R13. Administrative Services, Administration.

R13-10. State Entities' Posting of Financial Information to the Utah Public Finance Website.

R13-10-1. Purpose.

The purpose of this rule is to establish procedures related to the posting of the participating state entities' financial information to the Utah Public Finance Website (UPFW).

R13-10-2. Authority.

This rule is established pursuant to Section 63A-1-204, which authorizes the Department of Administrative Services to make rules governing the posting of financial information for participating state entities on the UPFW after consultation with the Utah Transparency Advisory Board.

R13-10-3. Definitions.

(1) Terms used in this rule are defined in Section 63G-1-201.

(2) Additional terms are defined as follows:

(a) "Utah Public Finance Website" (UPFW) or "Transparent Utah" means the website created in Section 63A-1-202 which is administered by the Office of the State Auditor and which permits Utah taxpayers to view, understand, and track the use of taxpayer dollars by making public financial information available on the internet without paying a fee.

(2) "Division" means the Division of Finance of the Department of Administrative Services.

(3) "FINET" means the State of Utah centralized accounting system.

(4) "Institution" means an institution of higher education such as colleges, universities, and the Utah System of Technical Colleges, including all component units of these entities as defined by the Governmental Accounting Standards Board (GASB).

(4) "Office" means the Office of the State Auditor.

R13-10-4. Public Financial Information.

(1) Each participating state entity shall submit detail revenue and expense transactions from its general ledger accounting system to the UPFW at least quarterly and within one month after the end of the fiscal quarter. The Division shall submit the detail transactions for all participating state entities that are recorded in the central general ledger of the State, FINET.

(2) Each participating state entity shall submit employee compensation detail information on a basis consistent with its fiscal year to the UPFW at least once per year and within three months after the end of the fiscal year. The Division shall submit the employee compensation detail information that is recorded in the central payroll system of the State that is operated by the Division.

(a) Employee compensation detail information will, at a minimum, break out the following amounts separately for each employee:

(i) total wages or salary;

(ii) total benefits, benefit detail that is protected by Subsection 63G-2-302(1)(g) may not be disaggregated;

(iii) incentive awards;

(iv) taxable allowances and reimbursements; and

(v) leave paid, if recorded separately from wages or salary in the participating state entity's payroll system.

(b) In addition, the following information will be submitted for each employee:

(i) name;

(ii) hourly rate for those employees paid on an hourly basis; and

(iii) job title

(3) An entity may not submit any data to the UPFW that is classified as private, protected, or controlled by Sections 63G-2-302, 63G-2-303, 63G-2-304, and 63G-2-305 or any other statute. All detail transactions or records are required to be submitted; however, the words "redacted" or "not provided" shall be inserted into any applicable data field in lieu of private, protected, or controlled information.

R13-10-5. UPFW Data Submission Procedures.

(1) Each entity must submit data to the UPFW according to the file specifications listed below.

(a) The public financial information required in Section R13-10-4 shall be submitted to the UPFW in a pipe delimited text file. The detail file layout is available from the Office and is posted on the UPFW under the Helps and FAQs tab.

(b) Data shall be submitted to the UPFW at the detail transaction level. However, the detailed transactions for compensation information for each employee may be summarized into transactions that represent an entire fiscal year.

(c) Each transaction submitted to the website must contain the information required in the detail file layout including:

(i) Organization - Categorizes transactions within the entity's organization structure. If applicable, at least two levels of organization will be submitted but not more than 10 levels.

(ii) Category - Categorizes transactions and further describes the transaction type. If applicable, at least two levels of category will be submitted but not more than seven levels.

(iii) Fund - Categorizes transactions by fund types and individuals funds. At least one but not more than four levels of fund will be submitted.

KEY: Utah Public Financial Website, transparency, state employees, finance

December 23, 2019 63A-1-204

R13. Administrative Services, Administration.

R13-11. Use of Electronic Meetings for the Utah Transparency Advisory Board.

R13-11-1. Purpose and Authority.

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

(2) Authority. This rule is enacted under the authority of Sections 52-4-207, and 63A-1-204.

R13-11-2. Definitions.

Terms used in this rule are defined in Sections 63G-1-201 and 52-4-103.

R13-11-3. Electronic Meetings.

(1) Electronic meetings of the Utah Transparency Advisory Board are governed by Subsection 52-4-207(3).

(2) As permitted by Subsection 52-4-207(2):

(a) A board member may request that a board meeting be conducted as an electronic meeting. The board member must make the request three days prior to the meeting.

(b) The board chair, in response to a request and in consultation with the department, may designate a meeting as an electronic meeting.

(c) When an electronic meeting is held, a quorum of the board must be present at a single anchor location.

(d) The chair may restrict the number of electronic connections for an electronic meeting.

(e) If one or more members of the board may participate in any meeting electronically or telephonically, public notices of the meeting shall so indicate.

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

KEY: electronic meetings, Utah Transparency Advisory Board

December 23, 2019 **52-4-207**
63G-3-201
63A-1-204

R23. Administrative Services, Facilities Construction and Management.
R23-26. Dispute Resolution.
R23-26-1. Purpose and Scope.

(1) The purpose of this rule is to establish a process for resolving disputes involved with contracts under the Division's procurement authority. The objectives of the procedure are to:

(a) encourage the payment of the appropriate and fair amount on a timely basis for work or services performed;

(b) encourage the resolution of issues on an informal basis in order to minimize Disputes and Claims;

(c) encourage fair and timely settlement of Claims;

(d) provide a process that is as simple as possible and minimizes the costs to all parties in achieving a resolution;

(e) maintain effective contractual relationships and responsibilities;

(f) when possible, resolve related issues and responsibilities as a package;

(g) discourage bad faith, frivolous or excessive Claims;

(h) avoid having Claims interfere with the progress of the work;

(i) assure that the presentation of good faith and non-frivolous issues and Claims do not negatively affect selection processes for future work, while bad faith and frivolous issues, as well as the failure of a Contractor or Subcontractor to facilitate resolution of issues, may be considered in the evaluation of the Contractor or Subcontractor; and

(j) provide a process where Subcontractors at any tier, which have a Claim that involves a good faith issue related to the responsibility of the Division or anyone for whom the Division is liable, has the ability to present the matter for resolution in a fair and timely manner to those of any higher tier and ultimately to the Division without creating any contractual relationship between the Division and the Subcontractor at any tier.

(2) This rule does not apply to any protest under Section 63G-6-801.

(3) A Claim under this rule that does not include a monetary claim against the Division or its agents is not limited to the dispute resolution process provided for in this rule.

(4) Persons pursuing Claims under the process required by this rule:

(a) are bound by the decision reached under the process unless the decision is properly appealed; and

(b) may not pursue a Claim under the dispute resolution process established in Sections 63G-6-805 through 63G-6-814.

(5) This rule does not apply to tort or other claims subject to the provisions of the Utah Governmental Immunity Act.

(6) This rule shall not limit the right of the Division to have any of its issues, disputes or claims considered in accordance with the applicable contract or law.

R23-26-2. Authority.

(1) The rule is authorized pursuant to Subsection 63A-5-208(6) and under the authority of the Utah State Building Board, Section 63A-5-101 and the Department of Administrative Services, Division of Facilities Construction and Management, Section 63A-5-201 et seq.

R23-26-3. Definitions.

For purposes of this rule:

(1) "Claim" means a dispute, demand, assertion or other matter submitted by a Contractor that has a contract under the procurement authority of the Division, including Subcontractors as provided for in this rule. The claimant may seek, as a matter of right, modification, adjustment or interpretation of contract terms, payment of money, extension of time or other relief with respect to the terms of the contract. A request for Preliminary Resolution Effort (PRE) shall not be considered a "Claim." A requested amendment, requested change order, or a Construction Change Directive (CCD) is not a PRE or Claim unless agreement cannot be reached and the procedures of this rule are followed.

(2) "Contractor" means a person or entity under direct contract with the Division and under the Division's procurement authority.

(3) "DFCM representative" means the Division person directly assigned to work with the Contractor on a regular basis.

(4) "Director" means the director of the Division, including unless otherwise stated, his/her duly authorized designee.

(5) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201 et seq. It may also be referred in this rule as "DFCM."

(6) "Executive Director" means the Executive Director of the Department of Administrative Services, including unless otherwise stated, his/her duly authorized designee.

(7) "Preliminary Resolution Effort" or "PRE" means the processing of a request for preliminary resolution or any similar notice about a problem that could potentially lead to a Claim and is prior to reaching the status of a Claim.

(8) "Resolution of the claim" means the final resolution of the claim by the Director, but does not include any administrative appeal, judicial review or judicial appeal thereafter.

(9) "Subcontractor" means any subcontractor or subconsultant at any tier under the Contactor, including any trade contractor, specialty contractor or consultant but does not include suppliers who provide only materials, equipment or supplies to a contractor, subcontractor or subconsultant. "Subcontractor" does not include any person or entity, at any tier, under contract with a Lessor.

R23-26-4. Procedure for Preliminary Resolution Efforts.

(1) Request for Preliminary Resolution Effort (PRE). A Contractor raising an issue related to a breach of contract or an issue concerning time or money shall file a PRE as a prerequisite for any consideration of the issue by the Division.

(2) Time for Filing. The PRE must be filed in writing with the DFCM representative within twenty-one (21) days after the Contractor knew or should have known of an event for initiating a PRE, as defined in the applicable contract. If the Division's contract does not define the event, the event shall be defined as the time at which the issue cannot be resolved through the normal business practices associated with the contract. The labeling of the notice shall not preclude the consideration of the issue by the Division. A shorter notice provision may be designated in the contract where damages can be mitigated such as delays or concealed or unknown conditions, the discovery of hazardous materials, emergency conditions, or historical or archeological discoveries.

(3) Content Requirement. The PRE shall be required to include in writing to the extent information is reasonably available at the time of such filing:

(a) a description of the issue;

(b) the potential impact on cost and time or other breach of contract; and

(c) an indication of the relief sought.

(4) Supplementation. Additional detail of the content requirement above shall be provided later if the detail is not yet available at the initial filing as follows:

(a) While the issue is continuing or the impact is being determined, the Contractor shall provide a written updated status report every 30 days or as otherwise reasonably requested by the DFCM Representative; and

(b) After the scope of work or other factors addressing the issue are completed, the complete information, including any

impacts on time, cost or other relief requested, must be provided to the DFCM Representative within twenty-one (21) days of such completion.

(5) Subcontractors.

(a) Under no circumstances shall any provision of this rule be intended or construed to create any contractual relationship between the Division and any Subcontractor.

(b) The Contractor must include the provisions of this subsection (5) in its contract with the first tier Subcontractor, and each Subcontractor must do likewise. At the Contractor's discretion, the Contractor may allow a Subcontractor at the 2nd tier and beyond to submit the PRE directly with the Contractor.

(c) In order for a Subcontractor at any tier to be involved with the preliminary resolution process of the Division, the following conditions and process shall apply:

(i) The Subcontractor must have attempted to resolve the issue with the Contractor including the submission of a PRE with the Contractor;

(ii) The Subcontractor must file a copy of the PRE with the DFCM Representative;

(iii) The PRE to the Contractor must meet the time, content and supplementation requirements of Section R23-26-4. The triggering event for a Subcontractor to file a PRE shall be the time at which the issue cannot be resolved through the normal business practices associated with the contract, excluding arbitration and litigation;

(iv) The PRE submitted to the Contractor shall only be eligible for consideration in the Division's PRE process to the extent the issue is reasonably related to the performance of the Division or an entity for which the Division is liable;

(v) The Contractor shall resolve the PRE to the satisfaction of the Subcontractor within sixty (60) days of its submittal to the Contractor or such other time period as subsequently agreed to by the Subcontractor in writing. If the Contractor fails to resolve the PRE with the Subcontractor within such required time period, the Subcontractor may submit in writing the PRE with the Contractor and the Division. In order to be eligible for Division consideration of the PRE, the Subcontractor must submit the PRE within twenty-one (21) days of the expiration of the time period for the Contractor/Subcontractor PRE process. The Division shall consider the PRE as being submitted by the Contractor on behalf of the Subcontractor.

(vi) Upon such PRE being submitted, the Contractor shall cooperate with the DFCM Representative in reviewing the issue.

(vii) The Division shall not be obligated to consider any submission which is not in accordance with this rule.

(viii) The Subcontractor may accompany the Contractor in participating with the Division regarding the PRE raised by the Subcontractor. The Division is not precluded from meeting with the Contractor separately and it shall be the responsibility of the Contractor to keep the Subcontractor informed of any such meetings.

(ix) Notwithstanding any provision of this rule, a Subcontractor shall be entitled to pursue a payment bond claim.

(6) PRE Resolution Procedure. The DFCM Representative may request additional information and may meet with the parties involved with the issue.

(7) Contractor Required to Continue Performance. Pending the final resolution of the issue, unless otherwise agreed upon in writing by the DFCM Representative, the Contractor shall proceed diligently with performance of the contract and the Division shall continue to make payments in accordance with the contract.

(8) Decision. The Division shall issue to the Contractor, and any other party brought into the process by the DFCM Representative as being liable to the Division, a written decision providing the basis for the decision on the issues presented by all of the parties within thirty (30) days of receipt of all the information required under Subsection R23-26-4 (5)(b) above.

(9) Decision Final Unless Claim Submitted. The decision by the Division shall be final, and not subject to any further administrative or judicial review (not including judicial enforcement) unless a Claim is submitted in accordance with this rule.

(10) Extension Requires Mutual Agreement. Any time period specified in this rule may be extended by mutual agreement of the Contractor and the Division.

(11) If Decision Not Issued. If the decision is not issued within the thirty (30) day period, including any agreed to extensions, the issue may be pursued as a Claim.

(12) Payment for Performance. Except as provided in this rule, any final decision where the Division is to pay additional monies to the Contractor, shall not be delayed by any PRE, Claim or appeal by another party. Payment to the Contractor of any final decision shall be made by the Division in accordance with the contract for the completed work. Notwithstanding any other provision of this rule, payment to the Contractor shall be subject to any set-off , claims or counterclaims of the Division. Payment to the Contractor for a Subcontractor issue submitted by the Contractor shall be paid by the Contractor to the Subcontractor in accordance with the contract between the Contractor and the Subcontractor. Any payment or performance determined owing by the Contractor to the Division shall be made in accordance with the contract.

R23-26-5. Resolution of Claim.

(1) Claim. If the decision on the PRE is not issued within the required timeframe or if the Contractor is not satisfied with the decision, the Contractor or other party brought into the process by the Division, may submit a Claim in accordance with this rule as a prerequisite for any further consideration by the Division or the right to any judicial review of the issue giving rise to the claim.

(2) Subcontractors. In order for a Subcontractor to have its issue considered in the Claim process by the Division, the Subcontractor that had its issue considered under Section 23-26-4(6) may submit the issue as a Claim by filing it with the Contractor and the Division within the same timeframe and with the same content requirements as required of a Claim submitted by the Contractor under this rule. The Division shall consider the Claim as being submitted by the Contractor on behalf of the Subcontractor. Under no circumstances shall any provision of this rule be intended or construed so as to create any contractual relationship between the Division and any Subcontractor.

(a) Upon such Claim being submitted, the Contractor shall fully cooperate with the Director, the person(s) evaluating the claim and any subsequent reviewing authority.

(b) The Director shall not be obligated to consider any submission which is not in accordance with this rule.

(c) The Subcontractor may accompany the Contractor in participating with the Director, the person(s) evaluating the Claim and any subsequent reviewing authority regarding the Claim. The Director, the person(s) evaluating the Claim and any subsequent reviewing authority is not precluded from meeting with the Contractor separately, and it shall be the responsibility of the Contractor to keep the Subcontractor informed of any such meetings and matters discussed.

(d) Notwithstanding any provision of this rule, a Subcontractor shall be entitled to pursue a payment bond claim.

(3) Time for Filing. The Claim must be filed in writing promptly with the Director, but in no case more than twenty-one(21) days after the decision is issued on the PRE under Subsection 23-26-4(8) above or no more than twenty-one (21) days after the decision is not issued under Subsection 23-26-4(11) above, whichever is later.

(4) Content Requirement. The written Claim shall include:

(a) a description of the issues in dispute;

(b) the basis for the Claim, including documentation and analysis required by the contract and applicable law and rules that allow for the proper determination of the Claim;

(c) a detailed cost estimate for any amount sought, including copies of any related invoices; and

(d) a specific identification of the relief sought.

(5) Extension of Time to Submit Documentation. The time period for submitting documentation and any analysis to support a Claim may be extended by the Director upon written request of the claimant showing just cause for such extension, which request must be included in the initial Claim submittal.

(6) Contractor Required to Continue Performance. Pending the final determination of the Claim, including any judicial review or appeal process, and unless otherwise agreed upon in writing by the Director, the Contractor shall proceed diligently with performance of the Contract and the Division shall continue to make payments in accordance with the contract.

(7) Agreement of Claimant on Method and Person(s) Evaluating the Claim. The Director shall first attempt to reach agreement with the claimant on the method and person(s) to evaluate the Claim. If such agreement cannot be made within fourteen (14) days of filing of the Claim, the Director shall select the method and person(s), considering the purpose of this rule as stated in Section R23-26-1. Unless agreed to by the Director and the claimant, any selected person shall not have a conflict of interest or appearance of impropriety. Any party and the person(s) evaluating the Claim has a duty to promptly raise any circumstances regarding a conflict of interest or appearance of impropriety. If such a reasonable objection is raised, and unless otherwise agreed to by the Director and the claimant, the Director shall take appropriate action to eliminate the conflict of interest or appearance of impropriety. The dispute resolution methods and person(s) may include any of the following:

(a) A single expert and/or hearing officer qualified in the field that is the subject of the Claim;

(b) An expert panel, consisting of members that are qualified in a field that is the subject of the Claim;

(c) An arbitration process which may be binding if agreed to by the parties to the Claim;

(d) A mediator; or

(e) Any other method that best accomplishes the purpose of Section R23-26-1.

(8) Evaluation Process.

(a) No Formal Rules of Evidence. There shall be no formal rules of evidence but the person(s) evaluating the Claim shall consider the relevancy, weight and credibility of the evidence.

(b) Questions. Parties and the person(s) evaluating the Claim have the right to ask questions of each other.

(c) Investigation and Documents. The person(s) evaluating the Claim has the right to investigate and request documents, consider any claims or counterclaims of the Division, may set deadlines for producing documents, and may meet with the parties involved with the Claim together or separately as needed. Copies of submitted documents shall be provided to all parties.

(d) Failure to Cooperate. The failure of a party to cooperate with the investigation or provide requested documentation may be a consideration by the person(s) evaluating the Claim in reaching the findings in its report.

(e) Record of the Proceeding. The person(s) evaluating the Claim shall determine the extent to which formal minutes, transcripts, and/or recordings shall be made of the meetings and/or hearings and shall make copies available to all parties.

(f) Certification. The person(s) evaluating the Claim may require the certification of documents provided.

(9) Timeframe for Person(s) Evaluation the Claim and Director's Determination. The Claim shall be resolved no later than sixty (60) days after the proper filing of the Claim, which includes any extension of time approved under Section R23-26-5(5). The person(s) evaluating the Claim may extend the time period for resolution of the Claim by not to exceed sixty (60) additional days for good cause. The time period may also be extended if the claimant agrees. The person(s) evaluating the Claim shall issue to the parties a schedule providing the timeframe for the issuance of the following:

(a) a Preliminary Resolution Report including the preliminary findings regarding the Claim;

(b) the receipt of written comments concerning the preliminary report. A copy of such comments must be delivered to the other parties to the Claim within the same timeframe;

(c) a reply to written comments, which must also be delivered to the other parties to the Claim within the same timeframe; and

(d) a final report and recommendation which must be delivered to the Director and the other parties no later than seven (7) days prior to the expiration of the required timeframe for resolution of the Claim.

(10) Director's Final Resolution. The Director shall consider the final recommendation and report and issue the final resolution of the Claim, with any modifications, prior to the expiration of the required timeframe for resolution of the Claim.

R23-26-6. Administrative Appeal to the Executive Director of the Department of Administrative Services.

(1) Administrative Appeal. The Contractor may file a written administrative appeal of the final resolution of the person(s) evaluating the Claim with the Executive Director of the Department of Administrative Services. The administrative appeal is the prerequisite for any further consideration by the State of Utah, or to judicial review of the issue giving rise to the Claim. It shall be considered that the Contractor, or another party brought into the process by the Division, has not exhausted its administrative remedies if such an administrative appeal is not undertaken.

(2) Time for Filing. The administrative appeal must be filed in writing promptly with the Executive Director and delivered to the other parties to the Claim, but in no case more than fourteen (14) days after the Contractor's receipt of the Director's final resolution of the Claim.

(3) Content. The Administrative Appeal must state the basis for the appeal.

(4) Response. Within five (5) days of receipt of the Administrative Appeal, any party may deliver to Executive Director written comments concerning the appeal. A copy of such comments must be delivered to the other parties to the Claim within the same five (5) day time period.

(5) Reply to Written Comments. Within five (5) days of receipt of written comments, any party may deliver to the Executive Director a reply to the written comments concerning the appeal. A copy of such reply must be delivered to the other parties to the Claim within the same five (5) day time period.

(6) Executive Director's Decision. Within thirty (30) days of receipt of the Administrative Appeal, and after considering the appeal, the Director's final resolution, responses and replies, the Executive Director or his/her designee shall issue a final decision of the appeal in writing and shall state the basis of the decision. Failure of the Executive Director to issue a written decision within the thirty (30) day time period, shall entitle the appellant to seek judicial review of the Claim. The time period for the Executive Director's decision may be extended by agreement of the Executive Director and the Appellant.

R23-26-7. Payment of Claim.

(1) When a stand alone component of a Claim has received a final determination, and is no longer subject to review or appeal, that amount shall be paid in accordance with the

payment provisions of the contract or judicial order.

(2) When the entire Claim has received a final determination, and is no longer subject to review or appeal, the full amount shall be paid within fourteen (14) days of the date of the final determination unless the work or services has not been completed, in which case the amount shall be paid in accordance with the payment provisions of the contract to the point that the work or services is completed.

(3) The final determination date is the earlier of the date upon which the claimant accepted the settlement in writing with an executed customary release document and waived its rights of appeal, or the expiration of the appeal period.

