Subsection (4)(b), at least one day prior to the beginning of the assessment.

(b) An LEA may allow a parent to exempt a student from taking a state required assessment less than one day prior to the beginning of the assessment upon parental request.

(c) An LEA may create an LEA specific form for a parent to fill out as described in Subsection (4)(a)(i)(B) if:

(i) the LEA includes a list of local LEA assessments that a parent may exempt the parent's student from as part of the LEA specific form; and

(ii) the LEA specific form includes all of the information described in the Parental Exclusion from State Assessment Form provided on the Board's website as described in Subsection (4)(a)(i)(A).

(5)(a) A teacher, principal, or other LEA administrator may contact a parent to verify that the parent submitted a parental exclusion form described in Subsection (4)(a)(i).

(b) An LEA may request, but may not require, a parent to meet with a teacher, principal, or other LEA administrator regarding the parent's request to exclude the parent's student from taking a state required assessment.

(6) The administration of any assessment that is not a state required assessment, including consequences associated with taking or failing to take the assessment, is governed by policy adopted by each LEA.

(7) An LEA shall provide a student's individual test results and scores to the student's parent or guardian upon request and consistent with the protection of student privacy.

(8) An LEA may not provide a nonacademic reward to a student for a student's participation in or performance on a state required assessment.

(9) An LEA shall allow an educator to provide an academic incentive for a student's performance on a state required assessment in accordance with Subsections 53E-4-303(4)(b), 304(3), and 305(4).

(10) An LEA shall ensure that a student who has been exempted from participating in a state required assessment under this section is provided with an alternative learning experience if the student is in attendance during test administration.

(11) An LEA may allow a student who has been exempted from participating in a state required assessment under this section to be physically present in the room during test administration.

R277-404-8. Public Education Employee Compliance with Assessment Requirements, Protocols, and Security.

(1) An educator, test administrator or proctor, administrator, or school employee may not:

(a) provide a student directly or indirectly with a specific question, answer, or the content of any specific item in a statewide assessment prior to assessment administration;

(b) download, copy, print, take a picture of, or make any facsimile of protected assessment material prior to, during, or after assessment administration without express permission of the Superintendent and an LEA administrator;

(c) change, alter, or amend any student online or paper response answer or any other statewide material at any time in a way that alters the student's intended response;

(d) use any prior form of any statewide assessment, including pilot assessment materials, that the Superintendent has not released in assessment preparation without express permission of the Superintendent and an LEA administrator;

(e) violate any specific assessment administrative procedure specified in the assessment administration manual, violate any state or LEA statewide assessment policy or procedure, or violate any procedure specified in the Standard Test Administration and Testing Ethics Policy;

(f) fail to administer a statewide assessment;

(g) fail to administer a statewide assessment within the designated assessment window;

(h) submit falsified data;

(i) allow a student to copy, reproduce, or photograph an assessment item or component; or

(j) knowingly do anything that would affect the security, validity, or reliability of statewide assessment scores of any individual student, class, or school.

(2) A school employee shall promptly report an assessment violation or irregularity to a building administrator, an LEA superintendent or director, or the Superintendent.

(3) An educator who violates this rule or an assessment protocol is subject to Utah Professional Practices Advisory Commission or Board disciplinary action consistent with R277-215.

(4) All assessment material, questions, and student responses for required assessments is designated protected, consistent with Subsection 63G-2-305(5), until released by the Superintendent.

(5)(a) Each LEA shall ensure that all assessment content is secured so that only authorized personnel have access and that assessment materials are returned to Superintendent following testing, as required by the Superintendent.

(b) An individual educator or school employee may not retain or distribute test materials, in either paper or electronic form, for purposes inconsistent with ethical test administration or beyond the time period allowed for test administration.

R277-404-9. Data Exchanges.

(1) The Board's IT Section shall communicate regularly with an LEA regarding the required format for electronic submission of required data.

(2) An LEA shall update UTREx data using the processes and according to schedules determined by the Superintendent.

(3) An LEA shall ensure that any computer software for maintaining or submitting LEA data is compatible with data reporting requirements established in Rule R277-484.

(4) The Superintendent shall provide direction to an LEA detailing the data exchange requirements for each statewide assessment.

(5) An LEA shall ensure that all statewide assessment data have been collected and certify that the data are ready for accountability purposes no later than July 12.

(6) An LEA shall verify that it has satisfied all the requirements of the Superintendent's directions described in this section.

(7) Consistent with Utah law, the Superintendent shall return assessment results from all statewide assessments to the school before the end of the school year.

KEY: assessments, student achievements

November 8, 2019	**Art X Sec 3**
Notice of Continuation November 29, 2016	**53E-4-302**
	53E-3-401(4)
	53G-6-803(9)(b)

R277. Education, Administration.
R277-464. School Counselor Direct and Indirect Services.
R277-464-1. 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-3-518, which directs the Board to make rules specifying:

(i) the recommended direct and indirect services a school counselor may provide;

(ii) the recommended amount of time a school counselor may spend on direct and indirect services; and

(iii) activities for a school counselor.

(2) The purpose of this rule is to establish standards and time limits for direct and indirect services provided by a counselor within an LEA.

R277-464-2. Definitions.

(1) "Direct services" means services provided to a student consistent with the School Counselor Services document incorporated by reference in Section R277-464-3.

(2) "Indirect services" means all other services consistent with the School Counselor Services document incorporated by reference in Section R277-464-3.

(3) "Non-school counselor activities" means activities inconsistent with direct and indirect services and deemed inappropriate consistent with the School Counselor Services document incorporated by reference in Section R277-464-3.

(4) "School counselor" means the same as the term is defined in Subsection R277-462-2(3).

R277-464-3. Incorporation of School Counselor Services Document.

(1) This rule incorporates by reference the School Counselor Services Document, August 2019, which lists approved direct services and indirect services provided by a school's counseling program.

(2) A copy of the School Counselor Services Document is located at:

(a) https://www.schools.utah.gov/file/d53963de-f5cb-456f-8502-2bc8ca7769cd; and

(b) the Utah State Board of Education - 250 East 500 South, Salt Lake City, Utah 84111.

R277-464-4. Time Allotment for Direct and Indirect Services.

(1) An LEA shall ensure the time allotment for implementation of a school's program be allocated in the following ways:

(a) 85% of a school program's aggregate time is devoted to providing direct services to students, including:

(i) collaborative classroom instruction;

(ii) assisting in creating a plan for college and career readiness;

(iii) dropout prevention efforts, including student social and emotional supports; and

(iv) providing supports for a student's needs consistent with the program.; and

(b) no more than 15% of a school program's aggregate time is devoted to indirect services including:

(i) faculty meetings;

(ii) administrative duties related to the program;

(iii) professional development of a school counselor; and

(iv) leadership meetings.

(2) An LEA shall ensure all direct and indirect services are consistent with the listed appropriate usage of time provided in the School Counselor Services document incorporated by reference in Section R277-464-3.

(3) An LEA shall ensure all appropriate and prohibited inappropriate activities are consistent with the School Counselor Services document incorporated by reference in Section R277-464-3, including the elimination of non-school counseling duties such as test coordination and administration.

(4) An LEA that receives funds pursuant to R277-462 shall be subject to the requirements of this rule and all additional requirements as described in R277-462.

R277-464-5. Annual Assurance and Compliance.

An LEA shall provide an annual assurance of intent to comply with the time allocation described in Section R277-464-4 through the annual assurances document described in R277-108.

KEY: school counselors, services
November 8, 2019 **Art X Sec 3**
53E-3-401(4)
53E-3-518

R277. Education, Administration.
R277-473. Utah Computer Science Grant.
R277-473-1. 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 63N-12-506(5) which allows the Board, in consultation with the Talent Ready Utah Board, to make rules outlining a grant recipient's reporting requirements; and

(d) Subsection 63N-12-506(7) which allows the Board to make rules outlining additional requirements for a grant recipient to include in the grant recipient's computer science grant plan.

(2) The purpose of this rule is to outline:

(a) the reporting requirements for a grant recipient; and

(b) the additional criteria required for a grant recipient to include in the grant recipient's computer science grant plan.

R277-473-2. Definitions.

(1) "Computer science advisory committee" or "advisory committee" means the computer science advisory committee established in Section R277-473-5.

(2) "Talent Ready Board" means the same as the term is defined in Subsection 63N-12-503.

R277-473-3. Incorporation of Utah's Master Plan.

(1) This rule incorporates by reference the Utah Master Plan, August 2019, which

(2) A copy of the Utah Master Plan is located at:

(a) https://www.schools.utah.gov/cte?mid=3363andtid=5; and

(b) the Utah State Board of Education - 250 East 500 South, Salt Lake City, Utah 30 84111.

R277-473-4. LEA Planning Grants.

(1) An LEA may apply for a planning grant in preparation for a full LEA plan and receiving a Computer Science Initiative Grant as described in this rule.

(2) A planning grant awarded under Subsection (1) shall be in the amount determined by student enrollment within the USBE state tier system up to $30,000.

(3) In order to qualify for a planning grant, an LEA shall:

(a) send an LEA representative to a pre-grant submission training conducted by the Superintendent; and

(b) complete a readiness assessment created by the Superintendent that provides an analysis for existing K-12 computer infrastructure in preparation for a grant.

(4)(a) If an LEA receives a planning grant, the LEA shall submit an LEA plan as set forth in Section R277-473-7 and 8 for the subsequent school year.

(b) An LEA that fails to submit an LEA plan in the subsequent year shall reimburse funds awarded under Subsection (2).

R277-473-5. Computer Science Advisory Committee Duties.

(1) The Superintendent shall create a computer science advisory committee.

(2) The advisory committee shall include the following members as non-voting chairs:

(a) the Superintendent; and

(b) the Executive Director of the Governor's Office of Economic Development or designee.

(3) In addition to the chairs described in Subsection (1), the Board, in consultation with the Talent Ready Utah Board, shall appoint five members to the advisory committee as follows:

(a) an industry representative;

(b) one member who represents a school district with expertise in digital teaching and learning;

(c) one member who represents a charter school with expertise in digital teaching and learning;

(d) a member of higher education; and

(e) a non-profit national computer science organization representative.

(3) The advisory committee shall:

(a) oversee review of an LEA plan to determine whether the LEA plan meets the criteria described in Subsection 63N-12-506(7);

(b) make a recommendation to the Superintendent and the Board on whether the Board should approve or deny an LEA plan;

(c) make recommendations to an LEA on how the LEA may improve the LEA's plan; and

(d) perform other duties as directed by:

(i) the Board; or

(ii) the Superintendent.

(4) The advisory committee may select additional LEA plan reviewers to assist the advisory committee with the work described in Subsection (3).

(5) The advisory committee, or the Superintendent on behalf of the advisory committee, shall present the advisory committee's recommendations on whether to approve or deny each LEA plan to the Board for the Board's approval.

R277-473-6. Board Approval or Denial of an LEA's Plan.

(1) The Board shall approve or deny each LEA plan submitted by the advisory committee.

(2) If the Board denies an LEA's plan, the LEA may amend and re-submit the LEA's plan to the advisory committee until the Board approves the LEA plan.

(3) The Board shall submit an approved LEA plan to the Talent Ready Utah Board for final approval as described in Subsection 63N-12-506(4).

R277-473-7. LEA Plan Requirements.

(1) An LEA shall develop a four-year plan in cooperation with educators, paraeducators, and parents.

(2) A plan shall be consistent with Subsection 63N-12-506(7) and include a comprehensive model outlined for each grade level.

R277-473-8. Grant Distribution.

(1) If an LEA's plan is approved by the Board, the Superintendent shall distribute grant money to the participating LEA as described in this section.

(2) An LEA with an approved plan may receive up to the LEA's requested amount.

(3) The Superintendent and advisory committee shall make computer science grant amount recommendations to the Board.

(4) The computer science grant amount recommendations shall be based on:

(a) an LEA's ability to satisfy the requirements of Subsection 63N-12-506(7);

(b) an LEA's completion of all the requirements listed in Subsection R277-473-4;

(c) the quality of an LEA's plan;

(d) the feasibility of an LEA's plan implementation; and

(e) the ability of an LEA to maximize the grant amount to reach the greatest amount of students possible.

(5)(a) If an LEA's plan is not approved during year one of the program, the advisory committee and the Superintendent shall provide additional supports to help the LEA become a qualifying LEA.

(b) The Superintendent shall redistribute the funds an LEA

would have been eligible to receive, in accordance with the competitive awards, to other qualifying LEAs if the LEA's plan is not approved after additional support described in Subsection (6)(a) is given.

(6) A non-qualifying LEA may reapply for grant money in subsequent years based on the LEA's plan being approved by the Board.

R277-473-9. Prohibited Uses of Grant Money.

A participating LEA may not use the grant money:

(1) to fund non-computer science programs;

(2) to purchase mobile telephones;

(3) to fund voice or data plans for mobile telephones;

(4) to supplant local funds; or

(5) for any expenditure outside of an LEA's budget for the LEA's approved plan.

R277-473-10. Participating LEA Reporting Requirements.

(1) An LEA shall provide a report as described in Subsections 63N-12-506(8)(a),(b), and (c).

KEY: computer science, grants, talent ready, Utah State Board of Education

November 8, 2019

Art X Sec 3
53E-3-401(4)
63N-12-506(5)
63N-12-506(7)(h)
63N-12-506(8)(d)

R277. Education, Administration.
R277-475. Patriotic, Civic and Character Education.
R277-475-1. Authority and Purpose.

(1) This rule is authorized by:

(a) the Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the Board;

(b) Subsection 53E-3-401(4) which allows the Board to adopt rules in accordance with its responsibilities; and

(c) Section 53G-10-304 which directs the Board to provide a rule for a program of instruction within the public schools relating to the flag of the United States.

(2) The purpose of this rule is to provide direction for patriotic, civic and character education programs in an LEA.

R277-475-2. Definitions.

(1) "Character education" means the same as that term is defined in Subsection 53G-10-204(1)(a).

(2) "Civic education" means the same as that term is defined in Subsection 53G-10-204(1)(b).

(3) "LEA" includes for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(4) "Patriotic" means having love of and dedication to one's country.

(5) "Patriotic education" means the educational and systematic process to help students identify, acquire, and act upon a dedication to one's country.

R277-475-3. Patriotic, Civic and Character Education.

(1) An LEA shall provide instruction for patriotic, civic and character education in the social studies curricula of kindergarten through grade twelve.

(2) An LEA shall ensure an educator has responsibility for patriotic, civic and character education taught in an integrated school curriculum and in the regular course of school work.

R277-475-4. School Responsibilities and Required Instruction.

(1) An LEA shall:

(a) ensure that all patriotic, civic and character education programs are consistent with the requirements of Sections 53G-10-302, 53G-10-304, and 53G-10-204;

(b) provide the setting and opportunities to teach patriotic values associated with the flag of the United States by example; and

(c) make information about the flag, respect for the flag, and civility toward all during patriotic activities available on the LEA's website.

(2) An LEA shall provide instruction in United States history and government that includes the following:

(a) a study of forms of government including:

(i) a republic;

(ii) a pure democracy;

(iii) a monarchy; and

(iv) an oligarchy.

(b) political philosophies and economic systems including:

(i) socialism;

(ii) individualism; and

(iii) free market capitalism.

(c) the United States' form of government: a compound constitutional republic; and

(d) the flag of the United States and the Pledge of Allegiance to the Flag consistent with:

(i) Subsection 53G-10-304(2);

(ii) Section 76-9-601;

(iii) the plan of the social studies Core curriculum in grades kindergarten through six; and

(iv) Subsection 53G-10-304(3).

R277-475-5. Parental Notice of Pledge of Allegiance.

(1) An LEA shall adequately notify students and parents of lawful exemptions to the requirement to participate in reciting the Pledge of Allegiance.

(2) An LEA may require an annual written request from a student's parent if a student or the student's parent requests that the student be excused from reciting the Pledge of Allegiance.

KEY: curricula, patriotic education, civic education, character education

November 8, 2019	**Art X Sec 3**
Notice of Continuation September 11, 2019	**53G-10-304**
	53E-3-401(4)

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; and

(d) provide for appropriate protection and maintenance of educator licensing data.

R277-487-2. Definitions.

(1) "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.

(2) "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.

(3) "Confidentiality" refers to an obligation not to disclose or transmit information to unauthorized parties.

(4) "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).

(5) "Data governance plan" has the same meaning as defined in Subsection 53E-9-301(6).

(6) "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.

(7) "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.

(8) "Expunge" means to seal a record so as to limit its availability to all except authorized individuals.

(9) "Enrollment verification data" includes:

(a) a student's birth certificate or other verification of age;

(b) verification of immunization or exemption from immunization form;

(c) proof of Utah public school residency;

(d) family income verification; or

(e) special education program information, including:

(i) an individualized education program;

(ii) a Section 504 accommodation plan; or

(iii) an English language learner plan.

(10) "FERPA" means the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, and its implementing regulations found at 34 C.F.R., Part 99.

(11) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(12) "Metadata dictionary" means any tool, document, or display that meets the requirements of Subsection 53E-9-301(11).

(13) "Personally identifiable student data" has the same meaning as defined in Subsection 53E-9-301(14) and 34 CFR 99.3.

(14) "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.

(15) "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.

(16) "Third party contractor" has the same meaning as defined in Subsection 53E-9-301(23).

R277-487-3. Data Privacy and Security Policies.

(1) By October 1 annually, each LEA shall provide the Superintendent with the following information:

(a) the name and contact information for the LEA's designated data manager and information security officer;

(b) the LEA's data governance plan;

(c) the LEA's annual notification of FERPA rights, as described in 34 CFR 99.7;

(d) the LEA's directory information notice, as described in 34 CFR 99.37;

(e) the LEA's student data collection notice, as described in Subsection 53E-9-305(2);

(f) the LEA's metadata dictionary; and

(g) evidence that the LEA has implemented a cyber security framework.

(2) 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 based on the LEA's cyber security framework.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) The Board may discipline a licensed educator in accordance with licensing discipline procedures if the educator violates this Rule R277-487.

(8) In accordance with the LEA's data governance plan, each 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. 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.

R277-487-6. 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.

R277-487-7. Application to Third Parties.

(1) A third-party contractor shall protect student personally identifiable information against unauthorized access and redisclosure, both physical and digital.

(2) A third-party contractor shall have policies in place that follow reasonably industry best practices and adequately address the protection of student personally identifiable information.

(3) A third-party contractor shall develop and document an information security program.

(4) A third-party contract shall inform an LEA or the Superintendent of the precautions taken regarding the maintenance and protection of student personally identifiable information.

(5) For the purposes of meeting the audit requirements of a contract subject to Subsection 53E-9-309(2)(e), a third-party contractor may:

(a) provide an LEA or the Superintendent a self-assessment of their compliance with the contract and the effectiveness of the information security program described in Subsection (3);

(b) provide responses to a questionnaire provided by the LEA or Superintendent;

(c) provide a report of an industry-recognized privacy and security audit, such as an SOC2 or SOC3; or

(d) submit to an onsite audit, if agreed upon by the third-party contract and the LEA or Superintendent.

R277-487-8. 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 developmental 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 HIPAA'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 Disabilities shall allow an audit that meets the requirements of Subsection R277-487-7(5) 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, expunge, or destroy any data that is inaccurate, misleading, or otherwise in violation of the privacy rights of the student.

R277-487-9. Data Security and Privacy Training for Educators.

(1) The Superintendent shall develop a student and data security and privacy training for educators.

(2) 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

November 8, 2019	**Art X Sec 3**
Notice of Continuation September 9, 2019	**53E-9-302**
	53E-3-401
	53G-11-511

R277. Education, Administration.
R277-506. School Psychologists, School Social Workers, School Counselors, Communication Disorders (Audiologists), Speech-Language Pathologists, and Speech-Language Technicians Licenses and Programs.
R277-506-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Career information delivery systems" means the state approved computer software program which provides specific occupation and career planning information, scholarship information, and information about postsecondary institutions.

C. "Communication Disorders license area of concentration" means the area of content required for an audiologist to provide services to individuals from birth through age 22. Communication Disorders area of concentration carries an audiology endorsement.

D. "Consultation" means consulting with parents, teachers, other educators, and community agencies regarding strategies to help students.

E. "Guidance curriculum planning" means structured, developmental experiences presented systematically through classroom and group activities which are organized in areas of self-knowledge, education and occupational exploration, and career planning directed toward meeting the Board approved student competencies.

F. "LEA" means local education agency, including local school boards/ public school districts, charter schools, and, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

G. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate Contract, to candidates who have also met all ancillary requirements established by law or rule.

H. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license as well as any additional requirements established by law or rule relating to professional preparation or experience.

I. "Practicum" means a practical, usually simulated, application of previously studied theory, monitored by a professional in the field. The experience shall include at least the following subject matter: student assessment and interpretation, guidance curriculum planning, individual and group counseling, individual education and occupational planning, and use of career information delivery systems.

J. "Speech-Language Pathologist (SLP) license" means a Speech-Language Pathologist area of concentration required for teaching students with communication disorders, birth through age 21. A Speech-Language Pathologist license carries a Speech-Language Pathologist endorsement.

K. "Speech-Language Technician (SLT) license area of concentration" means an area of concentration in which an individual has completed a Board approved bachelor's degree in communication disorders at an accredited higher education institution and additional training as required by the USOE.

L. "Temporary license" means a designation that an applicant has met all requirements of Section 3A(1), below.

M. "USOE" means the Utah State Office of Education.

R277-506-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Subsections 53E-3-501(1)(a), which requires the Board to make rules regarding the qualification and certification of educators and ancillary personnel who provide direct student services, and Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify:

(1) the standards for obtaining licenses and other credentials issued by the Board for employment in the public schools as school psychologists, school social workers, school counselors, audiologists, speech-language pathologists, and speech-language technicians; and

(2) the standards which shall be met by a post-secondary institution in order to receive Board approval of its program for school psychologists, school social workers, school counselors, audiologists, speech-language pathologists, and speech-language technicians.

R277-506-3. School Psychologist.

A. A candidate for the Level 1 School Psychologist License area of concentration shall have:

(1) completed at least an approved masters degree or equivalent certification program consisting of a minimum of 60 semester (90 quarter) hours in school psychology at an accredited institution;

(2) demonstrated competence in the following:

(a) understanding the organization, administration, and operation of schools, the major roles of personnel employed in schools, and curriculum development;

(b) directing psychological and psycho-educational assessments and intervention including all areas of exceptionality;

(c) individual and group intervention and remediation techniques, including consulting, behavioral methods, counseling, and primary prevention;

(d) understanding the ethical and professional practice and legal issues related to the work of school psychologists;

(e) social psychology, including interpersonal relations, communications and consultation with students, parents, and professional personnel;

(f) coordination and work with community-school relations and multicultural education programs and assessment; and

(g) the use and evaluation of tests and measurements, developmental psychology, affective and cognitive processes, social and biological bases of behavior, personality, and psychopathology;

(3) completed a one school year internship or its equivalent with a minimum of 1200 clock hours in school psychology. At least 600 of the 1200 clock hours shall be in a school setting or a setting with an educational component; and

(4) been recommended by an institution whose program of preparation for school psychologists has been approved by the Board.

B. Current certification as a nationally certified school psychologist by the National School Psychology Certification Board shall be accepted in lieu of requirements for the Level 1 License.

C. A candidate for the Level 2 School Psychologist License area of concentration shall:

(1) satisfy requirements for the Level 1 school psychologist License;

(2) have completed at least two years of successful experience as a school psychologist under a Level 1 School Psychologist License area of concentration or its equivalent; and

(3) have been recommended by the employing LEA with consultation from a teacher education institution.

D. The Board may approve the school psychologist preparation program of an institution if the program meets the standards prescribed in the Standards for State Approval of Teacher Education for school psychologists. These standards were developed by school psychologists in Utah schools and recommended to the Board by SACTE and are available from the USOE.

R277-506-4. School Social Workers.

A. A candidate for the Level 1 School Social Worker License area of concentration shall have:

(1) completed a Board approved program for the preparation of school social workers including a Master of Social Work degree from an accredited institution;

(2) demonstrated competence in the following:

(a) articulation of the role and function of the school social worker including relationships with other professional school and community personnel, organizations, and agencies;

(b) the understanding of the organization, administration, and evaluation of a school social work program;

(c) social work practice with individuals, families, and groups;

(d) the development and interpretation on of a social history and psycho-social assessment of the individual and the family system;

(e) the analysis of family dynamics and experience in counseling and conflict management and resolution;

(f) the communication and consultation of skills in working with the client, the family, the school staff, and community and social agencies;

(g) the understanding of the teaching/learning environment;

(h) the analysis of school law and child welfare issues;

(i) the use of social work methods to facilitate the affective domain of education and the learning process; and

(j) the knowledge pertaining to the cause and effects of social forces, cultural changes, stress, disability, disease, deprivation, neglect, and abuse on learning and on human behavior and development, and the effect of these forces on minorities of race, ethnicity, and class.

(3) completed an approved school social work internship in a school setting or in an agency which includes a substantial amount of experience with children and contact with schools; and

(4) been recommended by an institution whose program of preparation for social workers has been approved by the Board.

B. A candidate for the Level 2-Standard School Social Worker License area of concentration shall have:

(1) completed at least three years of successful experience as a school social worker under a Level 1 School Social Worker License area of concentration or its equivalent; and

(2) been recommended by the employing LEA with consultation from a teacher education institution.

C. The Board may approve the social worker program of an institution if the program meets the standards prescribed in the Standards for State Approval of Teacher Education for school social workers, developed and available as provided in R277-506-3D.

R277-506-5. School Counselors.

There are three levels of licensure for a K-12 school counselor:

A. The Board shall issue a School Counselor Professional Educator Level 1 License:

(1) to counselors who are beginning their professional careers who have completed an approved 600 hour field experience (400 hours if the applicant has completed two or more years of successful teaching experience as approved by USOE licensing); and

(2) upon completion of an accredited counselor education program; or

(3) to candidates applying for licensure under interstate agreements.

B. School Counselor Professional Educator License Level 2 is:

(1) a license issued after satisfaction of all requirements for a Level 1 license and 3 years of successful experience as a school counselor in an accredited school in Utah; and

(2) is valid for five years.

C. Counseling Intern Temporary License is based on written recommendation from a USOE accredited program that a candidate:

(1) is currently enrolled in the program;

(2) has completed 30 semester hours of course work, including successful completion of a practicum; and

(3) has skills to work in a school as an intern with supervision from the school setting and from the counselor education program.

(a) Letters from the accredited program recommending eligible candidates shall be submitted to USOE at the beginning of each school year.

(b) The Counseling Intern Temporary License is valid for the current year only and is not renewable.

R277-506-6. Communication Disorders (Audiologist).

A. A candidate shall complete a Board approved program for teaching students with communication disorders, which includes a master's degree, to qualify for the Communication Disorders license areas of concentration (audiologist).

B. The Board may approve the preparation program for audiologists of a higher education institution if the program is aligned with the standards prescribed by ASHA.

R277-506-7. Speech-Language Pathologist (SLP).

A. A candidate shall complete a Board approved program for teaching students with speech/language impairments to qualify for the SLP area of concentration. Such programs include:

(1) a master's degree and Certificate of Clinical Competence (CCC); or

(2) a master's degree; or

(3) an international equivalent of a master's degree, earned in a communication disorders program, or equivalent after receiving a bachelor's degree at an accredited higher education institution.

B. The Board may approve the preparation program for speech-language pathologists of a higher education institution if the program is aligned with the standards prescribed by ASHA.

C. The Board may license a candidate who has been accepted into a Board approved program and the candidate may be an SLT as described in R277-506-1K. The duties and responsibilities of the candidate may not exceed the candidate's current preparation.

D. This area of concentration does not qualify the individual to provide services outside of the educational setting.

R277-506-8. Speech-Language Technician (SLT).

A. a candidate shall complete a Board approved bachelor's degree in communication disorders and additional training as required by the USOE to qualify for the SLT area of concentration. A candidate shall complete additional professional development prior to or within the first year of receiving this area of concentration, in order to meet defined competencies.

B. A SLT shall work under the supervision of a SLP who accepts full responsibility for the work of the SLT.

C. The supervising SLP maintains full responsibility for the caseload of the SLP and any SLTs supervised by the SLP.

D. A candidate for the SLT area of concentration may perform SLT functions and duties solely within the confines of the public school.

E. The SLT's function and duties shall conform to Utah's SLP/SLT Handbook, developed by the USOE, 2007.

F. The performance of SLP and SLT duties shall be strictly consistent with Utah's SLP/SLT Handbook.

G. An LEA may substitute documented clinical employment at the LEA's, for employment in education.

KEY: educational program evaluations, professional competency, educator licensing

November 10, 2014	**Art X Sec 3**
Notice of Continuation November 8, 2019	**53E-3-501(1)(a)**
	53E-6-102
	53E-3-401(4)

R277. Education, Administration.
R277-609. Standards for LEA Discipline Plans and Emergency Safety Interventions.
R277-609-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) 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-3-501(1)(b)(v), which requires the Board to establish rules concerning discipline and control;

(d) Section 53E-3-509, which requires the Board to adopt rules that require a local school board or governing board of a charter school to enact gang prevention and intervention policies for all schools within the board's jurisdiction;

(e) Section 53G-8-702, which requires the Board to adopt rules regarding training programs for school principals and school resource officers; and

(f) Section 53G-8-202, which directs local school boards and charter school governing boards to adopt conduct and discipline policies and directs the Board to develop model policies to assist local school boards and charter school governing boards.

(2)(a) The purpose of this rule is to outline requirements for school discipline plans and policies.

(b) An LEA's written policies shall include provisions to develop, implement, and monitor the policies for the use of emergency safety interventions in all schools and for all students within each LEA's jurisdiction.

R277-609-2. Definitions.

(1) "Discipline" includes:

(a) imposed discipline; and

(b) self-discipline.

(2) "Disruptive student behavior" includes:

(a) the grounds for suspension or expulsion described in Section 53G-8-205; and

(b) the conduct described in Subsection 53G-8-209(2)(b).

(3)(a) "Emergency safety intervention" means the use of seclusionary time out or physical restraint when a student presents an immediate danger to self or others.

(b) An "emergency safety intervention" is not for disciplinary purposes.

(4) "Functional Behavior Assessment" or "FBA" means a systematic process of identifying problem behaviors and the events that reliably predict occurrence and non-occurrence of those behaviors and maintain the behaviors across time.

(5) "Immediate danger" means the imminent danger of physical violence or aggression towards self or others, which is likely to cause serious physical harm.

(6) "Imposed discipline" means a code of conduct prescribed for the highest welfare of the individual and of the society in which the individual lives.

(7) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(8) "Physical restraint" means personal restriction that immobilizes or reduces the ability of an individual to move the individual's arms, legs, body, or head freely.

(9) "Plan" means an LEA and school-wide written model for prevention and intervention addressing student behavior management and discipline procedures for students.

(10) "Program" means an instructional or behavioral program, including a program:

(a) provided by contract private providers under the direct supervision of public school staff;

(b) that receives public funding; or

(c) for which the Board has regulatory authority.

(11) "Policy" means standards and procedures that include:

(a) the provisions of Section 53G-8-202 and additional standards, procedures, and training adopted in an open meeting by a local board of education or charter school board that:

(i) defines hazing, bullying, and cyber-bullying;

(ii) prohibits hazing and bullying;

(iii) requires annual discussion and training designed to prevent hazing, bullying, cyber-bullying, discipline, and emergency safety interventions, among school employees and students; and

(iv) provides for enforcement through employment action or student discipline.

(12) "Qualifying minor" means a school-age minor who:

(a) is at least nine years old; or

(b) turns nine years old at any time during the school year.

(13) "Restorative justice program" means the same as that term is defined in Section 53G-8-211.

(14) "School" means any public elementary or secondary school or charter school.

(15) "School board" means:

(a) a local school board; or

(b) a local charter board.

(16) "School employee" means:

(a) a school teacher;

(b) a school staff member;

(c) a school administrator; or

(d) any other person employed, directly or indirectly, by an LEA.

(17) "Seclusionary time out" means that a student is:

(a) placed in a safe enclosed area by school personnel in accordance with the requirements of Rules R392-200 and R710-4;

(b) purposefully isolated from adults and peers; and

(c) prevented from leaving, or reasonably believes that the student will be prevented from leaving, the enclosed area.

(18) "Section 504 accommodation plan," required by Section 504 of the Rehabilitation Act of 1973, means a plan designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

(19) "Self-Discipline" means a personal system of organized behavior designed to promote self-interest while contributing to the welfare of others.

(20) "Student with a qualifying offense" means a qualifying minor who committed an alleged class C misdemeanor, infraction, status offense on school property, or truancy.

R277-609-3. Incorporation of Least Restricted Behavioral Interventions (LRBI) Technical Assistance Manual by Reference.

(1) This rule incorporates by reference the LRBI Technical Assistance Manual, dated September 2015, which provides guidance and information in creating successful behavioral systems and supports within Utah's public schools that:

(a) promote positive behaviors while preventing negative or risky behaviors; and

(b) create a safe learning environment that enhances all student outcomes.

(2) A copy of the manual is located at:

(a) https://www.schools.utah.gov/file/d6715b0b-9125-4132-86d3-179d8629a895; and

(b) the Utah State Board of Education.

R277-609-4. LEA Responsibility to Develop Plans.

(1) An LEA or school shall develop and implement a board approved comprehensive LEA plan or policy for student

and classroom management, and school discipline.

(2) An LEA shall include administration, instruction and support staff, students, parents, community council, and other community members in policy development, training, and prevention implementation so as to create a community sense of participation, ownership, support, and responsibility.

(3) A plan described in Subsection (1) shall include:

(a) the definitions of Section 53G-8-210;

(b) written standards for student behavior expectations, including school and classroom management;

(c) effective instructional practices for teaching student expectations, including:

(i) self-discipline;

(ii) citizenship;

(iii) civic skills; and

(iv) social skills;

(d) systematic methods for reinforcement of expected behaviors;

(e) uniform and equitable methods for correction of student behavior;

(f) uniform and equitable methods for at least annual school level data-based evaluations of efficiency and effectiveness;

(g) an ongoing staff development program related to development of:

(i) student behavior expectations;

(ii) effective instructional practices for teaching and reinforcing behavior expectations;

(iii) effective intervention strategies; and

(iv) effective strategies for evaluation of the efficiency and effectiveness of interventions;

(h) procedures for ongoing training of appropriate school personnel in:

(i) crisis intervention training;

(ii) emergency safety intervention professional development; and

(iii) LEA policies related to emergency safety interventions consistent with evidence-based practice;

(i) policies and procedures relating to the use and abuse of alcohol and controlled substances by students;

(j) policies and procedures, consistent with requirements of Rule R277-613, related to:

(i) bullying;

(ii) cyber-bullying;

(iv) hazing; and

(v) retaliation;

(k) policies and procedures for the use of emergency safety interventions for all students consistent with evidence-based practices including prohibition of:

(i) physical restraint, subject to the requirements of Section R277-609-5, except when the physical restraint is allowed as described in Subsection 53G-8-302(2);

(ii) prone, or face-down, physical restraint;

(iii) supine, or face-up, physical restraint;

(iv) physical restraint that obstructs the airway of a student or adversely affects a student's primary mode of communication;

(v) mechanical restraint, except:

(A) protective or stabilizing restraints;

(B) restraints required by law, including seatbelts or any other safety equipment when used to secure students during transportation; and

(C) any device used by a law enforcement officer in carrying out law enforcement duties;

(vi) chemical restraint, except as:

(A) prescribed by a licensed physician, or other qualified health professional acting under the scope of the professional's authority under State law, for the standard treatment of a student's medical or psychiatric condition; and

(B) administered as prescribed by the licensed physician or other qualified health professional acting under the scope of the professional's authority under state law;

(vii) seclusionary time out, subject to the requirements of Section R277-609-5, except when a student presents an immediate danger of serious physical harm to self or others; and

(viii) for a student with a disability, emergency safety interventions written into a student's IEP, as a planned intervention, unless:

(A) school personnel, the family, and the IEP team agree less restrictive means which meet circumstances described in Section R277-608-5 have been attempted;

(B) a FBA has been conducted; and

(C) a positive behavior intervention plan based on data analysis has been written into the plan and implemented.

(l) direction for dealing with bullying and disruptive students;

(m) direction for schools to determine the range of behaviors and establish the continuum of administrative procedures that may be used by school personnel to address student behavior, including students who engage in disruptive student behaviors as described in Section 53G-8-210;

(n) identification, by position, of an individual designated to issue notices of disruptive and bullying student behavior;

(o) identification of individuals who shall receive notices of disruptive and bullying student behavior;

(p) a requirement to provide for documentation of an alleged class B misdemeanor or a nonperson class A misdemeanor prior to referral of students with an alleged class B misdemeanor or a nonperson class A misdemeanor to juvenile court;

(q) strategies to provide for necessary adult supervision;

(R) a requirement that policies be clearly written and consistently enforced;

(s) notice to employees that violation of this rule may result in employee discipline or action;

(t) gang prevention and intervention policies in accordance with Subsection 53E-3-509(1);

(u) provisions that account for an individual LEA's or school's unique needs or circumstances, including:

(i) the role of law enforcement;

(ii) emergency medical services; and

(iii) a provision for publication of notice to parents and school employees of policies by reasonable means; and

(iv) a plan for referral for a student with a qualifying office to alternative school-related interventions, including:

(A) a mobile crisis outreach team, as defined in Section 78A-6-105;

(B) a receiving center operated by the Division of Juvenile Justice Services in accordance with Section 62A-7-104;

(C) a youth court; or

(v) a comparable restorative justice program.

(4) A plan described in Subsection (1) may include:

(a) the provisions of Subsection 53E-3-509(2); and

(b) a plan for training administrators and school resource officers in accordance with Section 53G-8-702.

R277-609-5. Physical Restraint and Seclusionary Time Out.

(1) When used consistently with an LEA plan under Subsection R277-609-4(1);

(a) a physical restraint must be immediately terminated when:

(i) a student is no longer an immediate danger to self or others; or

(ii) a student is in severe distress; and

(b) the use of physical restraint shall be for the minimum time necessary to ensure safety and a release criteria, as outlined in LEA policies, must be implemented.

(2) If a public education employee physically restrains a student, the school or the public education employee shall

immediately notify:
(a) the student's parent or guardian; and
(b) school administration.
(3) A public education employee may not use physical restraint on a student for more than 30 minutes.
(4) In addition to the notice described in Subsection (2), if a public education employee physically restrains a student for more than fifteen minutes, the school or the public education employee shall immediately notify:
(a) the student's parent or guardian; and
(b) school administration.
(5) An LEA may not use physical restraint as a means of discipline or punishment.
(6) If a public education employee uses seclusionary time out, the public education employee shall:
(a) use the minimum time necessary to ensure safety;
(b) use release criteria as outlined in LEA policies;
(c) ensure that any door remains unlocked;
(d) maintain the student within line of sight of the public education employee;
(e) use the seclusionary time out consistent with the LEA's plan described in Section R277-609-4; and
(f) ensure that the enclosed area meets the fire and public safety requirements described in R392-200 and R710-4.
(7) If a student is placed in seclusionary time out, the school or the public education employee shall immediately notify:
(a) the student's parent or guardian; and
(b) school administration.
(8) A public education employee may not place a student in a seclusionary time out for more than 30 minutes.
(9) In addition to the notice described in Subsection (7), if a public education employee places a student in seclusionary time out for more than fifteen minutes, the school or the public education employee shall immediately notify:
(a) the student's parent or guardian; and
(b) school administration.
(10) Seclusionary time out may only be used for maintaining safety.
(11) A public education employee may not use seclusionary time out as a means of discipline or punishment.