(4) Any final determination where the Division is to pay additional monies to the Contractor shall not be delayed by any appeal or request for judicial review by another party brought into the process by the Division as being liable to the Division.

(5) Notwithstanding any other provision of this rule, payment of all or part of a Claim is subject to any set-off , claims or counterclaims of the Division.

(6) Payment to the Contractor for a Subcontractor issue (Claim) deemed filed by the Contractor, shall be paid by the Contractor to the Subcontractor in accordance with the contract between the Contractor and the Subcontractor.

(7) The execution of a customary release document related to any payment may be required as a condition of making the payment.

R23-26-8. Judicial Review.

(1) The Executive Director's decision on the appeal, or the failure to provide a decision within the required time period under Subsection R23-26-6(6), shall be deemed a final agency action subject to judicial review as provided in Sections 63G-4-401 and 63G-4-402, including, but not limited to requirements for exhaustion of administrative remedies, the requirements for a petition of judicial review, jurisdiction and trial de novo.

(2) The participation of a person in the claim evaluation process does not preclude the person from testifying in a judicial proceeding to the extent allowed by Utah law.

R23-26-9. Allocation of Costs of Claim Resolution Process.

(1) In order to file a Claim, a claimant must pay a $1500 filing fee to the Division. When the Claim is a pass-through from a Subcontractor in accordance with Subsection R23-26-4(5), the payment of the fee shall be made by the Subcontractor.

(2) Unless otherwise agreed to by the parties to the Claim, the costs of resolving the Claim shall be allocated among the parties on the same proportionate basis as the determination of financial responsibility for the Claim.

(3) The costs of resolving the Claim that are subject to allocation include the claimant's filing fee, the costs of any person(s) evaluating the Claim, the costs of making any required record of the process, and any additional testing or inspection procured to investigate and/or evaluate the Claim.

(4) Each party is responsible for its own attorney fees.

R23-26-10. Alternative Procedures.

To the extent otherwise permitted by law, if all parties to a Claim agree in writing, a protocol for resolving a Claim may be used that differs from the process described in this rule.

R23-26-11. Impact on Future Selections.

(1) The presentation of a good faith and non-frivolous issue or Claim shall not be considered by the Division's selection process for a future award of contract; and

(2) The submission of a bad faith and frivolous issue or Claim or the failure by a Contractor to facilitate resolution of a Claim, may be considered in the Division's evaluation of performance.

R23-26-12. Delegated Projects.

Projects delegated by the Division shall provide for contract provisions which provide a similar dispute resolution process as provided for in this rule.

R23-26-13. Report to Building Board.

The Division may report on the status of claims to the Utah State Building Board.

KEY: resolutions, settlements, disputes
March 15, 2005 63A-5-208(6)
Notice of Continuation December 9, 2019 63A-5-103(1)(e)
63G-6-208(2)

R58. Agriculture and Food, Animal Industry.

R58-7. Livestock Markets, Satellite Video Livestock Auction Market, Livestock Sales, Dealers, and Livestock Market Weighpersons.

R58-7-1. Authority.

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

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

R58-7-2. Definitions.

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

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

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

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

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

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

R58-7-3. Livestock Markets.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Additional Standards for Approved Markets.

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

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

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

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

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

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

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

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

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

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

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

livestock health or movement, or

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

7. Operated as a livestock market without proper licensing.

E. Relating to temporary livestock market:

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

R58-7-4. Temporary Livestock Sale License.

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

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

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

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

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

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

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

B. A temporary license shall not be required for:

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

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

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

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

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

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

R58-7-5. Dealers.

A. Dealer Licensing and Bonding:

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

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

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

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

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

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

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

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

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

B. Record Keeping.

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

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

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

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

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

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

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

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

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

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

B. Balancing the empty scale.

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

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

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

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

C. Weighing the load.

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

D. Sale of livestock by weight.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R58-7-8. Livestock Market Committee.

A. Hearing on License Application; Notice of Hearing.

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

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

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

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R58. Agriculture and Food, Animal Industry.
R58-11. Slaughter of Livestock and Poultry.
R58-11-1. Authority.

Promulgated under authority of Section 4-32-8.

R58-11-2. Definitions.

(1) "Adulterated" means as defined in Section 4-32-3(1).

(2) "Bill of Sale for Hides" means a hide release or some other formal means of transferring the title of hides.

(3) "Business" means an individual or organization receiving remuneration for services.

(4) "Commissioner" means the Commissioner of Agriculture or his representative.

(5) "Custom Slaughter-Release Permit" means a permit that will serve as a brand inspection certificate and will allow animal owners to have their animals farm custom slaughtered.

(6) "Department" means the Utah Department of Agriculture and Food.

(7) "Detain or Embargo" means the holding of a food or food product for legal verification of adulteration, misbranding or proof of ownership.

(8) "Emergency Slaughter" means for the purpose of this chapter that Emergency Slaughter is no longer allowed for non-ambulatory injured cattle. Non-ambulatory disabled cattle that cannot rise from a recumbent position or cannot walk, including, but not limited to, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertebral column or metabolic conditions, are not allowed to be slaughtered for food.

(9) "Farm Custom Slaughtering" means the slaughtering, skinning and preparing of livestock and poultry by humane means for the purpose of human consumption which is done at a place other than a licensed slaughtering house by a person who is not the owner of the animal.

(10) "Food" means a product intended for human consumption.

(11) "Immediate Family" means persons living together in a single dwelling unit and/or their sons and daughters.

(12) "License" means a license issued by the Utah Department of Agriculture and Food to allow farm custom slaughtering.

(13) "Licensee" means a person who possesses a valid farm custom slaughtering license.

(14) "Misbranded" means as defined in Section 4-32-3(27).

(15) "Owner" means a person holding legal title to the animal.

(16) "Sanitary Standards, Practices",

(a) Sanitary operating conditions: All food-contact surfaces and non-food-contact surfaces of an exempt facility are cleaned and sanitized as frequently as necessary to prevent the creation of insanitary conditions and the adulteration of product. Cleaning compounds, sanitizing agents, processing aids, and other chemicals used by an exempt facility are safe and effective under the conditions of use. Such chemicals are used, handled, and stored in a manner that will not adulterate product or create insanitary conditions. Documentation substantiating the safety of a chemical's use in a food processing environment are available to inspection program employees for review. Product is protected from adulteration during processing, handling, storage, loading, and unloading and during transportation from exempt establishments.

(b) Grounds and pest control: The grounds of exempt operation are maintained to prevent conditions that could lead to insanitary conditions or adulteration of product. Plant operators have in place a pest management program to prevent the harborage and breeding of pests on the grounds and within the facilities. The operator's pest control operation is capable of preventing product adulteration. Management makes every effort to prevent entry of rodents, insects, or animals into areas where products are handled, processed, or stored. Openings (doors and windows) leading to the outside or to areas holding inedible product have effective closures and completely fill the openings. Areas inside and outside the facility are maintained to prevent harborage of rodents and insects. The pest control substances used are safe and effective under the conditions of use and are not applied or stored in a manner that will result in the adulteration of product or the creation of insanitary conditions.

(c) Sewage and waste disposal: Sewage and waste disposal systems properly remove sewage and waste materials--feces, feathers, trash, garbage, and paper--from the facility. Sewage is disposed of into a sewage system separate from all other drainage lines or disposed of through other means sufficient to prevent backup of sewage into areas where product is processed, handled, or stored. When the sewage disposal system is a private system requiring approval by a State or local health authority, upon request, the management must furnish to the inspector a letter of approval from that authority.

(d) Water supply and water, ice, and solution reuse: A supply of running water that complies with the National Primary Drinking Water regulations (40 CFR part 141) at a suitable temperature and under pressure as needed, is provided in all areas where required (for processing product; for cleaning rooms and equipment, utensils, and packaging materials; for employee sanitary facilities, etc.). If a facility uses a municipal water supply, it must make available to the inspector, upon request, a water report, issued under the authority of the State or local health agency, certifying or attesting to the potability of the water supply. If a facility uses a private well for its water supply, it must make available to the inspector, upon request, documentation certifying the potability of the water supply that has been renewed at least semi-annually.

(e) Facilities: Maintenance of facilities during slaughtering and processing is accomplished in a manner to ensure the production of wholesome, unadulterated product.

(f) Dressing rooms, lavatories, and toilets: Dressing rooms, toilet rooms, and urinals are sufficient in number ample in size, conveniently located, and maintained in a sanitary condition and in good repair at all times to ensure cleanliness of all persons handling any product. Dressing rooms, lavatories, and toilets are separate from the rooms and compartments in which products are processed, stored, or handled.

(g) Inedible Material Control: The operator handles and maintains inedible material in a manner that prevents the diversion of inedible animal products into human food channels and prevents the adulteration of human food.

(17) Commerce: Means the exchange transportation of poultry product between states, U.S. territories (Guam, Virgin Islands of the United States, and American Samoa), and the District of Columbia.

R58-11-3. Registration and License Issuance.

(1) Farm Custom Slaughtering License.

(a) Any person or person desiring to do farm custom slaughtering shall apply to the Department. Such application for a license will be made on a department form for a Farm Custom Slaughter License. The form shall show the name, address and telephone number of the owner, the name, address and telephone number of the operator if it is different than the owner, a brief description of the vehicle and the license number. Licenses will be valid for the calendar year (January 1 to December 31). Each licensee will be required to re-apply for a license every calendar year. Change of ownership or change of vehicle license will require a new application to be filed with the Department.

(b) Registration will not be recognized as complete until the applicant has demonstrated his ability to slaughter and has

completed and signed the registration form.

(c) A fee must be paid prior to license issuance.

R58-11-4. Equipment and Sanitation Requirements.

(1) Unit of vehicle and equipment used for farm custom slaughtering:

(a) The unit or vehicle used for farm custom slaughtering shall be so constructed as to permit maintenance in a clean, sanitary manner.

(b) A tripod or rail capable of lifting a carcass to a height which enables the carcass to clear the ground for bleeding and evisceration must be incorporated into the unit or vehicle. Hooks, gambles, or racks used to hoist and eviscerate animals shall be of easily cleanable metal construction.

(c) Knives, scabbards, saws, etc. shall be of rust resistant metal or other impervious easily cleanable material.

(i) A clean dust proof container shall be used to transport and store all instruments and utensils used in slaughtering animals.

(d) A water tank shall be an integral part of the unit or vehicle. It shall be of approved construction with a minimum capacity of 40 gallons. Water systems must be maintained in a sanitary manner and only potable water shall be used.

(e) A tank (for sanitizing) large enough to allow complete emersion of tools used for slaughtering must be filled during slaughter operations with potable water and maintained at a temperature of at least 180 degrees Fahrenheit. In lieu of 180 degrees Fahrenheit water, chemical sterilization may be used with an approved chemical agent after equipment has been thoroughly cleaned. Chloramine, hypochloride, and quaternary ammonium compounds or other approved chemical compounds may be used for this purpose and a concentration must be maintained at sufficient levels to disinfect utensils. Hot water, cleaning agents, and disinfectant shall be available at all times if chemicals are used in lieu of 180 degrees Fahrenheit water.

(f) Cleaning agents and paper towels shall be available so hands and equipment may be cleaned as needed.

(g) Aprons, frocks and other outer clothing worn by persons who handle meat must be clean and of material that is easily cleanable.

(h) All inedible products and offal will be denatured with either an approved denaturing agent or by use of pounch material as a natural denaturing agent.

(i) When a licensee transports uninspected meat to an establishment for processing, he shall:

(i) do so in a manner whereby product will not be adulterated or misbranded, and/or mislabeled; and

(ii) transport the meat in such a way that it is properly protected; and

(iii) deliver carcasses in such a way that they shall be placed under refrigeration within one hour of time of slaughter (40 degrees F).

(j) Sanitation.

(i) Unit or Vehicle.

(A) The unit or vehicle must be thoroughly cleaned after each daily use.

(B) All food-contact and non-food contact surfaces of utensils and equipment must be cleaned and sanitized as necessary to prevent the creation of insanitary conditions and the adulteration of carcasses and parts.

(C) Carcasses must be protected from adulteration during processing, handling, storage, loading, unloading and during transportation to processing establishments.

(ii) Equipment.

(A) All knives, scabbards, saws and all other food contact surfaces shall be cleaned and sanitized prior to slaughter and as needed to prevent adulteration.

(B) Equipment must be cleaned and sanitized after each slaughter and immediately before each slaughter.

(iii) Inedibles.

(A) Inedibles shall be placed in designated containers and be properly denatured, and the inedible containers must be clearly marked (Inedible Not For Human Consumption in letters not less than 4 inches in height).

(B) Containers for inedibles shall be kept clean and properly separated from edible carcasses to prevent adulteration.

(iv) Personal Cleanliness.

(A) Adequate care shall be taken to prevent contamination of the carcasses from fecal material, ingesta, milk, perspiration, hair, cosmetics, medications and similar substances.

(B) Outer clothing worn by permittee shall, while handling exposed carcasses, be clean.

(C) No licensee with a communicable disease or who is a disease carrier or is infected with boils, infected wounds, sores or an acute respiratory infection shall participate in livestock slaughtering.

(D) Hand wash facilities shall be used as needed to maintain good personal hygiene.

R58-11-5. Slaughtering Procedures of Livestock.

(1) Slaughter Area

(a) Slaughtering shall not take place under adverse conditions (such as blowing dirt, dust or in mud).

(b) If a slaughter area is used for repeated kills, the area should be maintained to prevent blood from collecting, running off on to adjacent property, or contaminating water sources.

(c) Hides, viscera, blood, pounch material, and all tissues must be removed and disposed at a rendering facility, landfill, composting or by burial as allowed by law.

(2) Humane Slaughter - Animals shall be rendered insensible to pain by a single blow, or gun shot or electrical shock or other means that is instantaneous and effective before being shackled, hoisted, thrown, cast or cut.

(3) Hoisting and Bleeding - Animals shall be hoisted and bled as soon after stunning as possible to utilize post-stunning heart action and to obtain complete bleeding. Carcasses shall be moved away from the bleeding area for skinning and butchering.

(4) Skinning - Carcass and head skin must be handled without neck tissue contamination. This may be done by leaving the ears on the hide and tying the head skin. Feet must be removed before carcass is otherwise cut. Except for skinning and starting skinning procedures, skin should be cut from inside outward to prevent carcass contamination with cut hair. Hair side of hide should be carefully rolled or reflected away from carcass during skinning. When carcass is moved from skinning bed, caution should be taken to prevent exposed parts from coming in contact with adulterating surfaces.

(5) Evisceration - Before evisceration, rectum shall be tied to include bladder neck and to prevent urine and fecal leakage. Care should also be taken while opening abdominal cavities to prevent carcass and/or viscera contamination.

(6) Carcass washing - Hair, dirt, and other accidental contamination should be trimmed prior to washing. Washing should proceed from the carcass top downward to move away any possible contaminants from clean areas.

R58-11-6. Identification and Records.

(1) Livestock Identification - Pursuant to requirements of Section 4-24-13, it shall be unlawful for any license holder to slaughter livestock which do not have a Brand Inspection Certificate or Farm Custom Slaughter Tag filled out at the time of slaughter.

(a) Animal owners must have a Brand Inspection Certificate for livestock intended to be farm custom slaughtered, issued by a Department Brand Inspector prior to slaughter, paying the legal brand inspection fee and beef promotion fee. This will be accomplished by the animal owner contacting a Department Brand Inspector and obtaining a Brand Inspection

Certificate (Custom Slaughter-Release Permit).

(b) Animal owners must also obtain farm custom slaughter identification tags from a Department Brand Inspector for a fee of $1 each. These tags will be required on beef, pork, and sheep.

(2) Records.

(a) The Custom Slaughter-Release Permit or Farm Custom Slaughter Tag will record the following information:

(i) An affidavit with a statement that shall read "I hereby certify ownership of this animal to be slaughtered by (name). I fully understand that having my animal farm custom slaughtered means my animal will not receive meat inspection and is for my use, the use of my immediate family, non-paying guests, or full-time employees. The carcass will be stamped "NOT FOR SALE" and will not be sold." This statement must be signed by the owner or designee.

(ii) In addition to this affidavit, the following information will be recorded:

(A) date;

(B) owner's name, address and telephone number;

(C) animal description including brands and marks; and

(D) Farm Custom Slaughter tag number.

(b) The Farm Custom Slaughter tag must record the following information:

(i) date;

(ii) owner's name, address and telephone number;

(iii) location of slaughter;

(iv) name of licensee;

(v) licensee permit number; and

(vi) carcass destination.

(c) Prior to slaughter the licensee shall:

(i) Prepare the Farm Custom Slaughter tag with complete and accurate information;

(A) One tag shall stay in the license holder's file for at least one year.

(B) One tag plus a copy of the Farm Custom Slaughter-Release Permit shall be sent into the Department by the 10th of each month for the preceding month's slaughter by the licensee.

(C) After slaughter, all carcasses must be stamped "NOT FOR SALE" on each quarter with letters at least 3/8" in height; further, a Farm Custom Slaughter "NOT FOR SALE" tag must be affixed to each quarter of beef and each half of pork and sheep.

(D) Hide Purchase - Licensee receiving hides for slaughtering services must obtain a copy of the Custom Slaughter-Release Permit to record transfer of ownership as required by Section 4-24-18.

R58-11-7. Poultry Slaughter.

(1) Personal Use Exemption.

(a) A person who raises poultry may slaughter and or process the poultry if:

(i) slaughtering or processing poultry is not prohibited by local ordinance;

(ii) the poultry product derived from the slaughtered poultry is consumed exclusively by the person or the person's immediate family, regular employees of the person, or nonpaying guests;

(iii) the slaughtering and processing of the poultry is performed only by the owner or an employee;

(iv) the poultry is healthy when slaughtered;

(v) the exempt poultry is not sold or donated for use as human food; and

(vi) the immediate containers bear the statement, "NOT FOR SALE".

(2) Farm Custom Slaughter/Processing

(a) A person may slaughter and or process poultry belonging to another person if:

(i) the person holds a valid farm custom slaughter license issued by the department;

(ii) slaughtering or processing poultry is not prohibited by local ordinance;

(iii) the licensee does not engage in the business of buying or selling poultry products capable for use as human food;

(iv) the poultry is healthy when slaughtered;

(v) the slaughtering and or processing is conducted in accordance with sanitary standards, practices, and procedures that produce poultry products that are sound, clean, and fit for human food;

(vi) the unit or vehicle used for farm custom slaughtering shall be so constructed as to permit maintenance in a clean and sanitary manner;

(A) the immediate containers bear the following information:

(B) the owner's name and address;

(C) the licensee's name and address, and;

(D) the statement, "NOT FOR SALE".

(3) Producer/Grower 1,000 Bird Limit Exemption

(a) A poultry grower may slaughter no more that 1,000 birds of his or her own raising in a calendar year for distribution as human food if;

(i) the person holds a valid poultry exemption license issued by the department;

(ii) slaughtering or processing poultry is not prohibited by local ordinance;

(iii) the poultry grower does not engage in buying or selling poultry products other than those produced from poultry raised on his or her own farm (includes rented or leased property);

(iv) the slaughtering and or processing are conducted under sanitary standards, practices and procedures according to United State Department of Agriculture (USDA) Food Safety Inspection Service (FSIS) regulations and guidance material capable of producing poultry products that are sound, clean, and fit for human food (not adulterated);

(v) the producer keeps slaughter records and records covering the sales of poultry products to customers for the current calendar year,

(vi) the poultry products do not move in commerce. Distribution directly to household consumers, retail establishments, restaurants, hotels, and boarding houses for use in their dining rooms or in the preparation of meals sold directly to consumers within the jurisdiction where it is prepared; and

(vii) the immediate containers bear the following information:

(A) name of product;

(B) ingredients statement (if applicable);

(C) net weights statement;

(D) name and address of processor;

(E) Safe food handling statement;

(F) date of package and/or Lot number, and;

(G) the statement "Exempt R58-11-7(C)".

(4) Producer/Grower 20,000 Bird Limit Exemption:

(a) a poultry grower may slaughter no more than 20,000 healthy birds of his or her own raising in a calendar year for distribution as human food if;

(i) the person holds a valid poultry exemption license issued by the department;

(ii) slaughtering or processing poultry is not prohibited by local ordinance;

(iii) the poultry grower does not engage in buying or selling poultry products other than those produced from poultry raised on his or her own farm (includes rented or leased property);

(iv) the slaughtering and or processing is conducted in a fixed establishment and in accordance with sanitary standards, practices, and procedures that produce poultry products that are sound, clean, and fit for human food;

(v) the producer keeps slaughter records and records covering the sales of poultry products to customers for the current calendar year,

(vi) the poultry products do not move in commerce. Distribution is directly to household consumers, retail establishments, restaurants, hotels, and boarding houses for use in their dining rooms or in the preparation of meals sold directly to consumers within the jurisdiction where it is prepared; and

(vii) the immediate containers bear the following information:

(A) name of product;
(B) ingredients statement (if applicable);
(C) net weights statement;
(D) name and address of processor;
(E) Safe food handling statement;
(F) date of package and/or Lot number, and;
(G) the statement "Exempt R58-11-7(4)".

(5) Producer/Grower or Other Person Exemption

(a) The term "Producer/Grower or Other Person" in this section means a single entity, which may be:

(i) A poultry grower who slaughters and processes poultry that he or she raised for sale directly to household consumers, restaurants, hotels, and boarding houses to be used in those homes and dining rooms for the preparation of meals served or sold directly to customers.

(ii) A person who purchases live poultry from a grower and then slaughters these poultry and processes such poultry for sale directly to household consumers, restaurants, hotels, and boarding houses to be served in those homes or dining rooms for the preparation of meals sold directly to customers.