R277-609-6. Implementation.
(1) An LEA shall implement strategies and policies consistent with the LEA's plan required in Section R277-609-4.
(2) An LEA shall develop, use and monitor a continuum of intervention strategies to assist students, including students whose behavior in school falls repeatedly short of reasonable expectations, by teaching student behavior expectations, reinforcing student behavior expectations, re-teaching behavior expectations, followed by effective, evidence-based interventions matched to student needs prior to administrative referral.
(3) An LEA shall implement positive behavior interventions and supports as part of the LEA's continuum of behavior interventions strategies.
(4) Nothing in state law or this rule restricts an LEA from implementing policies to allow for suspension of students of any age consistent with due process requirements and consistent with all requirements of the Individuals with Disabilities Education Act 2004.

R277-609-7. LEA Emergency Safety Intervention (ESI Committees.
(1) An LEA shall establish an Emergency Safety Intervention (ESI) Committee before September 1, 2015.
(2) The LEA ESI Committee:
(a) shall include:
(i) at least two administrators;
(ii) at least one parent or guardian of a student enrolled in the LEA, appointed by the LEA; and
(iii) at least two certified educational professionals with behavior training and knowledge in both state rules and LEA discipline policies;
(b) shall meet often enough to monitor the use of emergency safety intervention in the LEA;
(c) shall determine and recommend professional development needs; and
(d) shall develop policies for local dispute resolution processes to address concerns regarding disciplinary actions.

R277-609-8. LEA Reporting.
(1) An LEA shall have procedures for the collection, maintenance, and periodic review of documentation or records of the use of emergency safety interventions at schools within the LEA.
(2) The Superintendent shall define the procedures for the collection, maintenance, and review of records described in Subsection (1).
(3) An LEA shall provide documentation of any school, program or LEA's use of emergency safety interventions to the Superintendent annually.
(4)(a) An LEA shall submit all required UTREx discipline incident data elements to the Superintendent no later than June 30, 2018.
(b) Beginning in the 2018-19 school year, an LEA shall submit all required UTREx discipline incident data elements as part of the LEA's daily UTREx submission.

R277-609-9. Special Education Exception(s) to this Rule.
(1) An LEA shall have in place, as part of its LEA special education policies, procedures, or practices, criteria and steps for using emergency safety interventions consistent with state and federal law.
(2) The Superintendent shall periodically review:
(a) all LEA special education behavior intervention plans, procedures, or manuals; and
(b) emergency safety intervention data as related to IDEA eligible students in accordance with Utah's Program Improvement and Planning System.

R277-609-10. Parent/Guardian Notification and Court Referral.
(1) LEA policies shall provide procedures for qualifying minors and their parents to participate in decisions regarding consequences for disruptive student behavior.
(2) An LEA shall establish policies that:
(a) provide notice to parents and information about resources available to assist a parent in resolving the parent's school-age minors' disruptive behavior;
(b) provide for notices of disruptive behavior to be issued by schools to qualifying minors and parents consistent with:
(i) numbers of disruptions and timelines in accordance with Section 53G-8-210;
(ii) school resources available;
(iii) cooperation from the appropriate juvenile court in accessing student school records, including:
(A) attendance;
(B) grades;
(C) behavioral reports; and
(D) other available student school data; and
(iv) provide due process procedures for minors and parents to contest allegations and citations of disruptive student behavior.
(3)(a) When a crisis situation occurs that requires the use of an emergency safety intervention to protect the student or others from harm, a school shall notify the LEA and the student's parent or guardian as soon as possible and no later than

the end of the school day.

(b) In addition to the notice described in Subsection (3)(a), if a crisis situation occurs for more than fifteen minutes, the school shall immediately notify:

(i) the student's parent or guardian; and

(ii) school administration.

(d) A notice described in Subsection (3)(a) shall be documented within student information systems (SIS) records.

(4)(a) A school shall provide a parent or guardian with a copy of any notes or additional documentation taken during a crisis situation upon request of the parent or guardian.

(b) Within 24 hours of a crisis situation, a school shall notify a parent or guardian that the parent or guardian may request a copy of any notes or additional documentation taken during a crisis situation.

(c) A parent or guardian may request a time to meet with school staff and administration to discuss a crisis situation.

R277-609-11. Model Policies.

(1) The Superintendent shall develop, review regularly, and provide to LEA boards model policies to address disruptive student behavior and appropriate consequences.

(2) The Superintendent shall provide technical assistance to LEAs in developing and implementing policies and training employees in the appropriate use of physical force and emergency safety interventions to the extent of resources available.

R277-609-12. LEA Compliance.

If an LEA fails to comply with this rule, the Superintendent may withhold funds in accordance with Rule R277-114 or impose any other sanction authorized by law.

KEY: disciplinary actions, disruptive students, emergency safety interventions

May 8, 2018 **Art X Sec 3**

Notice of Continuation November 14, 2019 **53E-3-401(4)**

53E-3-501(1)(b)(v)

53E-3-509

53G-8-202

53G-8-702

R277. Education, Administration.
R277-715. Out-of-School Time Program Standards.
R277-715-1. 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-4-301(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-3-508, which requires the Board to adopt rules to set standards for high quality out-of-school time programs.

(2) The purpose of this rule is to set standards for high quality out-of-school time programs, and establish the programs required to adopt those standards.

R277-715-2. Definitions.

(1) "Assessment tool" means the Utah After-school Program Quality Assessment and Improvement Tool developed by a statewide multi-agency stakeholder group, and administered by the Utah After-school Network.

(2) "Out-of-school time" means time that a student at a participating program is engaged in a learning environment that is not during regular school hours, including before school, after school, and during the summer.

(3) "Participating program" means a program that receives funds from the Board or from the Department of Workforce Services to support the program's out-of-school time programming.

R277-715-3. Requirements and Standards for High Quality Out-of-School Time Programs.

(1) A participating program shall:

(a) use the assessment tool to determine the extent to which the program is meeting the standards described in this Section;

(b) ensure that it is working toward achieving the standards described in this Section; and

(c) collect and submit student attendance data to the Superintendent in a format prescribed by the Superintendent.

(2) The Superintendent shall provide for a flag in a student's data file to indicate the student's attendance in a participating program.

(3) The safety standard includes the following components in order to provide a safe, healthy, and nurturing environment for all participants, including that:

(a) staff are professionally qualified to work with program participants;

(b) policies and procedures are established and implemented to ensure the health and safety of all program participants;

(c) program participants are carefully supervised to maintain safety;

(d) a transportation policy is established and communicated to staff and families of participants; and

(e) a consistent and responsive behavior management plan is established and implemented.

(4) The relationships standard includes the following components in order to develop and maintain positive relationships among staff, participants, families, schools, and communities, including that:

(a) staff and participants know, respect, and support each other;

(b) the program communicates and collaborates with the school and the community; and

(c) the program fosters family involvement to support program goals.

(5) The skills standard includes the following components in order to encourage participants to learn new skills, including that:

(a) participants are actively engaged in learning activities that promote critical thinking, creative thinking, and that build on the individual's interests and strengths;

(b) the program aligns academic support and interventions to the school-day curricula to address student learning needs; and

(c) the program offers a variety of life skill activities and needs-based support to promote leadership skills, personal growth, and responsible behaviors toward self and others.

(6) The administration standard includes the following components in order to ensure that the program is effectively administered, including that the program:

(a) has established a plan for increasing capacity, ensuring program quality, and promoting sustainability, including sound fiscal management;

(b) establishes and consistently implements clearly-defined policies and procedures;

(c) recruits, hires, and trains diverse and qualified staff members who value and nurture all participants; and

(d) provides professional development and training opportunities to enhance staff job performance.

KEY: out-of-school time, programs, standards, students

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	53E-3-508

R307. Environmental Quality, Air Quality.
R307-110. General Requirements: State Implementation Plan.
R307-110-1. Incorporation by Reference.

To meet requirements of the Federal Clean Air Act, the Utah State Implementation Plan (SIP) must be incorporated by reference into these rules. Copies of the SIP are available on the division's website.

R307-110-2. Section I, Legal Authority.

The Utah State Implementation Plan, Section I, Legal Authority, as most recently amended by the Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-3. Section II, Review of New and Modified Air Pollution Sources.

The Utah State Implementation Plan, Section II, Review of New and Modified Air Pollution Sources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-4. Section III, Source Surveillance.

The Utah State Implementation Plan, Section III, Source Surveillance, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-5. Section IV, Ambient Air Monitoring Program.

The Utah State Implementation Plan, Section IV, Ambient Air Monitoring Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-6. Section V, Resources.

The Utah State Implementation Plan, Section V, Resources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-7. Section VI, Intergovernmental Cooperation.

The Utah State Implementation Plan, Section VI, Intergovernmental Cooperation, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-8. Section VII, Prevention of Air Pollution Emergency Episodes.

The Utah State Implementation Plan, Section VII, Prevention of Air Pollution Emergency Episodes, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-9. Section VIII, Prevention of Significant Deterioration.

The Utah State Implementation Plan, Section VIII, Prevention of Significant Deterioration, as most recently amended by the Utah Air Quality Board on March 8, 2006, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-10. Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter, as most recently amended by the Utah Air Quality Board on January 2, 2019, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-11. Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide, as most recently amended by the Utah Air Quality Board on January 5, 2005, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-12. Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide, as most recently amended by the Utah Air Quality Board on June 6, 2018, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-13. Section IX, Control Measures for Area and Point Sources, Part D, Ozone.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part D, Ozone, as most recently amended by the Utah Air Quality Board on January 3, 2007, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-14. Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-15. Section IX, Control Measures for Area and Point Sources, Part F, Lead.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part F, Lead, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-16. (Reserved.)

Reserved.

R307-110-17. Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits and Operating Practices, as most recently amended by the Utah Air Quality Board on December 4, 2019, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-18. Reserved.

Reserved.

R307-110-19. Section XI, Other Control Measures for Mobile Sources.

The Utah State Implementation Plan, Section XI, Other Control Measures for Mobile Sources, as most recently amended by the Utah Air Quality Board on February 9, 2000, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-20. Section XII, Transportation Conformity Consultation.

The Utah State Implementation Plan, Section XII, Transportation Conformity Consultation, as most recently amended by the Utah Air Quality Board on May 2, 2007, pursuant to 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-21. Section XIII, Analysis of Plan Impact.

The Utah State Implementation Plan, Section XIII, Analysis of Plan Impact, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-22. Section XIV, Comprehensive Emission Inventory.

The Utah State Implementation Plan, Section XIV, Comprehensive Emission Inventory, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-23. Section XV, Utah Code Title 19, Chapter 2, Air Conservation Act.

Section XV of the Utah State Implementation Plan contains Utah Code Title 19, Chapter 2, Air Conservation Act.

R307-110-24. Section XVI, Public Notification.

The Utah State Implementation Plan, Section XVI, Public Notification, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-25. Section XVII, Visibility Protection.

The Utah State Implementation Plan, Section XVII, Visibility Protection, as most recently amended by the Utah Air Quality Board on March 26, 1993, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-26. Section XVIII, Demonstration of GEP Stack Height.

The Utah State Implementation Plan, Section XVIII, Demonstration of GEP Stack Height, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-27. Section XIX, Small Business Assistance Program.

The Utah State Implementation Plan, Section XIX, Small Business Assistance Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-28. Regional Haze.

The Utah State Implementation Plan, Section XX, Regional Haze, as most recently amended by the Utah Air Quality Board on June 24, 2019, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-29. Section XXI, Diesel Inspection and Maintenance Program.

The Utah State Implementation Plan, Section XXI, Diesel Inspection and Maintenance Program, as most recently amended by the Utah Air Quality Board on July 12, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-30. Section XXII, General Conformity.

The Utah State Implementation Plan, Section XXII, General Conformity, as adopted by the Utah Air Quality Board on October 4, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-31. Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability, as most recently amended by the Utah Air Quality Board on September 4, 2019, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-32. Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-33. Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County, as most recently amended by the Utah Air Quality Board on October 6, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-34. Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-35. Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-36. Section X, Vehicle Inspection and Maintenance Program, Part F, Cache County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part F, Cache County, as most recently adopted by the Utah Air Quality Board on September 4, 2019, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-37. Section XXIII, Interstate Transport.

The Utah State Implementation Plan, Section XXIII, Interstate Transport, as most recently adopted by the Utah Air Quality Board on February 7, 2007, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, PM10, PM2.5, ozone
November 25, 2019 19-2-104
Notice of Continuation January 27, 2017

R307. Environmental Quality, Air Quality.
R307-405. Permits: Major Sources in Attainment or Unclassified Areas (PSD).
R307-405-1. Purpose.

This rule implements the federal Prevention of Significant Deterioration (PSD) permitting program for major sources and major modifications in attainment areas and maintenance areas as required by 40 CFR 51.166. This rule does not include the routine maintenance, repair and replacement provisions that were vacated by the DC Circuit Court of Appeals on March 17, 2006. This rule supplements, but does not replace, the permitting requirements of R307-401.

R307-405-2. Applicability.

(1) All references to 40 CFR in R307-405 shall mean the version that is in effect on July 1, 2018.

(2) The provisions of 40 CFR 52.21(a)(2) are hereby incorporated by reference.

(3) Notwithstanding the exemptions in R307-401, any source that is subject to R307-405 is subject to the requirement to obtain an approval order in R307-401-5 through 8.

R307-405-3. Definitions.

(1) Except as provided in (2) and (9) below, the definitions contained in 40 CFR 52.21(b) are hereby incorporated by reference.

(2)(a) In the definition of "baseline area" in 40 CFR 52.21(b)(15)(ii)(b) insert the words "or R307-405" after "Is subject to 40 CFR 52.21".

(b) "Reviewing Authority" means the director.

(c)(i) The term "Administrator" shall be changed to "director" throughout R307-405, except as provided in (ii).

(ii) The term "Administrator" shall be changed to "EPA Administrator" in the following incorporated sections:

(A) 40 CFR 52.21(b)(17),
(B) 40 CFR 52.21(b)(37)(i),
(C) 40 CFR 52.21(b)(43),
(D) 40 CFR 52.21(b)(48)(ii)(c),
(E) 40 CFR 52.21(b)(50)(i),
(F) 40 CFR 52.21(l)(2),
(G) 40 CFR 52.21(p)(2), and
(H) 40 CFR 51.166(q)(2)(iv).

(d) The following definitions or portions of definitions that apply to the equipment repair and replacement provisions are not incorporated because these provisions were vacated by the DC Circuit Court of Appeals on March 17, 2006:

(i) in the definition major modification in 40 CFR 52.21(b)(2), the second sentence in subparagraph (iii)(a),

(ii) the definition of "process unit" in 40 CFR 52.21(b)(55),

(iii) the definition of "functionally equivalent component" in 40 CFR 52.21(b)(56),

(iv) the definition of "fixed capital cost" in 40 CFR 52.21 (b)(57), and

(v) the definition of "total capital investment" in 40 CFR 52.21(b)(58).

(e) In the definition of "Regulated NSR pollutant" in 40 CFR 52.21(b)(50), subparagraph (iv) shall be changed to read, "Any pollutant that otherwise is subject to regulation under the Act." A new subparagraph (v) shall be added that reads, "The term regulated NSR pollutant shall not include any or all hazardous air pollutants either listed in section 112 of the federal Clean Air Act, or added to the list pursuant to section 112(b)(2) of the federal Clean Air Act, and which have not been delisted pursuant to section 112(b)(3) of the federal Clean Air Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the federal Clean Air Act."

(3) "Air Quality Related Values," as used in analyses under 40 CFR 52.21 (p) that is incorporated by reference in R307-405-17, means those special attributes of a Class I area, assigned by a federal land manager, that are adversely affected by air quality.

(4) "Heat input" means heat input as defined in 40 CFR 52.01(g), that is hereby incorporated by reference.

(5) "Title V permit" means any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to R307-415.

(6) "Title V Operating Permit Program" means R307-415.

(7) The definition of "Good Engineering Practice (GEP) Stack Height" as defined in R307-410 shall apply in this rule.

(8) The definition of "Dispersion Technique" as defined in R307-410 shall apply in this rule.

(9) "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the federal Clean Air Act, or a nationally-applicable regulation codified by the Administrator in subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(a) "Greenhouse gases (GHGs)," the air pollutant defined in 40 CFR 86.1818-12(a) (Federal Register, Vol. 75, Page 25686) as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in paragraph (d) of this section.

(b) For purposes of paragraphs (c) through (d) of this section, the term "tons per year (tpy) CO2 equivalent emissions (CO2e)" shall represent an amount of GHGs emitted, and shall be computed as follows:

(i) Multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of 40 CFR Part 98 - Global Warming Potentials, that is hereby incorporated by reference (Federal Register, Vol. 74, Pages 56395-96).

(ii) Sum the resultant value from paragraph (b)(i) of this section for each gas to compute a tpy CO2e.

(c) The term "emissions increase" as used in paragraph (d) of this section shall mean that both a significant emissions increase (as calculated using the procedures in 40 CFR 52.21 (a)(2)(iv) that is incorporated by reference in R307-405-2) and a significant net emissions increase (as defined in paragraphs 40 CFR 52.21(b)(3) and (b)(23) that is incorporated by reference in R307-405-3) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO2e instead of applying the value in paragraph 40 CFR 52.21(b)(23)(ii).

(d) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO2e or more; or

(ii) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO2e or more.

R307-405-4. Area Designations.

(1) Pursuant to section 162(a) of the federal Clean Air Act, the following areas are designated as mandatory Class I areas:

(a) Arches National Park,
(b) Bryce Canyon National Park,
(c) Canyonlands National Park,

(d) Capitol Reef National Park, and
(e) Zion National Park.
(2) Pursuant to section 162(b) of the federal Clean Air Act, all other areas in Utah are designated as Class II unless designated as nonattainment areas.
(3) No areas in Utah are designated as Class III.

R307-405-5. Area Redesignation.
Any person may petition the Board to change the classification of an area designated under R307-405-4, except for mandatory Class I areas designated under R307-405-4(1).
(1) The petition shall contain a discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic and social and energy effects of the proposed redesignation.
(2) The petition shall contain a demonstration that the proposed redesignation meets the criteria outlined in Section VIII of the State Implementation Plan and 40 CFR 51.166(e) and (g), that is hereby incorporated by reference.

R307-405-6. Ambient Air Increments.
The provisions of 40 CFR 52.21(c) are hereby incorporated by reference.

R307-405-7. Ambient Air Ceilings.
The provisions of 40 CFR 52.21(d) are hereby incorporated by reference.

R307-405-8. Exclusions from Increment Consumption.
(1) The following concentrations shall be excluded in determining compliance with a maximum allowable increase:
(a) concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) over the emissions from such sources before the effective date of such an order;
(b) concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan;
(c) concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;
(d) the increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and
(e) concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen dioxides from stationary sources which are affected by plan revisions approved by the EPA Administrator as meeting the criteria specified in 40 CFR 51.166(f)(4). The temporary increase shall not exceed 2 years in duration unless a longer time is approved by the EPA Administrator. This exclusion is not renewable.
(2) No exclusion of concentration under (1)(a) or (b) above shall apply more than five years after the effective date of the order to which paragraph (1)(a) refers or the plan to which paragraph (1)(b) refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than five years after the later of such effective dates.
(3) No exclusion under (1)(e) shall apply to an emission increase from a stationary source which would:
(a) impact a Class I area or an area where an applicable increment is known to be violated; or
(b) cause or contribute to a violation of the national ambient air quality standards.

R307-405-9. Stack Heights.
The provisions of 40 CFR 52.21(h) are hereby incorporated by reference.

R307-405-10. Exemptions.
(1) The provisions of 40 CFR 52.21(i)(1)(vi) through (viii) are hereby incorporated by reference.
(2) The provisions of 40 CFR 52.21(i)(2) through (5) are hereby incorporated by reference.

R307-405-11. Control Technology Review.
The provisions of 40 CFR 52.21(j) are hereby incorporated by reference.

R307-405-12. Source Impact Analysis.
The provisions of 40 CFR 52.21(k) are hereby incorporated by reference.

R307-405-13. Air Quality Models.
The provisions of 40 CFR 52.21(l) are hereby incorporated by reference.

R307-405-14. Air Quality Analysis.
(1) The provisions of 40 CFR 52.21(m)(1)(i) through (iv), (vi), and (viii) are hereby incorporated by reference.
(2) The provisions of 40 CFR 52.21(m)(2) and (3) are hereby incorporated by reference.

R307-405-15. Source Information.
The provisions of 40 CFR 52.21(n) are hereby incorporated by reference.

R307-405-16. Additional Impact Analysis.
The provisions of 40 CFR 52.21(o) are hereby incorporated by reference.

R307-405-17. Sources Impacting Federal Class I Areas: Additional Requirements.
(1) The provisions of 40 CFR 52.21(p) are hereby incorporated by reference.
(2) The director will transmit to the EPA Administrator a copy of each permit application relating to a major stationary source or major modification and provide notice to the EPA Administrator of every action related to the consideration of such permit.

R307-405-18. Public Participation.
(1) Except as provided in (2), the provisions of 40 CFR 51.166(q)(1) and (2) are hereby incorporated by reference.
(2) The phrase "within a specified time period" in 40 CFR 51.166(q)(1) shall be replaced with the phrase "within 30 days of receipt of the PSD permit application".

R307-405-19. Source Obligation.
The provisions of 40 CFR 52.21(r) are hereby incorporated by reference.

R307-405-20. Innovative Control Technology.
(1) Except as provided in (2), the provisions of 40 CFR 52.21(v) are hereby incorporated by reference.
(2)(a) The reference to "40 CFR 124.10" in 40 CFR 52.21(v)(1) shall be changed to "R307-405-18".
(b) 40 CFR 52.21(v)(2) shall be changed to read "The director shall, with the consent of the governors of other affected states, determine that the source or modification may employ a system of innovative control technology, if:".

R307-405-21. Actuals PALs.

(1) Except as provided in (2), the provisions of 40 CFR 52.21(aa) are hereby incorporated by reference.

(2) (a) The reference to "51.165(a)(3)(ii) of this chapter" in 40 CFR 52.21(aa)(4)(ii) shall be changed to "R307-403".

(b) The reference to "51.165(a)(3)(ii) of this chapter" in 40 CFR 52.21(aa)(8)(ii)(2) shall be changed to "R307-403".

(c) The references to "70.6(a)(3)(iii)(B) of this chapter" in 40 CFR 52.21(aa)(14)(ii) shall be changed to "R307-415-6a(3)(c)(ii)".

(d) The date of "March 3, 2003" in 40 CFR 52.21(aa)(15)(i) and (ii) shall be changed to "June 16, 2006".

R307-405-22. Banking of Emission Offset Credit in PSD Areas.

Banking of emission offset credits in PSD areas will be permitted. To preserve banked emission reductions the director must identify them in either the Utah SIP or an order. The director will provide a registry to identify the person, private entity, or government authority that has the right to use or allocate the banked emission reduction and to record any transfer of or lien on these rights.

KEY: air pollution, PSD, Class I area, greenhouse gases
November 25, 2019 19-2-104
Notice of Continuation November 13, 2018

R307. Environmental Quality, Air Quality.
R307-410. Permits: Emissions Impact Analysis.
R307-410-1. Purpose.

This rule establishes the procedures and requirements for evaluating the emissions impact of new or modified sources that require an approval order under R307-401 to ensure that the source will not interfere with the attainment or maintenance of any NAAQS. The rule also establishes the procedures and requirements for evaluating the emissions impact of hazardous air pollutants. The rule also establishes the procedures for establishing an emission rate based on the good engineering practice stack height as required by 40 CFR 51.118.

R307-410-2. Definitions.

(1) The following additional definitions apply to R307-410.

"Vertically Restricted Emissions Release" means the release of an air pollutant through a stack or opening whose flow is directed in a downward or horizontal direction due to the alignment of the opening or a physical obstruction placed beyond the opening, or at a height which is less than 1.3 times the height of an adjacent building or structure, as measured from ground level.

"Vertically Unrestricted Emissions Release" means the release of an air pollutant through a stack or opening whose flow is directed upward without any physical obstruction placed beyond the opening, and at a height which is at least 1.3 times the height of an adjacent building or structure, as measured from ground level.

(2) Except as provided in (3) below, the definitions of "stack", "stack in existence", "dispersion technique", "good engineering practice (GEP) stack height", "nearby", "excessive concentration", and "intermittent control system (ICS)" in 40 CFR 51.100(ff) through (kk) and (nn) are hereby incorporated by reference.

(3)(a) The terms "reviewing authority" and "authority administering the State implementation plan" shall mean the director.

(b) The reference to "40 CFR parts 51 and 52" in 40 CFR 51.100(ii)(2)(i) shall be changed to "R307-401, R307-403 and R307-405".

(c) The phrase "For sources subject to the prevention of significant deterioration program (40 CFR 51.166 and 52.21)" in 40 CFR 51.100(kk)(1) shall be replaced with the phrase "For sources subject to R307-401, R307-403, or R307-405".

R307-410-3. Use of Dispersion Models.

All estimates of ambient concentrations derived in meeting the requirements of R307 shall be based on appropriate air quality models, data bases, and other requirements specified in 40 CFR Part 51, Appendix W, (Guideline on Air Quality Models), effective July 1, 2018, which is hereby incorporated by reference. Where an air quality model specified in the Guideline on Air Quality Models or other EPA approved guidance documents is inappropriate, the director may authorize the modification of the model or substitution of another model. In meeting the requirements of federal law, any modification or substitution will be made only with the written approval of the Administrator, EPA.

R307-410-4. Modeling of Criteria Pollutant Impacts in Attainment Areas.

Prior to receiving an approval order under R307-401, a new source in an attainment area with a total controlled emission rate per pollutant greater than or equal to amounts specified in Table 1, or a modification to an existing source located in an attainment area which increases the total controlled emission rate per pollutant of the source in an amount greater than or equal to those specified in Table 1, shall conduct air quality modeling, as identified in R307-410-3, to estimate the impact of the new or modified source on air quality unless previously performed air quality modeling for the source indicates that the addition of the proposed emissions increase would not violate a National Ambient Air Quality Standard, as determined by the director.

TABLE 1

POLLUTANT	EMISSIONS
sulfur dioxide	40 tons per year
oxides of nitrogen	40 tons per year
PM10 - fugitive emissions and fugitive dust	5 tons per year
PM10 - non-fugitive emissions or non-fugitive dust	15 tons per year
carbon monoxide	100 tons per year
lead	0.6 tons per year

R307-410-5. Documentation of Ambient Air Impacts for Hazardous Air Pollutants.

(1) Prior to receiving an approval order under R307-401, a source shall provide documentation of increases in emissions of hazardous air pollutants as required under (c) below for all installations not exempt under (a) below.

(a) Exempted Installations.

(i) The requirements of R307-410-5 do not apply to installations which are subject to or are scheduled to be subject to an emission standard promulgated under 42 U.S.C. 7412 at the time a notice of intent is submitted, except as defined in (ii) below. This exemption does not affect requirements otherwise applicable to the source, including requirements under R307-401.

(ii) The director may, upon making a written determination that the delay in the implementation of an emission standard under R307-214-2, that incorporates 40 CFR Part 63, might reasonably be expected to pose an unacceptable risk to public health, require, on a case-by-case basis, notice of intent documentation of emissions consistent with (c) below.

(A) The director will notify the source in writing of the preliminary decision to require some or all of the documentation as listed in (c) below.

(B) The source may respond in writing within thirty days of receipt of the notice, or such longer period as the director approves.

(C) In making a final determination, the director will document objective bases for the determination, which may include public information and studies, documented public comment, the applicant's written response, the physical and chemical properties of emissions, and ambient monitoring data.

(b) Lead Compounds Exemption. The requirements of R307-410-5 do not apply to emissions of lead compounds. Lead compounds shall be evaluated pursuant to requirements of R307-410-4.

(c) Submittal Requirements.

(i) Each applicant's notice of intent shall include:

(A) the estimated maximum pounds per hour emission rate increase from each affected installation,

(B) the type of release, whether the release flow is vertically restricted or unrestricted, the maximum release duration in minutes per hour, the release height measured from the ground, the height of any adjacent building or structure, the shortest distance between the release point and any area defined as "ambient air" under 40 CFR 50.1(e), effective July 1, 2018, which is hereby incorporated by reference for each installation for which the source proposes an emissions increase,

(C) the emission threshold value, calculated to be the applicable threshold limit value - time weighted average (TLV-TWA) or the threshold limit value - ceiling (TLV-C) multiplied by the appropriate emission threshold factor listed in Table 2, except in the case of arsenic, benzene, beryllium, and ethylene oxide which shall be calculated using chronic emission

threshold factors, and formaldehyde, which shall be calculated using an acute emission threshold factor. For acute hazardous air pollutant releases having a duration period less than one hour, this maximum pounds per hour emission rate shall be consistent with an identical operating process having a continuous release for a one-hour period.

TABLE 2
EMISSION THRESHOLD FACTORS FOR HAZARDOUS AIR POLLUTANTS
(cubic meter pounds per milligram hour)

VERTICALLY-RESTRICTED AND FUGITIVE EMISSION RELEASE POINTS

DISTANCE TO PROPERTY BOUNDARY	ACUTE	CHRONIC	CARCINOGENIC
20 Meters or less	0.038	0.051	0.017
21 - 50 Meters	0.051	0.066	0.022
51 - 100 Meters	0.092	0.123	0.041
Beyond 100 Meters	0.180	0.269	0.090

VERTICALLY-UNRESTRICTED EMISSION RELEASE POINTS

DISTANCE TO PROPERTY BOUNDARY	ACUTE	CHRONIC	CARCINOGENIC
50 Meters or less	0.154	0.198	0.066
51 - 100 Meters	0.224	0.244	0.081
Beyond 100 Meters	0.310	0.368	0.123

(ii) A source with a proposed maximum pounds per hour emissions increase equal to or greater than the emissions threshold value shall include documentation of a comparison of the estimated ambient concentration of the proposed emissions with the applicable toxic screening level specified in (d) below.

(iii) A source with an estimated ambient concentration equal to or greater than the toxic screening level shall provide additional documentation regarding the impact of the proposed emissions. The director may require such documentation to include, but not be limited to:

(A) a description of symptoms and adverse health effects that can be caused by the hazardous air pollutant,

(B) the exposure conditions or dose that is sufficient to cause the adverse health effects,

(C) a description of the human population or other biological species which could be exposed to the estimated concentration,

(D) an evaluation of land use for the impacted areas,

(E) the environmental fate and persistency.

(d) Toxic Screening Levels and Averaging Periods.

(i) The toxic screening level for an acute hazardous air pollutant is 1/10th the value of the TLV-C, and the applicable averaging period shall be:

(A) one hour for emissions releases having a duration period of one hour or greater,

(B) one hour for emission releases having a duration period less than one hour if the emission rate used in the model is consistent with an identical operating process having a continuous release for a one-hour period or more, or

(C) the dispersion model's shortest averaging period when using an applicable model capable of estimating ambient concentrations for periods of less than one hour.

(ii) The toxic screening level for a chronic hazardous air pollutant is 1/30th the value of the TLV- TWA, and the applicable averaging period shall be 24 hours.

(iii) The toxic screening level for all carcinogenic hazardous air pollutants is 1/90 the value of the TLV-TWA, and the applicable averaging period shall be 24 hours, except in the case of formaldehyde which shall be evaluated consistent with (d)(i) above and arsenic, benzene, beryllium, and ethylene oxide which shall be evaluated consistent with (d)(ii) above.

R307-410-6. Stack Heights and Dispersion Techniques.

(1) The degree of emission limitation required of any source for control of any air pollutant to include determinations made under R307-401, R307-403 and R307-405, must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique except as provided in (2) below. This does not restrict, in any manner, the actual stack height of any source.

(2) The provisions in R307-410-6 shall not apply to:

(a) stack heights in existence, or dispersion techniques implemented on or before December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources which were constructed or reconstructed, or for which major modifications were carried out after December 31, 1970; or

(b) coal-fired steam electric generating units subject to the provisions of Section 118 of the Clean Air Act, which commenced operation before July 1, 1957, and whose stacks were constructed under a construction contract awarded before February 8, 1974.

(3) The director may require the source owner or operator to provide a demonstration that the source stack height meets good engineering practice as required by R307-410-6. The director shall notify the public of the availability of the demonstration as part of the public notice process required by R307-401-7, Pubic Notice.

KEY: air pollution, modeling, hazardous air pollutant, stack height
November 25, 2019 19-2-104
Notice of Continuation May 15, 2017

R309. Environmental Quality, Drinking Water.
R309-400. Improvement Priority System and Public Water System Ratings.
R309-400-1. Purpose.

(1) The purpose of this rule is to establish the Improvement Priority System used by the division to assign compliance ratings to public water systems and to prioritize enforcement action based on points assessed for noncompliance with drinking water rules.

R309-400-2. Authority.

(1) 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, Chapter 3 of the same, known as the Administrative Rulemaking Act.

R309-400-3. Definitions.

(1) "Improvement Priority System (IPS)" is a point system used by the division to evaluate a public water system's performance and compliance with the drinking water rules in Title 309, Environmental Quality, Drinking Water.

(2) "Public Water System Rating" is assigned to a public water system by the director to characterize the water system's compliance with drinking water rules and overall operation and performance.

R309-400-4. Improvement Priority System -- Assessment of Points.

(1) The division shall:

(a) maintain and make public an improvement priority system (IPS) program that includes:

(i) a table specifying the number of points associated with each instance of noncompliance with a drinking water rule requirement and noncompliance with a directive or order issued by the director, and

(ii) the point thresholds for assigning an Approved or Not Approved rating to each type of public water system; and

(b) obtain approval from the Drinking Water Board for substantive revisions to the IPS program.

(2) The division incorporates by reference the IPS program dated August 27, 2019.

(3) Implementation of the IPS program approved by Drinking Water Board starts on January 1, 2020.

(4) The director may assess points to a public water system and take enforcement action in accordance with the implementation policy and the table of points based on:

(a) noncompliance with Title R309 of the Utah Administrative Code;

(b) noncompliance with a directive or order issued by the director; or

(c) operational practices or performance that may result in a threat to public health.

R309-400-5. Public Water System Ratings.

(1) The director may assign a rating to a public water system of:

(a) Approved based on the total number of points assessed for noncompliance;

(b) Not Approved based on:

(i) the total number of points assessed for noncompliance, or

(ii) an immediate public health threat; or

(c) Corrective Action based on a current, written agreement with the division to resolve underlying noncompliance according to a compliance schedule.

(2) A public water system shall maintain an Approved rating.

(3) A public water system with a Not Approved rating shall:

(a) take immediate action to resolve the noncompliance that resulted in the Not Approved rating; or

(b) enter into a written agreement with the division to resolve the noncompliance that resulted in the Not Approved rating according to a compliance schedule.

R309-400-6. Administrative Appeals.

(1) The assessment of points does not constitute a permit order per R305-7-102(1)(l) and may not be appealed pursuant to R305-7.

(2) The assignment of a rating to a public water system constitutes an initial order per R305-7-102(1)(g) and may be appealed by submitting, filing, and serving a written Request for Agency Action pursuant to R305-7-303 within 30 days of the date of the order issued by the director.

KEY: drinking water, environmental protection, water system rating, penalties
November 8, 2019 19-4-104
Notice of Continuation March 13, 2015

R311. Environmental Quality, Environmental Response and Remediation.

R311-500. Illegal Drug Operations Site Reporting and Decontamination Act, Decontamination Specialist Certification Program.

R311-500-1. Objective, Scope and Authority.

(a) Objective. The Decontamination Specialist Certification Program is designed to assist in helping ensure that personnel in charge of decontamination are trained to perform cleanups and knowledgeable of established decontamination standards; to develop methods whereby an applicant can demonstrate competency and obtain certification to become a Certified Decontamination Specialist; to protect the public health and the environment; and to provide for the health and safety of personnel involved in decontamination activities.

(b) Scope. These certification rules apply to individuals who perform decontamination of property that is on the contamination list specified in Section 19-6-903(3)(b) of the Illegal Drug Operations Site Reporting and Decontamination Act.

(c) Authority. Section 19-6-906 directs the Department of Environmental Quality Solid and Hazardous Waste Control Board, in consultation with the Department of Health and local Health Departments, to make rules to establish within the Division of Environmental Response and Remediation:

(1) certification standards for any private person, firm, or entity involved in the decontamination of contaminated property; and

(2) a process for revoking the certification of a Decontamination Specialist who fails to maintain the certification standards.

R311-500-2. Definitions.

(a) Refer to Section 19-6-902 for definitions not found in this rule.

(b) For the purposes of the Decontamination Specialist Certification Program rules:

(1) "Applicant" means any individual who applies to become a Certified Decontamination Specialist or applies to renew the existing certificate.

(2) "Board" means the Solid and Hazardous Waste Control Board.

(3) "Certificate" means a document that evidences certification.

(4) "Certification" means approval by the Director or the Board to perform decontamination of contaminated property under Title 19 Chapter 6, Illegal Drug Operations Site Reporting and Decontamination Act.

(5) "Certification Program" means the Division's process for issuing and revoking the Certification.

(6) "Confirmation Sampling" means collecting samples during a preliminary assessment or upon completion of decontamination activities to confirm that contamination is below the decontamination standards outlined in R392-600, Illegal Drug Operations Decontamination Standards.

(7) "Decontamination" means treatment or removal of contamination by a decontamination specialist or as otherwise allowed in the Illegal Drug Operations Site Reporting and Decontamination Act to reduce concentrations below the decontamination standards defined in R392-600 and to remove property from the contamination list specified in Subsection 19-6-903(3)(b).

(8) "Department" means the Utah Department of Environmental Quality.

(9) "Director" means the Director of the Division of Environmental Response and Remediation or the Director's designated representative.

(10) "Division" means the Division of Environmental Response and Remediation.

(11) "Lapse" in reference to the Certification, means to terminate automatically.

(12) "UAPA" means the Utah Administrative Procedures Act, Title 63 Chapter 46b.

R311-500-3. Delegation of Powers and Duties to the Director.

(a) The Director is delegated authority by the Board to administer the Decontamination Specialist Certification Program established within the Division.

(b) The Director may take any action necessary or incidental to develop certification standards and issue or revoke a certificate. These actions include but are not limited to:

(1) Establishing certification standards;

(2) Establishing and reviewing applications, certifications, or other data;

(3) Establishing and conducting testing and training;

(4) Denying applications;

(5) Issuing certifications;

(6) Evaluating compliance with the performance standards established in Section R311-500-8 through observations in the field, review of sampling methodologies and records or other means;

(7) Renewing certifications;

(8) Revoking certifications;

(9) Issuing notices and initial orders;

(10) Enforcing notices, orders and rules on behalf of the Board; and

(11) Requiring a Certified Decontamination Specialist or applicant to furnish information or records relating to his or her fitness to be a Certified Decontamination Specialist.

R311-500-4. Application for Certification.

(a) Any individual may apply for certification by paying the applicable fees and by submitting an application to the Director to demonstrate that the applicant:

(1) meets the eligibility requirements specified in R311-500-5; and

(2) will comply with the performance standards specified in R311-500-8 after receiving a certificate.

(b) Applications submitted under R311-500-4 shall be on a form approved by the Director and shall be reviewed by the Director to determine if the applicant is eligible for certification.

R311-500-5. Eligibility for Certification.

(a) For initial and renewal certification, an applicant must:

(1) Meet Occupational Safety and Health Agency safety training requirements in accordance with 29 CFR 1910.120 and any other applicable safety training, including refresher training, as required by federal and state law; and

(2) Successfully pass a certification examination developed and administered under the direction of the Director.

(A) The contents of the initial certification examination and the renewal certification examination as well as the percentage of correct answers required to pass the examinations shall be determined by the Director before the tests are administered. The Director may offer a less comprehensive renewal certification examination to those individuals that have completed a Division sponsored renewal-training course.

(B) The Director shall determine the frequency and dates of the certification examinations.

(C) For applicants that fail the initial certification examination or the renewal certification examination, the Director may offer one additional examination within one month of the original test date without requiring submittal of a new application. The applicant shall pay a fee determined by the Director to cover the cost of the additional testing. Applicants that fail the re-examination shall wait six months prior to submitting a new application in accordance with R311-

500-4.

R311-500-6. Certification.

(a) Initial certification for all certificate holders shall be effective for a period of two years from the date of issuance, unless revoked before the expiration date pursuant to R311-500-9. Certificates shall be subject to periodic renewal pursuant to R311-500-7.

R311-500-7. Renewal.

(a) A certificate holder may apply for certificate renewal by successfully completing the following prior to the expiration date of the current certificate:

(1) Submitting a completed renewal application on a form approved by the Director within the dates specified by the Director;

(2) Paying any applicable fees; and

(3) Passing a certification renewal examination.

(A) If the Director determines that the applicant meets the eligibility requirements of R311-500-5 and will comply with the performance standards of R311-500-8, the Director shall reissue the certificate to the applicant.

(B) If the Director determines that the applicant does not meet the eligibility requirements described in R311-500-5 or will not comply or has not complied with the performance standards of R311-500-8, the Director may issue a notice to deny certification in a manner consistent with R311-500-9.

(b) Renewal certificates shall be valid for two years and shall be subject to revocation under R311-500-9.

(c) Any individual who is not a Certified Decontamination Specialist on the date the renewal certification examination is given because the applicant's certification was revoked or expired prior to completing a renewal application must successfully meet the application and eligibility criteria for initial certification as specified in R311-500-4 and R311-500-5 prior to issuance of a certificate.

R311-500-8. Performance Standards.

(a) A Certified Decontamination Specialist performing decontamination activities at contaminated property:

(1) shall be certified prior to engaging in any decontamination activities for the purpose of removing the contaminated property from the list referenced in Section 19-6-903(3)(b) and display the certificate upon request;

(2) shall report to the local Health Department the location of any property that is the subject of decontamination work by the Decontamination Specialist;

(3) shall file a workplan with the local Health Department;

(4) shall perform work in accordance with the workplan;

(5) shall perform work meeting applicable local, state and federal laws, including certification and licensing requirements for performing construction work;

(6) shall oversee and supervise all decontamination activities and ensure any person(s) assisting with decontamination work at contaminated property meets Occupational Safety and Health Agency safety training requirements in accordance with 29 CFR 1910.120;

(7) shall disclose to any person(s) assisting with decontamination at contaminated property that work is being performed in a clandestine drug laboratory, inform the person(s) of the potential risks associated with this type of environment and ensure that the person(s) wears the necessary personal protective equipment as established by the Decontamination Specialist;

(8) shall make all decisions regarding decontamination and be the only individual conducting confirmation sampling;

(9) shall follow scientifically sound and accepted sampling procedures;

(10) shall submit a Final Report to the local Health Department, which includes an affidavit stating that the property has been decontaminated to the standards outlined in R392-600;

(11) shall maintain a current address and phone number on file with the Division;

(12) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted; and

(13) shall not participate in any other activities regulated under R311-500 without meeting all requirements of that certification program.

R311-500-9. Denial of Application and Revocation of Certification.

(a) Grounds for denial of an application or revocation of a certification may include any of the following:

(1) Failure to meet any of the application and eligibility criteria established in R311-500-4 and R311-500-5;

(2) Failure to submit a completed application;

(3) Evidence of past or current criminal activity;

(4) Demonstrated disregard for the public health, safety or the environment;

(5) Misrepresentation or falsification of figures, reports and/or data submitted to the local Health Department or the State;

(6) Cheating on a certification examination;

(7) Falsely obtaining or altering a certificate;

(8) Negligence, incompetence or misconduct in the performance of duties as a Certified Decontamination Specialist;

(9) Failure to furnish information or records required by the Director to demonstrate fitness to be a Certified Decontamination Specialist; or

(10) Violation of any certification or performance standard specified in this rule.

(b) Administrative proceedings regarding the denial of an application or the revocation of certification are governed by Rule R305-6.

R311-500-10. No Preemption.

(a) Certification to work as a Certified Decontamination Specialist does not relieve an individual from any requirement to obtain additional licenses or certificates in different specialties to the extent required by other agencies whose jurisdiction and authority may overlap the decontamination work. The Certified Decontamination Specialist shall obtain the additional licenses or certificates prior to performing the work for which the additional license or certificate is required. The Illegal Drug Operations Site Reporting and Decontamination Act Decontamination Specialist Certification Program rules do not preempt or supercede rules or standards promulgated by other regulatory programs in the State of Utah.

R311-500-11. Certified Decontamination Specialist List.

(a) The Director shall maintain a current list of Certified Decontamination Specialists that shall be made available to the public upon request.

KEY: meth lab contractor certification, adjudicative proceedings, administrative proceedings, revocation procedures
August 29, 2011 19-1-301
Notice of Continuation November 21, 2019 19-6-901 et seq.
63G-4-201 through 205
63G-4-503

R357. Governor, Economic Development.
R357-2. Targeted Business Tax Credit.
R357-2-1. Purpose.

The purpose of this rule is to define what constitutes substantial new employment, new capital development, a project, and to establish a general formula for determining the allocated cap amount for each business applicant.

R357-2-2. Authority.

UCA 63N-2-302 requires the office make rules establishing the manner by which the allocation cap amount is determined and what constitutes substantial new employment, new capital development, and a project.

R357-2-3. Definitions.

(1) As used in this Rule;

(a) "Available Tax Credit" means the unencumbered amount of the annual $300,000 tax credit provided for in 63N-2-302(2).

(b) "Executive Committee" means the Executive Committee of the Governor's Rural Partnership Board provided for in UCA 63C-10-102(5)

(c) "Full Time Equivalent Employee" means an individual full time employee of the business applicant's Utah Business that is a Utah Resident and employed at least 30 hours per week (excluding lunch) during each week.

(d) "New Capital Development" means any new

(i) facility with construction costs of $100,000 or more, which includes additions to existing facilities and the enclosure of space that was not previously fully enclosed;

(ii) remodeling, site, or utility project with costs of $100,000 or more; or

(iii) purchase of real property.

(e) "Project" means the plan as described in the application submitted to The Office of Rural Development by the business applicant including the projects objectives, projections, and scope.

(f) "Substantial New Employment" means new full time equivalent employees the Business Applicant will add in the following three tax year(s) as specified in the application and where substantial is measured and determined by the Executive Committee of the Governor's Rural Partnership Board in relation to:

(i) The economic impact on the community in which the project will occur, including:

(A) salary and wages of the new full time equivalent employees in comparison to the county average wage;

(B) whether or not health and other benefits will be provided to all the new full time equivalent employees in addition to the salary and wages;

(C) the business applicant's declared number of projected new full time equivalent employees in comparison to the overall county employment numbers provided by the Department of Work Force Services;

(D) the amount of new full time equivalent employees in comparison to the business applicant's current number of full time equivalent employees; and

(E) any other factors that the Executive Committee considers as substantial new employment.

(2) For all other relevant terms not defined in this rule, the definitions set forth in UCA 63N-2-301 shall apply.

R357-2-4. Application Procedure.

Applications will be reviewed in January and February of each calendar year, and all applications should be submitted by January 31. The Office of Rural Development may consider applications submitted between January 31 and June 1 of the calendar year if approved by a majority vote of the Executive Committee of the Governor's Rural Partnership Board. No applications will be considered between June 1 and December 31st of the calendar year.

R357-2-5. Formula for Allocation Cap Amount for Each Business Applicant.

(1) Each business applicant's application will be reviewed, scored, and ranked by the Executive Committee, as follows:

(a) A weighted score will be given to each application in the following subcategories:

(i) project;

(ii) projected new capital development; and

(iii) projected substantial new employment

(2) The scoring criteria will be provided to business applicants via the targeted business tax credit application.

(3) The Executive Committee shall award a targeted business income tax credits to the top ranking projects in descending order, based on the available tax credit and until the cap is reached as set forth in UCM 63N-2-304(2).

(4) Awards shall be given over a three year period.

(5) Awards may be allocated as follows:

(a) $50,000 tax credit for one year of the award, and $25,000 tax credit for two of the three years; or

(b) The Executive Committee may elect to award available tax credit in a proportionate amount based upon the scores of each application during the solicitation period; or

(c) The Executive Committee may elect to award available tax credits in an equal amount to each business applicant during the solicitation period

(2) No business applicant shall receive an award that is in excess of the available tax credit.

KEY: rural business, tax credits
November 8, 2014 63N-2-302
Notice of Continuation November 7, 2019

R384. Disease Control and Prevention, Health Promotion.
R384-415. Electronic-Cigarette Substance Standards.
R384-415-1. Authority and Purpose.

(1) This rule is authorized by Section 26-57-103 and Subsection 59-14-803(5).

(2) This rule establishes standards for labeling, nicotine content, packaging, and product quality for electronic-cigarette substances for the regulation of electronic-cigarettes.

(3) This rule does not apply to a manufacturer-sealed electronic-cigarette substance.

(4) A product in compliance with this rule is not endorsed as safe.

R384-415-2. Definitions.

As used in this rule:

(1) "Business" means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit or non-profit purposes.

(2) "Child resistant" means the same as the term "special packaging" is defined in 16 C.F.R 1700.1(a)(4) (January 1, 2015) and is tested in accordance with the method described in 16 C.F.R. 1700.20 (January 1, 2015).

(3) "Department" means the Utah Department of Health.

(4) "Electronic-cigarette" means the same as the term is defined in Subsections 26-38-2(1) and 59-14-802(2).

(5) "Electronic-cigarette Product" means the same as the term is defined in Subsection 59-14-802(3).

(6) "Electronic-cigarette substance" means the same as the term is defined in Subsection 59-14-802(4).

(7) "Local health department" means the same as the term is defined in Subsection 26A-1-102(5).

(8) "Manufacture" means the same as the term is defined in Subsection 26-57-102(5).

(9) "Manufacturer" means the same as the term is defined in Subsection 26-57-102(6).

(10) "Mg/mL" means milligrams per milliliter, a ratio for measuring an ingredient, in liquid form, where accuracy is measured in milligrams per milliliter, or a percentage equivalent.

(11) "Nicotine" means the same as the term is defined in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 387(12) (2013).

(12) "Manufacturer-sealed electronic-cigarette substance" means the same as the term defined is in Subsection 26-57-102(6).

(13) "Package "or "packaging" means a pack, box, carton, or container of any kind, or if no other container, any wrapping, in which an electronic cigarette substance is offered for sale, sold, or otherwise distributed to consumers.

(14) "Retailer" means any person who sells, offers for sale, or offers to exchange for any form of consideration, an electronic-cigarette substance to a consumer. This definition is without regard to the quantity of an electronic-cigarette substance sold, offered for sale, exchanged, or offered for exchange.

(15) "Retailing" means involvement in any of the activities listed in Subsection R384-415-2(14). This definition is without regard to the quantity of an electronic-cigarette substance sold, offered for sale, exchanged, or offered for exchange.

(16) "Transaction statement" means a statement, in paper or electronic form, which the manufacturer transferring ownership of the product certifies that the electronic-cigarette substance is in compliance with the standards in this rule.

R384-415-3. Labeling.

(1) The retailer shall ensure that nicotine containing electronic-cigarette substance offered for sale to the consumer features on the product package label the required safety warning stating "WARNING": This product contains nicotine. Nicotine is an addictive chemical."

(2) The retailer shall ensure that an electronic-cigarette substance marketed as nicotine-free and offered for sale to the consumer features a safety warning stating "WARNING: Keep away from children and pets."

(3) The retailer shall ensure that the required safety warning appear directly on the package and must be visible underneath any cellophane or other clear wrapping as follows:

(a) be located in a conspicuous and prominent place on the two principle display panels of the package and the warning area must comprise at least 30 percent of each of the principal display panels;

(b) is capitalized and punctuated as indicated in Subsection (1) or (2) of this Section;

(c) be printed in at least 12-point font size and ensure that the required warning statement occupies the greatest possible proportion of the warning area set aside for the required text;

(d) uses a conspicuous and legible Helvetica, Arial, or other san serif font;

(e) uses either a black font on a white background or a white font on a black background; and

(f) is centered in the warning area in which the text is required to be printed and positions such that the text of the required warning statement and the other information on the principal display panel have the same orientation.

(4) A retailer of an electronic-cigarette substance will not be in violation of this Section when packaging:

(a) contains a health warning;

(b) is supplied to the retailer by a manufacturer, importer, or distributor, who has the required state, local, or tobacco tax license or permit, if applicable; and

(c) is not altered by the retailer in a way that is material to the requirements of this Section.

(5) An electronic-cigarette substance package that would be required to bear the warning in Subsection (1) or (2) of this Section but is too small or otherwise unable to accommodate a warning label with sufficient space to bear such information is exempt from compliance with the requirement provided:

(a) the information and specifications required in Subsection (1) and (2) of this Section appear on the carton or other outer container or wrapper if the carton, outer container, or wrapper has sufficient space to bear the information; or

(b) appear on a tag firmly and permanently affixed to the packaged electronic-cigarette substance.

(c) In the case of Subsection (5)(a) or (b), the carton, outer container, wrapper, or tag will serve as the location of the principal display panels.

R384-415-4. Prohibited Sales.

(1) The retailer shall be prohibited from selling an electronic-cigarette substance to the public that is labeled to the public as containing:

(a) additives that create the impression that an electronic-cigarette substance has a health benefit;

(b) additives that are associated with energy and vitality;

(c) illegal or controlled substances as identified in Section 58-37-3; and

(d) additives having coloring properties for emissions.

R384-415-5. Nicotine Content.

The retailer shall sell an electronic-cigarette substance to the consumer that is limited to 360 mg nicotine per container, and does not exceed a 24mg/mL concentration of nicotine.

R384-415-6. Packaging.

The retailer shall ensure that the packaging of an electronic-cigarette substance intended for sale to a consumer is certified as child resistant, and compliant with federal standards and law concerning child nicotine poisoning prevention.

R384-415-7. Product Quality.

When the United States Food and Drug Administration instituting its process to approve electronic cigarettes, the retailer shall only sell an electronic-cigarette substance that has been approved for regulatory sale by the United States Food and Drug Administration through a Pre-Market Tobacco application or Substantial Equivalent application.

R384-415-8. Record Keeping and Testing.

(1) The retailer shall provide the electronic-cigarette substances transaction statement to the Department or the local health department within five working days of a request. The retailer shall ensure that the transaction statement includes manufacturer certifications that:

(a) the nicotine content of an electronic-cigarette substance is compliant with Section R384-415-5;

(b) the packaging of an electronic cigarette-substance is child-resistant; and

(c) An electronic cigarette substance that has been approved for regulatory sale by the United States Food and Drug Administration through a Pre-Market Tobacco application or Substantial Equivalent application.

(2) The retailer shall provide evidence that supports the documents described in Subsection R384-415-8(1) to the Department or the local health department within 5 working days of a request.

(3) The retailer shall have access to the documents described in Subsections R384-415-8(1) and R384-415-8(2) for a period of two years after the retailer purchases the electronic-cigarette substance.

R384-415-9. Enforcement.

(1) The Department may enforce and seek penalties for the violation of public health rules including, the standards for electronic cigarettes set forth in this rule as prescribed in Sections 26-23-1 through 26-23-10.

(2) A local health department may enforce and seek penalties for the violation of the standards for electronic cigarettes set forth in this rule. A local health department shall have authority to enforce and seek penalties for violations of public health law including this rule as is found in Sections 26-23-1 through 26-23-10, 26A-1-108, 26A-1-114(1) and 26A-1-123.

(3) The Department or local health department is responsible to make a determination as to if a person holding a Utah State Tax Commission license to sell electronic cigarettes has violated the standards of this rule. If the Department or local health department makes such a determination it shall notify the Utah State Tax Commission to revoke the person's license as provided in Subsection 59-14-803(5).

(4) Administrative or civil enforcement of this rule by the Department or local health departments does not preclude criminal enforcement by a law enforcement agency and prosecution of any violation of the standards in this rule that can constitute a criminal offense under state law.

KEY: electronic cigarettes, nicotine, standards, Electronic Cigarette Regulation Act
December 1, 2019 **26-57-103**
59-14-803(5)

R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-1. General Definitions.
R426-1-100. Authority and Purpose.

This rule establishes uniform definitions for all R426 rules. It also provides administration standards applicable to all R426 rules.

R426-1-200. General Definitions.

The definitions in Title 26, Chapter 8a are adopted and incorporated by reference into this rule, in addition:

(1) "Advanced Emergency Medical Technician" or "AEMT" means an individual who has completed an AEMT training program, approved by the Department, who is licensed by the Department as qualified to render services enumerated in this rule.

(2) "Affiliated Provider" means a licensed EMS individual's secondary employer or employers.

(3) "Air Ambulance" means a specially equipped and permitted aircraft, especially a helicopter or fixed wing airplane, for transporting patients.

(4) "Air Ambulance Personnel" mean the pilot and patient care personnel who are involved in an air medical transport.

(5) "Air Ambulance Service" means any publicly or privately owned organization that is licensed or applies for licensure under R426-3 and provides transportation and care of patients by air ambulance.

(6) "Air Ambulance Service Medical Director" means a physician knowledgeable of potential medical complications which may arise because of air medical transport, and is responsible for overseeing and assuring that the appropriate air ambulance, medical personnel, and equipment are provided for patients transported by the air ambulance service.

(7) "Categorization" means the process of identifying and developing a stratified profile of Utah hospital trauma critical care capabilities in relation to the standards defined under R426-5-7.

(8) "Certify," "Certification," and "Certified" mean the official Department recognition that an individual has completed a specific level of training and has the minimum skills required to provide emergency medical care at the level for which they may be licensed.

(9) "Competitive Grant" means a grant awarded through the Emergency Medical Services Grants Program on a competitive basis for a share of available funds.

(10) "Continuing Medical Education" means a Department-approved training relating specifically to the appropriate level of certification designed to maintain or enhance an individual's emergency medical skills.

(11) "County or Multi-County EMS Council or Committee" means a group of persons recognized as the legitimate entity within the county to formulate policy regarding the provision of EMS.

(12) "Course Coordinator" means an individual who has completed a Department course coordinator course and is endorsed by the Department as capable to conduct Department-authorized EMS courses.

(13) "Department" means the Utah Department of Health.

(14) "Emergency Medical Dispatcher" or "EMD" means an individual who has completed a Department approved EMD training program, and is licensed by the Department as qualified to render services enumerated in this rule.

(15) "Emergency Medical Service Dispatch Center" means a call center designated by the Department for the routine acceptance of calls for emergency assistance, staffed by trained operators who utilize a selective medical dispatch system to dispatch licensed designated quick response units or licensed ambulance and paramedic services.

(16) "Emergency Medical Responder" or "EMR" means an individual who has completed a Department approved EMR training program, and is licensed by the Department as qualified to render services enumerated in this rule.

(17) "Emergency Medical Technician" or "EMT" means an individual who has completed a Department approved EMT training program and is licensed by the Department as qualified to render services enumerated in this rule.

(18) "Emergency Medical Technician Intermediate Advanced" means an individual who has completed a Department approved EMT- IA training program and is licensed by the Department as qualified to render services enumerated in this rule.

(19) "Emergency vehicle operator" means an individual on the roster of an EMS provider who may, in the normal course of the individual's duties, drive an ambulance or an emergency medical response vehicle.

(20) "EMS" means Emergency Medical Services.

(21) "Emergency Medical Incident" means any instance in which an Emergency Medical Services Provider is requested to provide or potentially provide emergency medical services.

(22) "EMS Instructor" means an individual who has completed a Department EMS instructor course and is endorsed by the Department as capable to teach EMS personnel.

(23) "EMS stand-by event" means the on-site licensed ambulance, paramedic service, or designated quick response unit at a scheduled event or activity provided by the local 911 exclusive license provider or their designee.

(24) "Endorsement" means a Department recognized set of skills or specific authority extended to an individual's EMS license.

(25) "Exclusive License" means the sole right to perform the licensed act in a defined geographic service area, and that prohibits the Department of Health from performing the licensed act, and from granting the right to anyone else.

(26) "Grants Review Subcommittee" means a subcommittee appointed by the EMS Committee to review, evaluate, prioritize and make grant funding recommendations to the EMS Committee.

(27) "Ground Ambulance" means a vehicle which is properly equipped, maintained, permitted and used to transport a patient to a patient destination such as a patient receiving facility or resource hospital.

(28) "Inclusive Trauma System" means the coordinated component of the State emergency medical services (EMS) system composed of all general acute hospitals licensed under Title 26, Chapter 21, trauma centers, and pre-hospital providers which have established communication linkages and triage protocols to provide for the effective management, transport and care of all injured patients from initial injury to complete rehabilitation.

(29) "Inter-facility Transfer" means an ambulance transfer of a patient, who does not have an emergency medical condition as defined in UCA 26-8a-102(6)(a), and the ambulance transfer of the patient is arranged by a transferring physician for the particular patient, from a hospital, nursing facility, patient receiving facility, mental health facility, or other licensed medical facility.

(30) "Individual" means a human being.

(31) "Level of Care" means the capabilities and commitment to the care of the trauma patient available within a specified facility.

(32) "Level of License" means the official Department recognized step in the licensure process in which an individual has attained as an EMS provider. It also means the licensed or designated level of an ambulance provider or Quick Response Unit.

(33) "Licensed EMS Individual" means a person licensed by the Bureau of Emergency Medical Services and Preparedness to perform an EMS function.

(34) "Meritorious Complaint" means a complaint against a licensed ambulance provider, designated agency, or licensed provider(s) that is made by a patient, a member of the immediate family of a patient, or health care provider, that the Department determines is substantially supported by the facts or a licensed ambulance provider, designated agency, or licensed provider(s):

(a) has repeatedly failed to provide service at the level or in the exclusive geographic service area required licensee;

(b) has repeatedly failed to follow operational standards established by the EMS Committee;

(c) has committed an act in the performance of a professional duty that endangered the public or constituted gross negligence; or

(d) has otherwise repeatedly engaged in conduct that is adverse to the public health, safety, morals or welfare, or would adversely affect the public trust in the emergency medical service system.

(35) "Matching Funds" means that portion of funds, in cash, contributed by the grantee to total project expenditures.

(36) "On-line Medical Control" which refers to physician medical direction of pre-hospital personnel during a medical emergency; and

(37) "Off-line Medical Control" which refers to physician oversight of local EMS services and personnel to assure their medical accountability.

(38) "Medical Director" means a physician certified by the Department to provide off-line medical control.

(39) "Mid-level Provider" means a licensed nurse practitioner or a licensed physician assistant.

(40) "Net Income" means the sum of net service revenue, plus other regulated operating revenue and subsidies of any type, less operating expenses, interest expense, and income.

(41) "Paramedic" means an individual who has completed a Department approved Paramedic training program and is licensed by the Department as qualified to render services enumerated in this rule.

(42) "Paramedic Ground Ambulance" means the provision of advanced life support patient care and transport by licensed paramedic personnel in a licensed ambulance.

(43) "Paramedic Rescue Service" means the provision of advanced life support patient care by licensed paramedic personnel without the ability to transport patients.

(44) "Paramedic Unit" means a vehicle which is properly equipped, maintained and used to transport licensed paramedics to the scene of emergencies to perform paramedic services without the ability to transport patients to a designated hospital or designated patient receiving facility.

(45) "Paramedic Tactical Service" means the retrieval and field treatment of injured peace officers or victims of traumatic confrontations by licensed paramedics who are trained in combat medical response.

(46) "Paramedic Tactical Unit" means a vehicle which is properly equipped, maintained, and used to transport licensed paramedics to the scene of traumatic confrontations to provide paramedic tactical services.

(47) "Patient Care Report" means a record of the response by each responding Emergency Medical Services Provider unit to each patient during an EMS Incident.

(48) "Patient Receiving Facility" means a Department designated medical clinic or designated resource hospital that is approved to receive patients transported by a licensed ambulance provider.

(49) "Per Capita grants" mean block grants determined by prorating available funds on a per capita basis as delineated in 26-8a-207, as part of the Emergency Medical Services Grants Program.

(50) "Permit" means the document issued by the Department that authorizes a vehicle to be used in providing emergency medical services.

(51) "Person" means an individual, firm, partnership, association, corporation, company, or group of individuals acting together for a common purpose, agency, or organization of any kind public or private.

(52) "Physician" means a medical doctor licensed to practice medicine in Utah.

(53) "Pilot" means an individual licensed to operate an air ambulance.

(54) "Pre-hospital Care" means medical care given to an ill or injured patient by a designated or licensed EMS provider outside of a hospital setting.

(55) "Primary Affiliated Provider" or "PAP" means a licensed EMS individual's primary or main employer or provider.

(56) "Primary emergency medical services" means an organization that is the only licensed or designated service in a geographical area.

(57) "Provider" means a Department licensed or designated entity that provides emergency medical services.

(58) "Provisional License" means temporary terms and conditions placed on a licensed EMS individual's license until completion of an investigation or a final adjudication or conclusion of the pending matter.

(59) "Quick Response Unit" or "QRU" means an entity that provides emergency medical services to supplement local licensed ambulance providers or provide unique services.

(60) "Quick Response Vehicle" or "QRV" means a vehicle which is properly equipped, maintained, permitted and used to perform assistive services at a scene. A QRV may transport or deliver a patient to a licensed ambulance provider access point. The QRV may include an automobile, an all-terrain vehicle or a watercraft.

(61) "Resource Hospital" means a facility designated by the EMS Committee to provide on-line medical control for the provision of pre-hospital emergency care.

(62) "Restricted License" means a licensed EMS individual may not function in their EMS capacity for an interim period of time.

(63) "Scene" means the location of initial contact with the patient.

(64) "Selective Medical Dispatch System" means a Department-approved reference system used by a designated local dispatch agency to dispatch aid to medical emergencies which includes:

(a) systemized caller interrogation questions;

(b) systemized pre-arrival instructions; and

(c) protocols matching the dispatcher's evaluation of injury or illness severity with vehicle response mode and configuration.

(65) "Specialized Life Support Air Ambulance Service" means a level of care which requires equipment or specialty patient care by one or more medical personnel in addition to the regularly scheduled air medical team.

(66) "Training Officer" means an individual who has completed a department Training Officer Course and is endorsed by the Department to be responsible for an EMS provider organization's continuing medical education, license renewal records, and testing.

KEY: emergency medical services
November 6, 2019 26-8a
Notice of Continuation October 9, 2018

R477. Human Resource Management, Administration.
R477-8. Working Conditions.
R477-8-1. Workweek.

(1) The state's standard workweek begins Saturday at 12:00 a.m. and ends the following Friday at 11:59 p.m. FLSA nonexempt employees may not deviate from this workweek.

(2) State offices are typically open Monday through Friday from 8:00 a.m. to 5:00 p.m. Agencies may adopt alternative business hours under Section 67-25-201.

(3) Agency management shall establish work schedules and may approve a flexible starting and ending time for an employee as long as scheduling is consistent with overtime provisions of Section R477-8-4.

(4) An employee is required to work the assigned schedule and be at work on time. An employee who is late, regardless of the reason, including inclement weather, shall, with management approval, account for the lost time by using accrued leave, leave without pay, or adjusting their work schedule.

(5) An employee's time worked shall be calculated in increments of 15 minutes. This rule incorporates by reference 29 CFR 785.48 (2012) for rounding practices when calculating time worked.

R477-8-2. Telecommuting.

(1) Telecommuting is an agency option, not a universal employee benefit. Agencies utilizing a telecommuting program shall:

(a) establish a written policy governing telecommuting;

(b) enter into a written agreement with each participating employee to specify conditions, such as use of state or personal equipment, protecting confidential information, and results such as identifiable benefits to the state and how customer needs are being met;

(c) not allow participating employees to violate overtime rules;

(d) not compensate for normal commute time; and

(e) document telecommuting authorization.

R477-8-3. Lunch, Break and Exercise Release Periods.

(1) Each full time work day may include a minimum of 30 minutes non-compensated lunch period, at the discretion of agency management.

(a) Lunch periods may not be used to shorten a work day.

(2) An employee may take a 15 minute compensated break period for every four hours worked.

(a) Break periods may not be accumulated to accommodate a shorter work day or longer lunch period.

(3) Compensated exercise release time may be allowed at agency discretion for up to three days per week for 30 minutes.

(a) Participating agencies shall have a written policy regarding exercise release time.

(b) Work time exercise that is a bona fide job requirement is not subject to this section.

(4) Authorization for exercise time shall be documented in the Utah Performance Management system.

(5) As requested and after consultation with an employee, reasonable, daily break periods shall be granted for the first year following the birth of a child to allow an employee to express breast milk for her child.

(a) A private location, other than a restroom, shall be provided.

(b) Appropriate temporary storage shall be provided for expressed milk.

R477-8-4. Overtime Standards.

The state's policy for overtime is adopted and incorporated from the Fair Labor Standards Act, 29 CFR Parts 500 to 899(2002) and Section 67-19-6.7.

(1) Management may direct an employee to work overtime. Each agency shall develop internal rules and procedures to ensure overtime usage is efficient and economical. These policies and procedures shall include:

(a) prior supervisory approval for all overtime worked;

(b) recordkeeping guidelines for all overtime worked;

(c) verification that there are sufficient funds in the budget to compensate for overtime worked.

(2) Overtime compensation designations are identified for each job title in HRE as either FLSA nonexempt, or FLSA exempt.

(a) An employee may appeal the FLSA designation to the agency human resource field office. Further appeals may be filed directly with the United States Department of Labor, Wage and Hour Division. Sections 67-19-31, 67-19a-301 and Title 63G, Chapter 4 may not be applied for FLSA appeals purposes.

(3) An FLSA nonexempt employee may not work more than 40 hours a week without management approval. Overtime shall accrue when the employee actually works more than 40 hours a week. Leave and holiday time taken within the work period may not be counted as hours worked when calculating overtime accrual. Hours worked over two or more weeks may not be averaged with the exception of certain types of law enforcement, fire protection, and correctional employees.

(4) Agency management shall arrange for an employee's use of compensatory time as soon as possible without unduly disrupting agency operations or endangering public health, safety or property.

R477-8-5. Compensatory Time for FLSA Nonexempt Employees.

(1) An FLSA nonexempt employee shall sign a prior overtime agreement authorizing management to compensate the employee for overtime worked by actual payment or accrual of compensatory time at time and one half.

(a) An FLSA nonexempt employee may receive compensatory time for overtime up to a maximum of 80 hours. Only with prior approval of the Executive Director, DHRM, may compensatory time accrue up to 240 hours for regular employees or up to 480 hours for peace or correctional officers, emergency or seasonal employees. Once an employee reaches the maximum, additional overtime shall be paid on the payday for the period in which it was earned.

(b) Compensatory time balances for an FLSA nonexempt employee shall be paid down to zero at the rate of pay in the old position in the same pay period that the employee is:

(i) transferred from one agency to a different agency; or

(ii) promoted, reclassified, reassigned or transferred to an FLSA exempt position.

R477-8-6. Compensatory Time for FLSA Exempt Employees.

(1) An FLSA exempt employee may not work more than 80 hours in a pay period without management approval. Compensatory time shall accrue when the employee actually works more than 80 hours in a work period. Leave and holiday time taken within the work period may not count as hours worked when calculating compensatory time. Each agency shall compensate an FLSA exempt employee who works overtime by granting time off. For each hour of overtime worked, an FLSA exempt employee shall accrue an hour of compensatory time.

(a) Agencies shall establish in written policy a uniform overtime year either for the agency as a whole or by unit number and communicate it to employees. Overtime years shall be set at one of the following pay periods: Five, Ten, Fifteen, Twenty, or the last pay period of the calendar year. If an agency fails to establish a uniform overtime year, the Executive Director, DHRM, and the Director of Finance, Department of Administrative Services, will establish the date for the agency at the last pay period of the calendar year. An agency may

change the established overtime year only after the current overtime year has lapsed, unless justifiable reasons exist and the Executive Director, DHRM, has granted a written exception.

(b) The limit on compensatory time accrued by an FLSA exempt employee may not be less than 80 hours.

(i) Any compensatory time earned by an FLSA exempt employee over the limit shall be paid out in the pay period it is earned.

(c) Any compensatory time earned by an FLSA exempt employee is not an entitlement, a benefit, nor a vested right.

(d) Any compensatory time earned by an FLSA exempt employee shall lapse upon occurrence of any one of the following events:

(i) at the end of the employee's established overtime year;

(ii) upon assignment to another agency;

(iii) changes FLSA status to nonexempt; or

(iv) when an employee terminates, retires, or otherwise does not return to work before the end of the overtime year.

R477-8-7. Nonexempt Public Safety Personnel.

(1) To be considered for overtime compensation under this rule, a law enforcement or correctional officer shall meet the following criteria:

(a) be a uniformed or plain clothes sworn officer;

(b) be empowered by statute or local ordinance to enforce laws designed to maintain public peace and order, to protect life and property from accidental or willful injury, and to prevent and detect crimes;

(c) have the power to arrest;

(d) be POST certified or scheduled for POST training; and

(e) perform over 80% law enforcement duties.

(2) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to law enforcement or correctional officers designated FLSA nonexempt and covered under this rule.

(a) 171 hours in a work period of 28 consecutive days; or

(b) 86 hours in a work period of 14 consecutive days.

(3) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to fire protection employees.

(a) 212 hours in a work period of 28 consecutive days; or

(b) 106 hours in a work period of 14 consecutive days.

(4) Agencies may designate a lesser threshold in a 14 day or 28 day consecutive work period as long as it conforms to the following:

(a) the Fair Labor Standards Act, Section 207(k);

(b) 29 CFR 553.230;

(c) the state's payroll period; and

(d) the approval of the Executive Director, DHRM.

R477-8-8. Time Reporting.

(1) Employees shall complete and submit a state approved biweekly time record that accurately reflects the hours actually worked, including:

(a) approved and unapproved overtime;

(b) on-call time;

(c) stand-by time;

(d) meal periods of public safety and correctional officers who are on duty more than 24 consecutive hours; and

(e) approved leave time.

(2) An employee who fails to accurately record time may be disciplined.

(3) Time records developed by the agency shall have the same elements of the state approved time record and be approved by the Department of Administrative Services, Division of Finance.

(4) A Supervisor who directs an employee to submit an inaccurate time record or knowingly approves an inaccurate time record may be disciplined.

(5) A Non-exempt employee who believes FLSA rights have been violated may submit a complaint directly to the Executive Director, DHRM or designee.

R477-8-9. Hours Worked.

(1) An FLSA nonexempt employee shall be compensated for all hours worked. An employee who works unauthorized overtime may be disciplined.

(a) All time that an FLSA nonexempt employee is required to wait for an assignment while on duty, before reporting to duty, or before performing activities is counted towards hours worked.

(b) Time spent waiting after being relieved from duty is not counted as hours worked if one or more of the following conditions apply:

(i) the employee arrives voluntarily before their scheduled shift and waits before starting duties;

(ii) the employee is completely relieved from duty and allowed to leave the job;

(iii) the employee is relieved until a definite specified time; or

(iv) the relief period is long enough for the employee to use as the employee sees fit.

R477-8-10. On-call Time.

(1) An FLSA non-exempt employee required by agency management to be available for on-call work shall be compensated for on-call time at a rate of one hour for every 12 hours the employee is on-call. A FLSA exempt employee required by agency management to be available for on-call work may be compensated at agency discretion, not to exceed a rate of one hour for every 12 hours the employee is on-call.

(a) Time is considered on-call time when the employee has freedom of movement in personal matters as long as the employee is available for a call to duty. An employee may not be in on-call status while using leave or while otherwise unable to respond to a call to duty.

(b) Agencies who enter into on-call agreements with employees shall have an agency policy consistent with this rule and finance policy.

(c) On-call status shall be designated by a supervisor and shall be in writing and documented in the Utah Performance Management system on an annual basis. Carrying a pager or cell phone shall not constitute on-call time without this written agreement.

(d) The employee shall record the hours spent in on-call status, and any actual hours worked, on the official time record, for the specific date the hours were incurred, in order to be paid.

(e) An employee may not record on-call hours and actual hours worked for the same period of time. On-call hours, actual hours worked, and leave hours cannot exceed 24 hours in a day.

(f) An employee shall round on-call hours to the nearest two decimal places. Hours of on-call pay shall be calculated by subtracting the number of hours worked in the on-call period from the number of hours in the on-call period then dividing the result by 12.

R477-8-11. Stand-by Time.

(1) An employee restricted to stand-by at a specified location ready for work shall be paid full-time or overtime, as appropriate. An employee shall be paid for stand-by time if required to stand by the post ready for duty, even during lunch periods, equipment breakdowns, or other temporary work shutdowns.

(2) The meal periods of police, and other public safety or correctional officers and firefighters who are on duty more than 24 consecutive hours shall be counted as working time, unless an express agreement excludes the time.

R477-8-12. Commuting and Travel Time.

(1) Normal commuting time from home to work and back may not count towards hours worked.

(2) Time an employee spends traveling from one job site to another during the normal work schedule shall count towards hours worked.

(3) Time an employee spends traveling on a special one-day assignment shall count towards hours worked except meal time and ordinary home to work travel.

(4) Travel that keeps an employee away from home overnight does not count towards hours worked if it is time spent outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

(5) Travel as a passenger counts toward hours worked if it is time spent during regular working hours. This applies to non-working days, as well as regular working days. However, regular meal period time is not counted.

(6) Management may compensate employees for travel and meal period not required by federal law as implemented in Sections (4) and (5).

R477-8-13. Excess Hours.

(1) An employee may use excess hours the same way as annual leave.

(a) An employee may not work hours which would lead to the accrual of excess hours without prior management approval.

(b) An employee may not use any leave time, other than holiday and jury leave, that results in the accrual of excess hours.

(c) An employee may not accumulate more than 80 excess hours.

(d) Agency management shall pay out excess hours:

(i) for all hours accrued above the limit set by DHRM;

(ii) when an employee is assigned from one agency to another; and

(iii) upon separation.

(e) Agency management may pay out excess hours:

(i) automatically in the same pay period accrued;

(ii) at any time during the year as determined appropriate by a state agency or division; or

(iii) upon request of the employee and approval by the agency head or designee.

R477-8-14. Dual State Employment.

An employee who has more than one position within state government, regardless of schedule is considered to be in a dual employment situation. The following conditions apply to dual employment status.