(b) A business may slaughter and process poultry under this exemption if;

(i) the person holds a valid poultry exemption license issued by the department;

(ii) slaughtering or processing poultry is not prohibited by local ordinance;

(iii) the producer/grower or other person slaughters for processing and sale directly to household consumers, restaurants, hotels, and boarding houses for use in dining rooms or in the preparation of meals sold directly to customers;

(iv) the producer/grower or other person slaughters no more than 20,000 birds in a calendar year that the producer/grower or other person raised or purchased;

(v) the producer/grower or other person does not engage in the business of buying or selling poultry or poultry products prepared under an other exemptions in the same calendar year he or she claims the Producer/Grower or Other Person Exemption;

(vi) the poultry products do not move in commerce. Distribution is directly to household consumers, restaurants, hotels, and boarding houses for use in their dining rooms or in the preparation of meals sold directly to consumers within the jurisdiction where it is prepared; and

(vii) the slaughtering and or processing is conducted in a fixed establishment and in accordance with sanitary standards, practices, and procedures that produce poultry products that are sound, clean, and fit for human food;

(viii) the producer keeps slaughter records and records covering the sales of poultry products to customers for the current calendar year, and;

(ix) the immediate containers bear the following information:

(A) name of product;
(B) ingredients statement (if applicable);
(C) net weights statement;
(D) name and address of processor;
(E) safe food handling statement;
(F) date of package and/or Lot number, and;
(G) the statement "Exempt R58-11-7(5)".

(c) A business preparing poultry product under the Producer/Grower or Other Person Exemption may not slaughter or process poultry owned by another person.

(d) A business preparing poultry products under the Producer/Grower or Other Person Exemption may not sell poultry products to a retail store or other producer/grower.

(6) Small Enterprise Exemption

(a) A business that qualifies for the Small Enterprise Exemption may be:

(i) A producer/grower who raises, slaughters, and dresses poultry for use as human food whose processing of dressed exempt poultry is limited to cutting up;

(A) A business that purchases live poultry that it slaughters and whose processing of the slaughtered poultry is limited to the cutting up; or

(B) A business that purchases dressed poultry, which it distributes as carcasses and whose processing is limited to the cutting up of inspected or exempted poultry products, for distribution for use as human food.

(ii) A business may slaughter, dress, and cut up poultry for distribution as human food if;

(A) the person holds a valid poultry exemption license issued by the department;

(B) slaughtering or processing poultry is not prohibited by local ordinance;

(C) the processing of federal or state inspected or exempt poultry product is limited to the cutting up of carcasses or the business slaughters and dresses or cuts up no more than 20,000 birds in a calendar year;

(D) the slaughtering and or processing is conducted in a fixed establishment and in accordance with sanitary standards, practices, and procedures that produce poultry products that are sound, clean, and fit for human food;

(E) the facility used to slaughter or process poultry is not used to slaughter or process another person's poultry;

(F) the immediate containers bear the following information:

(I) name of product;
(II) ingredients statement (if applicable);
(III) net weights statement;
(IV) name and address of processor;
(V) safe food handling statement;
(VI) date of package and/or Lot number, and;
(VII) the statement "Exempt R58-11-7(6)"

(iii) A business may not cut up and distribute poultry products produced under the Small Enterprise Exemption to a business operating under the following exemptions:

(A) Producer/Grower or PGOP Exemption,
(B) Retail Dealer, or
(C) Retail Store.

R58-11-8. Producer/Growers Sharing a Fixed Facility.

(1) Each producer/grower must comply with all the laws and regulations governing such establishments as set forth in Utah Meat and Poultry and Poultry Products Inspection and Licensing Act, this rule, the United States Department of Agriculture (USDA) Poultry Exemptions, and federal regulations that apply.

(2) The poultry producer/grower shall hold a valid Custom Exempt Meat Establishment License (2202) issued by the department. The individual who holds the 2202 license shall be present when slaughter and processing operations are being performed.

(3) The department shall be notified five business days prior to slaughtering and processing. The individual shall provide the department with the following information pertaining to the slaughtering and processing of birds:

(a) the date;
(b) the time; and

(c) the location.
(4) The producer/grower shall:
(a) conduct a pre-operational inspection on all food-contact surfaces;
(b) document the findings of the pre-operational inspection and corrective actions as described in 9 CFR 416.12(a) and 416.15 prior to the commencement of operations;
(c) maintain records for at least one year and have them available for inspection upon request by department officials;
(d) fully label product in accordance with this rule before leaving the facility;
(e) maintain the product temperature at 40 degrees F or less during transport;
(f) keep a written recall plan as described in 9 CFR 418 and have it available upon request by department officials;
(5) Producer/growers shall not process on the same day as any other producer/grower.

R58-11-9. Enforcement Procedures.
(1) Livestock and Poultry Slaughtering License:
(a) It shall be unlawful for any person to slaughter or assist in slaughtering livestock and poultry as a business outside of a licensed slaughterhouse unless he holds a valid Farm Custom Slaughtering License issued to him by the Department.
(b) Only persons who comply with the Utah Meat and Poultry Products Inspection and Licensing Act and Rules pursuant thereto, and the Utah Livestock Brand and Anti-Theft Act shall be entitled to receive and retain a license.
(c) License may be renewed annually and shall expire on the 31st of December of each year.
(2) Suspension of license - license may be suspended whenever:
(a) The Department has reason to believe that an eminent public health hazard exists;
(b) Insanitary conditions are such that carcasses would be rendered adulterated and or contaminated.
(c) The license holder has interfered with the Department in the performance of its duties;
(d) The licensee violates the Utah Meat and Poultry Products Inspection and Licensing Act or the Utah Livestock Brand and Anti-Theft Act or rules pursuant to these acts.
(3) The department may, in accordance with the 9 CFR Part 500 suspend or terminate any exemption with respect to any person whenever the department finds that such action will aid in effectuating the purposes of the Act. Failure to comply with the conditions of the exemption including but not limited to failure to process poultry and poultry products under clean and sanitary condition s may result in termination of an exemption, in addition to other Penalties consistent with 9 CFR 318.13
(4) Warning letter - In instances where a violation may have occurred a warning letter may be sent to the licensee which specifies the violations and affords the holder a reasonable opportunity to correct them.
(5) Hearings - Whenever a licensee has been given notice by the Department that suspected violations may have occurred or when a license is suspended he may have an opportunity for a hearing to state his views before the Department.
(6) Reinstatement of Suspended Permit - Any person whose license has been suspended may make application for the purpose of reinstatement of the license. The Department may then re-evaluate the applicant and conditions; if the applicant has demonstrated to the Department that he will comply with the rules, the license may be reinstated.
(7) Detainment or Embargo - Any meat found in a food establishment which does not have the proper identification or any uninspected meat slaughtered by a licensee which does not meet the requirements of these rules may be detained or embargoed.
(8) Condemnation - Meat which is determined to be unfit for human consumption may be denatured or destroyed.

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

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

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

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

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

R58-17-2. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) anadromous aquatic animal species;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R58-17-3. Penalties.

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

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

(A) Activities requiring a COR:

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

(a) Operate an aquaculture facility.

(b) Operate a fee-fishing facility.

(c) Operate a aquatic animal processing plant.

(d) Broker aquatic animals.

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

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

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

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

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

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

requirements in R657-3-11(8).

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

(a) public aquaculture facilities;.

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

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

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

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

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

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

R58-17-5. Species Allowed.

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

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

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

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

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

R58-17-6. Qualifying Waters.

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

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

R58-17-7. Screens Required.

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

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

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

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

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

(A) Application process.

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

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

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

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

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

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

(B) Renewal process.

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

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

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

(C) CORs are not transferable.

R58-17-9. Reporting Aquatic Animal Diseases.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R58-17-12. Statement of Variances.

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

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

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

(C) The variance is documented appropriately.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Buying aquatic animals:

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

(B) Selling aquatic animals:

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

(C) Transporting aquatic animals:

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

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

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

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

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

(d) Date of transaction.

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

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

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

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

(D) Brokers:

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

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

R58-17-15. Aquatic Animal Health Approval.

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

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

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

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

(B) Basis for Health Approval:

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

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

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

the brood aquatic animals if the following conditions exist:

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

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

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

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

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

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

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

(C) Approval Procedures:

(1) Applicable to all aquatic animals.

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

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

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

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

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

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

(2) Applicable to salmonid aquatic animals:

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

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

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

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

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

(3) Applicable to non-salmonid aquatic animals:

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

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

(D) Prohibited and reportable pathogen list:

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

(2) Emergency prohibited pathogens.

(a) Infectious hematopoietic necrosis virus (IHNV).

(b) Infectious pancreatic necrosis virus (IPNV).

(c) Viral hemorrhagic septicemia virus (VHSV).

(d) *Oncorhynchus masou virus (OMV).

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

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

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

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

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

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

(3) Prohibited pathogens.

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

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

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

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

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

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

(4) Reportable pathogens.

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

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

(c) Centrocestus formosanus**.

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

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

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

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

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

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

(2) CORs and entry permits.

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

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

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

(A) COR required:

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

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

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

dealing with salmonids shall neither hold nor sell live salmonids.

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

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

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

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

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

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

(5) Dates of transactions.

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

(E) Annual reports required:

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

(1) The report will contain:

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

(b) Number, size and weight by species.

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

(d) Dates of transactions.

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

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

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

(F) Fees assessed:

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

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

R58-17-18. Fee-Fishing Facilities.

(A) COR required:

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

(B) Live sales or transfers prohibited:

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

(C) Fishing licenses not required:

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

(D) Receipts required:

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

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

(2) Date caught.

(3) Species and number of fish.

(E) Annual report required:

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

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

(2) Number, size and weight by species.

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

(F) Fees assessed and annual report deadline:

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

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

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

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

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

R58-17-20. Classification of Pathogens.

TABLE

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

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

Birnaviruses

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

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

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

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

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

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

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

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

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

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

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

(c) the meeting agenda; and

(d) the date and time of the meeting.

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

(a) at the anchor location;

(b) on the Utah Public Notice Website; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) at the offices of the department;

(ii) on the department's web page;

(iii) on the Utah Public Notice Website; and

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

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

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

KEY: aquaculture
December 19, 2016 4-2-2
Notice of Continuation December 17, 2019 4-37

R58. Agriculture and Food, Animal Industry.
R58-21. Trichomoniasis.
R58-21-1. Authority.

(1) Promulgated under authority of Section 4-31-109.

(2) It is the intent of this rule to eliminate or reduce the spread of bovine trichomoniasis in Utah.

R58-21-2. Definitions.

(1) "Acceptable media" means any Department approved media in which samples may be transferred and transported.

(2) "Approved slaughter facility" means a slaughter establishment that is either under state or federal inspection.

(3) "Approved test" means a test approved by the state of origination to diagnose trichomoniasis in bulls. If the state of orgination has no approved test for the diagnosis of trichomoniasis it shall mean one sample tested by a method approved by the Department.

(4) "Brand" means a minimum of a 2 X 3 hot iron single character lazy V applied to the left of the tailhead of a bull, signifying that the bull is infected with the venereal disease, trichomoniasis.

(5) "Certified veterinarian" means a veterinarian who has been certified by the Utah Department of Agriculture and Food to collect samples for trichomoniasis testing.

(6) "Commuter bulls" means bulls traveling across state lines for grazing purposes while utilizing a Commuter Permit Agreement approved by both the respective State Veterinarians or bulls traveling on a Certificate of Veterinary Inspection where there is no change of ownership.

(7) "Confinement" means bulls held in such manner that escape is improbable. Typical barbed wire or net pasture fencing does not constitute confinement.

(8) "Department" means the Utah Department of Agriculture and Food.

(9) "Exposed to female cattle" means bulls with freedom from restraint such that breeding is a possible activity.

(10) "Feeder Bulls" means bulls not exposed to female cattle and kept in confinement for the purpose of feeding and only go to slaughter.

(11) "Negative bull" means a bull that has been tested with official test procedures and found free from infection by Tritrichomonas foetus.

(12) "Official tag" means a tag authorized by the Department that is placed in the right ear of a bull by a certified veterinarian after being tested for trichomoniasis. The color of the official tag shall be changed yearly.

(13) "Official test" means a test currently approved by the Department for detection of Tritrichomonas foetus.

(14) "Positive bull" means a bull that has been tested with official test procedures and found to be infected by Tritrichomonas foetus.

(15) "Positive herd" means any herd or group of cattle owned by one or more persons which shares common grazing or feeding operations and in which one or more animals has been diagnosed with trichomoniasis within the last 12 months.

(16) "Qualified feedlot" means a feedlot approved by the Utah Department of Agriculture and Food to handle heifers, cows, or bulls. These animals shall be confined to a dry lot area which is used to upgrade or finish feeding animals going only to slaughter.

(17) "Test chart" means a document which certifies that a bull has been subjected to an official test for trichomoniasis and indicates the results of the test.

(18) "Trichomoniasis" means a venereal disease of bovidea caused by the organism Tritrichomonas foetus.

R58-21-3. Trichomoniasis - Sampling and Testing Procedures.

(1) Sample collection - Samples are obtained from a vigorous scraping of the bull's prepuce using a sterile syringe and new pipette on each bull.

(2) Sample handling - Samples shall be transferred and transported in approved media. Media should be maintained at 65 to 90 degrees Fahrenheit (18 to 32 degrees Celsius) during sampling and transport to clinic. Samples shall be set up for incubation within 24 hours of sampling. Samples shall also be protected from direct sunlight.

(3) Polymerase Chain Reaction (PCR) testing - The inoculated media shall be incubated at 98 degrees Fahrenheit (37 degrees Celsius) for 24 hours and then frozen. Samples may remain frozen for up to 3 weeks. The frozen sample(s) shall be sent overnight on postal approved frozen packs to the Utah Veterinary Diagnostic Laboratory (950 East 1400 North, Logan, Utah 84341) or an other approved laboratory for PCR testing.

R58-21-4. Trichomoniasis - Rules - Prevention and Control.

(1) All bulls twelve months of age and older, entering Utah, must be tested with an approved test for trichomoniasis by an accredited veterinarian prior to entry into Utah. Bulls that have had contact with female cattle subsequent to testing must be retested prior to entry.

(2) The following bulls are exempted from (1) above:

(a) Bulls going directly to slaughter or to a qualified feedlot,

(b) Bulls kept in confinement operations,

(c) Rodeo bulls for the purpose of exhibition, and

(d) Bulls attending livestock shows for the purpose of exhibition, only to be returned to the state of origin immediately after the event.

(3) Rodeo and exhibition bulls with access to grazing, or exposed to female cattle, or being offered for sale are required to be tested prior to entry.

(4) All bulls twelve months of age and older residing in Utah, and all commuter bulls must be tested with an official test for trichomoniasis annually, between October 1 and May 15 of the following year, or prior to exposure to female cattle according to approved sampling and testing procedures. All bulls must be classified as a negative bull prior to exposure to female cattle or offered for sale.

(5) Testing shall be performed by a certified veterinarian.

(a) All test results shall be recorded on test charts provided by the Department or electronic forms created by the certified veterinarian.

(i) Electronic forms shall have the following information:

(A) Veterinarian's name and contact information

(B) Owner's name and contact information

(C) Bull's trichomoniasis tag number, age, breed

(D) Date of collection

(E) Test results

(b) A copy of all test charts shall be submitted to the Department within ten (10) days of collecting the sample.

(6) All bulls twelve months of age and older being offered for sale for reproductive purposes in the state of Utah must be tested for trichomoniasis with an official test prior to sale. Bulls that have had contact with female cattle subsequent to testing must be re-tested prior to sale or transfer of ownership.

(7) It shall be the responsibility of the owner or his agent to declare, on the auction drive-in slip, the trichomoniasis status of a bull being offered for sale at a livestock auction.

(a) Untested bulls (i.e. bulls without a current trichomoniasis test tag), including dairy bulls, must be sold for slaughter only, for direct movement to a qualified feedlot, or confinement operation, unless untested bulls are tested prior to exposure to female cattle.

(8) Any bull which has strayed and commingles with female cattle may be required to be tested (or re-tested) for trichomoniasis. The owner of the offending bull shall bear all costs for the official test.

(9) All Utah bulls, which are tested, shall be tagged in the right ear with an official tag by the certified veterinarian performing the test.

(10) Bulls entering the State of Utah under the provisions of this rule may be tagged upon arrival by a certified veterinarian upon receipt of the trichomoniasis test charts from the testing veterinarian.

(11) Bulls which bear a current trichomoniasis test tag from another state which has an official trichomoniasis testing program will be acceptable to the State of Utah providing that they meet all trichomoniasis testing requirements as described above.

R58-21-5. Trichomoniasis - Rules - Positive Bull.

(1) A bull is considered positive if a laboratory identifies Tritrichomonas foetus using an official test.

(2) All bulls testing positive for trichomoniasis must be reported within 48 hours to: 1) the owner, and 2) the State Veterinarian, by the certified veterinarian performing the test.

(4) The owner shall be required to notify the administrators of the common grazing allotment and any neighboring (contiguous) cattleman within ten days following such notification by the certified veterinarian.

(5) All bulls which test positive for trichomoniasis must be sent by direct movement within 14 days, to:

(a) Slaughter at an approved slaughter facility, or

(b) To a qualified feedlot for finish feeding and slaughter, or

(c) To an approved auction market for sale to one of the above facilities.

(d) An exemption to the 14 day requirement will be given by the State Veterinarian to owners of bulls that are required to be in a drug withdrawal period prior to slaughter.

(6) Such bulls must move only when accompanied by a VS 1-27 Form issued by the testing veterinarian or other regulatory official.

(7) Positive bulls entering a qualified feedlot, or approved auction market shall be identified with a lazy V brand on the left side of the tailhead by either the livestock inspector or the contract veterinarian, indicating that the bull is infected with trichomoniasis.

(8) All bulls from positive herds are required to have one additional individual negative Polymerase Chain Reaction (PCR) test prior to exposure to female cattle, unless they are being sent to slaughter, to a qualified feedlot, or being feed for slaughter in a confinement operation.

R58-21-6. Trichomoniasis - Rules - Non-compliance.

(1) Any person who fails to satisfy the requirements of this rule or who knowingly sells animals infected with trichomoniasis, other than to slaughter, without declaring their disease status shall be subject to citation and fines as prescribed by the department or may be called to appear before an administrative proceeding by the department.

(2) After May 15, owners of all untested bulls will be fined $1,000.00 per violation.

(3) Owners of untested bulls that have been exposed to female cattle will be fined $1,000.00 per violation regardless of the time of year.

KEY: disease control, trichomoniasis, bulls, cattle
June 14, 2017 4-31-21
Notice of Continuation December 26, 2019

R68. Agriculture and Food, Plant Industry.
R68-3. Utah Fertilizer Act Governing Fertilizers and Soil Amendments.
R68-3-1. Authority.

Promulgated under authority of Section 4-2-103(1)(i) and 4-13-104.

R68-3-2. Registration of Products.

A. All fertilizer or soil amendment products distributed in Utah shall be officially registered with the Utah Department of Agriculture and Food.

1. Application for registration shall be made to the Department upon forms prescribed and provided by the Department and shall include the following information for each product:

a. The net weight,

b. The brand and grade,

c. The guaranteed analysis,

d. The name and address and phone number of the registrant.

e. The label for each product registered.

f. Any waste-derived fertilizer distributed as a single ingredient product or blended with other fertilizer ingredients must be identified as "waste-derived fertilizer" by the registrant in the application for registration. "Waste-derived fertilizer" shall include any commercial fertilizer that is derived from an industrial byproduct, coproduct or other material that would otherwise be disposed of if a market for reuse were not an option, but does not include fertilizers derived from biosolids or biosolids products regulated under Environmental Protection Agency Code of Federal Regulation, Section 503.

g. The registrant of a waste-derived fertilizer shall state in the application for registration the levels of non-nutritive metals (including but not limited to arsenic, cadmium, mercury, lead and selenium). The registrant will provide a laboratory report or other documentation verifying the levels of the non-nutritive metals in the waste-derived fertilizer.

2. The Commissioner may require submission of the complete formula of any fertilizer or soil amendment if it shall be deemed necessary for administration of the Utah Fertilizer Act. If it appears to the Commissioner that the composition of the product is such as to warrant the proposed claims for it, and if the product and its labeling and any other information which may be required to be submitted comply with the requirements of the act, the products shall be registered.

a. Before registering any soil amendment the Commissioner shall require evidence to substantiate the claims made for the soil amendment and proof of the value and usefulness of the soil amendment. Such supportive data shall accompany the application for registration and shall be obtained from one or more State Experiment Stations. Cost for such research shall be the responsibility of the applicant. Final decision concerning registration of a soil amendment shall be made by the Commissioner following evaluation of all evidence presented.

3. The registrant is responsible for the accuracy and completeness of all information submitted concerning application for registration of a fertilizer or soil amendment product.

4. Once a fertilizer or soil amendment is registered under the act, no further registration is required, as long as the label does not differ in any respect.

5. Whenever the name of fertilizer or soil amendment product is changed or there are changes in the product ingredients or guaranteed analysis, a new registration shall be required. Other labeling changes shall not require re-registration, but the registrant shall submit copies of all changes to the Department as soon as they are effective. A reasonable time may be permitted to dispose of properly labeled stocks of the old product.

6. A registration fee determined by the department pursuant to Subsection 4-2-103(2), per product shall be paid by the applicant annually.

7. Each registration is renewable for a period of one year upon payment of the annual renewal fee determined by the department pursuant to Subsection 4-2-103(2), per product which shall be paid on or before December 31 of each year. If the renewal of a fertilizer or soil amendment registration is not filed prior to January 1 of any year, an additional fee determined by the department pursuant to Subsection 4-2-103(2), shall be assessed per product and added to the original registration fee and shall be paid by the applicant before the registration renewal for that fertilizer or soil amendment shall be issued.

8. A distributor is not required to register each grade of commercial fertilizer or soil amendment formulated by a consumer before mixing, but is required to register the name under which the business of blending or mixing is conducted and to pay an annual blender's license fee determined by the department pursuant to Subsection 4-2-103(2). A blender's license shall expire at midnight on December 31 of the year in which it is issued. A blender's license is renewable for a period of one year upon the payment of an annual license renewal fee. For Each renewal of a fertilizer or soil amendment blender's license not filed prior to January 1 of any one year, an additional fee determined by the department pursuant to Subsection 4-2-103(2), shall be assessed and added to the original license fee and shall be paid by the applicant before the license shall be issued.

9. Beginning January 1, 1991 and on a semi-annual basis, fertilizer and soil amendment products sold in the State of Utah will be assessed a fee determined by the department pursuant to Subsection 4-2-103(2). This assessment shall be paid by the manufacturer or distributor on or before February 1st each year for the sales period July 1 through December 31 and again on or before August 1st each year for the sales period January 1 through June 30. The amount of assessment will be determined by records of the previous six month's sales.