(1) An employee may work in up to four different positions in state government.

(2) An employee's benefit status for any secondary position(s), regardless of schedule of any of the positions, shall be the same as the primary position.

(3) An employee's FLSA status (exempt or nonexempt) for any secondary position(s) shall be the same as the primary position.

(4) Leave accrual shall be based on all hours worked in all positions and may not exceed the maximum amount allowed in the primary position.

(5) As a condition of dual employment, an employee in dual employment status is prohibited from accruing excess hours in either the primary or secondary positions. All excess hours earned shall be paid at straight time in the pay period in which the excess hours are earned.

(6) As a condition of dual employment, the Overtime or Comp selection shall be as overtime paid regardless of FLSA status. An employee may not accrue comp hours while in dual employment status.

(7) Overtime shall be calculated at straight time or time and one half depending on the FLSA status of the primary position. Time and a half overtime rates shall be calculated based on the weighted average rate of the multiple positions. Refer to Division of Finance's payroll policies, dual employment section.

(8) The Accepting Terms of Dual Employment form shall be completed, signed by the employee and supervisor, and placed in the employee's personnel file with a copy sent to the Division of Finance.

(9) Secondary positions may not interfere with the efficient performance of the employee's primary position or create a conflict of interest. An employee in dual employment status shall comply with conditions under Subsection R477-9-2(1).

R477-8-15. Reasonable Accommodation.

Employees and applicants seeking reasonable accommodation shall be evaluated under state and federal law. This shall be done in conjunction with the agency ADA coordinator. The ADA coordinator shall consult with the Division of Risk management prior to denying any accommodation request.

R477-8-16. Fitness For Duty Evaluations.

Fitness for duty medical evaluations may be performed under any of the following circumstances:

(1) return to work from injury or illness except as prohibited by federal law;

(2) when management determines that there is a direct threat to the health or safety of self or others;

(3) in conjunction with corrective action, performance or conduct issues, or discipline; or

(4) when a fitness for duty evaluation is a bona fide occupational qualification for selection, retention, or promotion.

R477-8-17. Temporary Transitional Assignment.

(1) Agency management may place an employee in a temporary transitional assignment when an employee is unable to perform essential job functions due to temporary health restrictions. Time spent on such an assignment may be counted as leave for purposes of R477-7-1(10).

(2) Temporary transitional assignments may also be part of any of the following:

(a) when management determines that there is a direct threat to the health or safety of self or others;

(b) in conjunction with an internal investigation, corrective action, performance or conduct issues, or discipline;

(c) where there is a bona fide occupational qualification for retention in a position;

(d) while an employee is being evaluated to determine if reasonable accommodation is appropriate.

R477-8-18. Change in Work Location.

(1) An involuntary change in work location shall not be permitted if this requires the employee to commute or relocate 50 miles or more, one way, beyond the current one-way commute, unless:

(a) the change in work location is communicated to the employee at appointment to the position requiring the change in location; or

(b) the agency either pays to move the employee consistent with Section R25-6-8 and Finance Policy FIACCT 05-03.03, or reimburses commuting expenses up to the cost of a move.

R477-8-19. Agency Policies and Exemptions.

(1) Each agency may write its own policies for work schedules, overtime, leave usage, and other working conditions consistent with these rules.

R477-8-20. Background Checks.

In order to protect the citizens of the State of Utah and state resources and with the approval of the agency head, agencies may establish background check policies requiring specific employees to submit to a criminal background check through the Department of Public Safety, Bureau of Criminal Identification.

(1) Agencies who have statewide responsibility for confidential information, sensitive financial information, or handle state funds may require employees to submit to a background check, including employees who work in other state agencies.

(2) The cost of the background check will be the responsibility of the employing agency.

R477-8-21. Workers' Compensation Interference Prohibited.

(1) Agency management may not interfere with an employee's effort to make a claim for workers' compensation.

(2) Agency management may not retaliate against an employee who makes or attempts to make a claim for workers' compensation, reports an employer's noncompliance Utah Code Sections 34A-2 or 34A-3, or testifies or intends to testify in a workers' compensation proceeding.

R477-8-22. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

KEY: breaks, telecommuting, overtime, dual employment
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67-19-6.7
20A-3-103

R512. Human Services, Child and Family Services.
R512-40. Identification, Home Studies, and Approval of Adoptive Families for Children in the Custody of Child and Family Services.
R512-40-1. Purpose and Authority.

(1) The purpose of this rule is to establish criteria for recruitment of adoptive families, standards for conducting adoptive home studies, and requirements for approval of adoptive homes.

(2) This rule is authorized by Sections 53-10-108, 62A-4a-102, 62A-4a-105, 62A-4a-205.6, 62A-4a-607, and 78B-6-128.

R512-40-2. Definitions.

(1) For the purpose of this rule the following definitions apply:

(a) "Adoptive parent" means a couple or individual who completes Child and Family Services training for prospective adoptive parents and is approved by Child and Family Services.

(b) "Cohabiting" means residing with another person and being involved in a sexual relationship.

(c) "Home study" means a pre-placement adoption evaluation defined in Section 78B-6-128 regarding the capacity of the adoptive parents, their family, and their resources available to meet the needs of a child in custody.

(d) "ICWA" means the Indian Child Welfare Act, which defines relative by the law or custom of the Indian child's tribe and includes extended relatives. This definition extends beyond the state's definition of relative. (Defined in 25 U.S.C. Sec. 1901 et seq.)

(e) "Permanency" means the establishment and maintenance of a legally permanent living situation for a child to give the child an internal sense of family stability and belonging and a sense of self that connects the child to his or her past, present, and future.

(f) "Relative" is defined in Section 78A-6-307 as a relative who is the child's grandparent, great-grandparent, aunt, great-aunt, uncle, great-uncle, brother-in law, sister-in-law, stepparent, first cousin, stepsibling, sibling, or the first cousin of the parent, or an adult who is an adoptive parent of the child's sibling.

(g) "Residing" means living in the same household on an uninterrupted basis for 30 days or more or on an intermittent basis.

R512-40-3. Identifying Adoptive Families for Children in the Custody of Child and Family Services.

(1) Child and Family Services seeks to identify permanent adoptive families for children in state's custody whose primary permanency goal is adoption, or whose parents have voluntarily relinquished their parental rights or whose parental rights have been terminated by a court. Kin caregivers and other relatives should be considered first.

(2) Identification of an adoptive family for children in state's custody is accomplished by:

(a) Identifying if the child is in a relative placement who will adopt them.

(b) Targeting efforts to identify family members and others known to the child to consider adoption if not already in a relative placement.

(c) Targeting efforts to identify family members and others known to the child to consider adoption if not already in a relative placement.

(d) Discussing with the current caregiver about adopting the child.

(e) Coordinating with Child and Family Services resource family consultants throughout the state about potential adoptive families for a child.

(f) Website listing of a child for whom there is not an identified adoptive family within 30 days of the primary permanency goal of adoption or whose parents' parental rights are terminated.

(g) Requiring all licensed child placing adoption agencies in Utah to inform adoptive applicants that there are children in state's custody available for adoption in accordance with Section 62A-4a-607.

R512-40-4. Requirements for Persons Applying for Adoptive Placement of a Child in the Custody of Child and Family Services.

(1) Adopting a child in state's custody is based on an adult or couple's ability to provide a permanent family for the child. Adoptive applicants shall:

(a) Apply in the region where they live.

(b) Complete the adoption training program approved by Child and Family Services, with one exception:

(i) Training for relatives who are adopting a child will be based on needs identified on a case-by-case basis.

(c) Be assessed and approved as an adoptive parent by Child and Family Services following completion of a home study pursuant to R512-40-5.

(d) Obtain a foster care license issued by the Department of Human Services, Office of Licensing, or meet the same standards required to be licensed in R501-12, or receive a written waiver from Child and Family Services for a specific standard.

(e) An employee of Child and Family Services must receive a determination by Child and Family Services that no conflict of interest exists in the adoption process.

R512-40-5. Home Study Requirements for Adoption.

(1) A home study must be completed by the Department of Human Services, Office of Licensing, Child and Family Services, or by a licensed child placing adoption agency contracted with Child and Family Services to conduct home studies.

(a) A prospective adoptive parent may be approved for the adoptive placement of a child in state's custody if the following are met:

(i) The prospective adoptive parent and all adults residing in the home have passed criminal background checks, including a national fingerprint-based check that is approved according to criteria specified in Sections 53-10-108, 62A-2-120, 78A-6-308, and 78B-6-128, and Pub. L. 109-248.

(ii) A child abuse registry check is completed by Child and Family Services for the prospective adoptive parent and all adults residing in the home, including a check of child abuse registries in any states in which the prospective adoptive parent and all adults residing in the home have resided in the five years prior to application, that is approved according to criteria specified in Sections 62A-2-120, 78A-6-308, and 78B-6-128, and Pub. L. 109-248.

(iii) The prospective adoptive parent is a relative of the child and/or an ICWA placement preference and is legally married, single, or may be cohabiting.

(iv) The prospective adoptive parent who is not a relative of the child or ICWA placement preference is legally married or single and not cohabiting.

(2) The home study should be consistent with the standards of the Child Welfare League of America (www.cwla.org).

(a) The following factors are critical in the success of adoptive placements and are required content in adoptive applicant interviews and home study documentation:

(i) Commitment to the legal adoption of the child as a permanent member of the family.

(ii) Stable marital or cohabiting relationship and/or commitment and stability in other existing family relationships and/or the ability to sustain long-term relationships that would provide a base for an adoptive child.

(iii) Proper motivation and realistic expectations of a child who has experienced trauma and other effects of abuse and neglect.

(iv) Emotional openness, empathy, and flexibility.

(v) Strong social support system for both the parent and child.

(vi) Knowledge of resources to help raise a child.

(b) The following factors may significantly contribute to adoption disruption and are required content to be addressed in adoptive applicant interviews and home study documentation:

(i) History of emotional or psychological problems or substance abuse.

(ii) Marital or relationship difficulties and incompatibilities that seriously compromise the ability to meet the needs of the child.

(iii) Serious problems in child rearing.

(iv) Unrealistic expectations of self and child.

(v) Impulse control disorders.

(vi) Disruptive and/or crisis filled lifestyle.

(vii) Criminal activity.

(c) The home study assessment and family evaluation will include information gathered from the following:

(i) Criminal background clearances for all adults in the home as described in subparagraph 1a(i) above.

(ii) Child abuse registry clearances for all adults in the home as described in subparagraph 1a(ii) above.

(iii) Three written statements of reference, one of which may be from a relative, which are positive regarding the applicant's stability and parenting capacity.

(iv) Psycho-social information gathered from the prospective adoptive parent and family members.

(v) Home visits and interviews to assess the prospective adoptive parent in the following areas:

(A) Marriage, relationship, and personal stability.

(B) Ability to manage stress.

(C) Parenting skills and emotional openness and flexibility to provide continuity of a caring relationship.

(D) Capacity to parent a child who has experienced trauma and who may have other special needs.

(E) How the children living at home will be affected.

(F) How supervision for the child will be arranged in accordance with the child's age and developmental ability at times when the prospective adoptive parent is not able to be in the home.

(vi) Health status verification regarding the prospective adoptive parent based on a doctor's examination made within six months prior to the date of application.

(vii) Financial status that verifies income sufficient to provide for a child's needs.

(viii) Home health and safety assessment.

(d) The evaluation of the family shall include their strengths and challenges.

(e) To preserve family connections for adopted children, home study requirements for relatives or friends known to the child that do not impact the health and safety of the child may be waived.

(f) Recommendations shall be made regarding the specific child intended to be adopted or the age and type of child who can best fit into the home to ensure the healthy development of the child.

R512-40-6. Follow-up Services.

(1) Child-specific home studies will be reviewed by the child's caseworker or designated adoption worker.

(2) All other home studies will be reviewed by the identified region committee. As a result of the review, the region committee will determine if the applicant is approved to receive adoptive placements, if the applicant is denied for adoptive placements, or if more information is needed from the applicant.

(a) If the applicant is approved for adoptive placements, the region committee (or region designee) will send a letter to the applicant to let them know that they are approved for adoptive placements.

(b) When Child and Family Services determines through the region committee that there are concerns about making an adoptive placement with the adoptive applicant:

(i) The region committee or designee will provide their concerns in writing to designated region staff. The concerns will include any steps an adoptive applicant may take in order remedy concerns.

(ii) Two designated region staff members will meet with the adoptive applicant and review the concerns outlined by the region committee, including whether the concerns can be resolved.

(iii) The region designees will take clarifying information and/or steps that the applicant has taken to remedy concerns back to the region home study committee.

(iv) If the applicant has been able to remedy the concerns to the satisfaction of the region committee, the region committee will approve the applicant to receive adoptive placements.

(v) If the applicant is unable or unwilling to remedy the concerns, a formal, written letter will be sent to the adoptive applicant explaining that Child and Family Services will not be making an adoptive placement with them.

(c) If an applicant is denied for adoptive placements, the applicant may request that the Child and Family Services region director or designee review the reasons for the denial. The Child and Family Services region director or designee is the only person who has the authority to reverse a denial.

(3) All adoptive home studies will require an updated amendment within 12 months immediately preceding the placement of a child.

(a) A family licensed as a foster parent will require a home study update every 12 months to include background and child abuse registry clearances and to address any changes in the circumstances of the family.

(b) A family that is not licensed as a foster parent or has let their license lapse must have a home study update within 18 months of the original home study to include background and child abuse registry clearances and address any changes in the circumstances of the family.

(c) A home study that is older than two years will require new training requirements and a complete new home study.

(4) The home study document will be maintained in the Child and Family Services offices and will be destroyed according the retention schedule.

KEY: adoption

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	62A-4a-105
	62A-4a-205.6
	62A-4a-607
	78B-6-128

R512. Human Services, Child and Family Services.
R512-41. Qualifying Adoptive Families and Adoption Placement.
R512-41-1. Purpose and Authority.

(1) The purpose of this rule is to define the requirements used to qualify adoptive parent(s) and the criteria for adoption placement used by the Division of Child and Family Services (Child and Family Services).

(2) This rule is authorized by Section 62A-4a-102. This rule also incorporates by reference Public Law 110-351 (2008).

R512-41-2. Definitions.

(1) For the purpose of this rule the following definitions apply:

(a) "Adoptive parent(s)" means a couple or individual who completes Child and Family Services training and has a completed home study for prospective adoptive parent(s) and is approved by Child and Family Services.

(b) "Permanency" means the establishment and maintenance of a permanent living situation for a child to give the child an internal sense of family stability and belonging and a sense of self that connects the child to his or her past, present, and future.

R512-41-3. Requirements for Adoptive Parent(s).

(1) Prospective adoptive parent(s) who apply to adopt a child in the custody of Child and Family Services, including a relative of a child or a Child and Family Services employee, must meet all of the requirements listed in Rule R512-40.

R512-41-4. Adoption Decision.

(1) Permanency decisions should be made in a timely manner, recognizing the child's developmental needs and sense of time. Child and Family Services shall make intensive efforts to place the child with the adoptive parent(s) within 30 days after the court determined a permanency goal of adoption for the child.

(2) When the child is not residing with the family that will adopt the child, Child and Family Services will reconsider any potential kinship caregivers or other adults known to the child.

(3) Concurrently, the Adoption Committee or committees should seek other resource families in all regions of the state to select adoptive parent(s) who could meet the child's needs.

(4) If adoptive parent(s) are not found for the child within 30 days of the primary permanency goal becoming adoption, the child must be registered with The Adoption Exchange to help recruit adoptive parents.

(5) Geographic boundaries alone should not present barriers or delays to the selection of adoptive parent(s).

(6) The Indian Child Welfare Act, 25 USC 1915 (January 3, 2007), takes precedence for an adoption of an Indian child who is a member of a federally recognized tribe or Alaskan Native village.

(7) Placements will be made in accordance with the Interethnic Adoption Act, 42 USC 1996b (2010).

R512-41-5. Matching the Child and the Adoptive Parent(s).

(1) The selection of the adoptive parent(s) for a child or sibling group will be determined based on the best interest of the child.

(2) The decision must be based on a thorough assessment of the child's current and potential development, medical, emotional, and educational needs, as well as needs for family connections.

(3) The capacity of the prospective adoptive parent(s) to successfully meet the child's needs and to love and accept the child as a fully integrated member of the family must be considered.

(4) The child's preference may be considered, if the child has the capacity to express a preference.

(5) Sibling groups should not be separated.

(a) If siblings are not placed together and there are no safety concerns that preclude the siblings being together, Child and Family Services should reconsider a family for all the siblings to be adopted together.

(b) If the siblings are not able to be adopted together or if being taken from a current family would create undue trauma to the child, arrangements should be made to allow life-long contact to be pursued between the adoptive families of the separated siblings.

(6) Current caregivers of the child should be considered for adoption if the child has substantial emotional ties with the foster parent(s)/caregiver and if removal of the child from the foster parent(s)/caregiver would be detrimental to the child's well-being.

(7) Child and Family Services shall provide detailed information about the child to the prospective adoptive parent(s), allowing sufficient time for the prospective adoptive parent(s) to make an informed decision regarding placement of the child. The information given to the prospective adoptive parent(s) must include detailed information available in writing that is important to raise the child. Child and Family Services and the prospective adoptive parent(s) will acknowledge receipt of the information by signing a Child and Family Services' information disclosure form. Child and Family Services shall respond to questions or concerns of the prospective adoptive parent(s). The prospective adoptive parent(s) shall have the opportunity to meet the child prior to permanent placement. Release of all documents is subject to the Government Records Access Management Act, Title 63G, Chapter 2 and other governing statutes.

(8) When the approved adoptive parent(s) agree to accept the placement of a child for adoption, the adoptive parent(s) and a representative from Child and Family Services shall sign an agreement for the intent to adopt a specific child on a form provided by Child and Family Services.

(9) When the adoptive parent(s) agree to accept the placement of a child who is not free for adoption, the parent(s) shall sign Child and Family Services' foster care agreement.

R512-41-6. Placement.

(1) Child and Family Services will make every effort to make a smooth and effective transition of the child to the prospective adoptive parent(s) with the cooperation of the foster family and others who have a supportive relationship with the child.

(2) All out-of-home requirements continue to be applicable until the adoption is finalized.

(3) The prospective adoptive parent(s) will have access to all relevant information in the case record to help them understand and accept the child and preserve the child's history.

(4) The prospective adoptive parent(s) shall be advised about adoption assistance available to meet the special needs of the child before and after the adoption is final, as well as of community services.

(5) Child and Family Services will develop a Child and Family Plan within 30 days of placement and supervise the adoptive placement, including frequent visits with the child and adoptive family for at least the first six months after placement.

(6) Child and Family Services' supervision will continue until the adoption is final.

R512-41-7. Adoption Disruption/Removal of a Child from Adoptive Parent(s) Prior to Finalization.

(1) Child and Family Services shall consider removal of a child before an adoption is finalized if the adoptive parent(s) request removal or if serious circumstances impair the child's security or development.

(2) Prior to removal, Child and Family Services shall respond to the adoptive parent(s)' concerns in a timely manner, counsel with the adoptive parent(s), and, if possible and appropriate, offer further treatment, including intensive in-home services or temporary removal of the child from the home for respite purposes.

(3) When removal is recommended, the Adoption Committee shall review the placement progress and present situation, and shall decide to either continue placement with further services or to remove the child from the home. The region director will review and approve the decision.

(4) If the Adoption Committee decides to remove the child, a Notice of Agency Action shall be sent to the adoptive parent(s), notifying them of their due process rights. The adoptive parent(s) shall be offered the same rights as those offered a foster family regarding removal of a child (Rule R512-31).

(5) Child and Family Services will reconsider any potential kinship caregivers if the child is disrupted or removed from an adoptive placement or a permanent placement has not been identified.

R512-41-8. Adoption Finalization and Post Adoption.

(1) Before an adoption is final, the Adoption Assistance Committee shall assess if the child qualifies for adoption assistance and, when appropriate, what level of monthly subsidy the child is eligible to receive (Rule R512-43).

(2) The prospective adoptive family shall be made aware of available post adoption resources.

R512-41-9. Adoption Committee.

(1) An Adoption Committee will be appointed in each Child and Family Services region and will consist of at least three members to include senior-level Child and Family Services staff and one or more members from an outside agency with expertise in adoption or foster care.

(2) The Adoption Committee is responsible for deciding adoptive parent(s) who can best meet the needs of a child when the child is not residing with the family that will adopt. The Adoption Committee is also responsible for recommending removal of the child from a placement when indicated.

(3) Anyone who has information regarding the child and the prospective adoptive parents under consideration may be invited by the Adoption Committee to present information but not to participate in the deliberations.

(4) Any member of the Adoption Committee who has a potential conflict of interest must recuse himself or herself from the proceeding.

(5) The Adoption Committee will reach its decision through consensus. If consensus cannot be reached, the Adoption Committee will submit their recommendation to the region director for a decision.

(6) Child and Family Services will send written notification of selection to the adoptive parent(s).

(7) A family or individual that is not selected for an adoption placement of a specific child shall have no right to appeal the decision, unless the parent(s) not selected for the adoptive placement is the child's current foster parent(s) and the foster parent(s) have completed all requirements. If the foster parent(s) are not selected for the adoptive placement, the foster parent(s) due process rights for removal of a child apply (Rule R512-31).

(8) The adoption committee will make and retain a written record of their proceedings. All proceedings are confidential.

R512-41-10. Adult Adoptee or Adoptive Parent(s) Request for Records.

(1) The adoption records of Child and Family Services shall be made available to the adoptive parent(s) or adult adoptee upon written request in accordance with the Government Records Access Management Act, Title 63G, Chapter 2. An adult adoptee may also register with the Utah Department of Health Mutual-Consent, Voluntary Adoption Registry, Section 78B-6-144 to attempt to contact biological family members.

R512-41-11. Information Regarding the Adoptive Parent(s).

(1) No identifying information regarding the adoptive parent(s) shall be released to birth families without the written consent of the adoptive parent(s).

KEY: child welfare, adoption

November 21, 2019	**62A-4a-102**
Notice of Continuation October 15, 2018	**62A-4a-105**
	62A-4a-205.6

R512. Human Services, Child and Family Services.
R512-42. Adoption by Relatives.
R512-42-1. Purpose and Authority.

(1) The purpose of this rule is to specify requirements for relatives to adopt a child in the custody of Child and Family Services.

(2) This rule is authorized by Sections 62A-4a-102, 78A-6-307, 78B-6-128, and 78B-6-133.

R512-42-2. Definitions.

(1) "Child and Family Services" means the Division of Child and Family Services.

(2) "Relative" is defined in Section 78A-6-307.

R512-42-3. Adoption by Relatives.

(1) A relative who has a relationship with a child in state's custody who may become available for adoption may apply to adopt a particular child.

(2) The application and adoptive evaluation (commonly called a home study) will be handled in accordance with the Child and Family Services Adoption Practice Guidelines, and in accordance with R512-41 and Sections 78B-6-128 and 78B-6-133, based upon the best interest of the child.

(a) Any preferential consideration of a relative defined in Section 78A-6-306 for the initial placement of a child in state's custody expires in 120 days of the shelter hearing.

(b) When a relative, as set forth in Section 78B-6-133, who has a significant and substantial relationship with the child, and who was not aware or did not come forward within 120 days, comes forward when a child in state's custody has a permanency goal of adoption, the long-term needs of the child to have connection with family will be a consideration as long as the relative has the ability to meet the long-term physical, emotional, cognitive, and special needs of the child.

(3) When the 120-day time period for preferential consideration for a relative of a child in custody expires, the court can grant a hearing to a petitioner that meets the following criteria:

(a) A relative who did not come forward in the first 120 days, if:

(i) they have a significant and substantial relationship with the child; and

(ii) the child is with another relative who is unable or unwilling to adopt the child; and

(iii) they were unaware the child was in foster care; and

(iv) they filed a written statement with the court within 30 days of reunification services being terminated to express the intent to assume full custody and adopt the child.

(b) The petitioner's home is where the child is placed.

(c) The petitioner's home is where the child has resided for six months.

(d) If the child:

(i) has been in the current placement for less than 180 days before the day on which the petitioner files the petition for adoption; and

(ii) is placed with, or is in the custody or guardianship of, an individual who previously informed Child and Family Services or the court that the individual is unwilling or unable to adopt the child.

KEY: adoption

November 21, 2019	**62A-4a-102**
Notice of Continuation October 13, 2016	**78A-6-307**
	78B-6-102
	78B-6-117
	78B-6-128
	78B-6-133
	78B-6-137

R512. Human Services, Child and Family Services.
R512-76. Expungement of DCFS Allegations.
R512-76-1. Purpose and Authority.

(1) The purpose of this rule is to define the criteria for the expungement of an allegation associated with an individual who is identified as a perpetrator or alleged perpetrator in the Management Information System (MIS) and the Licensing Information System (LIS).

(2) This rule is authorized by Sections 62A-4a-102 and 62A-4a-1008.

R512-76-2. Definitions.

(1) "CPS" means Child Protective Services.

(2) "DCFS" means the Division of Child and Family Services.

(3) "Expungement" means to seal an allegation associated with an individual identified as a perpetrator or alleged perpetrator that meets the criteria for expungement.

(4) "LIS" means the Licensing Information System as described in Section 62A-4a-1006.

(5) "MIS" means the Management Information System as described in Section 62A-4a-1003.

R512-76-3. Internal Process.

(1) An individual may submit a written request to expunge an allegation in which they are identified as a perpetrator or alleged perpetrator in the MIS or LIS. If the perpetrator or alleged perpetrator is a minor at the time expungement is sought, the perpetrator or alleged perpetrator's parent or guardian may submit the written request to expunge the allegation,

(2) Eligibility is based on the meeting of the criteria for expungement as outlined in the Criteria for Expungement subsection of this rule.

(3) If the individual does not meet the criteria for expungement, the request will be denied. The individual shall wait at least one year before submitting the same request.

(4) Decisions to approve or deny expungements are governed by the criteria for expungement and are not at the discretion of the division.

R512-76-4. Criteria for Expungement.

(1) Automatic Expungement after one year:

(a) All allegation types with a finding of Without Merit will be automatically expunged if:

(i) One year has passed since the CPS case closure date with no subsequent CPS case, including unaccepted referrals, involving allegations against the same alleged perpetrator.

(2) Automatic Expungement after five years:

(a) All allegation types Unsubstantiated or found to be without merit by the Juvenile Court will be automatically expunged if:

(i) Five years have passed since the CPS case closure date with no subsequent CPS case, including unaccepted referrals, involving allegations against the same alleged perpetrator.

(ii) Allegations of dependency and educational neglect with a finding of Unsupported or Supported will be automatically expunged after five years if:

(A) The original CPS case did not result in an ongoing case or removal due to the allegations involving the alleged perpetrator or the perpetrator; and

(B) Five years have passed since the CPS case closure date with no subsequent CPS case, including unaccepted referrals, involving allegations against the alleged perpetrator or perpetrator.

(3) Expungement Upon Request after five years:

(a) After five years have passed since the CPS case closure date, an individual may request an expungement on the following Unsupported General Findings:

(i) Child Endangerment;
(ii) Dealing in Material Harmful to a Child;
(iii) Dental Neglect;
(iv) Dependency;
(v) Domestic Violence Related Child Abuse;
(vi) Educational Neglect;
(vii) Emotional Abuse;
(viii) Emotional Maltreatment;
(ix) Environmental Neglect;
(x) Failure to Protect;
(xi) Failure to Thrive;
(xii) Juvenile Perpetrator of Sexual or Physical Abuse;
(xiii) Medical Neglect;
(xiv) Munchhausen Syndrome by Proxy;
(xv) Non-Supervision;
(xvi) Pediatric Condition Falsification;
(xvii) Physical Abuse;
(xviii) Physical Health;
(xix) Physical Neglect;
(xx) Psychological Neglect;
(xxi) Sibling or Child at Risk; and
(xxii) Unknown.

(b) The expungement will be approved only if:

(i) The original CPS case did not result in an ongoing case or removal due to the allegations involving the alleged perpetrator;

(ii) Five years have passed since the case closure date with no subsequent CPS case, including unaccepted referrals, involving allegations against the same alleged perpetrator; and

(iii) There was no criminal conviction for the same incident.

(4) Expungement Upon Request after 10 years:

(a) After ten years have passed since the CPS case closure date, the perpetrator may request an expungement on the following Supported General Findings:

(i) Child Endangerment;
(ii) Dealing in Material Harmful to a Child;
(iii) Dental Neglect;
(iv) Dependency;
(v) Domestic Violence Related Child Abuse;
(vi) Educational Neglect;
(vii) Emotional Abuse;
(viii) Emotional Maltreatment;
(ix) Environmental Neglect;
(x) Failure to Protect;
(xi) Failure to Thrive;
(xii) Fetal Exposure to Alcohol or other Harmful Substances;
(xiii) Juvenile Perpetrator -- non-significant risk of Sexual or Physical Abuse;
(xiv) Medical Neglect;
(xv) Munchhausen Syndrome by Proxy;
(xvi) Non-Supervision;
(xvii) Pediatric Condition Falsification;
(xviii) Physical Abuse;
(xix) Physical Health;
(xx) Physical Neglect;
(xxi) Psychological Neglect;
(xxii) Sibling or Child at Risk; and
(xxiii) Unknown.

(b) The expungement will only be approved if:

(i) The original CPS case did not result in an ongoing case or removal due to allegations involving the same perpetrator;

(ii) Ten years have passed since the CPS case closure date with no subsequent CPS case, including unaccepted referrals, involving allegations against the same perpetrator; and

(iii) There was no criminal conviction for the same incident.

(5) Allegations Never Eligible for Expungement:

(a) The following Supported or Unsupported allegations

designated as Chronic and/or Severe and/or there was a criminal conviction for the same incident are never eligible for expungement:

(i) Abandonment;
(ii) Baby Doe;
(iii) Child Endangerment;
(iv) Chronic Abuse;
(v) Chronic Neglect;
(vi) Court Ordered;
(vii) Dealing in Material Harmful to a Child;
(viii) Dependency;
(ix) Domestic Violence Related Child Abuse;
(x) Educational Neglect;
(xi) Emotional Abuse;
(xii) Environmental Neglect;
(xiii) Failure to Protect;
(xiv) Failure to Thrive;
(xv) Fetal Addiction to alcohol or other substance;
(xvi) Fetal Exposure to Alcohol or other Harmful Substances;
(xvii) Juvenile Perpetrator - significant risk of Sexual or Severe Physical Abuse;
(xviii) Labor Trafficking;
(xix) Lewdness;
(xx) Medical Neglect;
(xxi) Medical neglect resulting in death/disability/serious illness;
(xxii) Non-Supervision;
(xxiii) Pediatric Condition Falsification;
(xxiv) Physical Abuse;
(xxv) Physical Neglect;
(xxvi) Ritual Abuse;
(xxvii) Safe Relinquishment of a Newborn;
(xxviii) Severe Abuse;
(xxix) Severe Neglect;
(xxx) Sexual Abuse;
(xxxi) Sexual Exploitation;
(xxxii) Sexual Trafficking; and
(xxxiii) Sibling or Child at Risk.

(b) Any allegations with the following findings are never eligible for expungement:

(i) False Report;
(ii) Unable to Locate;
(iii) Unable to Complete; and
(iv) Substantiated by the Juvenile Court.

KEY: child abuse, expungement of records
November 7, 2019 **62A-4a-102**
62A-4a-1008

R590. Insurance, Administration.
R590-128. Unfair Discrimination Based on the Failure to Maintain Automobile Insurance. (Revised.)
R590-128-1. Authority.

This rule is promulgated pursuant to Subsection 31A-23a-402(3), which provides guidelines for determining what is unfair discrimination, and Subsection 31A-23a-402(8), which allows the commissioner to make rules defining unfair marketing acts or practices.

R590-128-2. Purpose.

The purpose of this rule is to identify certain practices the commissioner finds are unfair and discriminatory.

R590-128-3. Scope and Applicability.

This rule applies to all automobile insurance contracts delivered or issued for delivery in this state on or after the effective date of this rule.

R590-128-4. Rule.

(1) The following are hereby identified as acts or practices which, when applied because of failure to maintain automobile insurance for a period of time prior to the issuance of an insurance policy, constitute unfair discrimination among members of the same class:

(a) refusing to insure or refusing to continue to insure;

(b) limiting the amount, extent or kinds of coverage available;

(c) charging applicants different rates for the same coverage by either surcharging one applicant who did not have prior insurance or crediting another applicant who did have prior insurance; or

(d) designating the applicant as a non-standard, sub-standard, or otherwise worse than average risk for the purpose of placing the applicant in a specific company or rating tier.

(2) In the application of Subsection (1) the following shall apply:

(a) an insurer may reject or surcharge an applicant if the insurer can demonstrate through driving records or other objective means including, but not limited to, a statement from the applicant, that the applicant has at any time in the immediately prior three years been operating a motor vehicle in violation of any state's compulsory auto insurance laws; or

(b) an insurer may reject or surcharge an applicant if the applicant represents that prior insurance existed, but fails to provide evidence to the insurer, or fails to assist the insurer in securing evidence that said prior insurance actually existed.

(3) Inadvertent lapses in coverage of up to 30 days due to the applicant's reasonable reliance on information from an insurance producer or company that the applicant was insured are not considered to be a failure to maintain automobile insurance for the purposes of this rule.

R590-128-5. Penalties.

Violations of this rule are punishable pursuant to Section 31A-2-308.

KEY: insurance companies
June 16, 1998 **31A-23a-402**
Notice of Continuation November 25, 2019

R590. Insurance, Administration.
R590-132. Insurance Treatment of Human Immunodeficiency Virus (HIV) Infection.
R590-132-1. Authority, Purpose and Scope.

This rule is promulgated by the Insurance Commissioner pursuant to the authority provided under Subsections 31A-2-201(3) and (4), General Duties and Powers.

The purpose of this rule is to identify and restrict certain underwriting, classification, or declination practices regarding HIV infection, that the commissioner finds are or would be unfairly discriminatory if engaged in. This rule also provides guidelines for the confidentiality of AIDS related testing, which, if not followed, would be unfairly discriminatory or hazardous to members of the insuring public.

This rule applies to every licensee authorized to engage in the business of insurance in Utah under Title 31A of the Utah Code.

R590-132-2. Definitions.

For the purpose of this rule, the commissioner adopts the definitions set forth in Section 31A-1-301 and in addition, the following:

A. HIV infection is defined as the presence of Human Immunodeficiency Virus (HIV) in a person as detected by the following;

1. Presence of antibodies to HIV, verified by appropriate confirmatory tests.
2. Presence of HIV antigen.
3. Isolation of HIV.
4. Demonstration of HIV proviral DNA.

R590-132-3. Rule.

A. Persons with HIV infection will not be singled out for either unfairly discriminatory or preferential treatment for insurance purposes.

B. To properly classify risks related to covering prospective insureds, insurers may require reasonable testing. Application questions must conform to the following guidelines:

1. No inquiry in an application for health or life insurance coverage, or in an investigation conducted by an insurer or an insurance support organization on its behalf in connection with an application for such coverage, shall be directed toward determining the applicant's sexual orientation.

2. Sexual orientation may not be used in the underwriting process or in the determination of insurability.

C. When used, the testing of insurance applicants must not be administered on an unfair basis. If a prospective insured is to be declined or rated substandard because of HIV infection, such action must be based on appropriate confirmatory tests.

D. Notice and Consent. No person engaged in the business of insurance shall require an HIV test of an individual in connection with an application for insurance unless the individual signs a written release on a form which contains the following information:

1. A statement of the purpose, content, use and meaning of the test.

2. A statement regarding disclosure of the test results, including information explaining the effect of releasing information to a person directly engaged in the business of insurance. The applicant should be advised that the insurer may disclose test results to others involved in the underwriting and claims review processes. If the HIV test is positive, the results will be reported by those conducting the test or providers receiving test results to the local health department. If the applicant does not designate a physician or other health care provider, the insurer shall report a positive test result to the local health department. If the insurer is a member of the Medical Information Bureau ("MIB, Inc.") the insurer may report the test results to MIB, Inc. in a generic code which signifies only non-specific test abnormalities.

3. A provision where the applicant directs that any positive screen results be reported to a designated health care professional of his/her choice for post-test counseling.

For purposes of this section, insurers will use the following notice and consent disclosure form or a form that contains similar language. Such form is not considered part of the policy or policy application.

TABLE

Illustrative HIV Testing Informed Consent Form

EXAMINER ..... INSURER .....
ADDRESS ..... ADDRESS .....
....
....

NOTICE AND CONSENT FOR TESTING
WHICH MAY INCLUDE AIDS VIRUS (HIV) ANTIBODY/ANTIGEN TESTING

To determine your insurability, the insurer named above (the insurer) is requesting that you provide a sample of your blood and/or other bodily fluid for testing and analysis. In order to adequately perform all testing procedures, it may be necessary for you to provide a sample of more than one of these bodily fluids. All tests will be performed by a licensed laboratory.

Unless precluded by law, tests may be performed to determine the presence of antibodies or antigens to the Human Immunodeficiency Virus (HIV), also known as the AIDS virus. The HIV antibody test performed is actually a series of tests done by a medically accepted procedure. The HIV antigen test directly identifies AIDS viral particles. These tests are extremely reliable. Other tests which may be performed include determinations of blood cholesterol and related lipids (fats), screening for liver or kidney disorders, diabetes, immune disorders, and other physical conditions.

All test results will be treated confidentially. They will be reported by the laboratory to the insurer. When necessary for business reasons in connection with insurance you have or had applied for with the insurer, the insurer may disclose test results to others such as its affiliates, reinsurers, employees, or contractors. If the insurer is a member of the Medical Information Bureau (MIB, Inc.), and should the insurer request an additional sample of bodily fluid for further testing, and you choose to decline that request, your declination to be tested will be reported to the MIB, Inc. Regardless of the number of tests requested, if the final test results for HIV antibodies/antigens are other than normal, the insurer will report to the MIB, Inc. a generic code which signifies only a non-specific abnormality. If your HIV test is normal, no report will be made about it to the MIB, Inc. Other test results may be reported to the MIB, Inc. in a more specific manner. The organizations described in this paragraph may maintain the test results in a file or data bank. There will be no other disclosure of test results or even that the tests have been done except as may be required or permitted by law or as authorized by you.

If your HIV test results are normal, no routine notification will be sent to you. If the HIV test results are other than normal, the insurer will contact you. The insurer may also contact you if there are other abnormal test results which, in the insurer's opinion, are significant. The insurer may ask you for the name of a physician or other health care provider to whom you may authorize disclosure and with whom you may wish to discuss the results. The laboratory, physician or other health care provider will report positive test results to the Health Department. If you have not designated a physician or other health care provider to receive disclosure of positive test results, the insurer will report positive test results to the health department.

Positive HIV antibodies/antigen test results do not mean that you have AIDS, but that you are at significantly increased risk of developing AIDS or AIDS-related conditions. Federal authorities say that persons who are HIV antibody/antigen positive should be considered infected with the AIDS virus and capable of infecting others.

Positive HIV antibody or antigen test results or other significant abnormalities will adversely affect your application for insurance. This means that your application may be declined, that an increased premium may be charged, or that other policy changes may be necessary.

I have read and I understand this notice and consent for testing

which may include HIV antibodies/antigen testing. I voluntarily consent to the withdrawal from me of blood and/or other bodily fluid, the testing of that blood and/or other bodily fluid, and the disclosure of the test results as described above.

I understand that I have the right to request and receive a copy of this authorization. A photocopy of this form will be as valid as the original.

.....
Proposed Insured Date of Birth

.....
Signature of Proposed Insured Date

.....
State of Residence

.....
Designated Physician or Health Care Provider
that is to Receive Positive Test Results

.....
Street Address

.....
City State Zip

R590-132-4. Dissemination.

Each insurer is instructed to distribute a copy of this rule or an equivalent summary to all personnel engaged in activities requiring knowledge of this rule, and to instruct them as to its scope and operation.

R590-132-5. Penalties.

Any licensee that violates this rule will be subject to the forfeiture provisions set forth in Section 31A-2-308 and 31A-23-216.

R590-132-6. Confidentiality.

Except as outlined in R590-132-3(D) above, all positive or indeterminate records of the applicant held by the licensee that refer to the HIV status shall be held as confidential records under restricted access and will not be re-released unless re-disclosure is specifically authorized by the applicant.

Re-release and Re-disclosure are required when the test results are to be used for purposes other than those included in the initial release.

R590-132-7. Severability.

If any provision of this rule or its application to any person is for any reason held to be invalid, the remainder of the rule and the application of any provision to other persons or circumstances may not be affected.

KEY: insurance law
March 1, 1998 31A-2-201
Notice of Continuation November 25, 2019

R590. Insurance, Administration.
R590-196. Bail Bond Surety Fee Standards, Collateral Standards, and Disclosure Form.
R590-196-1. Purpose.

This rule establishes uniform fee and collateral standards for bail bond surety business in the State of Utah.

R590-196-2. Authority.

This rule is promulgated pursuant to Section 31A-35-104 which requires the commissioner to adopt by rule standards of conduct for bail bond surety business.

R590-196-3. Scope and Applicability.

This rule applies to any person engaged in bail bond surety business.

R590-196-4. Fee Standards.

(1) Initial bail bond fees.

(a) Bail bond premium:

(i) minimum fee: not less than 10% of bond amount;

(ii) maximum fee: not to exceed 20% of bond amount.

(b) Document preparation fee may not exceed $20 per set of forms pertaining to one bail bond.

(c) Credit card fee may not exceed 5% of the amount charged to the credit card.

(2) Additional fees.

(a) These fees are limited to actual and reasonable expenses incurred by the bail bond surety because:

(i) the defendant fails to appear before the court at any designated dates and times;

(ii) the defendant fails to comply with the court order; or

(iii) the defendant or the co-signer fails to comply with the terms of the bail bond agreement and any promissory notes pertaining to that agreement.

(b) Reasonable expense fee for mileage is the Internal Revenue Service standard for business mileage.

(c) Apprehension expenses such as meals, lodging, commercial travel, communications, whether or not the defendant is apprehended, are limited to actual expenses incurred and must be reasonable, i.e., meals at mid-range restaurants, lodging at mid-range hotels, commercial travel in coach class, etc.

(d) Reasonable collateral expense fees:

(i) actual expenses to obtain collateral; and

(ii) storage expenses if in a secured storage area, limited to actual expenses.

(e) A late payment fee of $20 or 5% of the delinquent periodic payment whichever is less.

(f) If a fee is charged by the court or the jail to process a bail bond, the actual fee charged may be passed through to the defendant or the co-signer.

R590-196-5. Collateral Standards.

(1) Collateral may be provided to secure bail bond fees, the face amount of the bail bond issued, or both.

(2) If the bail bond surety accepts the same collateral to secure the bail bond fees and the face amount of the bail bond issued, then, in the event of a failure to pay bail bond fees when due, the collateral may not be converted until the bail bond is exonerated or judgment entered against the surety and the depositor has been given no less than 15 days to pay any bond fees owing.

(3) If the bail bond surety accepts different collateral to secure the bail bond fee and the face amount of the bail bond issued then:

(i) the collateral securing the bail bond fees may not be converted until payment has been defaulted under the terms of the promissory note for those fees, and the depositor of the collateral has been given no less than 15 days to make the required payment;

(ii) the collateral securing the face amount of the bail bond issued may not be converted until the bond is exonerated or judgment entered against the surety and the depositor of the collateral has been given no less than 15 days to reimburse the bail bond surety for any amounts owed to the bail bond surety.

(4) The bail bond surety, its agents taking possession of collateral, or both, will hold said collateral as a fiduciary until such time as ownership of the collateral passes to the bail bond surety.

(5) Collateral held as a fiduciary may not be used by the bail bond surety or its agents without the specific written permission of the depositor of the collateral.

(6) Should proceeds from converted collateral exceed the outstanding balance due, the bail bond surety will return the excess to the depositor of the collateral.

(7) Notice under the rule shall be deemed proper if it is sent via first class mail to the address provided by the depositor of the collateral.

R590-196-6. Disclosure Form.

The bail bond surety and its agents will use the following disclosure form or a form that contains similar language.

TABLE

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XYZ Bail Bonds Disclosure Form
1234 South 1234 East, Salt Lake City, UT 84444:
801-123-4567 fax: 801-098-7654
Defendant.....Co-Signer.....
Court.....Charge.....
Bond amount $.....Bond number.....
Initial Fees, non-refundable.
....bond premium, maximum: no more than 20%;
    minimum: not less than 10%;                          $......
....document preparation, not to exceed $20
    per set of bond forms.                               $......
....credit card fee, not to exceed 5% of amount
    charged to credit card                               $......
                                  total initial fees     $......

Additional Fees.
     (1)  Limited to actual and reasonable expenses required
because the defendant fails to appear before the court at any
designated times, or fails to comply with the court order, or
fails to comply with the terms of the bail bond agreement or
any promissory notes pertaining to that agreement.  The following
are some reasonable expense fees:
     (i)  reasonable expense fee for mileage is IRS mileage
reimbursement standard for business miles;
     (ii)  reasonable apprehension expense fees include
meals at mid-range restaurants, lodging at mid-range hotels,
transportation at no more than coach fares; and
     (iii)  reasonable collateral expense fees: actual
expenses to obtain collateral and, actual storage expenses,
if collateral is in a secured storage area.
     (2)  A late payment fee of $20 or 5% of the
delinquent periodic payment whichever is less.
     (3)  If a fee is charged by the court or the jail to
process a bail bond, the actual fee charged may be passed
through to the defendant or the co-signer.

Grounds for revocation of bond.
     Should the defendant violate any of the following, the
defendant shall be subject to immediate bond revocation andthe
defendant, or the co-signer, or both, shall be subject to
all the costs incurred to return the defendant to the court.

Grounds for revocation include the following:
     (a)  the defendant or co-signer providing materially false
information on bail bond application;
     (b)  the court's increasing the amount of bail beyond sound
underwriting criteria employed by the bail bond agent or bail
bond surety;
     (c)  a material and detrimental change in the collateral
posted by the defendant or one acting on defendant's behalf;
     (d)  the defendant changes their address or telephone
number or employer without giving reasonable notice to the bail
bond agent or bail bond surety;
     (e)  the defendant is arrested for another crime, other
than a minor traffic violation, while on bail;
     (f)  the defendant is back in jail in any jurisdiction and
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revocations can be served prior to the defendant being released;
(g) failure by the defendant to appear in court at any appointed times;
(h) finding of guilt against the defendant by a court of competent jurisdiction;
(i) a request by the co-signer based on reasons (a) through (h) above. Items (a) through (h) pertain to the defendant; items (a), (c), (e) (g) and (i) pertain to co-signers, if any.

Collateral.
The following has been given as collateral to guarantee all court appearances of the defendant until the bond is exonerated:
.....
.....
.....
The following has been given as collateral to guarantee payment of bond fees:
.....
.....
In the event judgment is entered against the surety or the bonding fee is not paid according to the terms of the bail bond agreement and its promissory note, if any, following written notice to the undersigned of such judgment or non-payment, the undersigned authorize XYZ Bail Bonds to convert the appropriate collateral to collect the judgment or the unpaid bond fees. Should proceeds from the sale of the appropriate collateral be insufficient to cover the outstanding balance due, the defendant, the co-signer, or both, agree to be personally liable for the difference. Should proceeds from the sale exceed the outstanding balance, the difference will be returned to the depositor of the collateral. The depositor's signature below constitutes acknowledgment of a Bill of Sale for the collateral. The depositor accepts this agreement as a bill of sale for the collateral.

By signing below I certify that I have read and understand this disclosure form, the bail bond agreement and its attached promissory note, if any. I certify under penalty of perjury that all information given to XYZ Bail Bonds verbally and in writing on all documents relevant to this bond are true and accurate. The co-signer agrees that should the co-signer request XYZ Bail Bonds to revoke the defendant's bond, with or without probable cause, the co-signer will be responsible to pay XYZ Bail Bonds and their agents for the time returning the defendant to jail at the rates stated above in additional fees. If requested by the co-signer to revoke the bond without probable cause, the co-signer will be responsible to reimburse the defendant his bond fees.

Date.....Defendant.....
Date.....Co-signer.....
Date.....Depositor.....
I,....., agent of XYZ Bail Bonds, certify that I have given a copy of all documents pertaining to this bail bond agreement to the defendant, the co-signer, the depositor, or any of the above, at the time and date said bail bond agreement was executed.
Date.....Bail Bond Agent.....

R590-196-7. Penalties.

Violations of this rule are punishable pursuant to Section 31A-2-308.

R590-196-8. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this and the provisions of this rule are declared to be severable.

R590-196-9. Enforcement Date.

The commissioner will begin enforcing the revised provision of this rule 45 days from the rule's effective date.

KEY: insurance, bail bonds
April 14, 2010 31A-35-104
Notice of Continuation November 15, 2019

R590. Insurance, Administration.
R590-197. Treatment of Guaranty Association Assessments as Qualified Assets.
R590-197-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to the general authority to adopt a rule granted under 31A-2-201(3). Specific rulemaking authority in Subsection 31A-17-201(2)(a) allows the department to authorize other assets than those specified in the insurance code, as qualified assets in the determination of an insurers financial condition. Pursuant to Subsection 31A-28-109(8) the insurance commissioner is authorized to approve the amounts and time periods for which contributions are treated as assets.

R590-197-2. Purpose.

This rule is issued in order to establish the standards by which assessments paid by insurers to insurance guaranty associations may be treated as "qualified assets" as that term is defined in 31A-17-201(2).

R590-197-3. Extent to Which Paid Assessments Are Qualified Assets.

A. The term "qualified assets" in 31A-17-201 includes guaranty fund or guaranty association assessments paid in any state, but only to the extent it is probable the company will be able to offset those assessments against present or future premium taxes or income taxes paid in the state in which the assessments were paid.

B. The amount of the assessments allowed as qualified assets shall not exceed two and one half times the amount of premium or income taxes paid for the previous calendar year.

C. The insurance commissioner may disallow any such assessment as a qualified asset to the extent the commissioner determines a company is unlikely to realize a present or future premium tax or income tax offset as a result of the assessment.

D. For purposes of subsection (A) above, a company is deemed to have paid income or premium taxes where it actually reduces its gross premium tax liability by use of a credit or other legally allowable deduction.

R590-197-4. Severability.

If any provision or portion of this rule or the application of it to any company, person or circumstance is for any reason held to be invalid, such invalidity does not affect the remainder of the rule and the application of the provision to other companies, persons or circumstances.

KEY: insurance law
January 25, 2000 31A-2-201
Notice of Continuation November 15, 2019 31A-17-201

R590. Insurance, Administration.
R590-198. Valuation of Life Insurance Policies Rule.
R590-198-1. Purpose.

A. The purpose of this rule is to provide:

(1) tables of select mortality factors and rules for their use;

(2) rules concerning a minimum standard for the valuation of plans with nonlevel premiums or benefits; and

(3) rules concerning a minimum standard for the valuation of plans with secondary guarantees.

B. The method for calculating basic reserves defined in this rule will constitute the Commissioners' Reserve Valuation Method for policies to which this rule is applicable.

R590-198-2. Authority.

This rule is issued under the authority of Sections 31A-17-402 and 31A-17-512.

R590-198-3. Applicability.

This rule shall apply to all life insurance policies, with or without nonforfeiture values, issued on or after the original enactment date of this rule, subject to the following exceptions and conditions.

A. Exceptions

(1) This rule shall not apply to any individual life insurance policy issued on or after January 4, 2000 if the policy is issued in accordance with and as a result of the exercise of a reentry provision contained in the original life insurance policy of the same or greater face amount, issued before January 4, 2000, that guarantees the premium rates of the new policy. This rule also shall not apply to subsequent policies issued as a result of the exercise of such a provision, or a derivation of the provision, in the new policy.

(2) This rule shall not apply to any universal life policy that meets all the following requirements:

(a) Secondary guarantee period, if any, is five-years or less;

(b) Specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the CSO (Commissioner's Standard Ordinary) valuation tables as defined in Section 4F of this rule and the applicable valuation interest rate; and

(c) The initial surrender charge is not less than 100% of the first year annualized specified premium for the secondary guarantee period.

(3) This rule shall not apply to any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts.

(4) This rule shall not apply to any variable universal life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts.

(5) This rule shall not apply to a group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one-year.

B. Conditions

(1) Calculation of the minimum valuation standard for policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits, other than universal life policies, or both, shall be in accordance with the provisions of Section 6.

(2) Calculation of the minimum valuation standard for flexible premium and fixed premium universal life insurance policies, that contain provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period shall be in accordance with the provisions of Section 7.

R590-198-4. Definitions.

For purposes of this rule:

A. "Basic reserves" means reserves calculated in accordance with Section 31A-17-504.

B. "Contract segmentation method" means the method of dividing the period from issue to mandatory expiration of a policy into successive segments, with the length of each segment being defined as the period from the end of the prior segment, from policy inception, for the first segment, to the end of the latest policy year as determined below. All calculations are made using the 1980 CSO valuation tables, as defined in Subsection F of this section, or any other valuation mortality table adopted by the National Association of Insurance Commissioners, NAIC, after January 4, 2000 and promulgated by rule by the commissioner for this purpose, and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in Section 5B of this rule.

The length of a particular contract segment shall be set equal to the minimum of the value t for which G_t is greater than R_t, if G_t never exceeds R_t the segment length is deemed to be the number of years from the beginning of the segment to the mandatory expiration date of the policy, where G_t and R_t are defined as follows: $G_t = GP_{x+k+t} / GP_{x+k+t-1}$ where: x =original issue age; k =the number of years from the date of issue to the beginning of the segment; t =1, 2, ...; t is reset to 1 at the beginning of each segment; $GP_{x+k+t-1}$ =Guaranteed gross premium per thousand of face amount for year t of the segment, ignoring policy fees only if level for the premium paying period of the policy.

$R_t = q_{x+k+t} / q_{x+k+t-1}$, However, R_t may be increased or decreased by 1% in any policy year, at the company's option, but R_t shall not be less than one; where: x, k and t are as defined above, and $q_{x+k+t-1}$ =valuation mortality rate for deficiency reserves in policy year k+t but using the mortality of Section 5B(2) if Section 5B(3) is elected for deficiency reserves.

However, if GP_{x+k+t} is greater than 0 and $GP_{x+k+t-1}$ is equal to 0, G_t shall be deemed to be 1000. If GP_{x+k+t} and $GP_{x+k+t-1}$ are both equal to 0, G_t shall be deemed to be 0.

C. "Deficiency reserves" means the excess, if greater than zero, of:

(1) Minimum reserves calculated in accordance with Section 31A-17-507 over

(2) Basic reserves.

D. "Guaranteed gross premiums" means the premiums under a policy of life insurance that are guaranteed and determined at issue.

E. "Maximum valuation interest rates" means the interest rates defined in Section 31A-17-506, Computation of Minimum Standard by Calendar Year of Issue, that are to be used in determining the minimum standard for the valuation of life insurance policies.

F. "1980 CSO valuation tables" means the Commissioners' 1980 Standard Ordinary Mortality Table, 1980 CSO Table, without ten-year selection factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law, and variations of the 1980 CSO Table approved by the NAIC, such as the smoker and nonsmoker versions approved in December 1983.

G. "Scheduled gross premium" means the smallest illustrated gross premium at issue for other than universal life insurance policies. For universal life insurance policies, scheduled gross premium means the smallest specified premium described in Section 7A(3), if any, or else the minimum premium described in Section 7A(4).

H.(1) "Segmented reserves" means reserves, calculated using segments produced by the contract segmentation method, equal to the present value of all future guaranteed benefits less the present value of all future net premiums to the mandatory expiration of a policy, where the net premiums within each segment are a uniform percentage of the respective guaranteed

gross premiums within the segment. The uniform percentage for each segment is such that, at the beginning of the segment, the present value of the net premiums within the segment equals:

(a) The present value of the death benefits within the segment, plus

(b) The present value of any unusual guaranteed cash value, see Section 6D, occurring at the end of the segment, less

(c) Any unusual guaranteed cash value occurring at the start of the segment, plus

(d) For the first segment only, the excess of the Item (i) over Item (ii), as follows:

(i) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for in the first segment after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary within the first segment on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the 19-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one-year higher than the age at issue of the policy.

(ii) A net one-year term premium for the benefits provided for in the first policy year.

(2) The length of each segment is determined by the "contract segmentation method," as defined in this section.

(3) The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the sum of the lengths of all segments of the policy.

(4) For both basic reserves and deficiency reserves computed by the segmented method, present values shall include future benefits and net premiums in the current segment and in all subsequent segments.

I. "Tabular cost of insurance" means the net single premium at the beginning of a policy year for one-year term insurance in the amount of the guaranteed death benefit in that policy year.

J. "Ten-year select factors" means the select factors adopted with the 1980 amendments to the NAIC Standard Valuation Law.

K.(1) "Unitary reserves" means the present value of all future guaranteed benefits less the present value of all future modified net premiums, where:

(a) Guaranteed benefits and modified net premiums are considered to the mandatory expiration of the policy; and

(b) Modified net premiums are a uniform percentage of the respective guaranteed gross premiums, where the uniform percentage is such that, at issue, the present value of the net premiums equals the present value of all death benefits and pure endowments, plus the excess of Item (i) over Item (ii), as follows:

(i) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per year payable on the first and each subsequent anniversary of the policy on which a premium falls due. However, the net level annual premium shall not exceed the net level annual premium on the 19-year premium whole life plan of insurance of the same renewal year equivalent level amount at an age one-year higher than the age at issue of the policy.

(ii) A net one-year term premium for the benefits provided for in the first policy year.

(2) The interest rates used in the present value calculations for any policy may not exceed the maximum valuation interest rate, determined with a guarantee duration equal to the length from issue to the mandatory expiration of the policy.

L. "Universal life insurance policy" means any individual life insurance policy under the provisions of which separately identified interest credits, other than in connection with dividend accumulations, premium deposit funds, or other supplementary accounts, and mortality or expense charges are made to the policy.

R590-198-5. General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves.

A. At the election of the company for any one or more specified plans of life insurance, the minimum mortality standard for basic reserves may be calculated using the 1980 CSO valuation tables with select mortality factors, or any other valuation mortality table adopted by the NAIC after January 4, 2000 and promulgated by rule by the commissioner for this purpose. If select mortality factors are elected, they may be:

(1) The ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law, see Rule R590-95;

(2) The select mortality factors adopted by the NAIC at the 1999 Spring National Meeting.

(3) Any other table of select mortality factors adopted by the NAIC after January 4, 2000 and promulgated by rule by the commissioner for the purpose of calculating basic reserves.

B. Deficiency reserves, if any, are calculated for each policy as the excess, if greater than zero, of the quantity A over the basic reserve. The quantity A is obtained by recalculating the basic reserve for the policy using guaranteed gross premiums instead of net premiums when the guaranteed gross premiums are less than the corresponding net premiums. At the election of the company for any one or more specified plans of insurance, the quantity A and the corresponding net premiums used in the determination of quantity A may be based upon the 1980 CSO valuation tables with select mortality factors or any other valuation mortality table adopted by the NAIC after January 4, 2000 and promulgated by rule by the commissioner. If select mortality factors are elected, they may be:

(1) The ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law;

(2) The select mortality factors adopted by the NAIC at the 1999 Spring National Meeting;

(3) For durations in the first segment, X percent of the select mortality factors adopted by the NAIC at the 1999 Spring National Meeting, subject to the following:

(a) X may vary by policy year, policy form, underwriting classification, issue age, or any other policy factor expected to affect mortality experience;

(b) X is such that, when using the valuation interest rate used for basic reserves, Item (i) is greater than or equal to Item (ii);

(i) The actuarial present value of future death benefits, calculated using the mortality rates resulting from the application of X;

(ii) The actuarial present value of future death benefits calculated using anticipated mortality experience without recognition of mortality improvement beyond the valuation date;

(c) X is such that the mortality rates resulting from the application of X are at least as great as the anticipated mortality experience, without recognition of mortality improvement beyond the valuation date, in each of the first 5-years after the valuation date;

(d) The appointed actuary shall increase X at any valuation date where it is necessary to continue to meet all the requirements of Subsection B(3);

(e) The appointed actuary may decrease X at any valuation date as long as it continues to meet all the requirements of Subsection B(3); and

(f) The appointed actuary shall specifically take into account the adverse effect on expected mortality and the lapsing of any anticipated or actual increase in gross premiums.

(g) If X is less than 100% at any duration for any policy, the following requirements shall be met:

(i) The appointed actuary shall disclose, in the Regulatory Asset Adequacy Issues Summary required by R590-162-7, the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods; and

(ii) The appointed actuary shall annually opine for all policies subject to this rule as to whether the mortality rates resulting from the application of X meet the requirements of Subsection B(3). This opinion shall be supported by an actuarial report, subject to appropriate Actuarial Standards of Practice promulgated by the Actuarial Standards Board of the American Academy of Actuaries. The X factors shall reflect anticipated future mortality, without recognition of mortality improvement beyond the valuation date, taking into account relevant emerging experience.

(4) Any other table of select mortality factors adopted by the NAIC after January 4, 2000 and promulgated by rule by the commissioner for the purpose of calculating deficiency reserves.

C. This subsection applies to both basic reserves and deficiency reserves. Any set of select mortality factors may be used only for the first segment. However, if the first segment is less than ten-years, the appropriate ten-year select mortality factors incorporated into the 1980 amendments to the NAIC Standard Valuation Law may be used thereafter through the tenth policy year from the date of issue.

D. In determining basic reserves or deficiency reserves, guaranteed gross premiums without policy fees may be used where the calculation involves the guaranteed gross premium but only if the policy fee is a level dollar amount after the first policy year. In determining deficiency reserves, policy fees may be included in guaranteed gross premiums, even if not included in the actual calculation of basic reserves.

Reserves for policies that have changes to guaranteed gross premiums, guaranteed benefits, guaranteed charges, or guaranteed credits that are unilaterally made by the insurer after issue and that are effective for more than one-year after the date of the change shall be the greatest of the following:

(1) reserves calculated ignoring the guarantee;

(2) reserves assuming the guarantee was made at issue; and

(3) reserves assuming that the policy was issued on the date of the guarantee.

F. The commissioner may require that the company document the extent of the adequacy of reserves for specified blocks, including but not limited to policies issued prior to January 4, 2000. This documentation may include a demonstration of the extent to which aggregation with other non-specified blocks of business is relied upon in the formation of the appointed actuary opinion pursuant to and consistent with the requirements of Rule R590-162-5.

R590-198-6. Calculation of Minimum Valuation Standard for Policies with Guaranteed Nonlevel Gross Premiums or Guaranteed Nonlevel Benefits Other than Universal Life Policies.

A. Basic Reserves

Basic reserves shall be calculated as the greater of the segmented reserves and the unitary reserves. Both the segmented reserves and the unitary reserves for any policy shall use the same valuation mortality table and selection factors. At the option of the insurer, in calculating segmented reserves and net premiums, either of the adjustments described in Paragraph (1) or (2) below may be made:

(1) Treat the unitary reserve, if greater than zero, applicable at the end of each segment as a pure endowment and subtract the unitary reserve, if greater than zero, applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment.

(2) Treat the guaranteed cash surrender value, if greater than zero, applicable at the end of each segment as a pure endowment; and subtract the guaranteed cash surrender value, if greater than zero, applicable at the beginning of each segment from the present value of guaranteed life insurance and endowment benefits for each segment.

B. Deficiency Reserves

(1) The deficiency reserve at any duration shall be calculated:

(a) On a unitary basis if the corresponding basic reserve determined by Subsection A is unitary;

(b) On a segmented basis if the corresponding basic reserve determined by Subsection A is segmented; or

(c) On the segmented basis if the corresponding basic reserve determined by Subsection A is equal to both the segmented reserve and the unitary reserve.

(2) This subsection shall apply to any policy for which the guaranteed gross premium at any duration is less than the corresponding modified net premium calculated by the method used in determining the basic reserves, but using the minimum valuation standards of mortality, specified in Section 5B, and rate of interest.

(3) Deficiency reserves, if any, shall be calculated for each policy as the excess if greater than zero, for the current and all remaining periods, of the quantity A over the basic reserve, where A is obtained as indicated in Section 5B.

(4) For deficiency reserves determined on a segmented basis, the quantity A is determined using segment lengths equal to those determined for segmented basic reserves.

C. Minimum Value

Basic reserves may not be less than the tabular cost of insurance for the balance of the policy year, if mean reserves are used. Basic reserves may not be less than the tabular cost of insurance for the balance of the current modal period or to the paid-to-date, if later, but not beyond the next policy anniversary, if mid-terminal reserves are used. The tabular cost of insurance shall use the same valuation mortality table and interest rates as that used for the calculation of the segmented reserves. However, if select mortality factors are used, they shall be the ten-year select factors incorporated into the 1980 amendments of the NAIC Standard Valuation Law. In no case may total reserves, including basic reserves, deficiency reserves and any reserves held for supplemental benefits that would expire upon contract termination, be less than the amount that the policyowner would receive, including the cash surrender value of the supplemental benefits, if any, referred to above, exclusive of any deduction for policy loans, upon termination of the policy.

D. Unusual Pattern of Guaranteed Cash Surrender Values

(1) For any policy with an unusual pattern of guaranteed cash surrender values, the reserves actually held prior to the first unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the first unusual guaranteed cash surrender value as a pure endowment and treating the policy as an n-year policy providing term insurance plus a pure endowment equal to the unusual cash surrender value, where n is the number of years from the date of issue to the date the unusual cash surrender value is scheduled.

(2) The reserves actually held subsequent to any unusual guaranteed cash surrender value shall not be less than the reserves calculated by treating the policy as an n-year policy providing term insurance plus a pure endowment equal to the next unusual guaranteed cash surrender value, and treating any unusual guaranteed cash surrender value at the end of the prior segment as a net single premium, where

(a) n is the number of years from the date of the last unusual guaranteed cash surrender value prior to the valuation date to the earlier of:

(i) The date of the next unusual guaranteed cash surrender value, if any, that is scheduled after the valuation date; or

(ii) The mandatory expiration date of the policy; and

(b) The net premium for a given year during the n-year period is equal to the product of the net to gross ratio and the respective gross premium; and

(c) The net to gross ratio is equal to Item (i) divided by Item (ii) as follows:

(i) The present value, at the beginning of the n-year period, of death benefits payable during the n-year period plus the present value, at the beginning of the n-year period, of the next unusual guaranteed cash surrender value, if any, minus the amount of the last unusual guaranteed cash surrender value, if any, scheduled at the beginning of the n-year period.

(ii) The present value, at the beginning of the n-year period, of the scheduled gross premiums payable during the n-year period.

(3) For purposes of this subsection, a policy is considered to have an unusual pattern of guaranteed cash surrender values if any future guaranteed cash surrender value exceeds the prior year's guaranteed cash surrender value by more than the sum of:

(a) 110% of the scheduled gross premium for that year;

(b) 110% of one year's accrued interest on the sum of the prior year's guaranteed cash surrender value and the scheduled gross premium using the nonforfeiture interest rate used for calculating policy guaranteed cash surrender values; and

(c) 5% of the first policy year surrender charge, if any.

E. Optional Exemption for Yearly Renewable Term Reinsurance. At the option of the company, the following approach for reserves on YRT reinsurance may be used:

(1) Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year.

(2) Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in Subsection C.

(3) Deficiency reserves.

(a) For each policy year, calculate the excess, if greater than zero, of the valuation net premium over the respective maximum guaranteed gross premium.

(b) Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with Subparagraph (a) above.

(4) For purposes of this subsection, the calculations use the maximum valuation interest rate and the 1980 CSO mortality tables with or without ten-year select mortality factors, or any other table adopted after January 4, 2000 by the NAIC and promulgated by rule by the commissioner for this purpose.

(5) A reinsurance agreement shall be considered YRT reinsurance for purposes of this subsection if only the mortality risk is reinsured.

(6) If the assuming company chooses this optional exemption, the ceding company's reinsurance reserve credit shall be limited to the amount of reserve held by the assuming company for the affected policies.

F. Optional Exemption for Attained-Age-Based Yearly Renewable Term Life Insurance Policies. At the option of the company, the following approach for reserves for attained-age-based YRT life insurance policies may be used:

(1) Calculate the valuation net premium for each future policy year as the tabular cost of insurance for that future year.

(2) Basic reserves shall never be less than the tabular cost of insurance for the appropriate period, as defined in Subsection 6C.

(3) Deficiency reserves.

(a) For each policy year, calculate the excess, if greater than zero, of the valuation net premium over the respective maximum guaranteed gross premium.

(b) Deficiency reserves shall never be less than the sum of the present values, at the date of valuation, of the excesses determined in accordance with Subparagraph (a) above.

(4) For purposes of this subsection, the calculations use the maximum valuation interest rate and the 1980 CSO valuation tables with or without ten-year select mortality factors, or any other table adopted after January 4, 2000 by the NAIC and promulgated by rule by the commissioner for this purpose.

(5) A policy shall be considered an attained-age-based YRT life insurance policy for purposes of this subsection if:

(a) The premium rates, on both the initial current premium scale and the guaranteed maximum premium scale, are based upon the attained age of the insured such that the rate for any given policy at a given attained age of the insured is independent of the year the policy was issued; and

(b) The premium rates, on both the initial current premium scale and the guaranteed maximum premium scale, are the same as the premium rates for policies covering all insureds of the same sex, risk class, plan of insurance and attained age.

(6) For policies that become attained-age-based YRT policies after an initial period of coverage, the approach of this subsection may be used after the initial period if:

(a) The initial period is constant for all insureds of the same sex, risk class and plan of insurance; or

(b) The initial period runs to a common attained age for all insureds of the same sex, risk class and plan of insurance; and

(c) After the initial period of coverage, the policy meets the conditions of Paragraph (5) above.

(7) If this election is made, this approach shall be applied in determining reserves for all attained-age-based YRT life insurance policies issued on or after January 4, 2000.

G. Exemption from Unitary Reserves for Certain n-Year Renewable Term Life Insurance Polices. Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met:

(1) The policy consists of a series of n-year periods, including the first period and all renewal periods, where n is the same for each period, except that for the final renewal period, n may be truncated or extended to reach the expiry age, provided that this final renewal period is less than 10-years and less than twice the size of the earlier n-year periods, and for each period, the premium rates on both the initial current premium scale and the guaranteed maximum premium scale are level;

(2) The guaranteed gross premiums in all n-year periods are not less than the corresponding net premiums based upon the 1980 CSO Table with or without the ten-year select mortality factors; and

(3) There are no cash surrender values in any policy year.

H. Exemption from Unitary Reserves for Certain Juvenile Policies

Unitary basic reserves and unitary deficiency reserves need not be calculated for a policy if the following conditions are met, based upon the initial current premium scale at issue:

(1) At issue, the insured is age 24 or younger;

(2) Until the insured reaches the end of the juvenile period, which shall occur at or before age 25, the gross premiums and death benefits are level, and there are no cash surrender values; and

(3) After the end of the juvenile period, gross premiums are level for the remainder of the premium paying period, and death benefits are level for the remainder of the life of the policy.

R590-198-7. Calculation of Minimum Valuation Standard for Flexible Premium and Fixed Premium Universal Life Insurance Policies That Contain Provisions Resulting in the Ability of a Policyowner to Keep a Policy in Force Over a Secondary Guarantee Period.

A. General

(1) Policies with a secondary guarantee include:

(a) A policy with a guarantee that the policy will remain

in force at the original schedule of benefits, subject only to the payment of specified premiums;

(b) A policy in which the minimum premium at any duration is less than the corresponding one-year valuation premium, calculated using the maximum valuation interest rate and the 1980 CSO valuation tables with or without ten-year select mortality factors, or any other table adopted after January 4, 2000 by the NAIC and promulgated by rule by the commissioner for this purpose; or

(c) A policy with any combination of Subparagraph (a) and (b).

(2) A secondary guarantee period is the period for which the policy is guaranteed to remain in force subject only to a secondary guarantee. When a policy contains more than one secondary guarantee, the minimum reserve shall be the greatest of the respective minimum reserves at that valuation date of each unexpired secondary guarantee, ignoring all other secondary guarantees. Secondary guarantees that are unilaterally changed by the insurer after issue shall be considered to have been made at issue. Reserves described in Subsections B and C below shall be recalculated from issue to reflect these changes.

(3) Specified premiums mean the premiums specified in the policy, the payment of which guarantees that the policy will remain in force at the original schedule of benefits, but which otherwise would be insufficient to keep the policy in force in the absence of the guarantee if maximum mortality and expense charges and minimum interest credits were made and any applicable surrender charges were assessed.

(4) For purposes of this section, the minimum premium for any policy year is the premium that, when paid into a policy with a zero account value at the beginning of the policy year, produces a zero account value at the end of the policy year. The minimum premium calculation shall use the policy cost factors, including mortality charges, loads and expense charges, and the interest crediting rate, which are all guaranteed at issue.

(5) The one-year valuation premium means the net one-year premium based upon the original schedule of benefits for a given policy year. The one-year valuation premiums for all policy years are calculated at issue. The select mortality factors defined in Section 5B(2), (3), and (4) may not be used to calculate the one-year valuation premiums.

(6) The one-year valuation premium should reflect the frequency of fund processing, as well as the distribution of deaths assumption employed in the calculation of the monthly mortality charges to the fund.

B. Basic Reserves for the Secondary Guarantees

Basic reserves for the secondary guarantees shall be the segmented reserves for the secondary guarantee period. In calculating the segments and the segmented reserves, the gross premiums shall be set equal to the specified premiums, if any, or otherwise to the minimum premiums, that keep the policy in force and the segments will be determined according to the contract segmentation method as defined in Section 4B.

C. Deficiency Reserves for the Secondary Guarantees

Deficiency reserves, if any, for the secondary guarantees shall be calculated for the secondary guarantee period in the same manner as described in Section 6B with gross premiums set equal to the specified premiums, if any, or otherwise to the minimum premiums that keep the policy in force.

D. Minimum Reserves

The minimum reserves during the secondary guarantee period are the greater of:

(1) The basic reserves for the secondary guarantee plus the deficiency reserve, if any, for the secondary guarantees; or

(2) The minimum reserves required by other rules or rules governing universal life plans.

R590-198-8. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, that invalidity will 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 companies
August 26, 2015 31A-17-402
Notice of Continuation November 15, 2019 31A-17-512

R592. Insurance, Title and Escrow Commission.
R592-16. Prohibited Escrow Settlement Closing Transactions.
R592-16-1. Authority.

This rule is promulgated pursuant to Section 31A-2-404(2), which authorizes the Title and Escrow Commission (Commission) to make rules for the administration of the Insurance Code related to title insurance, including rules related to standards of conduct for a title insurer, agency title insurance producer or individual title insurance producer.

R592-16-2. Purpose and Scope.

(1) The purpose of this rule is to identify certain escrow practices involving two or more back to back sales and purchases of the same parcel of real property, which the Commission finds may violate the Insurance Code or rules, and therefore it is necessary to identify and prohibit such conduct.

(2) These practices include sales and purchases of the same parcel of real property where funds from the final purchaser are received by the initial seller despite having no contractual privity and those where no statutory authority exists for the title insurer, agency title insurance producer, or individual title insurance producer to conduct one or more of such escrows under Section 31A-23a-406 and Rule R592-6-4(5).

(3) This rule applies to all title insurers, agency title insurance producers, individual title insurance producers, and all employees, representatives, and any other party working for or on behalf of said entities whether as a full time or part time employee or as an independent contractor.

R592-16-3. Definitions.

For the purpose of this rule the Commission adopts the definitions as set forth in Section 31A-1-301 and the following:

(1) "Land flip" means two or more escrows involving real property where the following circumstances exist:

(a) Buyer B contracts with Seller A to buy a parcel of real property;

(b) Buyer B then contracts with Buyer C to sell the same parcel of real property; and

(c) Buyer B anticipates buying and selling the same parcel at or near the same time to Buyer C.

R592-16-4. Permitted Escrows of Flip Transactions.

Title insurers, agency title insurance producers, and individual title insurance producers are permitted to conduct escrows involving a land flip if each real estate transaction stands on its own and the following conditions are met:

(1) Buyer B, in the transaction with Seller A, must use funds separate and distinct from the funds used by Buyer C as part of the transaction between Buyer B and Buyer C.

R592-16-5. Prohibited Escrows of Flip Transactions.

Except as allowed under R592-16-4, title insurers, agency title insurance producers, and individual title insurance producers are prohibited from conducting any escrows involving a land flip.

R592-16-6. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule 45 days from the effective date of the rule.

R592-16-7. 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: escrow insurance flip
December 8, 2014 31A-2-404(2)
Notice of Continuation November 25, 2019

R623. Lieutenant Governor, Elections.
R623-100. Remote Notarization.
R623-100-1. Authority.

This rule is required by Section 46-1-3.7 and is enacted under the authority of Chapter 3 of Title 63G, the Utah Administrative Rulemaking Act.

R623-100-2. Definitions.

A. "Credential Analysis" means a method to verify a principal's identity, as described in 46-1-2(19) and R623-100-4, utilized by a remote notary public.

B. "Identity proofing" means a process or a service operating according to this rule through which a third person or party affirms the identity of a principal through a review of the principal's personal information.

C. "Knowledge-Based Authentication" is an identity assessment that is based on a set of questions formulated from public or private data sources.

D. "Multi-Factor Authentication" means a method of access control in which a principal is granted access after successfully presenting personal identity evidence using at least two or more of the following mechanisms: knowledge-based authentication; credential analysis; or biometric data.

E. "Principal" means a person whose electronic signature is notarized in a remote notarization.

F. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

G. "Remote Notarial Act" means the recorded process of completing a remote notarization between the principal and remote notary public described in Section 46-1-6.

H. "Remote Notarial Certificate" means the portion of a remotely notarized electronic document that is completed by a remote notary public and that bears the notary public's electronic signature, electronic seal and certification language as provided by Section 46-1-6.5.

I. "Remote notarization solution" means a set of applications, programs, hardware, software or technology designed to enable the performance of a remote notarial act.

J. "Solution Provider" means a third-party vendor, approved by the lieutenant governor, providing a software solution enabling a Utah remote notary public to perform the duties of, or complete, a remote notarial act.

K. "Tamper-Evident" means a technology-based process that indicates whether a change has been made to an electronic document since the technology was applied.

R623-100-3. Purpose.