R68-3-3. Product Labeling.

A. Each container of packaged fertilizer distributed in Utah shall bear a label showing the following information:

1. net weight,
2. brand and grade,
3. guaranteed analysis,
4. name and address of the registrant,
5. lot number.

B. Each container of packaged soil amendment distributed in Utah shall bear a label showing the following:

1. net weight,
2. brand name,
3. name and percentages of the soil amending ingredients,
4. purpose of product,
5. directions for application of product,
6. name and address of the registrant,
7. lot number.

C. When any reference is made upon the label, labeling, or graphic material of a commercial fertilizer or soil amendment to "trace elements," "minor elements," "secondary elements," "plant foods" or similar generalized terms, each individual plant food to which such term refers must be listed upon the label.

D. No guarantee for a plant food element may be shown upon a label which is not listed upon the application for registration of the fertilizer or soil amendment material.

E. If guarantees for secondary plant foods and trace elements are listed upon the label of a fertilizer of soil amendment, they must be represented in terms of the element, and the minimum among of each which may be guaranteed in the labeling of any fertilizer or soil amendment product is as

follows:

TABLE

Calcium (Ca)	1.00%	Copper (Cu)	0.05%
Magnesium (Mg)	0.50%	Iron (Fe)	0.10%
Sulfur (S)	1.00%	Manganese (Mn)	0.05%
Boron (B)	0.02%	Molybdenum (Mo)	0.0005%
Cobalt (Co)	0.0005%	Sodium (Na)	0.10%
Chlorine (Cl)	0.10%	Zinc (Zn)	0.05%

F. No specialty fertilizer label shall bear a statement that connotes or infers the presence of a slowly available plant nutrient unless the nutrient or nutrients are identified. When a fertilizer label infers or connotes that the nitrogen is slowly available through use of "organic," "organic nitrogen," "ureaform," "long lasting," or similar terms, the guaranteed analysis must indicate the percentage of water insoluble nitrogen in the material. When the water insoluble nitrogen is less than 15% of the total nitrogen, the label shall bear no reference to "long lasting," "organic," or similar terms.

G. Pesticides may be added to registered fertilizers or soil amendments provided:

1. The fertilizers and soil amendments and the pesticides are officially registered.

2. Each container or package containing a fertilizer or soil amendment pesticide mixture shall have attached a label showing the information stated in Subsection R68-3-2(2)(a) of these rules and in Section 4-14-4.

R68-3-4. Deficiencies of Ingredients.

A commercial fertilizer shall be deemed deficient if the analysis of nutrients is below the guarantee by an among exceeding the values in the following schedule or if the overall index value of the fertilizer is below 98%.

TABLE

ALLOWABLE DEFICIENCIES

Guarantee Percent	Nitrogen Percent	Available Phosphoric Acid	Potash Percent
04 or less	0.49	0.67	0.41
05	0.51	0.67	0.43
06	0.52	0.67	0.47
07	0.54	0.68	0.53
08	0.55	0.68	0.60
09	0.57	0.68	0.65
10	0.58	0.69	0.70
12	0.61	0.69	0.79
14	0.63	0.70	0.87
16	0.67	0.70	0.94
18	0.70	0.71	1.01
20	0.73	0.72	1.08
22	0.75	0.72	1.15
24	0.78	0.73	1.21
26	0.81	0.73	1.27
28	0.83	0.74	1.33
30	0.86	0.75	1.39
32 or more	0.88	0.76	1.44

R68-3-5. Values of Ingredients.

The Department shall annually publish the monetary values per unit of nitrogen, available phosphoric acid, and soluble potash in commercial fertilizer in this state, which may be used as a basis for assessing monetary penalties for ingredient deficiencies as provided under section 4-13-106.

R68-3-6. Unlawful Acts.

A. Any person who has committed any acts included but not limited to those listed below is in violation of the Utah Fertilizer Act or rules promulgated thereunder and is subject to penalties provided for in Section 4-2-304:

1. Made false or fraudulent claims through any media misrepresenting the effect of fertilizers or soil amendments offered for sale in Utah;

2. Neglected or, after notice, refused to comply with the provisions of the act, these rules, or any lawful order of the Commissioner;

3. Made false or fraudulent records, invoices, or reports;

4. Used fraud or misrepresentations in making application for, or renewal of a registration or license;

5. Distributed commercial fertilizer or soil amendments which contain seeds or other viable plant parts or noxious weeds.

6. Distributed any waste-derived fertilizer that has not been identified in the registration application.

KEY: fertilizers
July 25, 2008 4-2-2
Notice of Continuation October 15, 2019

R68. Agriculture and Food, Plant Industry.
R68-20. Utah Organic Standards.
R68-20-1. Authority.

Promulgated under authority of Sections 4-2-103(1)(i), 4-3-201, 4-4-102, 4-5-104, 4-9-103, 4-11-103, 4-12-3, 4-14-106, 4-16-103, 4-32-109, 4-37-109(2).

A. The Utah Department of Agriculture and Food (UDAF) adopts and incorporates by reference CFR, October 1, 2017 edition, Title 7 Part 205, National Organic Program Final Rule.

1. UDAF will make available to all its applicants for certification and producers of organic products, copies of the National Organic Program Final Rule.

R68-20-2. Definitions and Terms.

A. For the purpose of this rule, words in the singular form shall be deemed to impart the plural and vice versa, as the case may demand.

1. "Commissioner" means the Commissioner of the Utah Department of Agriculture and Food, or the commissioner's representative.

2. "Distributor" means a handler that purchases products under its own name, usually from a shipper, processor, or another distributor. Distributors may or may not take physical possession of the merchandise. A distributor is required to be certified if that person both takes title to the organic products and substantially transforms, processes, repackages or re-labels these products.

3. "Food (and food products)" means material, usually of plant or animal origin, containing or consisting of essential body nutrients, as carbohydrates, fats, proteins, vitamins, and minerals, that is taken in and assimilated by an organism to maintain life and growth. Food products include all agricultural and horticultural products of the soil, apiary and apiary products, poultry and poultry products, livestock and livestock products, dairy products and aquaculture products.

4. "Registration" means an agreement or contract that grants a certified operator the right to use a certificate or certification mark in accordance with organic standards and certification requirements.

5. "Utah Department of Agriculture and Food Organic Seal" means the seal to be displayed on packaging of certified organic foods and food products intended for retail sale, indicating compliance with provisions of this rules.

R68-20-3. Compliance.

A. Violations of the State Organic Program will be handled in compliance to Section 4-2-302.

R68-20-4. Fees for Organic Certification.

Fees for Organic Certification Services.

A. Fees shall be in accordance with the fee schedule in the annual appropriations act passed by the Legislature and signed by the Governor. The person, firm, corporation or other organization requesting registration as a producer, handler, processor or certification agency or requesting inspection or laboratory services shall pay such fees. All fees are payable to the Utah Department of Agriculture and Food.

B. Registration of producers, handlers, processors or combinations thereof. Applications for registration may be obtained from the Utah Department of Agriculture and Food and submitted with the annual fees. Annual registration is required for all producers, handlers, processors or combinations thereof and shall have applications submitted and be paid by February 1 of each year. New applicant shall have 120 days to complete their initial application and have it accepted by the Department or the applicant shall reapply.

C. Registration of Certifying Agencies. Applications for registration may be obtained from the Utah Department of Agriculture and Food and submitted with the annual fees. Annual registration is required for all certifying agencies and shall be paid by February 1 each year. Failure to pay by this date will result in late fees and a prohibition from conducting business in the State of Utah.

D. Gross sales fees. Payment of annual gross sales fees shall accompany the annual registration application and fees and shall be based on the previous year's gross sales of state certified producers and processors.

E. Any producers, handlers, processors or combinations thereof that conduct business under exemption listed in CFR, October 1, 2017 edition, Title 7 Part 205.101 within the State of Utah shall register annually with the Utah Department of Agriculture Organic Program before conducting business.

R68-20-5. UDAF Seal.

Use of the UDAF Organic Seal

A. The UDAF seal may be used only for raw or processed agricultural products in paragraphs (a), (b), (e)(1), and (e)(2) of CFR 205.301.

B. The UDAF seal must replicate the form and design and must be printed legibly and conspicuously.

1. On a white background with a double black circle the words, Utah Department of Agriculture and Food, within the borders of the circles. At the bottom of the circle a teal green horizontal line.

2. Within the inner circle a black outline of the State of Utah, and inscribed in italics in a teal green color, slanting upward from left to right, the word "Certified Organic".

3. A copy of the seal is available at the Department of Agriculture and Food, 350 North Redwood Road, PO Box 146500, Salt Lake City, Utah 84114-6500.

KEY: inspections
July 9, 2018 **4-2-103(1)(i)**
Notice of Continuation December 3, 2019 **4-3-201**
4-4-102
4-5-104
4-9-103
4-11-103
4-12-3
4-14-106
4-16-103
4-32-109
4-37-109(2)

R152. Commerce, Consumer Protection.
R152-32a. Pawnshop and Secondhand Merchandise Transaction Information Act Rule.
R152-32a-1. Purpose.

(1) The purpose of this rule is to specify the information capable of being transmitted electronically to the central database.

R152-32a-2. Authority.

(1) This rule is enacted pursuant to Subsections 13-2-5(1) and 13-32a-106(1)(b).

R152-32a-3. Definitions - Reserved.

Reserved.

R152-32a-4. Information Capable of Being Transmitted Electronically Pursuant to Subsection 13-32a-106(1)(a).

(1) The following information is capable of being transmitted electronically to the central database:

(a) all information described by:

(i) Subsections 13-32a-104(1)(a) through 13-32a-104(1)(c);

(ii) Subsections 13-32a-104(1)(e)(i) and (ii);

(iii) Subsection 13-32a-104(1)(f);

(iv) Subsections 13-32a-104(1)(h)(i) through 13-32a-104(1)(h)(vii);

(v) Subsections 13-32a-104.5(2)(a) through 13-32a-104.5(2)(c)(ii);

(vi) Subsection 13-32a-104.5(2)(d);

(vii) Subsections 13-32a-104.5(2)(f)(i) through 13-32a-104.5(2)(f)(vi);

(viii) Subsections 13-32a-104.5(3)(a) through 13-32a-104.5(3)(b)(vi);

(ix) Subsection 13-32a-104.5(4)(a);

(x) Subsections 13-32a-104.5(4)(d) through 13-32a-104.5(4)(f); and

(xi) Subsections 13-32a-104.5(4)(h) and (i).

(2) On and after January 1, 2020, the following information is capable of being transmitted electronically to the central database:

(a) an individual's electronic legible fingerprint, as required by Subsections 13-32a-104(1)(e)(iv), 13-32a-104(6)(a)(i), 13-32a-104.5(2)(c)(iv), and 13-32a-104.5(6)(a)(i); and

(b) any color digital photograph required by Subsection 13-32a-104(7).

KEY: pawnshops, secondhand merchandise dealers, consumer protection, central database
January 1, 2020 **13-2-5**
13-32a-106(1)(a) and (b)

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

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

R156-1-102. Definitions.

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

(1) "Active and in good standing" means a licensure status which allows the licensee full privileges to engage in the practice of the occupation or profession subject to the scope of the licensee's license classification. A license that has been placed on probation subject to terms and conditions is not active and in good standing.

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

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

(b) dishonest or selfish motive;

(c) pattern of misconduct;

(d) multiple offenses;

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

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

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

(h) vulnerability of the victim;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) replaces a temporary license;

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

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

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

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

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

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

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

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

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

(a) Mitigating circumstances include:

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

(ii) personal, mental or emotional problems provided such problems have not posed a risk to the health, safety or welfare

of the public or clients served such as drug or alcohol abuse while engaged in work situations or similar situations where the licensee or applicant should know that they should refrain from engaging in activities that may pose such a risk;

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

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

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

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

(vii) remorse.

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

(i) forced or compelled restitution;

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

(iii) resignation prior to disciplinary proceedings;

(iv) failure of injured client to complain;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Division concerns;

(b) allegations upon which those concerns are based;

(c) potential for administrative or judicial action; and

(d) disposition of Division concerns.

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

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

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

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

(4) Levels of supervision are defined as follows:

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

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

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

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

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

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

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

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

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

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

R156-1-103. Authority - Purpose.

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

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

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

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

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

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

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

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

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

(i) a national, state or local emergency;

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

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

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

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

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

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

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

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

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

R156-1-109. Presiding Officers.

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

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

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

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

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

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

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

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

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

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

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

immediately precedes the licensing technician's or program technician's signature.

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

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

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

(f) Residence Lien Recovery Fund Manager. The Residence Lien Recovery Fund manager, bureau manager, or program coordinator designated in writing by the Director shall be the presiding officer for the informal adjudicative proceeding described in Subsection R156-46b-202(1)(q), for approval or denial of an application for a tax credit certificate.

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

(a) Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R156-1-110. Issuance of Investigative Subpoenas.

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

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

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

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

(3)(a) Service may be made:

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

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

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

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

(b) Service by mail is complete upon mailing.

(c) Service may be accomplished by electronic means.

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

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

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

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

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

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

R156-1-111. Qualifications for Tax Certificate - Definitions - Application Requirements.

(1) In addition to the definitions in Title 58, Chapter 1, as used in Title 58, Chapter 1, or in this rule:

(a) "Psychiatrist", as defined under Subsection 58-1-111(1)(d, is further defined to include a licensed physician who is board eligible or board certified for a psychiatry specialization recognized by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association's Bureau of Osteopathic Specialists (BOS).

(b) Under Subsection 58-1-111(1)(f)(ii), the definition of a "volunteer retired psychiatrist" is further defined to mean a physician or osteopathic physician licensed under Title 58, Chapter 81, Retired Volunteer Health Practitioner Act, who is previously or currently board certified for a psychiatry specialization recognized by the American Board of Medical Specialties (ABMS) or the American Osteopathic Association's Bureau of Osteopathic Specialists (BOS).

(2) An applicant for a tax credit certificate under Section 58-1-111 shall provide to the Division:

(a) the original application made available on the Division's website, containing the signed attestation of compliance; and

(b) any additional documentation that may be required by the Division to verify the applicant's representations made in the application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) the degree of risk that a conduct will be repeated;

(e) the degree of risk that a condition will continue;

(f) the magnitude of the conduct or condition as it relates to the harm or potential harm;

(g) the length of time since the last conduct or condition has occurred;

(h) the current criminal probationary or parole status of the applicant or licensee;

(i) the current administrative status of the applicant or licensee;

(j) results of previously submitted applications, for any regulated profession or occupation;

(k) results from any action, taken by any professional licensing agency, criminal or administrative agency, employer, practice monitoring group, entity or association;

(l) evidence presented indicating that restricting or monitoring an individual's practice, conditions or conduct can protect the public health, safety or welfare;

(m) psychological evaluations; or

(n) any other information the Division or the board reasonably believes may assist in evaluating the degree of threat or potential threat to the public health, safety or welfare.

R156-1-303. Temporary Licenses in Declared Disaster or Emergency.

(1) In accordance with Section 53-2a-1203, persons who provide services under this exemption from licensure, shall within 30 days file a notice with the Division as provided under Subsection 53-2a-1205(1) using forms posted on the Division internet site.

(2) In accordance with Section 53-2a-1205 and Subsection 58-1-303(1), a person who provides services under the exemption from licensure as provided in Section 53-2a-1203 for a declared disaster or emergency shall, after the disaster period ends and before continuing to provide services, meet all the normal requirements for occupational or professional licensure under this title, unless:

(a) prior to practicing after the declared disaster the person is issued a temporary license under the provisions of Subsection 58-1-303(1)(c); or

(b) the person qualifies under another exemption from licensure.

R156-1-305. Inactive Licensure.

(1) In accordance with Section 58-1-305, except as provided in Subsection (2), a licensee may not apply for inactive licensure status.

(2) The following licenses issued under Title 58 that are active in good standing may be placed on inactive licensure status:

(a) architect;
(b) audiologist;
(c) certified public accountant emeritus;
(d) certified court reporter;
(e) certified social worker;
(f) chiropractic physician;
(g) clinical mental health counselor;
(h) clinical social worker;
(i) contractor;
(j) deception detection examiner;
(k) deception detection intern;
(l) dental hygienist;
(m) dentist;
(n) dispensing medical practitioner - advanced practice

registered nurse;

(o) dispensing medical practitioner - physician and surgeon;

(p) dispensing medical practitioner - physician assistant;

(q) dispensing medical practitioner - osteopathic physician and surgeon;

(r) dispensing medical practitioner - optometrist;

(s) dispensing medical practitioner - clinic pharmacy;

(t) genetic counselor;

(u) health facility administrator;

(v) hearing instrument specialist;

(w) landscape architect;

(x) licensed advanced substance use disorder counselor;

(y) marriage and family therapist;

(z) naturopath/naturopathic physician;

(aa) optometrist;

(bb) osteopathic physician and surgeon;

(cc) pharmacist;

(dd) pharmacy technician;

(ee) physician assistant;

(ff) physician and surgeon;

(gg) podiatric physician;

(hh) private probation provider;

(ii) professional engineer;

(jj) professional land surveyor;

(kk) professional structural engineer;

(ll) psychologist;

(mm) radiology practical technician;

(nn) radiologic technologist;

(oo) security personnel;

(pp) speech-language pathologist;

(qq) substance use disorder counselor; and

(rr) veterinarian.

(3) Applicants for inactive licensure shall apply to the Division in writing upon forms available from the Division. Each completed application shall contain documentation of requirements for inactive licensure, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(4) If all requirements are met for inactive licensure, the Division shall place the license on inactive status.

(5) A license may remain on inactive status indefinitely except as otherwise provided in Title 58 or rules which implement Title 58.

(6) An inactive license may be activated by requesting activation in writing upon forms available from the Division. Unless otherwise provided in Title 58 or rules which implement Title 58, each reactivation application shall contain documentation that the applicant meets current renewal requirements, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(7) An inactive licensee whose license is activated during the last 12 months of a renewal cycle shall, upon payment of the appropriate fees, be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their activated license.

(8) A Controlled Substance license may be placed on inactive status if attached to a primary license listed in Subsection R156-1-305(2) and the primary license is placed on inactive status.

R156-1-308a. Renewal Dates.

(1) The following standard two-year renewal cycle renewal dates are established by license classification in accordance with the Subsection 58-1-308(1):

TABLE
RENEWAL DATES

Acupuncturist	May 31	even years
Advanced Practice Registered Nurse	January 31	even years
Advanced Practice Registered Nurse-CRNA	January 31	even years
Architect	May 31	even years
Athlete Agent	September 30	even years
Athletic Trainer	May 31	odd years
Audiologist	May 31	odd years
Barber	September 30	odd years
Barber Apprentice	September 30	odd years
Barber School	September 30	odd years
Behavior Analyst and Assistant Behavior Analyst	September 30	even years
Behavior Specialist and Assistant Behavior Specialist	September 30	even years
Building Inspector	November 30	odd years
Burglar Alarm Security	March 31	odd years
C.P.A. Firm	December 31	even years
Certified Court Reporter	May 31	even years
Certified Dietitian	September 30	even years
Certified Medical Language Interpreter	March 31	odd years
Certified Nurse Midwife	January 31	even years
Certified Public Accountant	December 31	even years
Certified Social Worker	September 30	even years
Chiropractic Physician	May 31	even years
Clinical Mental Health Counselor	September 30	even years
Clinical Social Worker	September 30	even years
Contractor	November 30	odd years
Controlled Substance License	Attached to primary license renewal	
Controlled Substance Precursor	May 31	odd years
Controlled Substance Handler	September 30	odd years
Cosmetologist/Barber	September 30	odd years
Cosmetologist/Barber Apprentice	September 30	odd years
Cosmetology/Barber School	September 30	odd years
Deception Detection Deception Detection Examiner, Deception Detection Intern, Deception Detection Administrator	November 30	even years
Dental Hygienist	May 31	even years
Dentist	May 31	even years
Direct-entry Midwife	September 30	odd years
Dispensing Medical Practitioner Advanced Practice Registered Nurse, Optometrist, Osteopathic Physician and Surgeon, Physician and Surgeon, Physician Assistant	September 30	odd years
Dispensing Medical Practitioner Clinic Pharmacy	September 30	odd years
Electrician Apprentice, Journeyman, Master, Residential Journeyman, Residential Master	November 30	even years
Electrologist	September 30	odd years
Electrology School	September 30	odd years
Elevator Mechanic	November 30	even years
Environmental Health Scientist	May 31	odd years
Esthetician	September 30	odd years
Esthetician Apprentice	September 30	odd years
Esthetics School	September 30	odd years
Factory Built Housing Dealer	September 30	even years
Funeral Service Director	May 31	even years
Funeral Service Establishment	May 31	even years
Genetic Counselor	September 30	even years
Hair Designer	September 30	odd years
Hair Designer Instructor	September 30	odd years
Hair Designer School	September 30	odd years
Health Facility Administrator	May 31	odd years
Hearing Instrument Specialist	September 30	even years
Internet Facilitator	September 30	odd years
Landscape Architect	May 31	even years
Licensed Advanced Substance Use Disorder Counselor	May 31	odd years
Licensed Practical Nurse	January 31	even years
Licensed Substance Use Disorder Counselor	May 31	odd years
Marriage and Family Therapist	September 30	even years
Massage Apprentice	May 31	odd years
Massage Therapist	May 31	odd years
Master Esthetician	September 30	odd years
Master Esthetician Apprentice	September 30	odd years
Medication Aide Certified	March 31	odd years
Music Therapist	March 31	odd years
Nail Technologist	September 30	odd years
Nail Technologist Apprentice	September 30	odd years
Nail Technology School	September 30	odd years
Naturopath/Naturopathic Physician	May 31	even years
Occupational Therapist	May 31	odd years
Occupational Therapy Assistant	May 31	odd years

Optometrist	September 30	even years
Osteopathic Physician and Surgeon, Online Prescriber, Restricted Associate Osteopathic Physician	May 31	even years
Outfitter/Hunting Guide	May 31	even years
Pharmacy Class A-B-C-D-E, Online Contract Pharmacy	September 30	odd years
Pharmacist	September 30	odd years
Pharmacy Technician	September 30	odd years
Physical Therapist	May 31	odd years
Physical Therapist Assistant	May 31	odd years
Physician Assistant	May 31	even years
Physician and Surgeon, Online Prescriber, Restricted Associate Physician	January 31	even years
Plumber Apprentice, Journeyman, Master, Residential Master, Residential Journeyman	November 30	even years
Podiatric Physician	September 30	even years
Pre Need Funeral Arrangement Sales Agent	May 31	even years
Private Probation Provider	May 31	odd years
Professional Engineer	March 31	odd years
Professional Geologist	March 31	odd years
Professional Land Surveyor	March 31	odd years
Professional Structural Engineer	March 31	odd years
Psychologist	September 30	even years
Radiologic Technologist, Radiology Practical Technician Radiologist Assistant	May 31	odd years
Recreational Therapy Therapeutic Recreation Technician, Therapeutic Recreation Specialist, Master Therapeutic Recreation Specialist	May 31	odd years
Registered Nurse	January 31	odd years
Respiratory Care Practitioner	September 30	even years
Security Personnel	November 30	even years
Social Service Worker	September 30	even years
Speech-Language Pathologist	May 31	odd years
State Certified Commercial Interior Designer	March 31	odd years
Veterinarian	September 30	even years
Vocational Rehabilitation Counselor	March 31	odd years

(2) The following non-standard renewal terms and renewal or extension cycles are established by license classification in accordance with Subsection 58-1-308(1) and in accordance with specific requirements of the license:

(a) Associate Clinical Mental Health Counselor licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(b) Associate Marriage and Family Therapist licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(c) Certified Advanced Substance Use Disorder Counselor licenses shall be issued for a period of four years and may be extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made toward completing the required hours of supervised experience necessary for the next level of licensure.