Pursuant to Section 46-1-3.7, this rule outlines technical and procedural guidance for remote notaries public and solution providers to complete remote notarizations.

R623-100-4. Remote Notary Public Certification.

A. A commissioned notary public may apply for certification to perform remote notarizations from the lieutenant governor.

B. In addition to meeting the application requirements in Section 46-1-3.5, the applicant shall submit to the lieutenant governor the following information:

1. The notary public's commission number as assigned by the lieutenant governor;

2. The notary public's commission expiration date;

2. The name of the solution provider authorizing the notary public's use of the remote notarization product;

3. A copy of the notary public's electronic seal and electronic signature provided by the solution provider; and

4. A statement certifying that the notary public will comply with the provisions of R623 Remote Notarization and Title 46 Chapter 1 Notaries Public Reform Act.

C. Upon an applicant's meeting the requirements set forth in Section 46-1-3.5 and R623-100-1, the lieutenant governor may update the notary public's record allowing the applicant to perform remote notarial acts.

D. A remote notary public shall use an approved solution vendor to perform remote notarial acts.

E. A notary public providing remote notarial services without a current remote notary certificate is subject to suspension or revocation of his or her notary commission and other penalties as prescribed by Title 46 Chapter 1 Notaries Public Reform Act.

F. Any suspension or revocation of a remote notary public's traditional notary public commission will result in suspension or revocation of the notary public's remote certification until such time that the lieutenant governor lifts such suspension or revocation.

R623-100-5. Credential Analysis and Authentication.

A. Credential analysis must be provided by a reputable third-party vendor or software tool that can demonstrate proven credential analysis processes and shall employ technology that provides the following:

1. The principal's identity must be bound to the principal following successful knowledge-based authentication, or biometric data; and

2. Remote notarization procedures shall provide for human visual comparison between the principal and the principal's identification presented to the remote notary.

B. Remote notarization solution providers shall use an automated software process to aid the notary in verifying each principal's identity.

1. The identification shall pass an authenticity test that:

i. Uses appropriate technologies to confirm the integrity of visual, physical or cryptographic security features;

ii. Uses appropriate technologies to confirm that the identification is not fraudulent or inappropriately modified;

iii. Uses information held or published by the issuing source or authoritative source, as available, to confirm the validity of the identification details; and

iv. Provides the result of the authenticity test to the notary.

2. The identification analysis procedure shall enable the notary to visually compare the following for consistency:

i. The information and photo on the identification image presented; and

ii. The principal as viewed by the notary in real time through the audio/video system.

3. If the remote notary public is unable to validate the identification of the principal, or to match the 's physical features with the credential, the remote notary public shall not complete the remote notarial act.

i. No further attempt may be made by the notary or the Solution Provider to complete the notarial act using audio-video communication using that credential.

4. Identification requirements shall be a type required under 46-1-2(19)(b).

5. The identification image shall be captured and shall confirm that:

a. The principal is in possession of the identification at the time of the notarial act;

b. The identification images submitted for credential analysis have not been manipulated; and

c. The identification images match the identification in the principal's possession.

ii. The following general principles should be considered in the context of image resolution:

a. Captured image resolution should be sufficient for the issuing source or authoritative source to perform Credential Analysis per the requirements above;

b. Image resolution should be sufficient to enable visual

inspection by the notary, including legible text and clarity of photographs, barcodes, and other identification features; and

c. All images necessary to perform visual inspection and Credential Analysis shall be captured.

C. Knowledge-based authentication procedure must meet the following requirements:

1. Each principal must answer questions and achieve a passing score. The procedure must include:

a. Five multiple choice questions, drawn from public or private data sources.

b. A minimum of five possible answer choices per question.

c. Require that 80% of the questions are correctly answered within two minutes by the principal.

2. Each principal is to be provided a reasonable number of attempts per signing session.

i. If a principal fails their first quiz, they may attempt up to two additional quizzes within 48 hours from the first failure.

ii. During any quiz retake, a minimum of 40% (2) of the prior questions shall be replaced.

3. Biometric sensing technologies for remote notarization in the areas of authentication, credential analysis, and identity proofing verification may include facial, voice, and fingerprint recognition.

4. If a principal exits the notarial act during the notarial act, they shall restart the credential analysis and authentication workflow from the beginning.

R623-100-6. Audio and Video Quality Requirements.

A. A reliable remote notarization operating model should consist of continuous, synchronous audio and video feeds with good clarity such that all participants can always be clearly seen and understood.

B. The remote notary shall determine if the quality of both the audio and the video are adequate for communication and provide direction to terminate the session if adequate conditions are not met.

C. The audio/video recording shall include the person-to-person interaction required as part of the remote notarial act, shall be logically associated to the electronic notary journal, and shall be capable of being viewed and heard using broadly available audio/video players.

1. The transaction documents executed in the remote notarization act shall not be recorded as part of the video recording.

R623-100-7. Electronic Notary Journal Storage.

A. Actions completed as part of a remote notarization act shall be recorded in an electronic notary journal. Each entry in this electronic journal shall clearly indicate the notarial act performed, the date and time of its performance, the name of the principal performing the action and the IP address of the principal performing the action.

B. Each document completed as part of a Remote Notarization shall be electronically signed and rendered Tamper-Evident.

C. Solution Providers shall have comprehensive security programs in place to ensure privacy and data security. D. Solution Providers shall be vigilant to ensure consumer data, privacy and information security laws and regulations are satisfied through their information security programs.

R623-100-8. Solution Provider Application Process.

A. A solution provider may apply for approval to provide a remote notary solution submitted to the lieutenant governor electronically and shall include the following:

1. Legal name of the Solution Provider;
2. How the business is organized;
3. Mailing address of the Solution Provider;
4. Physical address of the Solution Provider;
5. Solution provider's contact name;
6. Phone number of the contact person;
7. Email of the contact person;
8. The name of the remote notarization solution provided;
9. The name of the provider or providers of the knowledge-based authentication, Credential Analysis and digital certificate services
10. A description of the technology used to ensure compliance with R623-100;
11. Plan for the disposition, including but not limited to the retention and storage of documents, journals, recordings, etc., in the event the Solution Provider no longer provides the remote notary solution, for whatever reason; and
12. Declaration that the solution complies with Utah laws pertaining to remote notarization.

B. Any information provided to the lieutenant governor pursuant to R623-100-7 is confidential and shall not be disclosed by the lieutenant governor except when required by law.

C. A Solution Provider's solution shall be approved by the lieutenant governor prior to use in this state and shall:

1. Provide secure access to the solution by password or other secure means identifying the Utah remote notary public;
2. Verify from the lieutenant governor's notary registry, each time a remote notary public logs into the solution to ensure that the remote notary public is in active status before performing a remote notarization;

D. Approval of the Solution Provider by the lieutenant governor will be sent electronically to the provider's contact email.

E. The lieutenant governor may approve, reject or request additional information on the application.

R623-100-9. Recording for Remote Notarized Documents.

A. The remote notarization solution provider's system, process, and procedures shall be capable of generating a printable version of all documents executed in the system, including but not limited to the documents executed in the notarial act, and associated tamper-evident certifications as required by the lieutenant governor.

B. Any document notarized remotely shall clearly state, in the remote notarial certificate, that the principal making the acknowledgment, oath or affirmation and signing the document appeared remotely using audio/video communication technology.

KEY: remote notarization
November 8, 2019 **46-1-3.7**

R849. School and Institutional Trust Fund Board of Trustees, Administration.
R849-1. Appeal Rule.
R849-1-1. Introduction and Authority.

(1) This rule sets forth the administrative hearing procedures for the Office.

(2) This rule is authorized by Sections 53D-1-701 and 702.

R849-1-2. Definitions.

(1) "Action" means an action by the Office that affects the legal rights of a person or group of persons, but not including rules made under the Utah Administrative Rulemaking Act, Title 63G, Chapter 3.

(2) "Administrative Law Judge" or ALJ means the person appointed to conduct an adjudicatory proceeding.

(3) "Ex Parte Communication" means direct or indirect communication in connection with an issue of fact or law between the ALJ and one party only.

(4) "Order" means a ruling by an ALJ that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons.

(5) "Respondent" means any group or individual who is adversely affected by any action or inaction of the Office.

(6) "Office" means the School and Institutional Trust Fund Office established under Section 53D-1-101 et seq.

R849-1-3. Computation of Time.

Unless otherwise provided in a specific section of these rules, time shall be computed in accordance with the Utah Rules of Civil Procedure.

R849-1-4. Request for Hearing.

(1) An aggrieved person may file a written request for agency action pursuant to Section 63G-4-201, and in accordance with this rule.

(2) Hearings must be requested within 30 calendar days from the date that the Office sends written notice of its intended action.

(3) Failure to submit a timely request for a hearing constitutes a waiver of a respondent's due process rights. The request must explain why the party is seeking agency relief, and the party must submit the request on the "Request for Hearing/Agency Action" form. The party must then mail or fax the form to the address or fax number contained on the notice of agency action.

(4) The Office considers a hearing request that a recipient sends via mail to be filed on the date of the postmark. If the postmark date is illegible, erroneous, or omitted, the Office considers the request to be filed on the date that the Office receives it, unless the sender can demonstrate through competent evidence that it was mailed before the date of receipt.

R849-1-5. Designation of Proceedings Informal.

(1) All proceedings shall be considered informal hearings.

(2) Informal hearings will be conducted in accordance with the Utah Administrative Procedure Act, Sections 63G-4-202, 203, 209, 302, 401, 402, 405, 501, 502, 503, and 601.

R849-1-6. Service.

(1) The individual or party that files a document with the Office shall also serve the document upon all other named parties to the proceeding and file a proof of service with the Office that consists of a certificate, affidavit or acknowledgment of service.

(2) If the Office must provide notice of a hearing, the notice becomes effective on the date notification is sent.

R849-1-7. Availability of Hearing.

(1) All requests for Hearings/Agency Action shall be set for an initial hearing in accordance with Section R849-1-11.

(2) The ALJ will conduct an evidentiary hearing in connection with the agency action if the aggrieved person requests a hearing and there is a disputed issue of fact. If there is no disputed issue of fact, the ALJ may deny a request for an evidentiary hearing and issue a recommended decision without a hearing. There is no disputed issue of fact if the aggrieved person submits facts that do not conflict with the facts that the agency relies upon in taking action or seeking relief.

(3) The Office may deny or dismiss a request for a hearing if the aggrieved person:

(a) withdraws the request in writing;

(b) verbally withdraws the hearing request at a prehearing conference;

(c) fails to appear or participate in a scheduled proceeding without good cause;

(d) prolongs the hearing process without good cause;

(e) cannot be located or agency mail is returned without a forwarding address; or

(f) does not respond to any correspondence from the ALJ.

(4) If the aggrieved person objects to the hearing denial, the person may raise that objection as grounds for relief in a request for reconsideration with the Agency board in accordance with Section 63G-4-302.

R849-1-8. Administrative Law Judge.

(1) The Board shall appoint an impartial ALJ to conduct any hearing provided under these rules. Previous involvement in the initial determination of the action precludes an ALJ from appointment.

(2) The ALJ shall maintain order and may recess the hearing to regain order if a person engages in disrespectful, disorderly or disruptive conduct. The ALJ may remove any person, including a participant, from the hearing to maintain order. If a person shows persistent disregard for order and procedure, the ALJ may:

(a) restrict the person's participation in the hearing;

(b) strike pleadings or evidence; or

(c) issue an order of default.

R849-1-9. Modifying Requirements of Rules.

(1) Except as provided in this paragraph, the requirements of these rules may be modified by order of the ALJ for good cause.

(2) The requirements for timely filing a Request for Hearing under Section R849-1-4 may not be modified.

R849-1-10. Ex Parte Communications.

(1) Ex parte communications are prohibited.

(2) The ALJ may not listen to or accept any ex parte communication. If a party attempts ex parte communication, the ALJ shall inform the offeror that any communication that the ALJ receives off the record will become part of the record and furnished to all parties.

(3) Ex parte communications do not apply to communications on the status of the hearing and uncontested procedural matters.

R849-1-11. The Informal Hearing.

(1) Unless otherwise provided in this section, informal hearings shall be conducted in accordance with Section 63G-4-202 and 203.

(2) As set forth in R849-1-7, all request for hearings/agency action shall be set for initial hearing within 30 days, only after at least 10-day notice of all parties.

(3) The Office shall notify the respondent and Office representative 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 president

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.

(4) The respondent named in the notice of agency action and the Office shall be permitted to testify, present evidence, and comment on the issues. Formal rules of evidence shall not apply.

(5) Testimony may be taken under oath at the ALJ's discretion.

(6) All hearings are open to all parties.

(7) Discovery is prohibited; informal disclosures will be ruled on at the pre-hearing conference.

(8) Subpoenas and orders to secure the attendance of witnesses or the production of evidence shall be issued by the ALJ when requested by a respondent or the Office, or may be issued by the ALJ on his/her own motion.

(9) A respondent shall have access to relevant information contained in the Office's files and to material gathered in the investigation of respondent to the extent permitted by law.

(10) The ALJ may cause an official record of the hearing to be made, at the Office's expense.

(11) Disposition of the ALJ's Order:

(a) Within a reasonable time after the close of the informal proceeding, the ALJ shall issue a signed order in writing that includes the following: the decision, the reasons for the decision, the Order, a notice of any right to administrative or judicial review of the order available to aggrieved parties and the time limits applicable to any reconsideration or review.

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

(c) A copy of the ALJ order shall be promptly mailed to each party.

R849-1-12. Proposed Decision and Final Agency Review.

(1) At the conclusion of the hearing, the ALJ shall take the matter under advisement and submit a recommended decision to the Board. The recommended decision is based on the testimony and evidence entered at the hearing and legal precedent.

(2) The recommended decision must contain findings of fact and conclusions of law.

(3) The Board may:

(a) adopt the recommended decision or any portion of the decision;

(b) reject the recommended decision or any portion of the decision, and make an independent determination based upon the record; or

(c) remand the matter to the ALJ for further proceeding, and the ALJ thereafter shall submit to the Board a new recommended decision.

(4) The Board's decision constitutes final administrative action and is subject to judicial review.

(5) The Board shall send a copy of the final administrative action to each party or representative and notify them of their right to judicial review.

(6) The parties shall comply with a final decision from the Board reversing the agency's decision within ten calendar days.

R849-1-13. Declaratory Orders.

(1) Any person may file a request for Office action, requesting that the Office issue a declaratory order determine the applicability of a statute, rule, or order within the primary jurisdiction of the Office in accordance with 63G-4-503.

(2) 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 where the petitioner can be reached during regular work days; and

(g) be signed by the petitioner.

(3) The provisions of Sections 63G-4-202 through 63G-4-302 apply to declaratory proceedings.

(4) The Office will not issue a declaratory order that deals with a question or request that the ALJ determines is:

(a) not within the jurisdiction and competence of the Office;

(b) trivial, irrelevant, or immaterial;

(c) not one that is ripe or appropriate for determination;

(d) currently pending or will be determined in an on-going judicial proceeding;

(e) prohibited by state or federal law; or

(f) challenge the validity of a federal statute or regulation.

KEY: adjudicative proceedings, appeals, hearings
April 15, 2015 53D-1-702
Notice of Continuation November 25, 2019

R850. School and Institutional Trust Lands, Administration.
R850-10. Expedited Rulemaking.
R850-10-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Section 53C-1-201(3)(c), which authorize the Director and Board of the School and Institutional Trust Lands Administration to develop a procedure for expedited rulemaking.

R850-10-200. Expedited Rulemaking Procedures.

When the criteria listed below are satisfied, the agency may pursue rulemaking in an expedited manner, expediting the traditional process provided for in 63G-3.

1. Material supporting the director's proposal should be provided to the board so that there is sufficient time for review prior to the meeting, when conditions permit.

2. The proposed action will be included on the published agenda for the board meeting.

3. The agency will provide a list of individuals who have been contacted and/or involved in the drafting of the proposed rule. Those individuals shall be invited to the board meeting.

4. A written finding shall be presented to the board which shall include the information required by Subsection 53C-1-201(3)(c)(i) through (iii).

5. The presentation of the proposed rule will include the existing language, if any, with new language underlined and language to be removed indicated by brackets and strike through. A copy of the proposed rule as it would appear after adoption will also be provided.

6. The agency shall disclose at the board meeting its anticipated effective date for the rule, and proposed actions to be taken upon implementation.

KEY: rulemaking procedures, administrative procedures
April 3, 1995 53C-1-201(3)(a)(ii)
Notice of Continuation November 7, 2019

R861. Tax Commission, Administration.
R861-1A. Administrative Procedures.
R861-1A-3. Division Conferences Pursuant to Utah Code Ann. Sections 59-1-210 and 63G-4-102.

Any party directly affected by a commission action or contemplated action may request a conference with the supervisor or designated officer of the division involved in that action.

(1) A request may be oral or written.

(2) A conference will be conducted in an informal manner in an effort to clarify and narrow the issues and problems involved.

(3) The party requesting a conference will be notified of the result:

(a) orally or in writing;

(b) in person or through counsel; and

(c) at the conclusion of the conference or within a reasonable time thereafter.

(4) A conference may be held at any time prior to a hearing, whether or not a petition for hearing, appeal, or other commencement of an adjudicative proceeding has been filed.

R861-1A-9. State Board of Equalization Procedures Pursuant to Utah Code Ann. Sections 59-2-212, 59-2-1004, and 59-2-1006.

(1) The commission sits as the state board of equalization in discharge of the equalization responsibilities given it by law. The commission may sit on its own initiative to correct the valuation of property that has been overassessed, underassessed, or nonassessed as described in Section 59-2-212, and as a board of appeal from the various county boards of equalization described in Section 59-2-1004.

(2) Appeals to the commission shall include:

(a) a copy of the recommendation of a hearing officer if a hearing officer heard the appeal;

(b) a copy of the notice required under Section 59-2-919.1;

(c) a copy of the minutes of the board of equalization;

(d) a copy of the property record maintained by the assessor;

(e) if the county board of equalization does not include the record in its minutes, a copy of the record of the appeal required under R884-24P-66;

(f) a copy of the evidence submitted by the parties to the board of equalization;

(g) a copy of the petition for redetermination; and

(h) a copy of the decision of the board of equalization.

(3) A notice of appeal filed by the taxpayer with the auditor pursuant to Section 59-2-1006 shall be presumed to have been timely filed unless the county provides convincing evidence to the contrary. In the absence of evidence of the date of mailing of the county board of equalization decision by the county auditor to the taxpayer, it shall be presumed that the decision was mailed three days after the meeting of the county board of equalization at which the decision was made.

(4) Appeals to the commission shall be scheduled for hearing pursuant to commission rules.

(5) Appeals to the commission shall be on the merits except for the following:

(a) dismissal for lack of jurisdiction;

(b) dismissal for lack of timeliness;

(c) dismissal for lack of evidence to support a claim for relief.

(6)(a) The commission shall consider the facts and evidence presented to the commission, including facts and evidence presented by a party that was submitted to the county board.

(b) A party may raise a new issue before the commission.

(7) On an appeal from a dismissal by a county board for the exceptions under Subsection (5), the only matter that will be reviewed by the commission is the dismissal itself, not the merits of the appeal.

(8) An appeal filed with the commission may be remanded to the county board of equalization for further proceedings if the commission determines that:

(a) dismissal under Subsections (5)(a) through (c) was improper;

(b) the taxpayer failed to exhaust all administrative remedies at the county level;

(c) in the interest of administrative efficiency, the matter can best be resolved by the county board;

(d) the commission determines that dismissal under Subsections (5)(a) through (c) is improper under R884-24P-66; or

(e) a new issue is raised before the commission by a party.

(9) The provisions of this rule apply only to appeals to the commission as the state board of equalization. For information regarding appeals to the county board of equalization, see Section 59-2-1004 and R884-24P-66.

R861-1A-10. Miscellaneous Provisions Pursuant to Utah Code Ann. Section 59-1-210.

A. Rights of Parties. Nothing herein shall be construed to remove or diminish any right of any party under the Constitution of the United States, the Constitution of the state of Utah, or any existing law.

B. Effect of Partial Invalidation. If any part of these rules be declared unconstitutional or in conflict with existing statutory law by a court of competent jurisdiction, the remainder shall not be affected thereby and shall continue in full force and effect.

C. Enactment of Inconsistent Legislation. Any statute passed by the Utah Legislature inconsistent with these rules or any part thereof will effect a repeal of that part of these rules with which it is inconsistent, but of no other part.

D. Presumption of Familiarity. It will be presumed that parties dealing with the Commission are familiar with:

1. these rules and the provisions thereof,

2. the revenue laws of the state of Utah, and

3. all rules enacted by the Commission in its administration thereof.

R861-1A-11. Appeal of Corrective Action Order Pursuant to Utah Code Ann. Section 59-2-704.

A. Appeal of Corrective Action Order. Any county appealing a corrective action order issued pursuant to Section 59-2-704, shall, within 10 days of the mailing of the order, request in writing a hearing before the Commission. The Commission shall immediately set the time and place of the hearing, which shall be held no later than June 30 of the tax year to which the corrective action order applies.

B. Hearings. Hearings on corrective action order appeals shall be conducted as formal hearings and shall be governed by the procedures contained in these rules. If the parties are able to stipulate to a modification of the corrective action order, and it is evident that there is a reasonable basis for modifying the corrective action order, an amended corrective action order may be executed by the Commission. One or more commissioners may preside at a hearing under this rule with the same force and effect as if a quorum of the Commission were present. However, a decision must be made and an order signed by a quorum of the Commission.

C. Decisions and Orders. The Commission shall render its decision and order no later than July 10 of the tax year to which the corrective action order applies. Upon reaching a decision, the Commission shall immediately notify the clerk of the county board of equalization and the county assessor of that decision.

D. Sales Information. Access to Commission property sales information shall be available by written agreement with

the Commission to any clerk of the county board of equalization and county assessor appealing under this rule. All other reasonable and necessary information shall be available upon request, according to Commission guidelines.

E. Conflict with Other Rules. This rule supersedes all other rules that may otherwise govern these proceedings before the Commission.

R861-1A-12. Policies and Procedures Regarding Public Disclosure Pursuant to Utah Code Ann. Sections 41-3-209, 59-1-210, 59-1-403, and 59-1-405.

(1) Hearings.

(a) Except as provided under Subsection (1)(b), and pursuant to Section 59-1-405, hearings related to appeals filed with the commission are confidential tax matters and not subject to Title 52, Chapter 4, Open and Public Meetings Act.

(b) Hearings related to the enforcement of Title 41, Chapter 3, Motor Vehicle Business Regulation, are open to the public.

(2) Orders.

(a) Except as provided in Subsections (2)(b) through (e), written orders signed by the commission will be mailed to the named parties in accordance with commission procedures. Copies of these orders or information about them will not be provided to any person other than the named parties except under the following circumstances:

(i) the parties have affirmatively waived any claims to confidentiality; or

(ii) the orders may be effectively sanitized through the deletion of references to the parties, specific tax amounts, witnesses, geographic information, or any other information that might identify a particular person.

(b) Property tax orders signed by the commission that do not contain commercial information will be mailed to the named parties in accordance with commission procedures. Copies of these orders or information about them will not be provided to any person other than the named parties except under the following circumstances:

(i) the parties have affirmatively waived any claims to confidentiality;

(ii) the orders may be effectively sanitized through the deletion of reference to the parties, specific tax amounts, witnesses, geographic information, or any other information that might identify any private party to the appeal; or

(iii) the disclosure is required or allowed under state law.

(c)(i) Property tax orders signed by the commission that contain commercial information will be mailed to the appropriate persons in accordance with Section 59-1-404 and rule R861-1A-37, Provisions Relating to Disclosure of Commercial Information.

(ii) Copies of property tax orders described in Subsection (2)(c)(i), or information about them, will be made available to persons other than the persons described in Section 59-1-404 and rule R861-1A-37 under the following circumstances:

(A) the parties have affirmatively waived any claims to confidentiality;

(B) the orders may be effectively sanitized through the deletion of reference to the parties, specific tax amounts, commercial information, witnesses, geographic information, or any other information that might identify any private party to the appeal; or

(C) the disclosure is required or allowed under state law.

(d) Orders resulting from a hearing related to the enforcement of Title 41, Chapter 1a, Motor Vehicle Act, will be mailed to the named parties in accordance with commission procedures. Copies of these orders or information about them will not be provided to any person other than the named parties except under the following circumstances:

(i) the parties have affirmatively waived any claims to confidentiality;

(ii) the orders may be effectively sanitized through the deletion of reference to the parties, specific tax amounts, witnesses, geographic information, or any other information that might identify any private party to the appeal; or

(iii) the disclosure is required under state law.

(e) Orders resulting from a hearing related to the enforcement of Title 41, Chapter 3, Motor Vehicle Business Regulation, are public information and may be publicized.

(3) Commission Notes and Workpapers.

(a) All workpapers, notes, and other material prepared by the commissioners, as well as staff and employees of the commission, are protected, and access to the specific material is restricted to employees of the commission and its legal counsel only.

(b) Examples of this restricted material include audit workpapers and notes, ad valorem appraisal worksheets, and notes taken during hearings and deliberations. In the case of information prepared as part of an audit, the auditing division will, upon request, provide summary information of the findings to the taxpayer. These items will not be available to any person or party by discovery carried out pursuant to these rules or the Utah Rules of Civil Procedure.

(4) Reciprocal Agreements.

(a) The commission may enter into individual reciprocal agreements to share specific tax information with authorized representatives of the United States Internal Revenue Service or the revenue service of any other state.

(b) For all taxes other than individual income tax and corporate franchise tax, the commission may share information gathered from returns and other written statements with the federal government, other states, and political subdivisions within and without the state if the political subdivision, state, or federal government grant substantially similar privileges to this state.

(5) Statistical Information. The commission authorizes the preparation and publication of statistical information regarding the payment and collection of state taxes. The information will be made available after review and approval of the commission.

(6) Publication of Delinquent Taxpayer Information.

(a) For purposes of this Subsection (6), "delinquent taxpayer" does not include a person subject to a tax under:

(i) Title 59, Chapter 7, Corporate Franchise and Income Taxes;

(ii) Title 59, Chapter 10, Part 1, Determination and Reporting of Tax Liability and Information;

(iii) Title 59, Chapter 10, Part 2, Trusts and Estates; or

(iv) Title 59, Chapter 10, Part 14, Pass-Through Entities and Pass-Through Entity Taxpayers Act.

(b) The commission may publicize the following information relating to a delinquent taxpayer:

(i) name;

(ii) address;

(iii) the amount of money owed by tax type; and

(iv) any legal action taken by the commission, including charges filed and property seized.

R861-1A-13. Requests for Accommodation and Grievance Procedures Pursuant to Utah Code Ann. Section 63G-3-201, 28 CFR 35.107 1992 edition, and 42 USC 12201.

(1) Individuals with a disability may request reasonable accommodations to services, programs, or activities, or a job or work environment in the following manner.

(a) Requests shall be directed to:

Accommodations Coordinator
Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134
Telephone: 801-297-3811 TDD: 801-297-3819 or relay

at 711

(b) Requests shall be made at least three working days prior to any deadline by which the accommodation is needed.

(c) Requests shall include the following information:

(i) the individual's name and address;

(ii) a notation that the request is made in accordance with the Americans with Disabilities Act;

(iii) a description of the nature and extent of the individual's disability;

(iv) a description of the service, program, activity, or job or work environment for which an accommodation is requested; and

(v) a description of the requested accommodation if an accommodation has been identified.

(2) The accommodations coordinator shall review all requests for accommodation with the applicable division director and shall issue a reply within two working days.

(a) The reply shall advise the individual that:

(i) the requested accommodation is being supplied; or

(ii) the requested accommodation is not being supplied because it would cause an undue hardship, and shall suggest alternative accommodations. Alternative accommodations must be described; or

(iii) the request for accommodation is denied. A reason for the denial must be included; or

(iv) additional time is necessary to review the request. A projected response date must be included.

(b) All denials of requests under Subsections (2)(a)(ii) and (2)(a)(iii) shall be approved by the executive director or designee.

(c) All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

(3) Individuals with a disability who are dissatisfied with the reply to their request for accommodation may file a request for review with the executive director in the following manner.

(a) Requests for review shall be directed to:

Executive Director
Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134
Telephone: 801-297-3841 TDD: 801-297-3819 or relay at 711

(b) A request for review must be filed within 180 days of the accommodations coordinator's reply.

(c) The request for review shall include:

(i) the individual's name and address;

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

(iii) a copy of the accommodation coordinator's reply;

(iv) a statement explaining why the reply to the individual's request for accommodation was unsatisfactory;

(v) a description of the accommodation desired; and

(vi) the signature of the individual or the individual's legal representative.

(4) The executive director shall review all requests for review and shall issue a reply within 15 working days after receipt of the request for review.

(a) If unable to reach a decision within the 15 working day period, the executive director shall notify the individual with a disability that the decision is being delayed and the amount of additional time necessary to reach a decision.

(b) All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

(5) The record of each request for review, and all written records produced or received as part of each request for review, shall be classified as protected under Section 63G-2-305 until the executive director issues a decision.

(6) Once the executive director issues a decision, any portions of the record that pertain to the individual's medical condition shall remain classified as private under Section 63G-2-302 or controlled under Section 63G-2-304, whichever is appropriate. All other information gathered as part of the appeal shall be classified as private information. Only the written decision of the executive director shall be classified as public information.

(7) Individuals with a disability who are dissatisfied with the executive director's decision may appeal that decision to the commission in the manner provided in Sections 63G-4-102 through 63G-4-105.

R861-1A-15. Requirement of Social Security and Federal Identification Numbers Pursuant to Utah Code Ann. Section 59-1-210.

A. Taxpayers shall provide the Tax Commission with their social security number or federal identification number, as required by the Tax Commission.

B. Sole proprietor and partnership applicants shall provide the Tax Commission with the following information for every owner or partner of the applying entity:

1. name;
2. home address;
3. social security number and federal identification number, as required by the Tax Commission.

C. Corporation and limited liability applicants shall provide the Tax Commission with the following information for every officer or managing member of the applying entity:

1. name;
2. home address; and
3. social security number and federal identification number, as required by the Tax Commission.

D. Business trust applicants shall provide the Tax Commission with the following information for the responsible trustees:

1. name;
2. home address; and
3. social security number and federal identification number, as required by the Tax Commission.

R861-1A-16. Utah State Tax Commission Management Plan Pursuant to Utah Code Ann. Section 59-1-207.

(1) The executive director reports to the commission. The executive director shall meet with the commission periodically to report on the status and progress of this agreement, update the commission on the affairs of the agency and seek policy guidance. The chairman of the commission shall designate a liaison of the commission to coordinate with the executive director in the execution of this agreement.

(2) The structure of the agency is as follows:

(a) The Office of the Commission, including the commissioners and the following units that report to the commission:

(i) Internal Audit;

(ii) Appeals;

(iii) Economic and Statistical; and

(iv) Public Information.

(b) The Office of the Executive Director, including the executive director's staff and the following divisions that report to the executive director:

(i) Administration;

(ii) Taxpayer Services;

(iii) Motor Vehicle;

(iv) Auditing;

(v) Property Tax;

(vi) Processing; and

(vii) Motor Vehicle Enforcement.

(3) The Executive Director shall oversee service agreements from other departments, including the Department

of Human Resources and the Department of Technology Services.

(4) The commission hereby delegates full authority for the following functions to the executive director:

(a) general supervision and management of the day to day management of the operations and business of the agency conducted through the Office of the Executive Director and through the divisions set out in Subsection (2)(b);

(b) management of the day to day relationships with the customers of the agency;

(c) all original assessments, including adjustments to audit, assessment, and collection actions, except as provided in Subsections (4)(d) and (5);

(d) in conformance with standards established by the commission, waivers of penalty and interest pursuant to Section 59-1-401 in amounts under $10,000, or offers in compromise agreements in amounts under $10,000;

(e) except as provided in Subsection (5)(g), voluntary disclosure agreements with companies, including multilevel marketers;

(f) determination of whether a county or taxing entity has satisfied its statutory obligations with respect to taxes and fees administered by the commission;

(g) human resource management functions, including employee relations, final agency action on employee grievances, and development of internal policies and procedures; and

(h) administration of Title 63G, Chapter 2, Government Records Access and Management Act.

(5) The executive director shall prepare and, upon approval by the commission, implement the following actions, agreements, and documents:

(a) the agency budget;

(b) the strategic plan of the agency;

(c) administrative rules and bulletins;

(d) waivers of penalty and interest in amounts of $10,000 or more pursuant to Section 59-1-401 as per the waiver of penalty and interest policy;

(e) offer in compromise agreements that abate tax, penalty and interest over $10,000 as per the offer in compromise policy;

(f) stipulated or negotiated agreements that dispose of matters on appeal; and

(g) voluntary disclosure agreements that meet the following criteria:

(i) the company participating in the agreement is not licensed in Utah and does not collect or remit Utah sales or corporate income tax; and

(ii) the agreement forgives a known past tax liability of $10,000 or more.

(6) The commission shall retain authority for the following functions:

(a) rulemaking;

(b) adjudicative proceedings;

(c) private letter rulings issued in response to requests from individual taxpayers for guidance on specific facts and circumstances;

(d) internal audit processes;

(e) liaison with the governor's office:

(i) Correspondence received from the governor's office relating to tax policy will be directed to the Office of the Commission for response. Correspondence received from the governor's office that relates to operating issues of the agency will be directed to the Office of the Executive Director for research and appropriate action. The executive director shall prepare a timely response for the governor with notice to the commission as appropriate.

(ii) The executive director and staff may have other contact with the governor's office upon appropriate notice to the commission;

(f) liaison with the Legislature:

(i) The commission will set legislative priorities and communicate those priorities to the executive director.

(ii) Under the direction of the executive director, staff may be assigned to assist the commission and the executive director in monitoring legislative meetings and assisting legislators with policy issues relating to the agency; and

(g) litigation:

(i) The executive director shall advise the commission on matters under litigation.

(ii) If a settlement offer is received, the executive director shall inform the commission of the:

(A) terms of the offer; and

(B) the division's recommendations with regards to that offer.

(7) Correspondence that has been directed to the commission or individual commissioners that relates to matters delegated to the executive director shall be forwarded to a staff member of the Office of the Executive Director for research and appropriate action. A log shall be maintained of all correspondence and periodically the executive director will review with the commission the volume, nature, and resolution of all correspondence from all sources.

(8) The executive director's staff may occasionally act as support staff to the commission for purposes of conducting research or making recommendations on tax issues.

(a) Official communications or assignments from the commission or individual commissioners to the staff reporting to the executive director shall be made through the executive director.

(b) The commissioners and the Office of the Commission staff reserve the right to contact agency staff directly to facilitate a collegial working environment and maintain communications within the agency. These contacts will exclude direct commands, specific policy implementation guidance, or human resource administration.

(9) The commission shall meet with the executive director periodically for the purpose of exchanging information and coordinating operations.

(a) The commission shall discuss with the executive director all policy decisions, appeal decisions or other commission actions that affect the day to day operations of the agency.

(b) The executive director shall keep the commission apprised of significant actions or issues arising in the course of the daily operation of the agency.

(c) When confronted with circumstances that are not covered by established policy or by instances of real or potential conflicts of interest, the executive director shall refer the matter to the commission.

R861-1A-18. Allocations of Remittances Pursuant to Utah Code Ann. Sections 59-1-210 and 59-1-705.

A. Remittances received by the commission shall be applied first to penalty, then interest, and then to tax for the filing period and account designated by the taxpayer.

B. If no designation for period is made, the commission shall allocate the remittance so as to satisfy all penalty, interest, and tax for the oldest period before applying any excess to other periods.

C. Fees associated with Tax Commission collection activities shall be allocated from remittances in the manner designated by statute. If a statute does not provide for the manner of allocating those fees from remittances, the commission shall apply the remittance first to the collection activity fees, then to penalty, then interest, and then to tax for the filing period.

R861-1A-20. Time of Appeal Pursuant to Utah Code Ann. Sections 63G-4-201 and 68-3-8.5.

(1) Except as provided in Subsection (2), a petition for adjudicative action must be received in the commission offices no later than 30 days from the date of the action that creates the right to appeal. The petition is deemed to be timely if:

(a) in the case of mailed or hand-delivered documents:

(i) the petition is received in the commission offices on or before the close of business of the last day of the 30-day period; or

(ii) the date of the postmark on the envelope or cover indicates that the petition was mailed on or before the last day of the 30-day period; or

(b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the 30-day period.

(c) A petition for adjudicative action that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsections 68-3-8.5(2)(b) and (c).

(2) If a statute provides the period within which an appeal may be filed, a petition for adjudicative action is deemed to be timely if:

(a) in the case of mailed or hand-delivered documents:

(i) the petition is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(ii) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the time frame provided by statute; or

(b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the time frame provided by statute.

(c) A petition for adjudicative action that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsections 68-3-8.5(2)(b) and (c).

(3) Any party adversely affected by an order of the commission may seek judicial review within the time frame provided by statute. Copies of the appeal shall be served upon the commission and upon the Office of the Attorney General.

R861-1A-22. Petitions for Commencement of Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501, and 63G-4-201.

(1) Time for Petition. Unless otherwise provided by Utah statute, petitions for adjudicative actions shall be filed within the time frames specified in R861-1A-20. If the last day of the 30-day period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next Tax Commission business day.

(2) Contents. A petition for adjudicative action need not be in any particular form, but shall be in writing and, in addition to the requirements of 63G-4-201, shall contain the following:

(a) name and street address and, if available, a fax number or e-mail address of petitioner or the petitioner's representative;

(b) a telephone number where the petitioning party or that party's representative can be reached during regular business hours;

(c) petitioner's tax identification, social security number or other relevant identification number, such as real property parcel number or vehicle identification number;

(d) particular tax or issue involved, period of alleged liability, amount of tax in dispute, and, in the case of a property tax issue, the lien date;

(e) if the petition results from a letter or notice, the petition will include the date of the letter or notice and the originating division or officer; and

(f) in the case of property tax cases, the assessed value sought.

(3) Effect of Nonconformance. The commission will not reject a petition because of nonconformance in form or content, but may require an amended or substitute petition meeting the requirements of this section when such defects are present. An amended or substitute petition must be filed within 15 days after notice of the defect from the commission.

R861-1A-23. Designation of Adjudicative Proceedings Pursuant to Utah Code Ann. Section 63G-4-202.

(1) All matters shall be designated as formal proceedings and set for an initial hearing, a status conference, or a scheduling conference pursuant to R861-1A-26.

(2) A matter may be diverted to a mediation process pursuant to R861-1A-32 upon agreement of the parties and the presiding officer.

R861-1A-24. Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-502.5, 63G-4-206, and 63G-4-208.

(1) The following may preside at a formal proceeding:

(a) a commissioner;

(b) an administrative law judge appointed by the commission; or

(c) in the case of a formal proceeding that relates to a matter that is not a tax, fee, or charge as defined under Section 59-1-1402:

(i) a commissioner;

(ii) an administrative law judge appointed by the commission; or

(iii) a hearing officer appointed by the commission.

(2) Assignment of a presiding officer to a case will be made pursuant to agency procedures and not at the request of any party to the appeal.

(a) A party may request that one or more commissioners be present at any hearing. However, the decision of whether the request is granted rests with the commission.

(b) If more than one commissioner, administrative law judge, or hearing officer is present at any hearing, the hearing will be conducted by the presiding officer assigned to the appeal, unless otherwise determined by the commission.

(3) A formal proceeding includes an initial hearing pursuant to Section 59-1-502.5, unless it is waived upon agreement of all parties, and a formal hearing on the record, if the initial hearing is waived or if a party appeals the initial hearing decision.

(a) Initial Hearing.

(i) An initial hearing pursuant to Section 59-1-502.5 shall be in the form of a conference.

(ii) In accordance with Section 59-1-502.5, the commission shall make no record of an initial hearing.

(iii) Any issue may be settled in the initial hearing, but any party has a right to a formal hearing on matters that remain in dispute after the initial hearing decision is issued.

(iv) Any party dissatisfied with the result of the initial hearing must file a timely request for a formal hearing before pursuing judicial review of unsettled matters.

(b) Formal Hearing.

(i) The commission shall make a record of all formal hearings, which may include a written record or an audio recording of the proceeding.

(ii) Evidence presented at the initial hearing will not be included in the record of the formal hearing, unless specifically requested by a party and admitted by the presiding officer.

R861-1A-26. Procedures for Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501 and 63G-4-204 through 63G-4-209.

(1) A scheduling or status conference may be held.

(a) At the conference, the parties and the presiding officer may:

(i) establish deadlines and procedures for discovery;
(ii) discuss scheduling;
(iii) clarify other issues;
(iv) determine whether to refer the action to a mediation process; and
(v) determine whether the initial hearing will be waived.
(b) The scheduling or status conference may be converted to an initial hearing upon agreement of the parties.
(2) Notice of Hearing. At least ten days prior to a hearing date, the commission shall notify the petitioning party or the petitioning party's representative by mail, e-mail, or facsimile of the date, time and place of any hearing or proceeding.
(3) Proceedings Conducted by Telephone. Any proceeding may be held with one or more of the parties on the telephone if the presiding officer determines that it will be more convenient or expeditious for one or more of the parties and does not unfairly prejudice the rights of any party. Each party to the proceeding is responsible for notifying the presiding officer of the telephone number where contact can be made for purposes of conducting the hearing.
(4) Representation.
(a) A party may pursue an appeal before the commission without assistance of legal counsel or other representation. However, a party may be represented by legal counsel or other representation at every stage of adjudication. Failure to obtain legal representation shall not be grounds for complaint at a later stage in the adjudicative proceeding or for relief on appeal from an order of the commission.
(i) An attorney licensed in a jurisdiction outside Utah may represent a taxpayer before the commission without being admitted pro hac vice in Utah.
(ii) For appeals concerning Utah corporate franchise and income taxes or Utah individual income taxes, legal counsel must file a power of attorney or the taxpayer must submit a signed petition for redetermination (Tax Commission form TC-738) on which the taxpayer has authorized legal counsel to represent him or her in the appeal. For all other appeals, legal counsel may, as an alternative, submit an entry of appearance.
(iii) Any representative other than legal counsel must submit a signed power of attorney authorizing the representative to act on the party's behalf and binding the party by the representative's action, unless the taxpayer submits a signed petition for redetermination (Tax Commission form TC-738) on which the taxpayer has authorized the representative to represent him or her in the appeal.
(iv) If a party is represented by legal counsel or other representation, all documents will be directed to the party's representative. Documents will be mailed to the representative's street or other address as shown in documents submitted by the representative. Documents may also be transmitted by facsimile number, e-mail address or other electronic means.
(b) Any division of the commission named as party to the proceeding may be represented by the Attorney General's Office upon an attorney of that office submitting an entry of appearance.
(5) Subpoena Power.
(a) Issuance. Subpoenas may be issued to secure the attendance of witnesses or the production of evidence.
(i) If all parties are represented by counsel, an attorney admitted to practice law in Utah may issue and sign the subpoena.
(ii) In all other cases, the party requesting the subpoena must prepare it and submit it to the presiding officer for review and, if appropriate, signature. The presiding officer may inform a party of its rights under the Utah Rules of Civil Procedure.
(b) Service. Service of the subpoena shall be made by the party requesting it in a manner consistent with the Utah Rules of Civil Procedure.
(6) Motions.
(a) Consolidation. The presiding officer has discretion to consolidate cases when the same tax assessment, series of assessments, or issues are involved in each, or where the fact situations and the legal questions presented are virtually identical.
(b) Continuance. A continuance may be granted at the discretion of the presiding officer.
(i) In the absence of a scheduling order:
(A) Each party to an appeal may receive one continuance, upon request, prior to the initial hearing.
(B) If the initial hearing is waived or a formal hearing is timely requested after an initial hearing decision is issued, each party may receive one continuance, upon request, prior to the formal hearing.
(C) A request must be submitted no later than ten days prior to the proceeding for which the continuance is requested and may be denied if a party is prejudiced by the continuance.
(ii) If a scheduling order has been issued or the requesting party has already been granted a continuance, a continuance request must be submitted in writing to the presiding officer. The request must set forth specific reasons for the continuance. After reviewing the request with one or more commissioners, the presiding officer shall grant the request only if the presiding officer determines that adequate cause has been shown and that no other party or parties will be unduly prejudiced.
(c) Default. The presiding officer may enter an order of default against a party in accordance with Section 63G-4-209.
(i) The default order shall include a statement of the grounds for default and shall be delivered to all parties.
(ii) A defaulted party may seek to have the default set aside according to procedures set forth in the Utah Rules of Civil Procedure.
(d) Ruling on Motions. Motions may be made during the hearing or by written motion.
(i) Each motion shall include the grounds upon which it is based and the relief or order sought. Copies of written motions shall be served upon all other parties to the proceeding.
(ii) Upon the filing of any motion, the presiding officer may:
(A) grant or deny the motion; or
(B) set the matter for briefing, hearing, or further proceedings.
(iii) If a hearing on a motion is held that may dispose of all or a portion of the appeal or any claim or defense in the appeal, the commission shall make a record of the proceeding, which may include a written record or an audio recording of the proceeding.
(e) Requests to Withdraw Locally-Assessed Property Tax Appeals.
(i) A party who appeals a county board of equalization decision to the commission may unilaterally withdraw its appeal if:
(A) it submits a written request to withdraw the appeal 20 or more days prior to:
(I) the initial hearing; or
(II) the formal hearing, if the parties waived the initial hearing or participated in a mediation conference in lieu of the initial hearing; and
(B) no other party has filed a timely appeal of the county board of equalization decision.
(ii) A party who appeals an initial hearing decision issued by the commission may unilaterally withdraw its appeal if:
(A) it submits a written request to withdraw 20 or more days prior to the formal hearing, regardless of whether the party who appealed the initial hearing order is also the party who appealed the county board of equalization decision; and
(B) no other party has filed a timely appeal of the initial hearing decision.

R861-1A-27. Discovery Pursuant to Utah Code Ann. Section 63G-4-205.

(1) Discovery procedures in formal proceedings shall be established during the scheduling, and status conference in accordance with the Utah Rules of Civil Procedure and other applicable statutory authority.

(2) The party requesting information or documents may be required to pay in advance the costs of obtaining or reproducing such information or documents.

R861-1A-28. Evidence in Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-210, 63G-4-206, 76-8-502, and 76-8-503.

(1) Except as otherwise stated in this rule, formal proceedings shall be conducted in accordance with the Utah Rules of Evidence, and the degree of proof in a hearing before the commission shall be the same as in a judicial proceeding in the state courts of Utah.

(2) Every party to an adjudicative proceeding has the right to introduce evidence. The evidence may be oral or written, real or demonstrative, direct or circumstantial.

(a) The presiding officer may admit any reliable evidence possessing probative value which would be accepted by a reasonably prudent person in the conduct of his affairs.

(b) The presiding officer may admit hearsay evidence. However, no decision of the commission will be based solely on hearsay evidence.

(c) If a party attempts to introduce evidence into a hearing, and that evidence is excluded, the party may proffer the excluded testimony or evidence to allow the reviewing judicial authority to pass on the correctness of the ruling of exclusion on appeal.

(3) At the discretion of the presiding officer or upon stipulation of the parties, the parties may be required to reduce their testimony to writing and to prefile the testimony.

(a) Prefiled testimony may be placed on the record without being read into the record if the opposing parties have had reasonable access to the testimony before it is presented. Except upon finding of good cause, reasonable access shall be not less than ten working days.

(b) Prefiled testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness.

(c) The presiding officer may require the witness to present a summary of the prefiled testimony. In that case, the witness shall reduce the summary to writing and either file it with the prefiled testimony or serve it on all parties within 10 days after filing the testimony.

(d) If an opposing party intends to cross-examine the witness on prefiled testimony or the summary of prefiled testimony, that party must file a notice of intent to cross-examine at least 10 days prior to the date of the hearing so that witness can be scheduled to appear or within a time frame agreed upon by the parties.

(4) The presiding officer shall rule and sign orders on matters concerning the evidentiary and procedural conduct of the proceeding.

(5) Oral testimony at a formal hearing will be sworn. The oath will be administered by the presiding officer or a person designated by him. Anyone testifying falsely under oath may be subject to prosecution for perjury in accordance with the provisions of Sections 76-8-502 and 76-8-503.

(6) Any party appearing in an adjudicative proceeding may submit a memorandum of authorities. The presiding officer may request a memorandum from any party if deemed necessary for a full and informed consideration of the issues.

R861-1A-29. Decisions, Orders, and Reconsideration Pursuant to Utah Code Ann. Sections 59-1-205 and 63G-4-302.

(1) "Taxpayer" for purposes of the requirement under Section 59-1-205 that in a tie vote of the commission the position of the taxpayer is considered to have prevailed, includes:

(a) a person that has received a license issued by the commission; or

(b) an applicant for a license issued by the commission.

(2) Decisions and Orders.

(a) Initial hearing decisions, formal hearing decisions, and other dispositive orders.

(i) A quorum of the commission shall deliberate all hearing decisions and other orders that could dispose of all or a portion of an appeal or any claim or defense in the appeal.

(ii) A quorum of the commission shall sign all hearing decisions and other orders that dispose of all or a portion of an appeal or any claim or defense in the appeal.

(iii) An administrative law judge, if he or she was the presiding officer for an appeal, may elect not to sign the commission's hearing decisions and other orders that dispose of all or a portion of an appeal or any claim or defense in the appeal.

(iv) An initial hearing decision shall become final upon the expiration of 30 days after the date of its issuance, except in any case where a party has earlier requested a formal hearing in writing.

(A) The date a party requests a formal hearing is the earlier of the date the envelope containing the request is postmarked or the date the request is received at the commission.

(B) If a party withdraws an appeal, the initial decision becomes final as of the date that is 30 days after the date of the issuance of the initial hearing decision.

(b) Orders that are not dispositive.

(i) A quorum of the commission is not required to participate in an order that does not dispose of a portion of an appeal or any claim or defense in the appeal.

(ii) The presiding officer is authorized to sign all orders that do not dispose of a portion of an appeal or any claim or defense in the appeal.

(iii) The commission may, at its option, sign any order that does not dispose of a portion of an appeal or any claim or defense in the appeal.

(3) Reconsideration. Within 20 days after the date that an order that is dispositive of a portion or all of an appeal or any claim or defense in the appeal is issued, any party may file a written request for reconsideration alleging mistake of law or fact, or discovery of new evidence.

(a) The commission shall respond to the petition within 20 days after the date that it was received in the appeals unit to notify the petitioner whether the reconsideration is granted or denied, or is under review.

(i) If no notice is issued within the 20-day period, the commission's lack of action on the request shall be deemed to be a denial and a final order.

(ii) For purposes of calculating the 30-day limitation period for pursuing judicial review, the date of the commission's order on the reconsideration or the order of denial is the date of the final agency action.

(b) If no petition for reconsideration is made, the 30-day limitation period for pursuing judicial review begins to run from the date of the final agency action.

R861-1A-30. Ex Parte Communications Pursuant to Utah Code Ann. Sections 63G-4-203 and 63G-4-206.

(1) No commissioner or administrative law judge shall make or knowingly cause to be made to any party to an appeal any communication relevant to the merits of a matter under appeal unless notice and an opportunity to be heard are afforded to all parties.

(2) No party shall make or knowingly cause to be made to any commissioner or administrative law judge an ex parte communication relevant to the merits of a matter under appeal for the purpose of influencing the outcome of the appeal. Discussion of procedural matters are not considered ex parte communication relevant to the merits of the appeal.

(3) A presiding officer may receive aid from staff assistants if:

(a) the assistants do not receive ex parte communications of a type that the presiding officer is prohibited from receiving, and,

(b) in an instance where assistants present information which augments the evidence in the record, all parties shall have reasonable notice and opportunity to respond to that information.

(4) Any commissioner or administrative law judge who receives an ex parte communication relevant to the merits of a matter under appeal shall place the communication into the case file and afford all parties an opportunity to comment on the information.

R861-1A-31. Declaratory Orders Pursuant to Utah Code Ann. Section 63G-4-503.

(1) A party has standing to bring a declaratory action if that party is directly and adversely affected or aggrieved by an agency action within the meaning of the relevant statute.

(2) The commission shall not accept a petition for declaratory order on matters pending before the commission in an audit assessment, refund request, collections action or other agency action, or on matters pending before the court on judicial review of a commission decision.

(3) The commission may refuse to render a declaratory order if the order will not completely resolve the controversy giving rise to the proceeding or if the petitioner has other remedies through the administrative appeals processes. The commission's decision to accept or reject a petition for declaratory order rests in part on the petitioner's standing to raise the issue and on a determination that the petitioner has not already incurred tax liability under the statutes or rules challenged.

(4) A declaratory order that invalidates all or part of an administrative rule shall trigger the rulemaking process to amend the rule.

R861-1A-32. Mediation Process Pursuant to Utah Code Section 63G-4-102.

(1) Except as otherwise precluded by law, a resolution to any matter of dispute may be pursued through mediation.

(a) The parties may agree to pursue mediation any time before the formal hearing on the record.

(b) The choice of mediator and the apportionment of costs shall be determined by agreement of the parties.

(2) If mediation produces a settlement agreement, the agreement shall be submitted to the presiding officer pursuant to R861-1A-33.

(a) The settlement agreement shall be prepared by the parties or by the mediator, and promptly filed with the presiding officer.

(b) The settlement agreement shall be adopted by the commission if it is not contrary to law.

(c) If the mediation does not resolve all of the issues, the parties shall prepare a stipulation that identifies the issues resolved and the issues that remain in dispute.

(d) If any issues remain unresolved, the appeal will be scheduled for a formal hearing pursuant to R861-1A-23.

R861-1A-33. Settlement Agreements Pursuant to Utah Code Sections 59-1-210 and 59-1- 502.5.

A. "Settlement agreement" means a stipulation, consent decree, settlement agreement or any other legally binding document or representation that resolves a dispute or issue between the parties.

B. Procedure:

1. Parties with an interest in a matter pending before a division of the Tax Commission may submit a settlement agreement for review and approval, whether or not a petition for hearing has been filed.

2. Parties to an appeal pending before the commission may submit a settlement agreement to the presiding officer for review and approval.

3. Each settlement agreement shall be in writing and executed by each party or each party's legal representative, if any, and shall contain:

a) the nature of the claim being settled and any claims remaining in dispute;

b) a proposed order for commission approval; and

c) a statement that each party has been notified of, and allowed to participate in settlement negotiations.

4. A settlement agreement terminates the administrative action on the issues settled before all administrative remedies are exhausted, and, therefore, precludes judicial review of the issues. Each settlement agreement shall contain a statement that the agreement is binding and constitutes full resolution of all issues agreed upon in the settlement agreement.

5. The signed agreement shall stay further proceedings on the issues agreed upon in the settlement until the agreement is accepted or rejected by the commission or the commission's designee.

a) If approved, the settlement agreement shall take effect by its own terms.

b) If rejected, action on the claim shall proceed as if no settlement agreement had been reached. Offers made during the negotiation process will not be used as an admission against that party in further adjudicative proceedings.

R861-1A-34. Private Letter Rulings Pursuant to Utah Code Ann. Section 59-1-210.

A. Private letter rulings are written, informational statements of the commission's interpretation of statutes or administrative rules, or informational statements concerning the application of statutes and rules to specific facts and circumstances.

1. Private letter rulings address questions that have not otherwise been addressed in statutes, rules, or decisions issued by the commission.

2. The commission shall not knowingly issue a private letter ruling on a matter pending before the commission in an audit assessment, refund request, or other agency action, or regarding matters that are pending before the court on judicial review of a commission decision. Any private letter ruling inadvertently issued on a matter pending agency or judicial action shall be set aside until the conclusion of that action.

3. Requests for private letter rulings must be addressed to the commission in writing. If the requesting party is dissatisfied with the ruling, that party may resubmit the request along with new facts or information for commission review.

B. The weight afforded a private letter ruling in a subsequent audit or administrative appeal depends upon the degree to which the underlying facts addressed in the ruling were adequate to allow thorough consideration of the issues and interests involved.

C. A private letter ruling is not a final agency action. Petitioner must use the designated appeal process to address judiciable controversies arising from the issuance of a private letter ruling.

1. If the private letter ruling leads to a denial of a claim, an audit assessment, or some other agency action at a divisional level, the taxpayer must use the appeals procedures to challenge

that action within 30 days of the final division decision.

2. If the only matter at issue in the private letter ruling is a challenge to the commission's interpretation of statutory language or a challenge to the commission's authority under a statute, the matter may come before the commission as a petition for declaratory order submitted within 30 days of the date of the ruling challenged.

R861-1A-35. Manner of Retaining Records Pursuant to Utah Code Ann. Sections 59-1-210, 59-5-104, 59-5-204, 59-6-104, 59-7-506, 59-8-105, 59-8a-105, 59-10-501, 59-12-111, 59-13-211, 59-13-312, 59-13-403, 59-14-303, and 59-15-105.

A. Definitions.

1. "Database Management System" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

2. "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized, structured electronic format.

3. "Hard copy" means any documents, records, reports, or other data printed on paper.

4. "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

5. "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

6. "Taxpayer" means the person required, under Title 59 or other statutes administered by the Tax Commission, to collect, remit, or pay the tax or fee to the Tax Commission.

B. If a taxpayer retains records in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the commission in machine-sensible format upon request by the commission.

C. Nothing in this rule shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not the taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this rule. However, this does not relieve the taxpayer of the obligation to comply with B.

D. Recordkeeping requirements for machine-sensible records.

1. Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the commission upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this rule are met.

2. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format.

3. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

4. Electronic Data Interchange Requirements.

a) Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record.

b) For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, and shipping detail. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method that allows the commission to interpret the coded information.

c) The taxpayer may capture the information necessary to satisfy D.4.b) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name, i.e., they contain only codes for that information, the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the commission. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

5. Electronic data processing systems requirements.

a) The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this rule.

6. Business process information.

a) Upon the request of the commission, the taxpayer shall provide a description of the business process that created the retained records. The description shall include the relationship between the records and the tax documents prepared by the taxpayer, and the measures employed to ensure the integrity of the records.

b) The taxpayer shall be capable of demonstrating:

(1) the functions being performed as they relate to the flow of data through the system;

(2) the internal controls used to ensure accurate and reliable processing; and

(3) the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

c) The following specific documentation is required for machine-sensible records retained pursuant to this rule:

(1) record formats or layouts;

(2) field definitions, including the meaning of all codes used to represent information;

(3) file descriptions, e.g., data set name; and

(4) detailed charts of accounts and account descriptions.

E. Records maintenance requirements.

1. The commission recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records. The NARA standards may be found at 36 C.F.R., Section 1234,(1995).

2. The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

F. Access to machine-sensible records.

1. The manner in which the commission is provided access to machine-sensible records as required in B. may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the

taxpayer.

2. Access will be provided in one or more of the following manners:

a) The taxpayer may arrange to provide the commission with the hardware, software, and personnel resources necessary to access the machine-sensible records.

b) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

c) The taxpayer may convert the machine-sensible records to a standard record format specified by the commission, including copies of files, on a magnetic medium that is agreed to by the commission.

d) The taxpayer and the commission may agree on other means of providing access to the machine-sensible records.

G. Taxpayer responsibility and discretionary authority.

1. In conjunction with meeting the requirements of D., a taxpayer may create files solely for the use of the commission. For example, if a data base management system is used, it is consistent with this rule for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and meets the requirements of D. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

2. A taxpayer may contract with a third party to provide custodial or management services of the records. The contract shall not relieve the taxpayer of its responsibilities under this rule.

H. Alternative storage media.

1. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this rule to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents that may be stored on these media include general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

2. Microfilm, microfiche and other storage-only imaging systems shall meet the following requirements:

a) Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche, or other storage-only imaging system must be maintained and made available on request. This documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

b) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained.

c) Upon request by the commission, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche, or other storage-only imaging system.

d) When displayed on equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

e) All data stored on microfilm, microfiche, or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.

f) There is no substantial evidence that the microfilm, microfiche or other storage-only imaging system lacks authenticity or integrity.

I. Effect on hard-copy recordkeeping requirements.

1. Except as otherwise provided in this section, the provisions of this rule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations. Hard-copy records may be retained on a recordkeeping medium as provided in H.

2. Hard-copy records not produced or received in the ordinary course of transacting business, e.g., when the taxpayer uses electronic data interchange technology, need not be created.

3. Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this rule. These details include those listed in D.4.a) and D.4.b).

4. Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

5. Nothing in this section shall prevent the commission from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

R861-1A-36. Signatures Defined Pursuant to Utah Code Ann. Sections 41-1a-209, 59-7-505, 59-10-512, 59-12-107, 59-13-206, and 59-13-307.

(1) Individuals who submit an application to renew their vehicle registration on the Internet web site authorized by the Tax Commission shall use the Tax Commission assigned personal identification number included with their registration renewal information as their signature for the renewal application submitted over the Internet.

(2) Taxpayers who use the Tax Commission authorized Internet web site to file tax return information for tax types that may be filed on that web site shall use the personal identification number provided by the Tax Commission as their signature for the tax return information filed on that web site.

(3) Taxpayers who file a tax return under Title 59, Chapter 10, Individual Income Tax Act, electronically and who meet the signature requirement of the Internal Revenue Service shall be deemed to meet the signature requirement of Section 59-10-512.

(4) Taxpayers who file a corporate franchise and income tax return electronically and who meet the signature requirement of the Internal Revenue Service shall be deemed to meet the signature requirement of Section 59-7-505.

R861-1A-37. Provisions Relating to Disclosure of Commercial Information Pursuant to Utah Code Ann. Section 59-1-404.

(1) The provisions of this rule apply to the disclosure of commercial information under Section 59-1-404. For disclosure of information other than commercial information, see rule R861-1A-12.

(2) For purposes of Section 59-1-404, "assessed value of the property" includes any value proposed for a property.

(3) For purposes of Subsection 59-1-404(2), "disclosure" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

(a) named party of a decision or order;

(b) party requesting a private letter ruling; or

(c) designated representative of a party described in Subsection (3)(a) or (3)(b).

(4) For purposes of Subsection 59-1-404(6), "published decision" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial

information to a:

(a) named party of a decision or order;

(b) party requesting a private letter ruling; or

(c) designated representative of a party described in Subsection (4)(a) or (4)(b).

(5) Information that may be disclosed under Subsection 59-1-404(3) includes:

(a) the following information related to the property's tax exempt status:

(i) information provided on the application for property tax exempt status;

(ii) information used in the determination of whether a property tax exemption should be granted or revoked; and

(iii) any other information related to a property's property tax exemption;

(b) the following information related to penalty or interest relating to property taxes that the commission or county legislative body determines should be abated:

(i) the amount of penalty or interest that is abated;

(ii) information provided on an application or request for abatement of penalty or interest;

(iii) information used in the determination of the abatement of penalty or interest; and

(iv) any other information related to the amount of penalty or interest that is abated; and

(c) the following information related to the amount of property tax due on property:

(i) the amount of taxes refunded or deducted as an erroneous or illegal assessment under Section 59-2-1321;

(ii) information provided on an application or request that property has been erroneously or illegally assessed under Section 59-2-1321; and

(iii) any other information related to the amount of taxes refunded or deducted under Subsection (5)(c)(i).

(6)(a) Except as provided in statute and Subsection (6)(b), commercial information disclosed during an action or proceeding may not be disclosed outside an action or proceeding by any person conducting or participating in any action or proceeding.

(b) Notwithstanding Subsection (6)(a), commercial information contained in a decision issued by the commission may be disclosed outside the action or proceeding if all of the parties named in the decision agree in writing to the disclosure.

(7) The commission may disclose commercial information in a published decision as follows.

(a) If the property taxpayer that provided the commercial information does not respond in writing to the commission within 30 days of the decision's issuance, requesting that the commercial information not be published and identifying the specific commercial information the taxpayer wants protected, the commission may publish the entire decision.

(b) If the property taxpayer that provided the commercial information indicates to the commission in writing the specific commercial information that the taxpayer wants protected, the commission may publish a version of the decision that contains commercial information not identified by the taxpayer under Subsection (7)(a).

(8) The commission may share commercial information gathered from returns and other written statements with the federal government, any other state, any of the political subdivisions of another state, or any political subdivision of this state, if these political subdivisions, or the federal government grant substantially similar privileges to this state.

R861-1A-38. Class Actions Pursuant to Utah Code Ann. Section 59-1-304.

A. Unless the limitations of Section 59-1-304(2) apply, the commission may expedite the exhaustion of administrative remedies required by individuals desiring to be included as a member of the class.

B. In expediting exhaustion of administrative remedies, the commission may take any of the following actions:

1. publish sample claim forms that provide the information necessary to process a claim in a form that will reduce the burden on members of the putative class and expedite processing by the commission;

2. provide for waiver of initial hearings where requested by any party;

3. provide for expedited rulings on motions for summary judgment where the facts are not contested and the legal issues have been previously determined by the commission in ruling on the case brought by class representatives. The parties may waive oral hearing and have final orders issued based upon information submitted in the claims and division responses;

4. consolidate the cases for hearing at the commission, where a group of claims presents identical legal issues and it is agreed by the parties that the resolution of the legal issues would be dispositive of the claims;

5. designate a claim as a test or sample claim with any rulings on that test or sample claim to be applicable to all other similar claims, upon agreement of the claiming parties; or

6. any other action not listed in this rule if that action is not contrary to procedures required by statute.

R861-1A-39. Penalty for Failure to File a Return Pursuant to Utah Code Ann. Sections 10-1-405, 59-1-401, 59-12-118, and 69-2-5.

(1)(a) Subject to Subsection (1)(b), "failure to file a tax return," for purposes of the penalty for failure to file a tax return under Subsection 59-1-401(1) includes a tax return that does not contain information necessary for the commission to make a correct distribution of tax revenues to counties, cities, and towns.

(b) Subsection (1)(a) applies to a tax return filed under:

(i) Chapter 12, Sales and Use Tax Act;

(ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or

(iii) Title 69, Chapter 2, Emergency Telephone Service Law.

(2)(a) "Unpaid tax," for purposes of the penalty for failure to file a tax return under Subsection 59-1-401(1) includes tax remitted to the commission under Subsection (2)(b) that is:

(i) not accompanied by a tax return; or

(ii) accompanied by a tax return that is subject to the penalty for failure to file a tax return.

(b) Subsection (2)(a) applies to a tax remitted under:

(i) Chapter 12, Sales and Use Tax Act;

(ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or

(iii) Title 69, Chapter 2, Emergency Telephone Service Law.

R861-1A-40. Waiver of Requirement to Post Security Prior to Judicial Review Pursuant to Utah Code Ann. Section 59-1-611.

(1) "Post security" is as defined in Section 59-1-611.

(2)(a) A taxpayer that seeks judicial review of a final commission determination of a deficiency may apply for a waiver of the requirement to post security with the commission by:

(i) submitting a letter requesting the waiver;

(ii) providing financial information requested by the commission; and

(iii) providing a copy of the financial information to the attorney general that is representing the commission in the judicial review.

(b) The financial information described in Subsection (2)(a) shall be signed by the taxpayer under penalties of perjury.

(3) Upon review of the financial information described in Subsection (2), the commission shall:

(a) determine whether the taxpayer qualifies for a waiver of the requirement to post security with the commission; or

(b) if unable to make the determination under Subsection (3)(a) from the financial information, request additional information from the taxpayer as necessary to make that determination.

R861-1A-42. Waiver of Penalty and Interest for Reasonable Cause Pursuant to Utah Code Ann. Section 59-1-401.

(1) Procedure.

(a) A taxpayer may request a waiver of penalties or interest for reasonable cause under Section 59-1-401 if the following conditions are met:

(i) the taxpayer provides a signed statement, with appropriate supporting documentation, requesting a waiver;

(ii) the total tax owed for the period has been paid;

(iii) the tax liability is based on a return the taxpayer filed with the commission, and not on an estimate provided by the taxpayer or the commission;

(iv) the taxpayer has not previously received a waiver review for the same period; and

(v) the taxpayer demonstrates that there is reasonable cause for waiver of the penalty or interest.

(b) Upon receipt of a waiver request, the commission shall:

(i) review the request;

(ii) notify the taxpayer if additional documentation is needed to consider the waiver request; and

(iii) review the account history for prior waiver requests, taxpayer deficiencies, and historical support for the reason given.

(c) Each request for waiver is judged on its individual merits.

(d) If the request for waiver of penalty or interest is denied, the taxpayer has a right to appeal. Procedures for filing appeals are found in Title 63G, Chapter 4, Administrative Procedures Act, and commission rules.

(e) If a taxpayer first requests a waiver of penalties or interest in an appeal to the commission, the taxpayer is not required to meet Subsections (1)(a)(i) through (iv).

(2) Reasonable Cause for Waiver of Interest. Grounds for waiving interest are more stringent than for penalty. To be granted a waiver of interest, the taxpayer must prove that the commission gave the taxpayer erroneous information or took inappropriate action that contributed to the error.

(3) Reasonable Cause for Waiver of Penalty. The following clearly documented circumstances may constitute reasonable cause for a waiver of penalty:

(a) Timely Mailing:

(i) The taxpayer mailed the return with payment to the commission by the due date and it was not timely delivered by the post office through no fault of the taxpayer.

(ii) In cases where the taxpayer cannot document a post office error, the penalties may be waived if the taxpayer:

(A) has an excellent history of compliance;

(B) proves that sufficient funds were in the bank as of the date of payment, and the check was written in numerical order; and

(C) presents documentation showing that the return or payment was mailed timely.

(b) Wrong Filing Place: The return or payment was filed on time, but was delivered to the wrong office or agency.

(c) Death or Serious Illness:

(i) The death or serious illness of a taxpayer or a member of the taxpayer's immediate family caused the delay.

(ii) With respect to a business, trust or estate, the death or illness must have been of the individual, or the immediate family of the individual, who had sole authority to file the return.

(iii) The death or illness must have occurred on or immediately prior to the due date of the return.

(d) Unavoidable Absence: The person having sole responsibility to file the return was absent from the state due to circumstances beyond his or her control.

(e) Disaster Relief:

(i) A delay in reporting, filing, or paying was due either to a federal or state declared disaster or to a natural disaster, such as fire or accident, that results in the destruction of records or disruption of business.

(ii) If delinquency or delay is due to a federally declared disaster, federal relief guidelines shall be followed.

(iii) In the absence of federal guidelines, and for other listed disasters, the taxpayer must demonstrate the matter was corrected within a reasonable time, given the circumstances.

(f) Reliance on Erroneous Tax Commission Information:

(i) Underpayments and late filings or payments were attributable to incorrect advice obtained from the commission, unless the taxpayer gave the commission inaccurate or insufficient information.

(ii) Proof of erroneous information may be based on written communication provided by the commission or, if the taxpayer clearly documents, verbal communication. Clear documentation of verbal communication should include the dates, times, and names of commission employees who provided the erroneous information.

(iii) A failure to comply will also be excused if it is demonstrated that the taxpayer requested the necessary tax forms and instructions timely, and the commission failed to timely provide the forms and instructions requested.

(g) Tax Commission Office Visit: The taxpayer proves that before expiration of the time for filing the return or making the payment, the taxpayer visited a commission office for information or help in preparing the return and a commission employee was not available for consultation.

(h) Unobtainable Records: For reasons beyond the taxpayer's control, the taxpayer was unable to obtain records to determine the amount of tax due.

(i) Reliance on Competent Tax Advisor: The taxpayer:

(i) furnishes all necessary and relevant information to a competent tax advisor, and the tax advisor:

(A) incorrectly advises the taxpayer;

(B) fails to timely file a return on behalf of the taxpayer; or

(C) fails to make a payment on behalf of the taxpayer; and

(ii) demonstrates that the taxpayer exercised ordinary business care, prudence, and diligence in determining whether to seek further advice.

(j) First Time Filer:

(i) It is the first return required to be filed and the taxes were filed and paid within a reasonable time after the due date.

(ii) The commission may also consider waiving penalties on the first return after a filing period change if the return is filed and tax is paid within a reasonable time after the due date.

(k) Bank Error:

(i) The taxpayer's bank has made an error in returning a check, making a deposit or transferring money.

(ii) A letter from the bank verifying its error is required.

(l) Compliance History:

(i) The commission will consider the taxpayer's recent history for payment, filing, and delinquencies in determining whether a penalty may be waived.

(ii) The commission will also consider whether other tax returns or reports are overdue at the time the waiver is requested.

(m) Employee Embezzlement: The taxpayer shows that failure to pay was due to employee embezzlement of the tax funds and the taxpayer was unable to obtain replacement funds from any other source.

(n) Recent Tax Law Change: The taxpayer's failure to file and pay was due to a recent change in tax law that the taxpayer could not reasonably be expected to be aware of.

(4) Other Considerations for Determining Reasonable Cause.

(a) The commission allows for equitable considerations in determining whether reasonable cause exists to waive a penalty. Equitable considerations include:

(i) whether the commission had to take legal means to collect the taxes;

(ii) if the error is caught and corrected by the taxpayer;

(iii) the length of time between the event cited and the filing date;

(iv) typographical or other written errors; and

(v) other factors the commission deems appropriate.

(b) Other clearly supported extraordinary and unanticipated reasons for late filing or payment, which demonstrate reasonable cause and the inability to comply, may justify a waiver of the penalty.

(c) In most cases, ignorance of the law, carelessness, or forgetfulness does not constitute reasonable cause for waiver. Nonetheless, other supporting circumstances may indicate that reasonable cause for waiver exists.

(d) Intentional disregard, evasion, or fraud does not constitute reasonable cause for waiver under any circumstance.

R861-1A-43. Electronic Meetings Pursuant to Utah Code Ann. Section 52-4-207.

(1) A commissioner may participate electronically in a meeting open to the public under Section 52-4-207 if:

(a) two commissioners are present at a single anchor location; or

(b) one commissioner is present at the anchor location.

(2) If Subsection (1)(b) applies, the commissioner at the anchor location shall conduct the meeting.

(3)(a) The commission shall indicate in a public notice if the public may participate electronically in a meeting open to the public under Section 52-4-207.

(b) A notice provided under Subsection (3)(a) shall direct the public on how to participate electronically in the meeting.

R861-1A-44. Definition of Delivery Service Pursuant to Utah Code Ann. Section 59-1-1404.

For purposes of determining the date on which a document has been mailed under Section 59-1-1404, "delivery service" means the following delivery services the Internal Revenue Service has determined to be a designated delivery service under Section 7502, Internal Revenue Code:

(1) DHL Express (DHL):

(a) DHL Same Day Service;

(b) DHL Next Day 10:30 a.m.;

(c) DHL Next Day 12:00 p.m.;

(d) DHL DHL Next Day 3:00 p.m.; and

(e) DHL 2nd Day Service;

(2) Federal Express (FedEx):

(a) FedEx Priority Overnight;

(b) FedEx Standard Overnight;

(c) FedEx 2 Day;

(d) FedEx International Priority; and

(e) FedEx International First; and

(3) United Parcel Service (UPS):

(a) UPS Next Day Air;

(b) UPS Next Day Air Saver;

(c) UPS 2nd Day Air;

(c) UPS 2nd Day Air A.M.;

(d) UPS Worldwide Express Plus; and

(e) UPS Worldwide Express.

R861-1A-45. Procedures for Commission Meetings Not Open to the Public Pursuant to Utah Code Ann. Section 59-1-405.

(1) When the commission holds a meeting that is not open to the public pursuant to Section 59-1-405, the commission shall:

(a) follow the procedures set forth in commission rules:

(i) R861-1A-9, Tax Commission as Board of Equalization;

(ii) R861-1A-11, Appeal of Corrective Action;

(iii) R861-1A-20, Time of Appeal;

(iv) R861-1A-22, Petitions for Commencement of Adjudicative Proceedings;

(v) R861-1A-23, Designation of Adjudicative Proceedings;

(vi) R861-1A-24, Formal Adjudicative Proceedings;

(vii) R861-1A-26, Procedures for Formal Adjudicative Proceedings;

(viii) R861-1A-27, Discovery;

(ix) R861-1A-28, Evidence in Adjudicative Proceedings;

(x) R861-1A-29, Decision, Orders, and Reconsideration;

(xi) R861-1A-30, Ex Parte Communications;

(xii) R861-1A-31, Declaratory Orders;

(xiii) R861-1A-32, Mediation Process;

(xiv) R861-1A-33, Settlement Agreements;

(xv) R861-1A-34, Private Letter Rulings;

(xvi) R861-1A-38, Class Actions;

(xvii) R861-1A-40, Waiver of Requirement to Post Security Prior to Judicial Review; and

(xviii) R861-1A-42, Waiver of Penalty and Interest for Reasonable Cause; and

(b) for all meetings other than initial hearings, or the deliberating and issuing of an order relating to adjudicative proceedings, keep confidential written minutes and a confidential recording of the meeting.

(2) Written minutes of a meeting under Subsection (1)(b) shall include:

(a) the date, time, and place of the meeting;

(b) the names of each person present at the meeting;

(c) the substance of all matters proposed, discussed, or decided by the commission, which may include a summary of comments made by the commissioners;

(d) a record, by commissioner, of each vote taken by the commission;

(e) a summary of comments made by a person, other than a commissioner, present at the meeting; and

(f) any other information that is a record of the proceedings of the meeting that any commissioner requests be entered in the minutes or recording.

(3) Recorded minutes of a meeting under Subsection (1)(b) shall be:

(a) properly labeled or identified with the date, time, and place of the meeting; and

(b) a complete and unedited record of the meeting.

R861-1A-46. Procedures for Purchaser Refund Requests Pursuant to Utah Code Ann. Sections 59-1-1410 and 59-12-110.

(1) Definitions.

(a) "Division" means the Auditing Division of the commission.

(b) "Purchaser refund request" means:

(i) a refund request for sales tax overpaid; and

(ii) submitted by a person other than the seller that originally collected and remitted the sales tax to the commission.

(c) "Required information and documents" means, for each transaction included in a purchaser refund request:

(i) a description of the item for which a refund is requested;

(ii) the invoiced transaction date;

(iii) the taxable purchase amount;
(iv) the tax rate applied to the purchase amount;
(v) the invoice number;
(vi) invoices or receipts or other books and records that show the items purchased and sales tax charged;
(vii) the sales tax paid;
(viii) the reason and basis in Utah law for exempting or excluding the item from sales tax;
(ix) documentation that verifies that the item qualifies for a sales tax exemption or exclusion;
(x) the amount of sales tax overpaid;
(xi) proof of payment of sales tax, such as a canceled check, bank statement, credit card statement or receipt, letter from the seller, or other books and records that demonstrate payment was made;
(xii) if an agent applies for the refund on behalf of a purchaser, a power of attorney;
(xiii) the name and address of the seller; and
(xiv) a signed statement that the seller that calculated and remitted the sales tax:
(A) has not provided a sales tax refund or credit; and
(B) will not be asked to provide a sales tax refund or credit.