(d) Certified Advanced Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(e) Certified Medical Language Interpreter Tier 1 and 2 licenses shall be issued for a period of three years and may be renewed. The initial renewal date of March 31, 2017, is established for these license classifications, subject to the provisions of Subsection R156-1-308c(7) to establish the length of the initial license period.

(f) Certified Substance Use Disorder Counselor licenses shall be issued for a period of two years and may be extended if the licensee presents satisfactory evidence to the Division and Board that reasonable progress is being made toward completing the required hours of supervised experience necessary for the next level of licensure.

(g) Certified Social Worker Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first.

(h) Certified Substance Use Disorder Counselor Intern licenses shall be issued for a period of six months or until the examination is passed, whichever occurs first.

(i) Funeral Service Intern licenses shall be issued for a two year term and may be extended for an additional two year term if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(j) Hearing Instrument Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examination, but a circumstance arose beyond the control of the licensee, to prevent the completion of the examination process.

(k) Pharmacy technician trainee licenses shall be issued for a period of two years and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward completing the requirements necessary for the next level of licensure.

(l) Psychology Resident licenses shall be issued for a two year term and may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(m) Type I Foreign Trained Physician-Educator licenses will be issued initially for a one-year term and thereafter renewed every two years following issuance.

(n) Type II Foreign Trained Physician-Educator licenses will be issued initially for an annual basis and thereafter renewed annually up to four times following issuance if the licensee continues to satisfy the requirements described in Subsection 58-67-302.7(3) and completes the required continuing education requirements established under Section 58-67-303.

R156-1-308b. Renewal Periods - Adjustment of Renewal Fees for an Extended or Shortened Renewal Period.

(1) Except as otherwise provided by statute or as required to establish or reestablish a renewal period, each renewal period shall be for a period of two years.

(2) The renewal fee for a renewal period which is extended or shortened by more than one month to establish or reestablish a renewal period shall increased or decreased proportionately.

R156-1-308c. Renewal of Licensure Procedures.

The procedures for renewal of licensure shall be as follows:

(1) The Division shall send a renewal notice to each licensee at least 60 days prior to the expiration date shown on the licensee's license. The notice shall include directions for the licensee to renew the license via the Division's website.

(2) Except as provided in Subsection(4), renewal notices shall be sent by mail deposited in the post office with postage prepaid, addressed to the last mailing address shown on the Division's automated license system.

(3) In accordance with Subsection 58-1-301.7(1), each licensee is required to maintain a current mailing address with the Division. In accordance with Subsection 58-1-301.7(2), mailing to the last mailing address furnished to the Division constitutes legal notice.

(4) If a licensee has authorized the Division to send a renewal notice by email, a renewal notice may be sent by email to the last email address shown on the Division's automated license system. If selected as the exclusive method of receipt of renewal notices, such mailing shall constitute legal notice. It shall be the duty and responsibility of each licensee who authorizes the Division to send a renewal notice by email to maintain a current email address with the Division.

(5) Renewal notices shall provide that the renewal requirements are outlined in the online renewal process and that each licensee is required to document or certify that the licensee meets the renewal requirements prior to renewal.

(6) Renewal notices shall advise each licensee that a license that is not renewed prior to the expiration date shown on the license automatically expires and that any continued practice without a license constitutes a criminal offense under Subsection 58-1-501(1)(a).

(7) Licensees licensed during the last 12 months of a renewal cycle shall be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their license.

R156-1-308d. Waiver of Continuing Education Requirements - Credit for Volunteer Service.

(1)(a) In accordance with Subsection 58-1-203(1)(g), a licensee may request a waiver of any continuing education requirement established under this title or an extension of time to complete any requirement on the basis that the licensee was unable to complete the requirement due to a medical or related condition, humanitarian or ecclesiastical services, extended presence in a geographical area where continuing education is not available, etc.

(b) A request must be submitted no later than the deadline for completing any continuing education requirement.

(c) A licensee submitting a request has the burden of proof and must document the reason for the request to the satisfaction of the Division.

(d) A request shall include the beginning and ending dates during which the licensee was unable to complete the continuing education requirement and a detailed explanation of the reason why. The explanation shall include the extent and duration of the impediment, extent to which the licensee continued to be engaged in practice of his profession, the nature of the medical condition, the location and nature of the humanitarian services, the geographical area where continuing education is not available, etc.

(e) The Division may require that a specified number of continuing education hours, courses, or both, be obtained prior to reentering the practice of the profession or within a specified period of time after reentering the practice of the profession, as recommended by the appropriate board, in order to assure competent practice.

(f) While a licensee may receive a waiver from meeting the minimum continuing education requirements, the licensee shall not be exempted from the requirements of Subsection 58-1-501(2)(i), which requires that the licensee provide services within the competency, abilities and education of the licensee. If a licensee cannot competently provide services, the waiver of meeting the continuing education requirements may be conditioned upon the licensee limiting practice to areas in which the licensee has the required competency, abilities and education.

(2)(a) In accordance with Subsection 58-1-203(1)(g) and 58-55-302.5(2)(e)(i), the Division may grant continuing education credit to a licensee for volunteering as a subject-matter expert in the review and development of licensing exams for the licensee's profession.

(b) Subject to specific limitations established by rule by the Division, in collaboration with a licensing board, or the Construction Services Commission, this volunteer continuing education credit shall:

(i) apply to the license period or periods during which the volunteer service was provided;

(ii) be granted on a 1:1 ratio, meaning that for each hour of attendance, the licensee may receive one hour of credit;

(iii) be deemed "core", "classroom", or "live" credit, regardless of whether the licensee attended meetings in person or electronically; and

(iv) at the licensee's discretion, all or part of the credit hours may be counted towards any law or ethics continuing education requirements.

(c) The licensee shall be responsible for maintaining information with respect to the licensee's volunteer services to demonstrate the services meet the requirements of this subsection.

(3) In accordance with Section 58-13-3, a health care professional licensee may fulfill up to 15% of the licensee's continuing education requirements by providing volunteer services at a qualified location, within the scope of the licensee's license, earning one hour of continuing education credit for every four documented hours of volunteer services.

R156-1-308e. Automatic Expiration of Licensure Upon Dissolution of Licensee.

(1) A license that automatically expires prior to the expiration date shown on the license due to the dissolution of the licensee's registration with the Division of Corporations, with the registration thereafter being retroactively reinstated pursuant to Section 16-10a-1422, shall:

(a) upon written application for reinstatement of licensure submitted prior to the expiration date shown on the license, be retroactively reinstated to the date of expiration of licensure; and

(b) upon written application for reinstatement submitted after the expiration date shown on the current license, be reinstated on the effective date of the approval of the application for reinstatement, rather than relating back retroactively to the date of expiration of licensure.

R156-1-308f. Denial of Renewal of Licensure - Classification of Proceedings - Conditional Renewal of Licensure During Adjudicative Proceedings - Conditional Initial, Renewal, or Reinstatement Licensure During Audit or Investigation.

(1) When an initial, renewal or reinstatement applicant under Subsections 58-1-301(2) through (3) or 58-1-308(5) or (6)(b) is selected for audit, is under investigation, or is pending inspection, the Division may conditionally issue an initial license to an applicant for initial licensure, or renew or reinstate the license of an applicant pending the completion of the audit, investigation or inspection.

(2) The undetermined completion of a referenced audit, investigation or inspection, rather than the established expiration date, shall be indicated as the expiration date of a conditionally issued, renewed, or reinstated license.

(3) A conditional issuance, renewal, or reinstatement shall not constitute an adverse licensure action.

(4) Upon completion of the audit, investigation, or inspection, the Division shall notify the initial license, renewal, or reinstatement applicant whether the applicant's license is unconditionally issued, renewed, reinstated, denied, or partially denied or reinstated.

(5) A notice of unconditional denial or partial denial of licensure to an applicant the Division conditionally licensed,

renewed, or reinstated shall include the following:

(a) that the applicant's unconditional initial issuance, renewal, or reinstatement of licensure is denied or partially denied and the basis for such action;

(b) the Division's file or other reference number of the audit or investigation; and

(c) that the denial or partial denial of unconditional initial licensure, renewal, or reinstatement of licensure is subject to review and a description of how and when such review may be requested.

R156-1-308g. Reinstatement of Licensure which was Active and in Good Standing at the Time of Expiration of Licensure - Requirements.

The following requirements shall apply to reinstatement of licensure which was active and in good standing at the time of expiration of licensure:

(1) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the Division between the date of the expiration of the license and 30 days after the date of the expiration of the license, the applicant shall:

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

(b) pay the established license renewal fee and a late fee.

(2) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the Division between 31 days after the expiration of the license and two years after the date of the expiration of the license, the applicant shall:

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

(b) pay the established license renewal fee and reinstatement fee.

(3) In accordance with Subsection 58-1-308(6)(a), if an application for reinstatement is received by the Division more than two years after the date the license expired and the applicant has not been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States during the time the license was expired, the applicant shall:

(a) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure;

(b) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to engage in the occupation or profession for which reinstatement of licensure is requested; and

(c) pay the established license fee for a new applicant for licensure.

(4) In accordance with Subsection 58-1-308(6)(b), if an application for reinstatement is received by the Division more than two years after the date the license expired but the applicant has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States shall:

(a) provide documentation that the applicant has continuously, since the expiration of the applicant's license in Utah, been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States;

(b) provide documentation that the applicant has completed or is in compliance with any renewal qualifications;

(c) provide documentation that the applicant's application was submitted within six months after reestablishing domicile within Utah or terminating full-time government service; and

(d) pay the established license renewal fee and the reinstatement fee.

R156-1-308h. Reinstatement of Restricted, Suspended, or Probationary Licensure During Term of Restriction, Suspension, or Probation - Requirements.

(1) Reinstatement of restricted, suspended, or probationary licensure during the term of limitation, suspension, or probation shall be in accordance with the disciplinary order which imposed the discipline.

(2) Unless otherwise specified in a disciplinary order imposing restriction, suspension, or probation of licensure, the disciplined licensee may, at reasonable intervals during the term of the disciplinary order, petition for reinstatement of licensure.

(3) Petitions for reinstatement of licensure during the term of a disciplinary order imposing restriction, suspension, or probation, shall be treated as a request to modify the terms of the disciplinary order, not as an application for licensure.

R156-1-308i. Reinstatement of Restricted, Suspended, or Probationary Licensure After the Specified Term of Suspension of the License or After the Expiration of Licensure in a Restricted, Suspended or Probationary Status - Requirements.

Unless otherwise provided by a disciplinary order, an applicant who applies for reinstatement of a license after the specified term of suspension of the license or after the expiration of the license in a restricted, suspended or probationary status shall:

(1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and conditions of license reinstatement;

(2) pay the established license renewal fee and the reinstatement fee;

(3) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be reinstated to engage in the occupation or profession for which the applicant was suspended, restricted, or placed on probation; and

(4) pay any fines or citations owed to the Division prior to the expiration of license.

R156-1-308j. Relicensure Following Revocation of Licensure - Requirements.

An applicant for relicensure following revocation of licensure shall:

(1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;

(2) pay the established license fee for a new applicant for licensure; and

(3) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was revoked.

R156-1-308k. Relicensure Following Surrender of Licensure - Requirements.

The following requirements shall apply to relicensure applications following the surrender of licensure:

(1) An applicant who surrendered a license that was active and in good standing at the time it was surrendered shall meet the requirements for licensure listed in Sections R156-1-308a through R156-1-308l.

(2) An applicant who surrendered a license while the license was active but not in good standing as evidenced by the written agreement supporting the surrender of license shall:

(a) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;

(b) pay the established license fee for a new applicant for licensure;

(c) provide information requested by the Division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was surrendered;

(d) pay any fines or citations owed to the Division prior to the surrender of license.

R156-1-308l. Reinstatement of Licensure and Relicensure - Term of Licensure.

Except as otherwise governed by the terms of an order issued by the Division, a license issued to an applicant for reinstatement or relicensure issued during the last 12 months of a renewal cycle shall, upon payment of the appropriate fees, be issued for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than requiring the licensee to immediately renew their reinstated or relicensed license.

R156-1-310. Application for Division Determination Regarding Criminal Conviction.

The application procedures for a Division determination pursuant to Section 58-1-310 are clarified and established as follows:

(1) An individual applying for a determination shall submit the Application for Criminal History Determination form made available on the Division's website, containing a signed attestation and release.

(2) An individual shall submit a separate application for criminal history determination with processing fee for each occupational or professional license that the individual is interested in seeking.

(3) Pursuant to Subsection 58-1-310(2), the individual's complete criminal conviction history shall include:

(a) criminal convictions, pleas of nolo contendere, and pleas of guilty or nolo contendere which are held in abeyance pending the successful completion of probation; and

(b) current restrictions from possession, purchase, transfer, or ownership of a firearm or ammunition.

(4) Pursuant to Subsection 58-1-310(2)(e), the individual shall provide any additional documentation that may be required by the Division to verify or evaluate the individual's representations made in their application.

(5) A determination shall be based solely on the information contained in the individual's application and supporting documents.

(6) An individual whose application has been denied as incomplete, or who has received an unfavorable determination that their criminal record would disqualify them from obtaining the license, may submit a request for agency review to the executive director within 30 days of the date of issuance of the denial or of the unfavorable determination.

R156-1-404a. Diversion Advisory Committees Created.

(1) There are created diversion advisory committees of at least three members for the professions regulated under Title 58. The diversion committees are not required to be impaneled by the director until the need for the diversion committee arises. Diversion committees may be appointed with representatives from like professions providing a multi-disciplinary committee.

(2) Committee members are appointed by and serve at the pleasure of the director.

(3) A majority of the diversion committee members shall constitute a quorum and may act on behalf of the diversion committee.

(4) Diversion committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in diversion committees business.

R156-1-404b. Diversion Committees Duties.

The duties of diversion committees shall include:

(1) reviewing the details of the information regarding licensees referred to the diversion committee for possible diversion, interviewing the licensees, and recommending to the director whether the licensees meet the qualifications for diversion and if so whether the licensees should be considered for diversion;

(2) recommending to the director terms and conditions to be included in diversion agreements;

(3) supervising compliance with all terms and conditions of diversion agreements;

(4) advising the director at the conclusion of a licensee's diversion program whether the licensee has completed the terms of the licensee's diversion agreement; and

(5) establishing and maintaining continuing quality review of the programs of professional associations and/or private organizations to which licensees approved for diversion may enroll for the purpose of education, rehabilitation or any other purpose agreed to in the terms of a diversion agreement.

R156-1-404c. Diversion - Eligible Offenses.

In accordance with Subsection 58-1-404(4), the unprofessional conduct which may be subject to diversion is set forth in Subsections 58-1-501(2)(e) and (f).

R156-1-404d. Diversion - Procedures.

(1) No later than 60 days following the referral of a licensee to the diversion committee for possible diversion, diversion committees shall complete the duties described in Subsection R156-1-404b(1) and (2).

(2) Following the completion of diversion committee duties, the Division shall prepare and serve upon the licensee a proposed diversion agreement. The licensee shall have a period of time determined by the Division not to exceed 30 days from the service of the proposed diversion agreement, to negotiate a final diversion agreement with the director. The final diversion agreement shall comply with Subsection 58-1-404.

(3) If a final diversion agreement is not reached with the director within 30 days from service of the proposed diversion agreement, or if the director finds that the licensee does not meet the qualifications for diversion, the Division shall pursue appropriate disciplinary action against the licensee in accordance with Section 58-1-108.

(4) In accordance with Subsection 58-1-404(5), a licensee may be represented, at the licensee's discretion and expense, by legal counsel during negotiations for diversion, at the time of execution of the diversion agreement, and at any hearing before the director relating to a diversion program.

R156-1-404e. Diversion - Agreements for Rehabilitation, Education or Other Similar Services or Coordination of Services.

(1) The Division may enter into agreements with professional or occupational organizations or associations, education institutions or organizations, testing agencies, health care facilities, health care practitioners, government agencies or other persons or organizations for the purpose of providing rehabilitation, education or any other services necessary to

facilitate an effective completion of a diversion program for a licensee.

(2) The Division may enter into agreements with impaired person programs to coordinate efforts in rehabilitating and educating impaired professionals.

(3) Agreements shall be in writing and shall set forth terms and conditions necessary to permit each party to properly fulfill its duties and obligations thereunder. Agreements shall address the circumstances and conditions under which information concerning the impaired licensee will be shared with the Division.

(4) The cost of administering agreements and providing the services thereunder shall be borne by the licensee benefiting from the services. Fees paid by the licensee shall be reasonable and shall be in proportion to the value of the service provided. Payments of fees shall be a condition of completing the program of diversion.

(5) In selecting parties with whom the Division shall enter agreements under this section, the Division shall ensure the parties are competent to provide the required services. The Division may limit the number of parties providing a particular service within the limits or demands for the service to permit the responsible diversion committee to conduct quality review of the programs given the committee's limited resources.

R156-1-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct;

(2) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company;

(3) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd." in the commercial use of the name of the limited partnership;

(4) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation;

(5) using a DBA (doing business as name) which has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing;

(6) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", 2004, established by the Federation of State Medical Boards, which is hereby adopted and incorporated by reference;

(7) failing, as a prescribing practitioner, to follow the "Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain", July 2013, adopted by the Federation of State Medical Boards, which is incorporated by reference;

(8) violating any term, condition, or requirement contained in a "diversion agreement", as defined in Subsection 58-1-404(6)(a); or

(9) failing, as a health care provider, to follow the health care claims practices of Subsection 31A-26-301.5(4), in violation of Subsection 58-1-508(2).

R156-1-501.1. Cheating on Examinations.

(1) Policy.

The passing of an examination, when required as a condition of obtaining or maintaining a license issued by the Division, is considered to be a critical indicator that an applicant or licensee meets the minimum qualifications for licensure. Failure to pass an examination is considered to be evidence that an applicant or licensee does not meet the minimum qualifications for licensure. Accordingly, the accuracy of the examination result as a measure of an applicant's or licensee's competency must be assured. Cheating by an applicant or licensee on any examination required as a condition of obtaining a license or maintaining a license shall be considered unprofessional conduct and shall result in imposition of an appropriate penalty against the applicant or licensee.

(2) Cheating Defined.

Cheating is defined as the use of any means or instrumentality by or for the benefit of an examinee to alter the results of an examination in any way to cause the examination results to inaccurately represent the competency of an examinee with respect to the knowledge or skills about which they are examined. Cheating includes:

(a) communication between examinees inside of the examination room or facility during the course of the examination;

(b) communication about the examination with anyone outside of the examination room or facility during the course of the examination;

(c) copying another examinee's answers or looking at another examinee's answers while an examination is in progress;

(d) permitting anyone to copy answers to the examination;

(e) substitution by an applicant or licensee or by others for the benefit of an applicant or licensee of another person as the examinee in place of the applicant or licensee;

(f) use by an applicant or licensee of any written material, audio material, video material or any other mechanism not specifically authorized during the examination for the purpose of assisting an examinee in the examination;

(g) obtaining, using, buying, selling, possession of or having access to a copy of any portion of the examination prior to administration of the examination.

(3) Action Upon Detection of Cheating.

(a) The person responsible for administration of an examination, upon evidence that an examinee is or has been cheating on an examination shall notify the Division of the circumstances in detail and the identity of the examinees involved with an assessment of the degree of involvement of each examinee;

(b) If cheating is detected prior to commencement of the examination, the examinee may be denied the privilege of taking the examination; or if permitted to take the examination, the examinee shall be notified of the evidence of cheating and shall be informed that the Division may consider the examination to have been failed by the applicant or licensee because of the cheating; or

(c) If cheating is detected during the examination, the examinee may be requested to leave the examination facility and in that case the examination results shall be the same as failure of the examination; however, if the person responsible for administration of the examination determines the cheating detected has not yet compromised the integrity of the examination, such steps as are necessary to prevent further cheating shall be taken and the examinee may be permitted to continue with the examination.

(d) If cheating is detected after the examination, the Division shall make appropriate inquiry to determine the facts concerning the cheating and shall thereafter take appropriate action.

(e) Upon determination that an applicant has cheated on an examination, the applicant may be denied the privilege of

retaking the examination for a reasonable period of time, and the Division may deny the applicant a license and may establish conditions the applicant must meet to qualify for a license including the earliest date on which the Division will again consider the applicant for licensure.

R156-1-502. Administrative Penalties.

(1) In accordance with Subsection 58-1-401(5) and Section 58-1-502, except as otherwise provided by a specific chapter under Title R156, the following fine schedule shall apply to citations issued under the referenced authority:

TABLE

FINE SCHEDULE

FIRST OFFENSE

Violation	Fine
58-1-501(1)(a)	$ 500.00
58-1-501(1)(c)	$ 800.00
58-1-501(2)(o)	$ 0 - $250.00
58-1-508(2)	$ 250.00

SECOND OFFENSE

Violation	Fine
58-1-501(1)(a)	$1,000.00
58-1-501(1)(c)	$1,600.00
58-1-501(2)(o)	$251.00 - $500.00
58-1-508(2)	$ 500.00

THIRD OFFENSE

Double the amount for a second offense with a maximum amount not to exceed the maximum fine allowed under Subsection 58-1-502(2)(j)(iii).

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) An investigative supervisor or chief investigator may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-1-503. Reporting Disciplinary Action.

The Division may report disciplinary action to other state or federal governmental entities, state and federal data banks, the media, or any other person who is entitled to such information under the Government Records Access and Management Act.

R156-1-506. Supervision of Cosmetic Medical Procedures.

The 80 hours of documented education and experience required under Subsection 58-1-506(2)(f)(iii) to maintain competence to perform nonablative cosmetic medical procedures is defined to include the following:

(1) the appropriate standards of care for performing nonablative cosmetic medical procedures;

(2) physiology of the skin;

(3) skin typing and analysis;

(4) skin conditions, disorders, and diseases;

(5) pre and post procedure care;

(6) infection control;

(7) laser and light physics training;

(8) laser technologies and applications;

(9) safety and maintenance of lasers;

(10) cosmetic medical procedures an individual is permitted to perform under this title;

(11) recognition and appropriate management of complications from a procedure; and

(12) current cardio-pulmonary resuscitation (CPR) certification for health care providers from one of the following organizations:

(a) American Heart Association;

(b) American Red Cross or its affiliates; or

(c) American Safety and Health Institute.

R156-1-601. Telehealth - Definitions.

In accordance with Section 26-60-103 and Subsection 26-60-104(1), in addition to the definitions in Title 58 and Rule R156, as used in this section:

(1) "Asynchronous store and forward transfer" means the same as defined in Subsection 26-60-102(1).

(2) "Standards of Practice" means those standards of practice applicable in a traditional health care setting, as provided in Subsection 26-60-103(1)(a)(ii).

(3) "Distant site" means the same as defined in Subsection 26-60-102(2).

(4) "Originating site" means the same as defined in Subsection 26-60-102(3).

(5) "Patient" means the same as defined in Subsection 26-60-102(4).

(6) "Patient Encounter" means any encounter where medical treatment and/or evaluation and management services are provided. For purposes of this rule, the entire course of an inpatient stay in a healthcare facility or treatment in an emergency department is considered a single patient encounter.

(7) "Provider" means the same as defined in Subsection 26-60-102(5)(b), an individual licensed under Title 58 to provide health care services, and:

(a) shall include an individual exempt from licensure as defined in Section 58-1-307 who provides health care services within the individual's scope of practice under Title 58; and

(b) for purposes of this section, "provider" may include multiple providers obtaining informed consent and providing care as a team, consistent with the standards of practice applicable to a broader practice model found in traditional health care settings.

(8) "Synchronous interaction" means the same as defined in Subsection 26-60-102(6).

(9) "Telehealth services" means the same as defined in Subsection 26-60-102(7).

(10) "Telemedicine services" means the same as defined in Subsection 26-60-102(8).

R156-1-602. Telehealth - Scope of Telehealth Practice.

(1) This rule is not intended to alter or amend the applicable standard of practice for any healthcare field or profession. The provider shall be held to the same standards of practice including maintaining patient confidentiality and recordkeeping that would apply to the provision of the same health care services in an in-person setting.

(2) In accordance with Section 26-60-103 and Subsection 26-60-104(1), a provider offering telehealth services shall, prior to each patient encounter:

(a) verify the patient's identity and originating site;

(b) obtain informed consent to the use of telehealth services by clear disclosure of:

(i) additional fees for telehealth services, if any, and how payment is to be made for those additional fees if they are charged separately from any fees for face-to-face services provided to the patient in combination with the telehealth services;

(ii) to whom patient health information may be disclosed and for what purpose, including clear reference to any patient consent governing release of patient-identifiable information to a third-party;

(iii) the rights of patients with respect to patient health information;

(iv) appropriate uses and limitations of the site, including emergency health situations;

(v) information:

(A) affirming that the telehealth services meet industry security and privacy standards, and comply with all laws referenced in Subsection 26-60-102(8)(b)(ii);

(B) warning of potential risks to privacy notwithstanding the security measures;

(C) warning that information may be lost due to technical failures, and clearly referencing any patient consent to hold the provider harmless for such loss; and

(D) disclosing the website owner/operator, location, and contact information; and

(c) allow the patient an opportunity to select their provider rather than being assigned a provider at random, to the extent possible;

(d) ensure that the online site from which the provider offers telehealth services does not restrict a patient's choice to select a specific pharmacy for pharmacy services.

(3) In accordance with Subsection 26-60-103(1)(b), it is not an acceptable standard of care for a provider offering telehealth services to establish a diagnosis and identify underlying conditions and contraindications to a recommended treatment based solely on an online questionnaire, except as specifically provided in Title 58, Chapter 83, the Online Prescribing, Dispensing and Facilitation Licensing Act.

(4) In accordance with Subsection 26-60-103(1)(c), a provider offering telehealth services shall be available to the patient for subsequent care related to the initial telemedicine services, by:

(a) providing the patient with a clear mechanism to:

(i) access, supplement, and amend patient-provided personal health information;

(ii) contact the provider for subsequent care;

(iii) obtain upon request an electronic or hard copy of the patient's medical record documenting the telemedicine services, including the informed consent provided; and

(iv) request a transfer to another provider of the patient's medical record documenting the telemedicine services;

(b) if the provider recommends that the patient needs to be seen in person, such as where diagnosis requires a physical examination, lab work, or imaging studies:

(i) arranging to see the patient in person, or directing the patient to the patient's regular provider, or if none, to an appropriate provider; and

(ii) documenting the recommendation in the patient's medical record; and

(c) upon patient request, electronically transferring to another provider the patient's medical record documenting the telemedicine services, within a reasonable time frame allowing for timely care of the patient by that provider.

(5) In accordance with Subsection 26-60-103(1)(d), a provider offering telehealth services shall be familiar with available medical resources, including emergency resources near the originating site.

(6) In settings and circumstances where an established provider-patient relationship is not present, a provider offering telehealth services shall establish a provider-patient relationship during the patient encounter, in a manner consistent with standards of practice including providing the provider's licensure and credentials.

(7) Nothing in this section shall prohibit electronic communications consistent with standards of practice applicable in traditional health care settings, including those:

(a) between a provider and a patient with a preexisting provider-patient relationship;

(b) between a provider and another provider concerning a patient with whom the other provider has a provider-patient relationship;

(c) in on-call or cross coverage situations in which the provider has access to patient records;

(d) in broader practice models where multiple providers provide care as a team, including, for example:

(i) within an existing organization; or

(ii) within an emergency department; or

(e) in an emergency, which as used in this section means a situation in which there is an occurrence posing an imminent threat of a life-threatening condition or severe bodily harm.

KEY: diversion programs, licensing, supervision, evidentiary restrictions
December 23, 2019 **58-1-106(1)(a)**
Notice of Continuation December 6, 2016 **58-1-308**
58-1-501(2)

R156. Commerce, Occupational and Professional Licensing.
R156-31b. Nurse Practice Act Rule.
R156-31b-101. Title.

This rule is known as the "Nurse Practice Act Rule".

R156-31b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 31b, as defined or used in this rule:

(1) "Accreditation" means formal recognition and approval of a nurse education program by an accrediting body for nursing education that is approved by the United States Department of Education.

(2) "Administering" means the direct application of a prescription drug or device, whether by injection, inhalation, ingestion, or by any other means, to the body of a human patient or research subject by another person.

(3) "APRN" means advanced practice registered nurse.

(4) "APRN-CRNA" means advanced practice registered nurse with registered nurse anesthetist certification.

(5) "Approved continuing education" means:

(a) continuing education that has been approved by a nationally or internationally recognized approver of professional continuing education for health-related industries;

(b) nursing education courses offered by an approved education program as defined in Subsection R156-31b-102(7);

(c) health-related coursework taken from an educational institution accredited by a regional or national institutional accrediting body recognized by the U.S. Department of Education;

(d) continuing education approved by any state board of nursing; or

(e) training or educational presentations offered by the Division.

(6) "Approved education program" means any nursing education program that meets the standards established in Section 58-31b-601 or Section R156-31b-602.

(7) "Approved re-entry program" means:

(a) a program designed to evaluate nursing competencies for nurses;

(b) approved by a state board of nursing; or

(c) offered by an accredited nursing education program; and

(d) includes a minimum of 150 hours of supervised clinical learning.

(8) "CGFNS" means the Commission on Graduates of Foreign Nursing Schools.

(9) "Completed a PN, RN, or APRN pre-licensing program" means graduation from the pre-licensing program, verified by official transcripts showing degree and date of program completion.

(10) "Comprehensive nursing assessment" means:

(a) conducting extensive initial and ongoing data collection:

(i) for individuals, families, groups or communities; and

(ii) addressing anticipated changes in patient conditions as well as emergent changes in patient health status;

(b) recognizing alterations to previous patient conditions;

(c) synthesizing the biological, psychological, spiritual, and social aspects of the patient's condition;

(d) evaluating the impact of nursing care; and

(e) using data generated from the assessments conducted pursuant to this Subsection (a) through (d) to:

(i) make independent decisions regarding patient health care needs;

(ii) plan nursing interventions;

(iii) evaluate any possible need for different interventions; and

(iv) evaluate any possible need to communicate and consult with other health team members.

(11) "Contact hour" in the context of continuing education means 60 minutes, which may include a 10-minute break.

(12) "Delegate" means:

(a) to transfer to another nurse the authority to perform a selected nursing task in a selected situation;

(b) in the course of practice of an APRN who specializes in psychiatric mental health nursing, to transfer to any individual licensed as a mental health therapist selected psychiatric APRN supervisory clinical experiences within generally-accepted industry standards; or

(c) to transfer to an unlicensed person the authority to perform a task that, according to generally-accepted industry standards or law, does not require a nursing assessment as defined in Sections R156-31b-102(10) and (16).

(13) "Delegatee" means one or more persons assigned by a delegator to act on the delegator's behalf.

(14) "Delegator" means a licensed nurse directly responsible for a patient's care, who assigns to another licensed or unlicensed person the authority to perform a task on behalf of the delegator in accordance with Subsection 58-31b-102(15)(g), Subsection R156-31b-102(12), and Section R156-31b-701.

(15)(a) "Disruptive behavior" means conduct, whether verbal or physical, that:

(i) is demeaning, outrageous, or malicious;

(ii) occurs during the process of delivering patient care; and

(iii) places a patient at risk.

(b) "Disruptive behavior" does not include criticism that is offered in good faith with the aim of improving patient care.

(16) "Focused nursing assessment" means an appraisal of a patient's status and situation at hand, including:

(a) verification and evaluation of orders; and

(b) assessment of:

(i) the patient's nursing care needs;

(ii) the complexity and frequency of the required nursing care;

(iii) the stability of the patient; and

(iv) the availability and accessibility of resources, including appropriate equipment, adequate supplies, and other appropriate health care personnel to meet the patient's nursing care needs.

(17) "Foreign nurse education program" means any program that originates or occurs outside of the United States.

(18) "Individualized healthcare plan" or "IHP" means a written document that outlines the provision of student healthcare services intended to achieve specific student outcomes.

(19) "Licensure by equivalency" applies only to the licensed practical nurse and may be warranted if the person seeking licensure:

(a)(i) has, within the two-year period preceding the date of application, successfully completed course work in a registered nurse education program that meets the criteria established in Sections 58-31b-601 and R156-31b-602; and

(ii) has been unsuccessful on the NCLEX-RN at least one time; or

(b)(i) is currently enrolled in an accredited registered nurse education program; and

(ii) has completed course work that is certified by the education program provider as being equivalent to the course work of an ACEN-accredited practical nursing program, as verified by the nursing education program director or administrator.

(20) "LPN" means licensed practical nurse.

(21) "MAC" means medication aide certified.

(22) "Medication" means any prescription or nonprescription drug as defined in Subsections 58-17b-102(24), (37) or (61) of the Pharmacy Practice Act.

(23) "NCLEX" means the National Council Licensure Examination of the National Council of State Boards of Nursing.

(24) "Non-approved education program" means any nurse prelicensing course of study that does not meet the criteria of Section 58-31b-601, including a foreign nurse education program.

(25) "Nurse" means:

(a) an individual licensed under Title 58, Chapter 31b as:

(i) a licensed practical nurse;

(ii) a registered nurse;

(iii) an advanced practice registered nurse; or

(iv) an advanced practice registered nurse-certified registered nurse anesthetist; or

(b) a certified nurse midwife licensed under Title 58, Chapter 44a.

(26) "Other specified health care professionals," as used in Subsection 58-31b-102(15), means an individual, in addition to a registered nurse or a licensed physician, who is permitted to direct the tasks of a licensed practical nurse, and includes:

(a) an advanced practice registered nurse;

(b) a certified nurse midwife;

(c) a chiropractic physician;

(d) a dentist;

(e) an osteopathic physician;

(f) a physician assistant;

(g) a podiatric physician;

(h) an optometrist;

(i) a naturopathic physician; or

(j) a mental health therapist as defined in Subsection 58-60-102(5).

(27) "Patient" means one or more individuals:

(a) who receive medical and/or nursing care; and

(b) to whom a licensee owes a duty of care.

(28) "Patient surrogate" means an individual who has legal authority to act on behalf of a patient when the patient is unable to act or make decisions unaided, including:

(a) a parent;

(b) a foster parent;

(c) a legal guardian; or

(d) a person legally designated as the patient's attorney-in-fact.

(29) "PN" means an unlicensed practical nurse.

(30) "Psychiatric mental health nursing specialty" means an expertise in psychiatric mental health, whether as a clinical nurse specialist or nurse practitioner licensed as an APRN.

(31) "Practica" means working in the nursing field as a student; not exclusive to patient care activities.

(32) "Practitioner" means a person authorized by law to prescribe treatment, medication, or medical devices.

(33) "RN" means a registered nurse.

(34) "School" means any private or public institution of primary or secondary education, including a charter school, pre-school, kindergarten, or special education program.

(35) "Supervision" is defined as the following:

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

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

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

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

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

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

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

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

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

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

(36) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 31b, is further defined in Section R156-31b-502.

R156-31b-103. Authority -- Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 31b.

R156-31b-104. Organization -- Relationship to Rule R156-1.

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

R156-31b-201. Board of Nursing -- Membership.

In accordance with Subsection 58-31b-201(1), the Board membership shall comprise:

(1) one licensed practical nurse;

(2) two advanced practice registered nurses, at least one of whom is an APRN-CRNA;

(3) four RNs;

(4) two additional members licensed either as RNs or APRNs who are actively involved in nursing education; and

(5) two public members.

R156-31b-202. Advisory Peer Education Committee Created - Membership - Duties.

(1) In accordance with Subsection 58-1-203(1)(f), there is created the Advisory Peer Education Committee.

(2) The duties and responsibilities of the Advisory Peer Education Committee are to:

(a) review applications for approval of medication aide training programs;

(b) monitor a nursing education program that is approved for a limited time under Section R156-31b-602 as it progresses toward accreditation; and

(c) advise the Division as to nursing education issues.

(3) The composition of the Advisory Peer Education Committee shall be:

(a) seven RNs or APRNs actively involved in nursing education, including at least one representative from public, private, and proprietary nursing programs; and

(b) any member of the Board who wishes to serve on the committee.

R156-31b-301. License Classifications - Professional Upgrade.

(1) A licensed practical nurse license shall be superseded upon the issuance of a registered nurse license.

(2) An advanced practice registered nurse may hold both an APRN and an RN license in Utah.

(3) Unless the APRN requests that both the APRN and RN licenses remain active, the registered nurse license shall be superseded upon the issuance of an advanced practice registered nurse license.

R156-31b-301a. LPN License -- Education, Examination,

and Experience Requirements.

(1) An applicant who has never obtained a license in any state or country shall:

(a) demonstrate that the applicant:

(i) has successfully completed a PN prelicensing education program that meets the requirements of Section 58-31b-601;

(ii) has successfully completed a PN prelicensing education program that is equivalent to an approved program under Section 58-31b-601;

(iii)(A) has completed an RN prelicensing education program that meets the requirements of Section 58-31b-601; and

(B) has taken, but not passed the NCLEX-RN at least one time; or

(v)(A) is enrolled in a registered nurse education program that meets the requirements of Section 58-31b-601; and

(B) has completed coursework that is equivalent to the coursework of an accredited practical nurse program;

(b) pass the NCLEX-PN examination pursuant to Section R156-31b-301e; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(2) An applicant who holds a current LPN license issued by another country or state shall:

(a) demonstrate that the license issued by the other jurisdiction is active and in good standing as of the date of application;

(b) demonstrate that the PN prelicensing education completed by the applicant:

(i) is equivalent to PN prelicensing education approved in Utah as of the date of the applicant's graduation; and

(ii) if a foreign education program, meets all requirements outlined in Section R156-31b-301d;

(c) pass the NCLEX-PN examination pursuant to Section R156-31b-301e; and

(d) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(3) An applicant who holds a current LPN license in an interstate compact state shall apply for a license within 90 days of establishing residency in Utah and complete all requirements pursuant to R156-31b-301a(2).

(4) An applicant who has been licensed previously in Utah, but whose license has expired or lapsed, shall:

(a) if the applicant has not practiced as a nurse for up to five years, document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3);

(b) if the applicant has not practiced as a nurse for more than five years but less than eight years:

(i) pass the NCLEX-PN examination within 60 days following the date of application; or

(ii) successfully complete an approved re-entry program;

(c) if the applicant has not practiced as a nurse for more than eight years but less than 10 years:

(i) successfully complete an approved re-entry program; and

(ii) pass the NCLEX-PN examination within 60 days following the date of application; or

(d) if the applicant has not practiced as a nurse for 10 years or more, comply with this Subsection (1).

(5) An applicant who has been licensed in another state or country, but whose license has expired or lapsed, shall:

(a) comply with this Subsection (2)(b); and

(b) comply with this Subsection (4) as applicable; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

R156-31b-301b. RN License -- Education, Examination, and Experience Requirements.

(1) An applicant who has never obtained a license in any state or country shall:

(a) demonstrate that the applicant has successfully completed an RN prelicensing education program that:

(i) meets the requirements of Section 58-31b-601; or

(ii) is equivalent to an approved program under Section 58-31b-601;

(b) pass the NCLEX-RN examination pursuant to Section R156-31b-301e; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(2) An applicant who holds a current RN license issued by another country or state shall:

(a) demonstrate that the license issued by the other jurisdiction is current, active, and in good standing as of the date of application;

(b)(i) demonstrate that the applicant has graduated from an RN prelicensing education program; and

(ii) if a foreign education program, demonstrate that the program meets all requirements outlined in Section R156-31b-301d;

(c) pass the NCLEX-RN examination pursuant to Section R156-31b-301e; and

(d) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(3) An applicant who holds a current RN license in an interstate compact state shall apply for a license within 90 days of establishing residency in Utah and complete all requirements pursuant to R156-31b-301b(2).

(4) An applicant who has been licensed previously in Utah, but whose license has expired or lapsed, shall:

(a) if the applicant has not practiced as a nurse for up to five years, document current compliance with the continuing competency requirements as established in Subsection R156-31b-303(3);

(b) if the applicant has not practiced as a nurse for more than five years but less than eight years:

(i) pass the NCLEX-RN examination within 60 days following the date of application; or

(ii) successfully complete an approved re-entry program;

(c) if the applicant has not practiced as a nurse for more than eight years but less than 10 years:

(i) successfully complete an approved re-entry program; and

(ii) pass the NCLEX-RN examination within 60 days following the date of application; or

(d) if the applicant has not practiced as a nurse for 10 years or more, comply with this Subsection (1).

(5) An applicant who has been licensed in another state or country, but whose license has expired or lapsed, shall:

(a) comply with this Subsection (2)(b);

(b) comply with this Subsection (4) as applicable; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

R156-31b-301c. APRN License -- Education, Examination, and Experience Requirements.

(1) An applicant for licensure as an APRN shall:

(a) demonstrate that the applicant holds a current, active RN license in good standing;

(b) demonstrate that the applicant has successfully completed an APRN prelicensing education program that meets the requirements of Subsection 58-31b-601(1) and Subsection 58-31b-302(4)(e);

(c) pass a national certification examination for nurse practitioner, clinical nurse specialist, certified nurse midwife, or registered nurse anesthetist, pursuant to Section R156-31b-301e, and administered by a certification body approved by:

(i) the National Commission for Certifying Agencies; or

(ii) the Accreditation Board for Specialty Nursing

Certification;

(d) if the applicant specializes in psychiatric mental health nursing, demonstrate that the requirements outlined in this Subsection (2) are met; and

(e) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(2) Requirements for APRN Specializing in Psychiatric Mental Health Nursing:

(a) In accordance with Subsection 58-31b-302(4)(g), the supervised clinical practice in mental health therapy and psychiatric and mental health nursing shall consist of a minimum of 4,000 hours of psychiatric mental health nursing education and clinical practice, including mental health therapy, as follows.

(i) 1,000 hours shall be credited for completion of clinical experience in an approved education program in psychiatric mental health nursing.

(ii) The remaining 3,000 hours shall:

(A) be completed after passing the applicable national certification examination and within five years of graduation from an accredited master's or doctoral level educational program;

(B) include a minimum of 1,000 hours of mental health therapy practice; and

(C) include at least 2,000 clinical practice hours that are completed under the supervision of:

(I) an APRN specializing in psychiatric mental health nursing; or

(II) a licensed mental health therapist as delegated by the supervising APRN.

(b) An applicant who obtains all or part of the clinical practice hours outside of Utah may receive credit for that experience by demonstrating that the training completed is equivalent in all respects to the training required under this Subsection (2)(a).

(c)(i) An approved supervisor shall verify practice as a licensee engaged in the practice of mental health therapy for not less than 4,000 hours in a period of not less than two years.

(ii) Duties and responsibilities of a supervisor include:

(A) being independent from control by the supervisee such that the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(B) supervising not more than three supervisees unless otherwise approved by the Division in collaboration with the Board; and

(C) submitting appropriate documentation to the Division with respect to all work completed by the supervisee, including the supervisor's evaluation of the supervisee's competence to practice.