(2)(a) Except as provided in Subsection (3), a person submitting a purchaser refund request shall include the required information and documents with the application to the division.

(b) The items described in Subsection (2)(a) shall be provided to the division in the format and manner prescribed by the division.

(c) If the application is not accompanied by all of the required information and documents, the division shall send a notice to the person that submitted the purchaser refund request.

(d) The notice described in Subsection (2)(c) shall:
(i) indicate the required information and documents that are missing; and
(ii) allow the person submitting the purchaser refund request 30 days to provide the missing required information and documents to the division.

(e)(i) A person submitting a purchaser refund request who is unable to provide the information and documents described in Subsection (2)(d)(i) within the time period described in Subsection (2)(d)(ii) may contact the division to request an extension of time to provide the required information and documents that are missing.

(ii) The division shall grant reasonable requests for extension that will not unnecessarily prolong the processing of the refund request. If an extension is granted, the division shall provide written notice to the person submitting the purchaser refund request of the length of an extension of time granted under Subsection (2)(e)(i).

(f) If the division has not received all of the required information and documents within the time period described in Subsection (2)(d), or if applicable, within an extension of time granted under Subsection (2)(e), the division shall:
(i) evaluate the purchaser refund request based solely on the required information and documents received; and
(ii) dismiss for lack of evidence requests for refunds on items for which the division has not received the required information and documents.

(g)(i) Dismissals under Subsection (2)(f) may be appealed to the commission.

(ii) On an appeal under Subsection (2)(g)(i), the commission shall review whether information and documents adequate to determine the validity of the purchaser refund request were received by the division within the time period prescribed under Subsection (2)(d), or if applicable, within an extension of time granted under Subsection (2)(e).

(iii) If a person prevails on an appeal under Subsection (2)(g)(i), the commission shall hold a hearing for disposition of the underlying tax issue.

(3)(a) A person who submits a purchaser refund request may, at the time the application for the refund is filed, request the division use a sampling method in its review of the purchaser refund request.

(b) A person requesting a sampling method of review under Subsection (3)(a) shall include the following information for each transaction included in the purchaser refund request with the application to the division:
(i) the invoice number;
(ii) the invoiced transaction date;
(iii) the taxable purchase amount;
(iv) the tax rate applied to the purchase amount;
(v) the sales tax paid;
(vi) the amount of sales tax overpaid;
(vii) the name and address of the seller
(viii) a description of the item for which a refund is requested; and
(ix) the reason and basis in Utah law the item is exempt or excluded from sales tax.

(c) The items described in Subsection (3)(b) shall be provided to the division in the format and manner prescribed by the division.

(4)(a) If the division and a person submitting a purchaser refund request agree to the division's use of a sampling method in its review of the purchaser refund request, the division shall:
(i) determine the items that will be included in the sample;
(ii) notify the person submitting the purchaser refund request of the items that will be included in the sample and the information and documents that must be submitted to the division; and
(iii) allow the person submitting the purchaser refund request 30 days to provide the information and documents to the division in the format and manner prescribed by the division.

(b)(i) A person submitting a purchaser refund request who is unable to provide the information and documents described in Subsection (4)(a)(ii) within the time period described in Subsection (4)(a)(iii) may contact the division to request an extension of time to provide the information and documents that are missing.

(ii) The division shall grant reasonable requests for extension that will not unnecessarily prolong the processing of the refund request. If an extension is granted, the division shall provide written notice to the person submitting the purchaser refund request of the length of an extension of time granted under Subsection (4)(b)(i).

(c) Information and documents described in Subsection (4)(a)(ii) that are not received by the end of the period described in Subsection(4)(a), or if applicable, within an extension of time granted under Subsection (4)(b), shall be:
(i) considered errors; and
(ii) included in the overall error factor by which the purchaser refund request is decreased.

(d)(i) Errors under Subsection (4)(c) may be appealed to the commission.

(ii) On an appeal under Subsection (4)(d)(i), the only matter that will be reviewed by the commission is whether information and documents adequate to determine the validity of the purchaser refund request were received by the division within the time period prescribed under Subsection (4)(a), or if applicable, within an extension of time granted under Subsection (4)(b).

KEY: developmental disabilities, grievance procedures, taxation, disclosure requirements

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63G-3-201(2)
68-3-7
68-3-8.5
69-2-5
42 USC 12201
28 CFR 25.107 1992 Edition

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 complete courses 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) For an individual commencing employment as an ad valorem personal property auditor/appraiser before April 15, 2019 to qualify for this designation, an individual must, by April 15, 2021:

(i) successfully complete courses 101, 103, 501, and 503; and

(ii) successfully complete a comprehensive auditing practicum.

(b) For an individual commencing employment as an ad valorem personal property auditor/appraiser on or after April 15, 2019 to qualify for this designation, an individual must within 24 months of commencing that employment:

(i) successfully complete courses 101, 103, 501, and 503; and

(ii) successfully complete a comprehensive auditing practicum.

(c) 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 complete courses 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 6 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 entity has not completed the tax rate setting process as prescribed in Sections 59-2-919 and 59-2-920 before September 1, 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) For a county of the first, second, third or fourth class, the measure of central tendency shall be within:

(A) 5 percent of the legal level of assessment for county-wide residential property; or

(B) 10 percent of the legal level of assessment for all other classes of property.

(ii) For a county of the fifth or sixth class, the measure of central tendency shall be within 10 percent of the legal level of assessment for all property.

(iii) 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)(i) Except as provided in Subsection (3)(e)(ii), 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.

(ii) The division may exempt a county from the study described in Subsection (3)(e)(i) if the county demonstrates to the satisfaction of the division that the county employs methods and measures adequate to ensure assessment compliance with applicable law.

(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 adjustments or other corrective action shall be ordered if the property fails to meet the standards outlined in Subsections (2)(b) and (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. 2020 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-107.

(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
19	75%
18	44%
17 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
19	95%
18	85%
17	73%
16	61%
15	50%
14	39%
13	26%
12 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
19	89%
18	73%
17	55%
16	37%
15 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
19	96%
18	87%
17	77%
16	66%
15	57%
14	47%
13	35%
12	24%
11 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 2020 percent good applies to 2020 models purchased in 2019.
(vi) Trucks weighing two tons or more have a residual taxable value of $1,750.

TABLE 6

Model Year	Percent Good of Cost New
20	90%
19	73%
18	68%
17	63%
16	59%
15	54%
14	49%
13	44%
12	40%
11	35%
10	20%
09	15%
08	10%
07 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
19	97%
18	91%
17	82%
16	74%
15	66%
14	59%
13	48%
12	40%
11	31%
10	22%
09 and prior	11%

(h) Class 9 - Off-Highway Vehicles. 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. 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
19	97%
18	94%
17	88%
16	81%
15	76%
14	70%
13	62%
12	56%
11	50%
10	44%
09	37%
08	29%
07	20%
06 and prior	9%

(j) Class 11 - Street Motorcycles. 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
19	62%
18	46%
17	21%
16	9%
15 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) 2020 model equipment purchased in 2019 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
19	51%
18	49%
17	47%
16	45%
15	41%
14	39%
13	37%
12	35%
11	33%
10	31%
09	29%
08	25%
07	23%
06 and prior	15%

(m) Class 14 - Motor Homes. 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
19	47%
18	34%
17	24%
16	15%
15 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
19	97%
18	96%
17	93%
16	88%
15	85%
14	82%
13	76%
12	72%
11	65%
10	64%
09	59%
08	58%
07	53%
06	47%
05	39%
04	31%
03	24%
02	16%
01 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 2020 percent good applies to 2020 models purchased in 2019.

(vi) Property in this class has a residual taxable value of $1,000.

TABLE 17

Model Year	Percent Good of Cost New
20	90%
19	70%
18	68%
17	66%
16	63%
15	61%
14	59%
13	57%
12	54%
11	52%
10	50%
09	47%
08	45%
07	43%
06	41%
05	38%
04	36%
03	34%
02	32%
01	29%
00	27%
99 and prior	22%

(q) Class 17a - Vessels Less Than 31 Feet in Length. 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. 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
19	97%
18	90%
17	84%
16	76%
15	69%
14	63%
13	57%
12	48%
11	42%
10	35%
09	28%
08	20%
07 and prior	11%

(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 2020 percent good applies to 2020 models purchased in 2019.

(iv) Commercial trailers have a residual taxable value of

$1,000.

TABLE 21

Model Year	Percent Good of Cost New
20	95%
19	86%
18	82%
17	78%
16	74%
15	68%
14	66%
13	62%
12	58%
11	54%
10	51%
09	47%
08	42%
07	37%
06	34%
05	30%
04 and prior	20%

(u) Class 21a - Other Trailers (Non-Commercial). 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. 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. 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
19	94%
18	88%
17	82%
16	77%
15	71%
14	65%
13	59%
12	54%
11	48%
10	42%
09	36%
08 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
19	89%
18	73%
17	56%
16	38%
15	20%
14 and prior	4%

(aa) Class 26 - Personal Watercraft. 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
19	97%
18	95%
17	92%
16	90%
15	87%
14	84%
13	82%
12	79%
11	77%
10	74%
09	71%
08	69%
07	66%
06	64%
05	61%
04	58%
03	56%
02	53%
01	51%
00	48%
99	45%
98	43%
97	40%
96	38%
95	35%
94	32%
93	30%
92	27%
91	25%
90	22%
89	19%
88	17%
87	14%

86	12%
85 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
19	75%
18	50%
17	25%
16 and prior	0%

The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2020.

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. 2020 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	682
2)	Cache	576
3)	Carbon	439
4)	Davis	715
5)	Emery	416
6)	Iron	668
7)	Kane	347
8)	Millard	663
9)	Salt Lake	623
10)	Utah	639
11)	Washington	542
12)	Weber	684

(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	599
2)	Cache	492
3)	Carbon	349
4)	Davis	629
5)	Duchesne	407
6)	Emery	335
7)	Grand	323
8)	Iron	586
9)	Juab	376
10)	Kane	268
11)	Millard	583
12)	Salt Lake	535
13)	Sanpete	450
14)	Sevier	476
15)	Summit	382
16)	Tooele	372
17)	Utah	552
18)	Wasatch	405
19)	Washington	462
20)	Weber	599

(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	512
2)	Box Elder	471
3)	Cache	372
4)	Carbon	233
5)	Davis	506
6)	Duchesne	285
7)	Emery	210
8)	Garfield	176
9)	Grand	205
10)	Iron	465
11)	Juab	253
12)	Kane	148
13)	Millard	461
14)	Morgan	320
15)	Piute	278
16)	Rich	148
17)	Salt Lake	408
18)	San Juan	151
19)	Sanpete	331
20)	Sevier	354
21)	Summit	262
22)	Tooele	249
23)	Uintah	308
24)	Utah	424
25)	Wasatch	281
26)	Washington	340
27)	Wayne	273
28)	Weber	476

(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	423
2)	Box Elder	390
3)	Cache	289
4)	Carbon	149
5)	Daggett	158
6)	Davis	422
7)	Duchesne	200
8)	Emery	131
9)	Garfield	94
10)	Grand	124
11)	Iron	380
12)	Juab	168
13)	Kane	66
14)	Millard	374
15)	Morgan	237
16)	Piute	194
17)	Rich	68
18)	Salt Lake	316
19)	San Juan	68
20)	Sanpete	248
21)	Sevier	271
22)	Summit	180
23)	Tooele	170
24)	Uintah	228
25)	Utah	340
26)	Wasatch	200
27)	Washington	256
28)	Wayne	193

29)	Weber	389

(b) Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5
Fruit Orchards

1)	Beaver	493
2)	Box Elder	534
3)	Cache	493
4)	Carbon	493
5)	Davis	538
6)	Duchesne	493
7)	Emery	493
8)	Garfield	493
9)	Grand	493
10)	Iron	493
11)	Juab	493
12)	Kane	493
13)	Millard	493
14)	Morgan	493
15)	Piute	493
16)	Salt Lake	493
17)	San Juan	493
18)	Sanpete	493
19)	Sevier	493
20)	Summit	493
21)	Tooele	493
22)	Uintah	493
23)	Utah	542
24)	Wasatch	493
25)	Washington	583
26)	Wayne	493
27)	Weber	538

(c) Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

1)	Beaver	217
2)	Box Elder	218
3)	Cache	221
4)	Carbon	110
5)	Daggett	130
6)	Davis	225
7)	Duchesne	140
8)	Emery	115
9)	Garfield	87
10)	Grand	112
11)	Iron	220
12)	Juab	129
13)	Kane	90
14)	Millard	163
15)	Morgan	164
16)	Piute	159
17)	Rich	88
18)	Salt Lake	200
19)	Sanpete	163
20)	Sevier	169
21)	Summit	168
22)	Tooele	154
23)	Uintah	173
24)	Utah	213
25)	Wasatch	174
26)	Washington	190
27)	Wayne	143
28)	Weber	255

(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	80
3)	Cache	99
4)	Carbon	41
5)	Davis	44
6)	Duchesne	46
7)	Garfield	40
8)	Grand	41
9)	Iron	41
10)	Juab	44
11)	Kane	40
12)	Millard	39
13)	Morgan	54
14)	Rich	40
15)	Salt Lake	48
16)	San Juan	46
17)	Sanpete	46
18)	Summit	40
19)	Tooele	44
20)	Uintah	46
21)	Utah	43
22)	Wasatch	40
23)	Washington	40
24)	Weber	67

(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	69
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	22
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	37

(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	59
4)	Carbon	44
5)	Daggett	44
6)	Davis	52
7)	Duchesne	58
8)	Emery	59
9)	Garfield	64
10)	Grand	65
11)	Iron	63
12)	Juab	55
13)	Kane	63
14)	Millard	64
15)	Morgan	56
16)	Piute	75
17)	Rich	54
18)	Salt Lake	62
19)	San Juan	65
20)	Sanpete	53
21)	Sevier	55
22)	Summit	60
23)	Tooele	60
24)	Uintah	67
25)	Utah	56
26)	Wasatch	44
27)	Washington	54
28)	Wayne	73
29)	Weber	59

(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	19
10)	Grand	19
11)	Iron	19
12)	Juab	16
13)	Kane	20
14)	Millard	21
15)	Morgan	18
16)	Piute	21
17)	Rich	17
18)	Salt Lake	18
19)	San Juan	22
20)	Sanpete	15
21)	Sevier	15
22)	Summit	17
23)	Tooele	17
24)	Uintah	23
25)	Utah	20
26)	Wasatch	14
27)	Washington	18
28)	Wayne	23
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)(i) through (iii).

(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 Subsection 59-2-1004(3)(a) if any of the following conditions apply:

(a) During the period prescribed by Subsection 59-2-1004(3)(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 Subsection 59-2-1004(3)(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 Subsection 59-2-1004(3)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Subsection 59-2-1004(3)(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.

R884-24P-74. Changes to Jurisdiction of Mining Claims Pursuant to Utah Code Ann. Section 59-2-201.

(1) A mining claim shall be assessed by the county in which the mining claim is located if the commission determines that the mining claim is used for other than mining purposes.

(2) The owner of a mining claim may request that the mining claim be assessed by the county in which the mining claim is located by providing the following to the commission:

(a) a copy of the title to the mining claim;

(b) certification that all owners of the mining claim seek assessment by the county in which the mining claim is located;

(c) a valid metes and bounds legal description of the mining claim approved by the county recorder where the mining claim is located; and

(d) evidence that the mining claim is used for other than mining purposes.

(3) A county may request that a mining claim be assessed by the county in which the mining claim is located by providing the following to the commission:

(a) a valid metes and bounds legal description of the mining claim approved by the county recorder where the mining claim is located; and

(b) evidence that the mining claim is used for other than mining purposes.

(4) Evidence that a mining claim is used for other than mining purposes is dependent on specific facts and circumstances and includes:

(a) evidence that the mining claim will be actively and solely used for other than mining purposes for more than a temporary period of time;

(b) evidence that a restrictive covenant or conservation easement prohibiting mining activities on the mining claim is recorded in the county where the mining claim is located;

(c) evidence that local zoning ordinances prohibit mining activities on the mining claim; or

(d) in the case where the mining claim has been used for mining activities at any time, the mining claim has been reclaimed as evidenced by the return of the mine reclamation bond to the owner of the mining claim by the Division of Oil, Gas, and Mining.

KEY: taxation, personal property, property tax, appraisals

November 26, 2019 **Art. XIII, Sec 2**

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
59-2-210
59-2-211
59-2-301
59-2-301.3
59-2-302
59-2-303
59-2-303.1
59-2-305
59-2-306
59-2-401
59-2-402
59-2-404
59-2-405
59-2-405.1
59-2-406
59-2-508
59-2-514
59-2-515
59-2-701
59-2-702
59-2-703
59-2-704
59-2-704.5
59-2-705
59-2-801
59-2-918 through 59-2-924
59-2-1002
59-2-1004
59-2-1005
59-2-1006
59-2-1101
59-2-1102
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
59-2-1317
59-2-1328
59-2-1330
59-2-1347
59-2-1351
59-2-1365
59-2-1703

R907. Transportation, Administration.
R907-33. Department of Transportation Procurement Rules.
R907-33-1. Authority and Purpose.

(1) This administrative rule, R907-33, is authorized by Utah Code Subsections 63G-6a-106(3)(a), and 72-1-201(h).

(2) The purpose of this rule is to establish procedures for purchasing equipment, services, and supplies necessary to perform and exercise the department's functions, powers, duties, rights, and responsibilities mandated by Utah Code Section 72-1-201.

R907-33-2. Definitions.

Terms used in this rule, R907-33, are as defined in Utah Code Section 63G-6a-103 unless stated otherwise by a section or subsection of this rule, R907-33.

R907-33-3. Application of Rule.

This rule, R907-33 applies to all vendors that are bound by contracts with the Department, vendors competing for contracts with the Department, and to all Department divisions and work groups administrating contracts.

R907-33-4. Use of Similar Laws and Rules to Establish Precedent or Extrapolate Legal Intent - Title R33 Division of Purchasing and General Services.

(1) When the Department or its legal counsel determines a specific law or rule governing an issue does not exist, the executive director or designee, or the Department's legal counsel may refer to other laws similar in nature to the issue to establish a precedent or extrapolation of legal intent to assist in making a determination based on the reasonable person standard.

(2) For matters not addressed by this rule, R907-33 or rule R907-66, the applicable section or subsection of Title R33 Division of Purchasing and General Services shall apply.

R907-33-5. Competitive Procurement Required for Expenditure of Public Funds, Use of Public Property or Other Public Assets to Acquire Products and Services Unless Exception is Authorized, Need for Flexibility.

(1) Employees and agents conducting or administering the Department's procurement processes must maximize competition for contracts as much as practicable.

(2) Unless the executive director or a designee issues a written exception in accordance with provisions set forth in the Utah Procurement Code and applicable administrative rules documenting why a competitive procurement process is not required and why it is in the best interest of the Department to award a contract without engaging in a standard procurement process, the department must conduct a standard procurement process whenever:

(a) Public funds are expended or used to acquire a procurement item; or

(b) the Department's property, name, influence, assets, resources, programs, or other things of value are used as consideration in the formation of a contract for a procurement item.

(3) The standard of care the Department must exercise when designing, constructing, and maintaining a state highway in a reasonably safe condition for travel requires that its procurement practices are flexible enough to allow it to consider all characteristics, terms, and conditions relevant to satisfying its needs when procuring required products and services.

R907-33-6. Multiple Award Contracts.

(1) Multiple Award Contracts. Awarding a contract for an indefinite quantity of a product or service to more than one seller. Contracts may be entered on a multiple award basis when the manager of procurement services determines that one or more of the following criteria is applicable:

(a) It is administratively or economically impractical to develop or modify specifications for a myriad of related supplies because of rapid technological changes.

(b) The subjective nature in the use of certain supplies and the fact that recognizing this need creates a more efficient use of the item.

(c) It is administratively or economically impractical to develop or modify specifications because of the heterogeneous nature or dissimilar attributes of the product lines.

(d) There is a need for compatibility with existing systems.

(e) The department should select the contractor to furnish the supply, service or construction based upon best value or return on investment.

(f) The product or service being procured serves a purpose of preventing or forestalling a threat to public health, welfare or safety.

(2) The Department may use invitations for bids or requests for proposals to solicit for multiple award contracts.

(3) If the Department anticipates entering into a multiple award contract before issuing the invitation for bids or request for proposals, it will:

(a) State in the solicitation that the Department may enter into multiple award contracts at the end of the procurement process, and

(b) describe the methodology the Department will use to determine the number of contract awards.

R907-33-7. Exceptions to Competition-Based Procurement.

(1)(a) Small Purchases. The Department will conduct small purchases as required by Utah Code Section 63G-6a-506, and rules R33-5-104, R33-5-106, R33-5-106.5, and R33-5-107.

(b) The small purchase threshold for individual procurements will be $5,000 rather that the threshold for individual procurements included in rule R33-5-104(3)(a).

(c) The Department will conduct small purchases of professional service providers and consultants as required by rule R907-66.

(2) Sole Source Procurement. A contract may be awarded for a supply, service or construction item without competition if the contracting officer first determines in writing that one of the following conditions exists:

(a) Only a single contractor is capable of providing the supply, service or construction.

(b) A Federal or State statute or Federal regulation exempts the supply, service or construction from the competitive procedure.

(c) The total cost of the supply, service or construction is less than the amount established by the department for small, no-bid procurements pursuant to R33-5 relating to small procurements.

(d) The manager of procurement services determines in writing it is clearly not feasible to award the contract for supplies or services on a competitive basis.

(e) The services are to be provided by attorneys, legal services providers, or litigation consultants selected by the Attorney General's Office.

(f) The services are to be provided by expert witnesses.

(g) The services involve the repair, modification, or calibration of equipment and they are to be performed by the manufacturer of the equipment or by the manufacturer's authorized dealer provided the manager of procurement services determines in writing that bidding is not appropriate under the circumstances.

(h) The executive director or designee determines in writing the contract for supplies or services are to protect public health, welfare, or safety, or to protect the safety or security of a transportation system.

(3)(a) Pursuant to authority granted by Utah Code Subsection 63G-6a-802(3)(b)(ii), the Department is not required

to publish a notice of any kind prior to making a sole source procurement.

(b) The manager of procurement services may require publication of a notice of the Department's intent to make a sole source procurement if the manager determines publishing such a notice is necessary to maintain the fair and equitable treatment of persons who deal with the Department's procurement system.

(4) Written determination and large sole source procurements. The written determination authorizing sole source procurement must be included in the contract file. For procurements over $250,000 made under subsection R907-33-7(2)(i), the determination shall be approved by the attorney general's office.

(5) Regularly scheduled audits. The executive director or a designee may require regular audits of procurements made pursuant to any subsection of this rule R907-33-7.

(6) Emergency procurement. The executive director or a designee will make or authorize others to make an emergency procurement when there exists a threat to public health, welfare or safety, or circumstances outside the control of the Department create an urgency of need that does not permit the delay involved in using formal competitive procurement methods.

(a) A written authorization to make an emergency procurement will be required.

(b) The provider of the supply, service, or construction procured pursuant to this subsection, R907-33-7(6) may be paid based on the written authorization required by subsection R907-33-7(6)(a).

(c) Procurements made according to the requirements of this section R907-33-7(6) may not to be affected by divergent terms included in other contracts.

KEY: procurement, contractors, purchasing, vendors
November 7, 2019 63G-6a-106(3)(a)
72-1-201(h)

R940. Transportation, Administration.
R940-6. Prioritization of New Transportation Capacity Projects.
R940-6-1. Authority and Purpose.

(1) Authority. The Commission makes this administrative rule pursuant to authority delegated by Utah Code Section 72-1-304(4).

(2) Purpose. This administrative rule is to provide a procedure the Commission will follow to satisfy the requirements of Utah Code Section 72-1-304.

R940-6-2. Definitions.

(1) "Commission" means the Utah Transportation Commission created by Utah Code Subsection 72-1-301(1).

(2) "Department" means the Utah Department of Transportation created by Utah Code Subsection 72-1-201(1).

(3) "Department Approved Active Transportation Plan" means an active transportation plan that the Department has reviewed and approved.

(4) "Fixed Guideway Public Transit" means a public transit facility that uses or occupies rail for the use of public transit or a separate right-of-way for the use of public transit such as bus rapid transit systems.

(5) "Fund Allocation Percentage" means the percentage of funding for a TIF Active Transportation project, TTIF First and Last Mile project, or TTIF Transit project coming from TIF or TTIF funds.

(6) "Fund Request Amount" means the funding amount requested by a local government or district from either TIF or TTIF for a TIF Active Transportation project, TTIF First and Last Mile project, or TTIF Transit project.

(7) "In-kind match" means non-cash matches including services (labor), right-of-way, construction materials, or labor/equipment time valued at fair market value.

(8) "Match" means the 40% matching funds required by and detailed in Utah Code Subsections 72-2-124(4)(a)(viii) and 72-2-124(9)(e).

(9) "Long-Range Transportation Plan" or "LRP" means any one of the five plans developed by the Department and the state's four MPOs that forecast the state's transportation needs for the next 20- plus years, also known as the Regional Transportation Plans or RTPs.

(10) "Metropolitan planning organization" or "MPO" means the same as it is defined by Utah Code Subsection 72-1-208.5(1).

(11) "Required Match Percentage" means the match percentage (40%) required for TIF Active Transportation projects, TTIF First and Last Mile projects, and TTIF Transit projects.

(12) "Statewide strategic initiative" or "SSI" means initiatives the Department is required to develop and adopt by Utah Code Section 72-1-211.

(13) "Strategic Goals" means the Utah Department of Transportation's strategic goals.

(14) "TIF Active Transportation Projects" means paved pedestrian or paved nonmotorized transportation projects per Utah Code Section 72-2-124

(15) "TIF Highway Projects" means projects on state highways per Utah Code Section 72-2-124.

(16) "Transportation Investment Fund" or "TIF" means the capital projects fund created in 2005 by Utah Code Subsection 72-2-124(1).

(17) "Transit Transportation Investment Fund" or "TTIF" means the fund within the Transportation Investment Fund of 2005 created by Utah Code Section 72-2-124(9).

(18) "TTIF First and Last Mile Projects" means pedestrian or nonmotorized transportation projects that provides connection to a public transit system per Utah Code Section 72-2-124.

(19) "TTIF Transit Projects" means public transit capital development projects per Utah Code Subsection 72-2-124.

(20) "UDOT Planning" or "Planning" means the Planning Division of the Program Development Group of the Utah Department of Transportation.

R940-6-3. Prioritization Requirements.

The Commission, in consultation with the Department and the MPOs, will develop a written prioritization process to determine priorities and funding levels of projects in the state transportation systems and capital development of new public transit facilities for each fiscal year, taking into consideration the Department's strategic initiatives in Section 72-1-211 and the Department's Strategic Goals.

R940-6-4. Prioritization Process.

(1) The Commission's written prioritization process, developed pursuant to the requirements of Utah Code Section 72-1-304 and called "New Transportation Capacity Project Prioritization Process" having been reviewed and its implementation voted on in a properly noticed public meeting, is incorporated by reference and may be accessed at this Internet address: udot.utah.gov/go/projectprioritizationprocess.

(2) The Commission will review the written prioritization process annually.

(a) The Commission will call for and hear public input on the prioritization process during the review of the process.

(b) The Commission will provide notice of proposed amendments to the prioritization process in a public meeting, and amend the prioritization process following the public meeting, and after allowing public comments. Amendments to the prioritization process will not affect projects that have already been funded.

(c) If a TIF Highway Project is identified in Phase 1 of the LRP and the total project cost estimate is more than $5,000,000 it will be included in the annual prioritization of projects.

(d) The Commission may consider additional projects for prioritization beyond those identified in Phase I of the LRP if during the development of the LRP they were determined to be a Phase I need.

R940-6-5. Requirements and Process for Project Nomination by Local Government or District.

(1) Local governments or districts may nominate projects for prioritization.

(2) The nomination process is as follows:

(a) TIF Highway Projects.

(i) A local government or district may submit to the Commission a written nomination for a project to be included in the prioritization process. Nominations must identify the project sponsor's name, address, phone number, and email address and include a detailed description of the nominated project including why the project is important to the local government or district.

(ii) The Commission will determine if the nominated projects will be included in the annual prioritization of projects. The factors used in this determination may include, but are not limited to the following:

(A) If, during the development of the LRP, the Project was determined to be a Phase I need.

(B) If there are any proposed additional funding sources.

(C) The Commission will prioritize projects annually.

(b) TIF Active Transportation Projects.

(i) A local government or district may nominate a project to the Transportation Commission in a format determined by the Commission. Nominations must identify the project sponsor's name, address, phone number, and email address and include a detailed description of the nominated project. The nomination must also demonstrate the following requirements:

(A) That the project is in a Department Approved Active Transportation Plan; and

(B) that the project will mitigate traffic congestion on the state highway system; and

(C) that the local government or district will be responsible for the maintenance of the facility; and

(D) how the 40% match requirement will be met.

(I) The match may be an in-kind match; and

(II) The required match amount will be calculated as follows:

The Fund Request Amount divided by the Fund Allocation Percentage multiplied by the Required Match Percentage.

For example:

For a Fund Request Amount of $600,000 a Fund Allocation Percentage of 60 % and a Required Match Percentage of 40 % the required match amount would be $400,000. ($600,000 divided by 0.6) times 0.4 equals $400,000.

(III) If a nominated project meets the requirements it will be included in the annual prioritization of projects.

(IV) The Commission may request additional information from the project sponsor.

(V) The Commission will prioritize projects annually.

(c) TTIF Transit Projects.

(i) A local government or district may nominate a project to the Transportation Commission in a format determined by the Commission. Nominations must identify the project sponsor's name, address, phone number, and email address and include a detailed description of the nominated project. The nomination must also demonstrate the following requirements:

(A) That there is an ongoing funding plan for maintenance and operations. If the project sponsor is a local government this will require consultation with the transit operator to determine if the plan is consistent with the transit operator's maintenance and operations planning.

(B) How the 40 % match requirement will be met.

(I) The match may be an in-kind match; and

(II) The required match amount will be calculated as follows:

The Fund Request Amount divided by the Fund Allocation Percentage multiplied by the Required Match Percentage.

For example:

For a Fund Request Amount of $600,000 a Fund Allocation Percentage of 60 % and a Required Match Percentage of 40 % the required match amount would be $400,000. ($600,000 divided by 0.6) times 0.4 equals $400,000.

(C) If the nominated project would provide new fixed guideway public transit service, the project is identified in Phase 1 of the LRP or, during the development of the LRP, the Project was determined to be a Phase 1 need.

(I) If a nominated project meets the requirements it will be included in the annual prioritization of projects.

(II) The Commission may request additional information from the project sponsor. (iv) The Commission will prioritize projects annually.

(d) TTIF First and Last Mile Projects.

(i) A local government or district may nominate a project to the Transportation Commission in a format determined by the Commission. Nominations must identify the project sponsor's name, address, phone number, and email address and include a detailed description of the nominated project. The nomination must also demonstrate the following requirements:

(A) That the local government or district will be responsible for the maintenance of the facility; and

(I) how the 40 % match requirement will be met.

(II) The match may be an in-kind match; and

(III) The required match amount will be calculated as follows:

The Fund Request Amount divided by the Fund Allocation Percentage multiplied by the Required Match Percentage.

For example: For a Fund Request Amount of $600,000 a Fund Allocation Percentage of 60 % and a Required Match Percentage of 40 % the required match amount would be $400,000. ($600,000 divided by 0.6) times 0.4 equals $400,000.

(B) That the project will connect and improve access to transit.

(I) If a nominated project meets the requirements it will be included in the annual prioritization of projects.

(II) The Commission may request additional information from the project sponsor.

(III) The Commission will prioritize projects annually.

R940-6-6. Commission Discretion.

The Commission, in consultation with the Department, may establish additional criteria or use other considerations in establishing funding levels for capacity projects. If the Commission funds a project over another project that has a higher prioritization rank under the criteria set forth in R940-6-4, the Commission will identify the change and the reasons for it and accept public comment at a public meeting.

KEY: transportation commission, roads, transit capacity
November 21, 2019 72-1-201
Notice of Continuation November 3, 2015 72-1-304

R994. Workforce Services, Unemployment Insurance.
R994-305. Collection of Contributions.
R994-305-101. Policy Governing the Filing of Warrants.

(1) Warrants will be issued on fault overpayments and delinquent employer accounts when there is no installment agreement in effect, when the installment agreement provides for more than three years from the date the liability is established to pay the liability, when the monthly installment payment amount on a fault overpayment is less than the amount specified in Subsection R994-406-302(4)(b), or when an installment agreement is canceled due to failure to make payments or due to the occurrence of a new liability.

(2) Warrants will be issued on all fraudulent overpayments established under Subsection 35A-4-405(5), even if there is an installment agreement and warrants on such overpayments, penalties, and costs will be renewed until paid in full.

(3) No warrants will be issued on non-fault overpayments established under Subsection 35A-4-406(5).

R994-305-102. Charge Off Policy for Nonfault Overpayments.

All nonfault overpayments established under Subsection 35A-4-406(5) may be charged off and removed from the records of the Department after three years without further review unless a payment or offset has been made within the prior 90 days. These debts will be forgiven and forgotten and no further collection or offset will take place.

R994-305-103. Write Off Policy for Other Overpayments.

Except for fraud overpayments established under Subsection 35A-4-405(5), all accounts receivable overpayments for claimant and employer liabilities including interest and penalties which have not been collected or offset within three years after the filing of a warrant may be reviewed for determination of collectability. If it is determined on the information reasonably available to the Department that the delinquent claimant or employer has no known assets which are subject to the attachment, and it appears there is no likelihood of collection in the foreseeable future, the Department may write off the account. All collection or offset action shall cease as far as enforcement of collection procedures are concerned. However, consistent with general accounting principles, if the Department receives money by virtue of a warrant judgment on a debt that has been written off, the Department will reinstate the equivalent portion of the debt and retain the collected monies.

R994-305-801. Wage List Requirement.

(1) Federal Requirement.

Section 1137 of the Social Security Act requires employers to submit quarterly wage reports to a state agency. This Department is the designated agency for the state of Utah. The Unemployment Insurance Division of the Department uses wage information submitted by employers to establish benefit determinations for claimants and to verify employer contribution payments.

(2) Wage List Due Date.

(a) Contributory employers must file a wage list with the Form 3, Employer's Contribution Report. Reimbursable employers must file a wage list with the Form 794, Insured Employment and Wage Report. Wage lists are due the last day of the month following the end of the calendar quarter.

(b) Domestic employers electing to file an annual report must file a wage list with the Form 3D, Domestic Employer's Annual Report. The wage list is due January 31 of the year following the year wages were paid.

(c) Reimbursable employers must not file a wage list with Form 794-N, Non-insured Employment and Wage Report.

(d) Wage list due dates may be changed and extensions granted under the same provisions established for contribution reports in Rule R994-302.

(3) Wage Information Required.

Each page of the wage list must be identified by the employer's Utah registration number, the employer's name, and the quarter and year being reported. The following information must be provided for each employee as a line item on each wage list in the following order:

(a) social security number;

(b) full name; and

(c) gross wages paid during the quarter. Section 35A-4-204 defines subject employment and Section 35A-4-208 defines wages. Only those employees who were paid wages during the quarter should be reported on the wage list.

(4) Wage Reporting Methods.

The Department will accept wage lists filed on the Department website.

(5) Wage List Total Must Equal the Quarterly Report Total.

The total amount of wages reported on the wage list must be the same as the total wages shown on the Form 3, Employer's Contribution Report. The total of the wage list for a reimbursable employer must be the same as the total wages shown as "insured payroll" on Form 794, Insured Employment and Wage Report. Wage lists consisting of more than one page must show the employer's Utah registration number, the quarter and year of the reporting period, a total for each page and a grand total for all pages on the first page.

(6) Wage Lists Corrections for Prior Quarters.

(a) Corrections to wage lists for prior quarters must be made on a separate report and not on the wage list for the current quarter. The employer must submit the following information for each employee in the following order:

(i) social security number;

(ii) full name; and

(iii) gross wages that should have been properly reported.

(b) Each page of the wage list adjustments must be identified by the employer's Utah registration number, the employer's name, and the quarter and year.

(c) The employer must submit an explanation for the corrections being made.

(d) Corrections to wages may result in additional contributions being assessed or refunded.

(7) Penalty for Failure to Provide Wage List Information.

(a) A penalty may be assessed for each failure to submit a wage list by the due date as specified in this rule or for failure to submit a wage list in an acceptable format as specified in this rule. The penalty amount is $50 for every 15 days, or fraction thereof, that the filing is late or not in an acceptable format, not to exceed $250 per filing.

(b) The penalty will be collected in the same manner and under the same legal provisions as unpaid contributions. Waiver of the penalty will be made if the employer can show good cause for failure to provide the required wage list. Good cause is established if the employer was prevented from filing a wage list for circumstances that are compelling or beyond the employer's control. Payment of the penalty does not relieve the employer from the responsibility of filing the wage list in the acceptable format.

R994-305-1201. Offer in Compromise.

(1) If an employer or claimant is unable to pay the total amount owing of past due contributions, interest, penalties, costs or fault or nonfault benefit overpayments, the employer or claimant may request an application for offer in compromise, pursuant to Section 35A-4-305(12). In order for an offer in compromise to be considered the employer or claimant must:

(a) complete an application and provide verification of total income, expenses, assets, and liabilities;

(b) show there is no expectation that financial resources will significantly improve within three years of the date of the application. Being currently unemployed or underemployed alone is insufficient to meet the requirements of this provision;

(c) not have a current rejected offer in compromise issued by the Utah State Tax Commission within twelve months of the date of application with the Department; and

(d) have not been granted an offer in compromise by the Department in the ten years prior to applying for an offer in compromise.

(2)(a) The Department may compromise a portion of any past due liability for contributions, interest, penalties or costs to an employer if the employer can show it has an inability to pay the full amount owing within three years of the date of application or payment would result in the insolvency of the employing unit.

(b) The Department may compromise a portion of any fault or nonfault overpayment owed by a claimant if the claimant can show he or she does not have the ability to pay the full amount owing within three years of the date of application.

(3) If the Department accepts an offer in compromise, the acceptance will be rescinded and the compromised liability will be reestablished if it is subsequently determined that:

(a) any employer, claimant, or person acting on behalf of any employer or claimant, provided false information or concealed information that lead to the granting of such compromise;

(b) the employer or claimant fails to timely pay the total amount agreed upon;

(c) the employer or claimant is not current with all obligations under the Employment Security Act for at least three years from the date of the application; or

(d) an offer in compromise is rejected by the Utah State Tax Commission within twelve months following the date the application with the Department was approved.

(4) The determination of the Department is final and not appealable. However, the Department may consider an amended offer in compromise application that is substantially different from the rejected application.

KEY: unemployment compensation, overpayments, wage list
July 1, 2019 35A-4-305
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