(3) An applicant who holds a current APRN license issued by another state or country shall:

(a) demonstrate that the license issued by the other state or country is current, active, and in good standing as of the date of application;

(b) demonstrate that the APRN prelicensing education completed by the applicant:

(i) if completed on or after January 1, 1987:

(A) is equivalent to APRN prelicensing education approved in Utah as of the date of the applicant's graduation; or

(B) constitutes a bachelor degree in nursing; and

(ii) if a foreign education program, meets all requirements outlined in Section R156-31b-301d;

(c) if the applicant specializes in psychiatric mental health nursing, demonstrate that the applicant has successfully engaged in active practice in psychiatric mental health nursing for not less than 4,000 hours in the three-year period immediately preceding the date of application; and

(d) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(4) An applicant who has been licensed previously in Utah, but whose license has expired, lapsed, or been on inactive status, shall:

(a) demonstrate current certification in the individual's specialty area; and

(b) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

(5) An applicant who has been licensed previously in another state or country, but whose license has expired or lapsed, shall:

(a) comply with this Subsection (3)(b);

(b) demonstrate that the applicant is currently certified in the individual's specialty area; and

(c) submit to a criminal background check pursuant to Subsection 58-31b-302(5) and Section R156-31b-301g.

R156-31b-301d. Foreign Education Programs.

If an applicant's prelicensing education was completed through a foreign program that does not meet the requirements of Section 58-31b-601, the applicant shall demonstrate:

(1)(a) within the year preceding the date of the application, the applicant successfully completed all three components of the CGFNS Certification Program and the credentials evaluation service professional report; and

(b) within five years preceding the date of the application, the applicant met at least one of the following practice requirements:

(i) completed the nursing education program;

(ii) worked as a nurse;

(iii) completed an approved re-entry program; or

(iv) obtained an advanced (baccalaureate, master's or doctorate) nursing degree from an accredited nurse education program; or

(2)(a) during the five years preceding the date of the application, the applicant practiced as a licensed nurse for 6,000 hours in another state or territory of the United States; and

(b) prior to the date of the application, the applicant achieved a passing score on an English proficiency test satisfying current CGFNS requirements.

R156-31b-301e. Examination Requirements.

(1)(a) An applicant for licensure as an LPN, RN, Certified Nurse Midwife, or APRN shall pass the applicable licensure or certification examination within five years of the applicant's date of graduation from the approved education program, except as provided in Subsection (1)(b).

(b) An individual specializing in psychiatric mental health nursing shall complete the applicable certification examination prior to beginning the 3,000 hours of required psychiatric clinical and mental health therapy practice.

(c) An individual who does not pass the applicable licensure or certification examination pursuant to this Subsection (1)(a) or (b) as applicable shall complete another approved nursing education program before again attempting to pass the licensure or certification examination.

(2) An applicant for certification as an MAC shall pass the NCSBN Medication Aide Certification Examination (MACE) within one year of completing the approved training program.

(3) The examinations required under these rules are national examinations and cannot be challenged before the Division.

R156-31b-301f. Licensing Fees.

An applicant for licensure shall pay the applicable nonrefundable application fee before the application may be considered by the Division or Board.

R156-31b-301g. Criminal Background Checks.

A criminal background check conducted during the

application process is considered current and acceptable for that specific application only.

R156-31b-303. LPN, RN, and APRN License Renewal - Professional Downgrade - Continuing Education.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 31b, is established by rule in Section R156-1-308a.

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

(3) Each applicant for renewal shall comply with the following continuing competency requirements:

(a) An LPN or RN shall complete one of the following during the two-year period immediately preceding the date of application for renewal:

(i) licensed practice for not less than 400 hours;

(ii) licensed practice for not less than 200 hours and completion of 15 contact hours of approved continuing education; or

(iii) completion of 30 contact hours of approved continuing education hours.

(b) An APRN shall comply with the following:

(i)(A) be currently certified or recertified in the licensee's specialty area of practice; or

(B) if licensed prior to July 1, 1992, complete 30 hours of approved continuing education and 400 hours of practice; and

(ii) if authorized to prescribe controlled substances, comply with Section R156-37-402 and Section 58-37-6.5.

(c) An MAC shall complete eight contact hours of approved continuing education related to medications or medication administration during the two-year period immediately preceding the application for renewal.

(4) A licensee who wishes to downgrade the license in conjunction with a renewal or reinstatement application shall:

(a) comply with the competency requirements of this Subsection (3)(a);

(b) pay all required fees, including any applicable late fees;

(c) submit a completed renewal or reinstatement form as applicable to the license desired; and

(d) complete and sign a license surrender document as provided by the Division.

(5) A licensee who obtained a license downgrade may apply for license upgrade by:

(i) submitting the appropriate application for licensure complete with all supporting documents as required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure;

(ii) meeting the continuing competency requirements of this Subsection (3); and

(iii) paying the established license fee for a new applicant for licensure.

R156-31b-309. APRN Intern License.

(1) An individual who has completed all requirements outlined in Subsection R156-31b-301c(1) except the certification examination requirement may apply for an APRN intern license.

(2) In accordance with Section 58-31b-306, and unless this Subsection (3) or (4) applies, an intern license expires the earlier of:

(a) 180 days from the date of issuance;

(b) 30 days after the Division receives notice pursuant to this Subsection (4) that the applicant has failed the specialty certification examination; or

(c) upon issuance of an APRN license.

(3) The Division in collaboration with the Board may extend the term of any intern license upon a showing of extraordinary circumstances beyond the control of the applicant.

(4) An individual holding an APRN intern license specializing in psychiatric mental health nursing must work under the supervision of an APRN pursuant to R156-31b-301c.

(5) It is the professional responsibility of an APRN intern:

(a) to inform the Division of examination results within ten calendar days of receipt; and

(b) to cause the examination agency to send the examination results directly to the Division.

R156-31b-402. Administrative Penalties.

In accordance with Sections 58-1-501, 58-31b-501, 58-31b-502, 58-31b-502.5, 58-31b-503, Subsection 58-31b-102(1), and Section R156-31b-502, and unless otherwise ordered by the presiding officer, the following fine schedule shall apply:

TABLE

FINE SCHEDULE

VIOLATION	FIRST OFFENSE	SUBSEQUENT OFFENSE
58-31b-501(1)	$ 500 - $ 4,000	$ 4,000 - $ 8,000
58-31b-501(2)	$ 500 - $ 4,000	$ 4,000 - $ 8,000
58-31b-501(3)	$ 2,000 - $ 7,500	$ 7,500 - $ 9,500
58-31b-601	$ 2,000 - $ 7,500	$ 7,500 - $ 9,500
R156-31b-602	$ 2,000 - $ 7,500	$ 7,500 - $ 9,500
58-1-501(1)(a)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-1-501(1)(b)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-1-501(1)(c)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-1-501(1)(d)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-1-501(1)(e)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-1-501(1)(f)(i)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(a)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(b)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(c)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(d)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(e)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(f)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(g)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(h)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(i)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(j)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(k)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(l)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(m)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(o)	$ 250 - $ 4,000	$ 4,000 - $ 8,000
58-31b-502(1)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-31b-502(2)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-31b-502(3)	$ 4,000 - $ 8,000	$ 8,000 - $10,000
58-31b-502(4)	$ 2,000 - $ 5,000	$ 5,000 - $10,000
58-31b-502(5)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
58-31b-502(6)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
58-31b-502(7)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
58-31b-502(8)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-31b-502(9)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-31b-502(10)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-31b-502(11)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-31b-502(12)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-31b-502(13)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
58-31b-502(14)	double the original penalty, up to $20,000	
58-31b-502(15)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
58-31b-801	$ 1,000 - $ 5,000	$ 5,000 - $10,000
58-1-501(1)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)	$ 500 - $ 5,000	$ 5,000 - $10,000
R156-31b-502(1)(a)	$ 500 - $ 4,000	$ 4,000 - $ 8,000
R156-31b-502(1)(b)	$ 500 - $ 5,000	$ 5,000 - $10,000
R156-31b-502(1)(f)	$ 500 - $ 5,000	$ 5,000 - $10,000
R156-31b-502(1)(e)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-31b-502(1)(g)	$ 250 - $ 1,500	$ 1,500 - $10,000
R156-31b-502(1)(h)	$ 250 - $ 1,500	$ 1,500 - $10,000
58-31b-502.5(1)	$ 500 - $ 5,000	$ 1,500 - $10,000
Ongoing:$2,000 per day but not less than the second offense		
58-31b-502.5(2)	$ 500 - $ 5,000	$ 1,500 - $10,000
Ongoing:$2,000 per day but not less than the second offense		
58-31b-502.5(3)	$ 5,000	$ 10,000
Ongoing:	$ 2,000 per day but not less than the second offense	
R156-31b-502(1)(i)	$ 250	second offense $500 third and subsequent offenses $1,000
R156-31b-502(1)(j)	$ 250	second offense $500 third and subsequent offenses $1,000

Subsequent offenses. Sanctions for an offense subsequent to second offense, shall be $10,000 or $2,000 per day.

R156-31b-502. Unprofessional Conduct.

(1) "Unprofessional conduct" includes:

(a) failing to destroy a license that has expired due to the issuance and receipt of an increased scope of practice license;

(b) knowingly accepting or retaining a license that has been issued pursuant to a mistake or on the basis of erroneous information;

(c) as an RN or LPN, issuing a prescription for a prescription drug to a patient, except in accordance with the provisions of Section 58-17b-620 or as may be otherwise legally permissible;

(d) failing as the nurse accountable for directing nursing practice of an agency to verify any of the following:

(i) that standards of nursing practice are established and carried out;

(ii) that safe and effective nursing care is provided to patients;

(iii) that guidelines exist for the organizational management and management of human resources needed for safe and effective nursing care to be provided to patients; or

(iv) that the nurses employed by the agency have the knowledge, skills, ability and current competence to carry out the requirements of their jobs;

(e) engaging in sexual contact with a patient surrogate concurrent with the nurse/patient relationship unless the nurse affirmatively shows by clear and convincing evidence that the contact:

(i) did not result in any form of abuse or exploitation of the surrogate or patient; and

(ii) did not adversely alter or affect in any way:

(A) the nurse's professional judgment in treating the patient;

(B) the nature of the nurse's relationship with the surrogate; or

(C) the nature of the nurse's relationship with the patient;

(f) engaging in disruptive behavior in the practice of nursing;

(g) prescribing to oneself any controlled substance drug, in violation of Subsection R156-37-502(1)(a);

(h) violating any federal or state law relating to controlled substances, including self-administering any controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug, in violation of Section R156-37-502;

(i) as an APRN, failing to discuss the risks of using an opiate with a patient or the patient's guardian before issuing an initial opiate prescription in accordance with Section 58-37-19;

(j) as an APRN, violating a provision of Title 26, Chapter 61a, Utah Medical Cannabis Act; and

(k) failing to practice within limits of competency, in violation of Section 58-31b-801.

(2) In accordance with a prescribing practitioner's order and an IHP, a registered nurse who, in reliance on a school's policies or the delegation rule as provided in Sections R156-31b-701 and R156-31b-701a, delegates or trains an unlicensed assistive person to administer medications under Sections 53A-11-601, R156-31b-701 and R156-31b-701a, shall not be considered to have engaged in unprofessional conduct for inappropriate delegation.

R156-31b-602. Requirements for Limited-time Approval of Non-accredited Nursing Education Programs.

(1)(a) Pursuant to Subsection 58-31b-601(2), a nursing education program may, prior to obtaining an accreditation described in Subsection 58-31b-601(1), qualify for a limited time as an approved education program if the program was granted limited-time approval on or before May 15, 2016 and had demonstrated to the satisfaction of the Board that the program:

(i) established a timeline which allows for the initial accreditation visit to occur before the first students graduate;

(ii) understands the accreditation standards of its selected accrediting body as demonstrated in a written report which includes plans and processes consistent with the accrediting body for:

(A) curricular organization and delivery method;

(B) student learning outcomes;

(C) student support;

(D) program administration and organization;

(E) learning environment and facilities;

(F) clinical learning and placements; and

(G) faculty and nurse administrator qualifications;

(iii) clearly informs students and potential students about its accreditation status and the potential implications for future practice; and

(2) The provider of a program with limited-time approval pursuant to this Subsection (1) and (2) shall, pursuant to this Subsection (3), disclose to each student who enrolls:

(a) that program accreditation is pending;

(b) that any education completed prior to the accrediting body's final determination will satisfy, at least in part, state requirements for prelicensing education; and

(c) that, if the program fails to achieve accreditation on or before December 31, 2020, any student who has not yet graduated will not be made eligible for the NCLEX by the state of Utah.

(3) The disclosure required by this Subsection (2) shall:

(a) be signed by each student who enrolls with the provider; and

(b) at a minimum, state the following: "The nursing program in which you are enrolling has not yet been accredited. The program is being reviewed by the (accrediting body). Any education you complete prior to December 31, 2020 or a final determination by the (accrediting body) will satisfy associated state requirements for licensure. If the (accrediting body) ultimately determines that the program does not qualify for accreditation, you will not be made eligible for the NCLEX by the state of Utah."

(4) If an accredited program receives notice or determines that its accreditation status is in jeopardy, the institution offering the program shall:

(a) immediately notify the Board of its accreditation status;

(b) immediately and verifiably notify all enrolled students in writing of the program's accreditation status, including:

(i) the estimated date on which the accrediting body will make its final determination as to the program's accreditation; and

(ii) the potential impact of a program's accreditation status on the graduate's ability to secure licensure and employment or transfer academic credits to another institution in the future; and

(c) attempt negotiations with other academic institutions to establish a transfer articulation agreement.

(5) If a program with limited-time approval fails to achieve accreditation by December 31, 2020 or if a program loses its accreditation, the institution offering the program shall:

(a) submit a written report to the Board within ten days of receiving formal notification from the accrediting body;

(b) notify all matriculated and pre-enrollment nursing students about the program's accreditation status;

(c) inform all nursing students who will graduate from a non-accredited program that they will not be eligible for initial licensure through Utah; and

(d) submit a written plan to close the program and cease operations, if necessary.

R156-31b-603. Education Providers -- Requirements for Ongoing Communication with the Board.

An education program that has achieved limited-time

approval of its program(s) shall provide to the Board:

(1) a Board-approved annual report by December 31 of each calendar year; and

(2) copies of any correspondence between the program provider and the accrediting body within 30 days of receipt or submission of the correspondence.

R156-31b-609. Standards for Out-of-State Programs Providing Clinical Experiences in Utah.

A nursing education program provider located in another state that desires to place nursing students in Utah agencies or institutions for clinical or practica experiences shall, prior to placing a student, demonstrate to the satisfaction of the Division and Board that the program:

(1) is approved by the home state Board of Nursing;

(2) is accredited by an accrediting body for nursing education that is approved by the United States Department of Education;

(3) has faculty who:

(a) are employed by the nursing education program;

(b) meet the requirements to be a faculty member as established by the accrediting body and the home state's Board of Nursing;

(c) are licensed in good standing in Utah or a Compact state if supervising face-to-face clinical or practica experiences; and

(d) are affiliated with an institution of higher education; and

(4) has a plan for selection and supervision of:

(a) faculty or preceptor; and

(b) the clinical activity, including:

(i) the selection of an appropriate clinical location, and

(ii) ensuring that each preceptor is licensed in good standing in Utah or a Compact state;

(5) maintains its accreditation with an accrediting body for nursing education that is approved by the United States Department of Education; and

(a) reports any changes in its accreditation status to the Utah Board of Nursing in a timely manner;

(6) submits an annual report to the Utah Board of Nursing by August 1 of each year; and

(a) includes in the annual report:

(i) an overview of the number of students placed in Utah facilities;

(ii) an attestation that all face-to-face clinical faculty and preceptors used by the program are licensed in good standing in Utah or a Compact state; and

(iii) a verification that it is currently accredited, in good standing, with its accrediting body.

R156-31b-701. Delegation of Nursing Tasks in a Non-school Setting.

In accordance with Subsection 58-31b-102(15)(g) and Subsection R156-31b-102(12), the delegation of nursing tasks in a non-school setting is further defined, clarified, or established as follows:

(1) A delegator retains accountability for the appropriate delegation of tasks and for the nursing care of the patient.

(2) Tasks Appropriate for Delegation - Prior Assessment Required.

(a) A delegator may not delegate to unlicensed assistive personnel, including a medical assistant, any task requiring the specialized knowledge, judgment, or skill of a licensed nurse.

(b) A delegator may not delegate a task that is:

(i) outside the area of the delegator's responsibility;

(ii) outside the delegator's personal knowledge, skills, or ability; or

(iii) beyond the ability or competence of the delegatee to perform:

(A) as personally known by the delegator; and

(B) as evaluated according to generally accepted nursing practice standards of health, safety, and reasonable prudence.

(c) A nursing task may be delegated if it meets the following criteria, as applied to each specific patient situation:

(i) it is considered routine care for the specific patient;

(ii) it poses little potential hazard for the patient;

(iii) it is generally expected to produce a predictable outcome for the patient;

(iv) it is administered according to a previously developed plan of care; and

(v) it does not inherently involve nursing judgment that cannot be separated from the procedure.

(d) Before determining which, if any, nursing tasks may be delegated, the delegator shall make a focused nursing assessment of the circumstances, and evaluate the following factors to determine the degree of supervision required to ensure safe care:

(i) the stability and condition of the patient;

(ii) the training, capability, and willingness of the delegatee to perform the delegated task;

(iii) the nature of the task being delegated, including the complexity, irreversibility, predictability of outcome, and potential for harm inherent in the task;

(iv) the proximity and availability to the delegatee of the delegator or other qualified nurse during the time(s) when the task will be performed; and

(v) any immediate risk to the patient if the task is not carried out.

(e) If a delegator, upon review of the criteria established in this Subsection, determines that a proposed delegatee cannot safely provide the requisite care, the delegator shall not delegate the task to the proposed delegatee.

(3) Instruction and Demonstration of Competency Prior to Delegation.

(a) In delegating a nursing task, the delegator shall:

(i) provide instruction and direction necessary to allow the delagatee to safely perform the specific task;

(ii) explain the delegation to ensure that the delegatee understands which patient is to be treated, and according to what time frame; and

(iii) instruct the delegatee how to intervene in any foreseeable risks that may be associated with the delegated task.

(b)(i) If the employing facility or agency requires initial and ongoing demonstration of competency of direct patient care tasks, and makes competency documentation available to the delegator, the delegator may use that competency documentation.

(ii) If the employing facility or agency does not require demonstration of competency or does not provide competency documentation that is satisfactory to the delegator, or if a task falls outside tasks in which the proposed delegatee has previously been proven competent, the delegator or qualified educator shall:

(A) require the proposed delegatee to provide to the delegator or qualified educator a physical or verbal demonstration of the delegated task; and

(B) document the observed or spoken demonstration.

(iii) Teaching of a task, demonstration of competency, and documentation may be conducted per individual or in a group training session.

(4) Supervision and Monitoring. During delegation, the delegator shall:

(a) provide ongoing appropriate supervision and evaluation of the delegatee;

(b) ensure that the delegator or another qualified nurse is readily available, either in person or by telecommunication, to:

(i) evaluate the patient's health status;

(ii) evaluate the performance of the delegated task;

(iii) determine whether goals are being met; and

(iv) determine the appropriateness of continuing delegation of the task; and

(c) if the delegated task is to be performed more than once, establish a system for ongoing monitoring of the delegatee.

(5) Further Delegation Prohibited. A delegatee may not:

(a) further delegate to another person any task delegated to the individual by the delegator; or

(b) expand the scope of the delegated task without the express permission of the delegator.

(6) Internal Policies or Practices. Tasks that according to the internal policies or practices of a medical facility are required or allowed to be performed by an unlicensed person, shall not be deemed to have been delegated by a licensee.

R156-31b-701a. Delegation of Tasks in a School Setting.

In addition to the delegation rule found in Section R156-31b-701, the delegation of tasks in a school setting is further defined, clarified, or established as follows:

(1) Before a registered nurse may delegate a task that is required to be performed within a school setting, the registered nurse shall:

(a) develop, in conjunction with the applicable student, parent(s) or parent surrogate(s), educator(s), and healthcare provider(s) an IHP; and

(b) ensure that the IHP is available to school personnel.

(2) Any task being delegated by a registered nurse shall be identified within the patient's current IHP.

(3)(a) A registered nurse shall personally train any unlicensed person who will be delegated the task of administering medications that are routine for the student.

(b) The training required under this Subsection (3)(a) shall be performed at least annually.

(c) A registered nurse may not delegate to an unlicensed person the administration of any medication:

(i) with known, frequent side effects that can be life threatening;

(ii) that requires the student's vital signs or oxygen saturation to be monitored before, during or after administration of the drug;

(iii) that is being administered as a first dose in a school setting:

(A) of a new medication; or

(B) after a dosage change; or

(iv) that requires nursing assessment or judgment prior to or immediately after administration.

(d) In addition to delegating other tasks pursuant to this rule, a registered nurse may delegate to an unlicensed person who has been properly trained regarding a diabetic student's IHP:

(i) the administration of a scheduled dose of insulin; and

(ii) the administration of glucagon in an emergency situation, as prescribed by the practitioner's order or specified in the IHP.

R156-31b-703a. Standards of Professional Accountability.

The following standards apply equally to the LPN, RN, and APRN licenses. In demonstrating professional accountability, a licensee shall:

(1) practice within the legal boundaries that apply to nursing;

(2) comply with all applicable statutes and rules;

(3) demonstrate honesty and integrity in nursing practice;

(4) base nursing decisions on nursing knowledge and skills, and the needs of patients;

(5) seek clarification of orders when needed;

(6) obtain orientation/training competency when encountering new equipment and technology or unfamiliar care situations;

(7) demonstrate attentiveness in delivering nursing care;

(8) implement patient care, including medication administration, properly and in a timely manner;

(9) document all care provided;

(10) communicate to other health team members relevant and timely patient information, including:

(a) patient status and progress;

(b) patient response or lack of response to therapies;

(c) significant changes in patient condition; and

(d) patient needs;

(11) take preventive measures to protect patient, others, and self;

(12) respect patients' rights, concerns, decisions, and dignity;

(13) promote a safe patient environment;

(14) maintain appropriate professional boundaries;

(15) contribute to the implementation of an integrated health care plan;

(16) respect patient property and the property of others;

(17) protect confidential information unless obligated by law to disclose the information;

(18) accept responsibility for individual nursing actions, competence, decisions, and behavior in the course of nursing practice; and

(19) maintain continued competence through ongoing learning and application of knowledge in each patient's interest.

R156-31b-703b. Scope of Nursing Practice Implementation.

(1) LPN. An LPN shall be expected to:

(a) conduct a focused nursing assessment;

(b) plan for and implement nursing care within limits of competency;

(c) conduct patient surveillance and monitoring;

(d) assist in identifying patient needs;

(e) assist in evaluating nursing care;

(f) participate in nursing management by:

(i) assigning appropriate nursing activities to other LPNs;

(ii) delegating care for stable patients to unlicensed assistive personnel in accordance with these rules and applicable statutes;

(iii) observing nursing measures and providing feedback to nursing managers; and

(iv) observing and communicating outcomes of delegated and assigned tasks; and

(g) serve as faculty in area(s) of competence.

(2) RN. An RN shall be expected to:

(a) interpret patient data, whether obtained through a focused nursing assessment or otherwise, to:

(i) complete a comprehensive nursing assessment; and

(ii) determine whether, and according to what timeframe, another medical professional, a patient's family member, or any other person should be apprised of a patient's nursing needs;

(b) detect faulty or missing patient information;

(c) apply nursing knowledge effectively in the synthesis of the biological, psychological, spiritual, and social aspects of the patient's condition;

(d) utilize broad and complete analyses to plan strategies of nursing care and nursing interventions that are integrated within each patient's overall health care plan or IHP;

(e) demonstrate appropriate decision making, critical thinking, and clinical judgment to make independent nursing decisions and to identify health care needs;

(f) correctly identify changes in each patient's health status;

(g) comprehend clinical implications of patient signs, symptoms, and changes as part of ongoing or emergent situations;

(h) critically evaluate the impact of nursing care, the patient's response to therapy, and the need for alternative

interventions;

(i) intervene on behalf of a patient when problems are identified so as to revise a care plan as needed;

(j) appropriately advocate for patients by:

(i) respecting patients' rights, concerns, decisions, and dignity;

(ii) identifying patient needs;

(iii) attending to patient concerns or requests; and

(iv) promoting a safe and therapeutic environment by:

(A) providing appropriate monitoring and surveillance of the care environment;

(B) identifying unsafe care situations; and

(C) correcting problems or referring problems to appropriate management level when needed;

(k) communicate with other health team members regarding patient choices, concerns, and special needs, including:

(i) patient status and progress;

(ii) patient response or lack of response to therapies; and

(iii) significant changes in patient condition;

(l) demonstrate the ability to responsibly organize, manage, and supervise the practice of nursing by:

(i) delegating tasks in accordance with these rules and applicable statutes; and

(ii) matching patient needs with personnel qualifications, available resources, and appropriate supervision;

(m) teach and counsel patient families regarding an applicable health care regimen, including general information about health and medical conditions, specific procedures, wellness, and prevention;

(n) if acting as a chief administrative nurse:

(i) ensure that organizational policies, procedures, and standards of nursing practice are developed, kept current, and implemented to promote safe and effective nursing care;

(ii)(A) assess the knowledge, skills, and abilities of nursing staff and assistive personnel; and

(B) ensure all personnel are assigned to nursing positions appropriate to their determined competence and licensure/certification/registration level; and

(iii) ensure that thorough and accurate documentation of personnel records, staff development, quality assurance, and other aspects of the nursing organization are maintained;

(o) if employed by a department of health:

(i) implement standing orders and protocols; and

(ii) complete and provide to a patient prescriptions that have been prepared and signed by a physician in accordance with the provisions of Section 58-17b-620;

(p) serve as faculty in area(s) of competence; and

(q) perform any task within the scope of practice of an LPN.

(3) APRN.

(a) An APRN who chooses to change or expand from a primary focus of practice shall, at the request of the Division, document competency within that expanded practice based on education, experience, and certification. The burden to demonstrate competency rests upon the licensee.

(b) An individual licensed as an APRN may practice within the scope of practice of an RN and an LPN in Utah.

(c) An APRN who wishes to practice as an RN in a Compact state must reinstate, qualify for, and obtain an RN Compact license in Utah.

R156-31b-801. Medication Aide Certified -- Formulary and Protocols.

In accordance with Subsection 58-31b-102(12)(b)(i), the formulary and protocols for an MAC to administer routine medications are as follows.

(1) Under the supervision of a licensed nurse, an MAC may:

(a) administer over-the-counter medication;

(b) administer prescription medications:

(i) if expressly instructed to do so by the supervising nurse; and

(ii) via approved routes as listed in Subsection 58-31b-102(17)(b);

(c) turn oxygen on and off at a predetermined, established flow rate;

(d) destroy medications per facility policy;

(e) assist a patient with self administration; and

(f) account for controlled substances with another MAC or nurse physically present.

(2) An MAC may not administer medication via the following routes:

(a) central lines;

(b) colostomy;

(c) intramuscular;

(d) subcutaneous;

(e) intrathecal;

(f) intravenous;

(g) nasogastric;

(h) nonmetered inhaler;

(i) intradermal;

(j) urethral;

(k) epidural;

(l) endotracheal; or

(m) gastronomy or jejunostomy tubes.

(3) An MAC may not administer the following kinds of medications:

(a) barium and other diagnostic contrast;

(b) chemotherapeutic agents except oral maintenance chemotherapy;

(c) medication pumps including client controlled analgesia; and

(d) nitroglycerin paste.

(4) An MAC may not:

(a) administer any medication that requires nursing assessment or judgment prior to administration, through ongoing evaluation, or during follow-up;

(b) receive written or verbal patient orders from a licensed practitioner;

(c) transcribe orders from the medical record;

(d) conduct patient or resident assessments or evaluations;

(e) engage in patient or resident teaching activities regarding medications unless expressly instructed to do so by the supervising nurse;

(f) calculate drug doses, or administer any medication that requires a medication calculation to determine the appropriate dose;

(g) administer the first dose of a new medication or a dosage change, unless expressly instructed to do so by the supervising nurse; or

(h) account for controlled substances, unless assisted by another MAC or a nurse who is physically present.

(5) In accordance with Section R156-31b-701, a nurse may refuse to delegate to an MAC the administration of medications to a specific patient or in a specific situation.

(6)(a) A nurse practicing in a facility that is required to provide nursing services 24 hours per day shall not supervise more than two MACs per shift.

(b) A nurse providing nursing services in a facility that is not required to provide nursing services 24 hours per day may supervise as many as four MACs per shift.

R156-31b-802. Medication Aide Certified -- Approval of Training Programs.

In accordance with Subsection 58-31b-601(3), the minimum standards for an MAC training program to be approved by the Division in collaboration with the Board and

the process to obtain approval are established as follows.

(1) All training programs shall be approved by the Division in collaboration with the Board and shall obtain approval prior to the program being implemented.

(2) Training programs may be offered by an educational institution, a health care facility, or a health care association.

(3) The program shall consist of at least:

(a) 60 clock hours of didactic (classroom) training that is consistent with the model curriculum set forth in Section R156-31b-803; and

(b) 40 hours of practical training within a long-term care facility.

(4) The classroom instructor shall:

(a)(i) have a current, active, LPN, RN, or APRN license in good standing or a multistate privilege to practice nursing in Utah; and

(ii) have at least one year of clinical experience; or

(b)(i) be an approved certified nurse aide (CNA) instructor who has completed a "Train the Trainer" program recognized by the Utah Nursing Assistant Registry; and

(ii) have at least one year of clinical experience.

(5)(a) The on-site practical training experience instructor shall meet the following criteria:

(i)(A) have a current, active, LPN, RN or APRN license in good standing or a multistate privilege to practice nursing in Utah; and

(B) have at least one year of clinical experience; or

(ii)(A) be an approved certified nurse aide (CNA) instructor who has completed a "Train the Trainer" program recognized by the Utah Nursing Assistant Registry; and

(B) have at least one year of clinical experience.

(b) The practical training instructor-to-student ratio shall be no greater than:

(i) 1:2 if the instructor is working with individual students to administer medications; or

(ii) 1:6 if the instructor is supervising students who are working one-on-one with medication nurses to administer medications in clinical facilities.

(c) The on-site practical training experience instructor shall be on site and available at all times if the student is not being directly supervised by a licensed nurse during the practical training experience.

(6) An entity seeking approval to provide an MAC training program shall:

(a) submit to the Division a complete application form prescribed by the Division;

(b) provide evidence of adequate and appropriate trainers and resources to provide the training program, including a well-stocked clinical skills lab or the equivalent;

(c) submit to the Division a copy of the proposed training curriculum and an attestation that the proposed curriculum is consistent with the model curriculum referenced in Section R156-31b-803;

(d) document minimal admission requirements, which shall include:

(i) an earned high school diploma, successful passage of the general educational development (GED) test, or equivalent education as approved by the Board;

(ii) current certification as a nursing aide, in good standing, from the Utah Nursing Assistant Registry;

(iii) at least 2,000 hours of experience completed:

(A) as a certified nurse aide working in a long-term care setting; and

(B) within the two-year period preceding the date of application to the training program: and

(iv) current cardiopulmonary resuscitation (CPR) certification.

R156-31b-803. Medication Aide Certified -- Model Curriculum.

A school that offers a medication aide certification program shall follow the "Medication Assistant-Certified (MA-C) Model Curriculum" adopted by the National Council of State Boards of Nursing's Delegate Assembly on August 9, 2007, which is hereby adopted and incorporated by reference.

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

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

R156-37f-102. Definitions.

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

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

(2) "DEA" means Drug Enforcement Administration.

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

(4) "EHR" means electronic health record.

(5) "HIE" means health information exchange.

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

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

(8) "NDC" means National Drug Code.

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

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

(11) "Point of sale date", "POS date", or "Date Sold" means the date the prescription drug left the pharmacy (not the date the prescription drug was filled, if the dates differ). ASAP Version 4.2 uses the "DSP17" field to identify the point of sale date.

(12) "Positive identification" means:

(a) one of the following photo identifications issued by a foreign or domestic government:

(i) driver's license;

(ii) non-driver identification card;

(iii) passport;

(iv) military identification; or

(v) concealed weapons permit; or

(b) if the individual does not have government-issued identification, alternative evidence of the individual's identity as deemed appropriate by the pharmacist, as long as the pharmacist documents in a prescription record a description of how the individual was positively identified.

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

(14) "Rx" means a prescription.

(15) "Zero report" means a report containing the data fields required by Subsection R156-37f-203(5), indicating that no controlled substance required to be reported has been dispensed since the previous submission of data.

R156-37f-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 37f.

R156-37f-104. Organization - Relationship to Rule R156-1.

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

R156-37f-203. Submission, Collection, and Maintenance of Data.

(1) In accordance with Subsection 58-37f-203(1), each pharmacy or pharmacy group shall submit the data required in this section on a daily basis, either in real time or daily batch file reporting. The submitted data shall be from the point of sale date.

(a) If the data is submitted by a single pharmacy entity, the data shall be submitted in chronological order according to the date each prescription was sold.

(b) If the data is submitted by a pharmacy group, the data shall be sorted by individual pharmacy within the group, and the data of each individual pharmacy within the group shall be submitted in chronological order according to the date each prescription was sold.

(2) In accordance with Subsections 58-37f-203(2), (3), and (6), the data required by this section shall be submitted to the Database through one of the following methods:

(a) electronic data sent via a secured internet transfer method, including sFTP site transfer;

(b) secure web base service; or

(c) any other electronic method approved by the Database administrator prior to submission.

(3) In accordance with Subsections 58-37f-203(2), (3), and (6), the format used for submission to the Database shall be Version 4.2 of the American Society for Automation in Pharmacy (ASAP) Format for Controlled Substances. The Division may approve alternative formats substantially similar to this standard.

(4) In accordance with Subsection 58-37f-203(6), the pharmacist-in-charge and the pharmacist identified in Subsections 58-37f-203(2) and (3) shall provide the following data fields to the Division:

(a) version of ASAP used to send transaction (ASAP 4.2 code = TH01);

(b) transaction control number (TH02);

(c) date transaction created (TH05);

(d) time transaction created (TH06);

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

(f) segment terminator character (TH09);

(g) information source identification number (IS01);

(h) information source entity name (IS02);

(i) reporting pharmacy's:

(i) National Provider Identifier (PHA01); and

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

(j) patient last name (PAT07);

(k) patient first name (PAT08);

(l) patient address (PAT12);

(m) patient city of residence (PAT14);

(n) patient zip code (PAT 16);

(o) patient date of birth (PAT18);

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

(q) prescription number (DSP02);

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

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

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

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

(v) product identification qualifier (DSP07);

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

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

(y) days supply dispensed (DSP10)

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

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

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

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

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

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

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

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

(hh) dispensing pharmacist first name (AIR10);

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

(jj) transaction control number (TT01); and

(kk) total number of segments included in the transaction (TT02).

(5) In accordance with Subsection 58-37f-203(6), if no controlled substance required to be reported has been dispensed since the previous submission of data, then the pharmacist-in-charge and the pharmacist shall submit a zero report to the Division, which shall include the following data fields:

(a) version of ASAP used to send transaction (TH01);

(b) transaction control number (TH02);

(c) date transaction created (TH05);

(d) time transaction created (TH06);

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

(f) segment terminator (TH09);

(g) information source identification number (IS01);

(h) information source entity name (IS02);

(i) date range (IS03);

(j) reporting pharmacy's:

(i) National Provider Identifier (PHA01); and

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

(k) patient last name = "Report" (PAT07);

(l) patient first name = "Zero" (PAT08);

(m) date prescription dispensed at dispensing pharmacy (DSP05);

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

(o) transaction control number (TT01); and

(p) total number of segments included in the transaction (TT02).

(6) In accordance with Subsection 58-37f-203(2), a Class A, B, D, or E pharmacy or pharmacy group that has a controlled substance license but is not dispensing controlled substances and does not anticipate doing so in the immediate future may request a waiver or submit a certification of such, in a form preapproved by the Division, in lieu of daily zero reports:

(a) The waiver or certification must be renewed at the end of each calendar year.

(b) If a pharmacy or pharmacy group that has submitted a waiver or certification under this Subsection dispenses a controlled substance:

(i) the waiver or certification shall immediately and automatically terminate;

(ii) the Database reporting requirements of Subsections 58-37f-203(1) and R156-37f-203(1) shall apply to the pharmacy or pharmacy group immediately upon the dispensing of the controlled substance; and

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

(7) The Database shall collect information regarding the prescription noncontrolled substance 1-(Aminomethyl)-cyclohexaneacetic acid (Gabapentin), in accordance with Subsection 58-37f-203(8).

(8) The Database shall collect information regarding "any substance which contains any quantity of a derivative of barbituric acid or any salt of any of them" (Butalbital), in accordance with Subsection 58-37-4(2)(c)(ii) which designates this as a Schedule III controlled substance.

R156-37f-301. Access to Database Information.

In accordance with Subsections 58-37f-301(1)(a) and (b):

(1) The Division Director may designate those individuals employed by the Division who may have access to the information in the Database (Database staff).

(2)(a) An applicant to become a registered user of the Database shall apply for an online account and user name only under the specific subparagraph in Subsection 58-37f-301(2) under which he or she qualifies.

(b) A registered user shall not permit another person to have knowledge of or use the registered user's assigned password or PIN.

(3)(a) A request for information from the Database may be made:

(i) directly to the Database by electronic submission, if the requester is registered to use the Database; or

(ii) by written request to the Database staff in accordance with the requirements of this section, if the requester is not registered to use the Database.

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

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

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

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

(b) subject's birth date;

(c) date prescription was sold;

(d) prescription (Rx) number;

(e) metric quantity;

(f) days supply;

(g) NDC code/drug name;

(h) prescriber ID/name;

(i) subject's last name;

(j) subject's first name; and

(k) subject's street address;

(5)(a) Federal, state and local law enforcement authorities and state and local prosecutors requesting information from the Database under Subsection 58-37f-301(2)(m) shall provide a valid search warrant authorized by the courts, which may be provided using one of the following methods:

(i) in person;

(ii) email to csd@utah.gov;

(iii) facsimile; or

(iv) U.S. Mail.

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

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

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

(iii) the date range to be searched.

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

(6) In accordance with Subsection 58-37f-301(2)(n), a probation or parole officer employed by the Department of Corrections or a political subdivision may have access to the database without a search warrant, for supervision of a specific probationer or parolee under the officer's direct supervision, if the following conditions have been met:

(a) a security agreement signed by the officer is submitted to the Division for access, which contains:

(i) the agency's:

(A) name;

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

(C) ORI number;

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

(iii) the officer's:

(A) full name;

(B) contact phone number; and

(C) agency email address; and

(b) the online database account includes the officer's:
(i) full name;
(ii) agency email address;
(iii) complete home address, including city and zip code;
(iv) work title;
(v) contact phone number;
(vi) complete work address including city and zip code;
(vii) work phone number; and
(viii) driver's license number.
(7) In accordance with Subsections 58-37f-301(2)(q) and (r):
(a) An individual may:
(i) obtain the individual's own information and records contained within the Database; and
(ii) unless the individual's record is subject to a pending or current investigation authorized under Subsection 58-37f-301(2)(r), receive an accounting of persons or entities that have requested or received Database information about the individual, to include:
(A) the role of the person that accessed the information;
(B) the date range of the information that was accessed, if available;
(C) the name of the person or entity that requested the information; and
(D) the name of the practitioner on behalf of whom the request was made, if applicable.
(b) The individual may request the information by submitting an original signed and notarized request as furnished by the Division that includes:
(i) the individual's:
(A) full name, including all aliases;
(B) complete home address;
(C) telephone number; and
(D) date of birth;
(ii) a clearly legible, color copy of government-issued picture identification confirming the individual's identity; and
(iii) requested date range for the information.
(c) A third party may request information from the Database on behalf of an individual as provided in Subsection (7)(a), by submitting:
(i) an original signed and notarized request as furnished by the Division;
(ii) a clearly legible, color copy of government-issued picture identification confirming the requester's identity; and
(iii) an original, or certified copy, of properly executed legal documentation acceptable to the Database staff that the requester:
(A) is the individual's current agent under a power of attorney that:
(I) authorizes the agent to make health are decisions for the individual;
(II) allows the agent to have access to the patient's protected health information (PHI) under HIPAA; or
(III) otherwise grants the agent specific authority to obtain Database information on behalf of the individual;
(B) is the parent or court-appointed legal guardian of a minor individual;
(C) is the court-appointed legal guardian of an incapacitated adult individual; or
(D) has an original, signed, and notarized form for release of records from the individual in a format acceptable to the Database staff, that identifies the purpose of the release with respect to the Database.
(8) An employee of a licensed practitioner who is authorized to prescribe controlled substances may obtain Database information to the extent permissible under Subsection 58-37f-301(2)(i), if prior to making the request:
(a) the licensed practitioner has provided to the Division a written designation that includes:
(i) the practitioner's:
(A) DEA number; and
(B) email address account registered with the Database; and
(ii) the designated employee's:
(A) full name;
(B) complete home address;
(C) e-mail address;
(D) date of birth;
(E) driver license number or state identification card number; and
(F) professional license number, if any; and
(iii) manual signatures from both the practitioner and designated employee.
(b) the designated employee has registered for an account for access to the Database and provided a unique user identification;
(c) the designated employee has passed a Database background check of available criminal court and Database records; and
(d) the Database has issued the designated employee a user personal identification number (PIN) and activated the employee's Database account.
(9) An employee of a business that employs a licensed practitioner who is authorized to prescribe controlled substances may obtain Database information to the extent permissible under Subsection 58-37f-301(2)(i), if prior to making the request:
(a) the licensed practitioner and employing business have provided to the Division a written designation that includes:
(i) the practitioner's:
(A) DEA number; and
(B) email address account registered with the Database;
(ii) the name of the employing business; and
(iii) the designated employee's:
(A) full name;
(B) complete home address;
(C) e-mail address;
(D) date of birth;
(E) driver license number or state identification card number; and
(F) professional license number, if any;
(b) the designated employee has registered for an account for access to the Database and provided a unique user identification and password;
(c) the designated employee has passed a Database background check of available criminal court and Database records; and
(d) the Database has issued the designated employee a user personal identification number (PIN) and activated the employee's Database account.
(10) An individual who is employed in the emergency department of a hospital that employs a licensed practitioner who is authorized to prescribe controlled substances may obtain Database information to the extent permissible under Subsection 58-37f-301(4)(a) if, prior to making the request:
(a) the practitioner and the hospital operating the emergency department have provided to the Division a written designation that includes:
(i) the practitioner's:
(A) DEA number; and
(B) email address account registered with the Database;
(ii) the name of the hospital; and
(iii) the designated employee's:
(A) full name;
(B) complete home address;
(C) e-mail address;
(D) date of birth;
(E) driver license number or state identification card

number; and

(F) professional license number, if any;

(b) the designated employee has registered for an account for access to the Database and provided a unique user identification and password;

(c) the designated employee has passed a Database background check of available criminal court and Database records; and

(d) the Database has issued the designated employee a user personal identification number (PIN) and activated the employee's Database account.

(11) In accordance with Subsection 58-37f-301(5), an individual's requests to the Division regarding third-party notice when a controlled substance or noncontrolled substance prescription is dispensed to that individual, shall be made as follows:

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

(i) the individual's:

(A) full name, including all aliases;

(B) birth date;

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

(D) email address; and

(E) contact phone number;

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

(iii) the designated third party's:

(A) full name;

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

(C) email address; and

(D) contact phone number.

(b) After receiving a request to discontinue third-party notice, the Division shall:

(i) provide notice to the requesting individual that the discontinuation notice was received; and

(ii) provide notice to the designated third party that the notification has been rescinded.

(c) An individual may have up to three active designated third parties.

(12) A licensed pharmacy technician or pharmacy intern employed by a pharmacy may obtain Database information to the extent permissible under Subsection 58-37f-301(2)(l) if, prior to making the request:

(a) the pharmacist-in-charge (PIC) has provided to the Division a written designation authorizing access to the pharmacy technician or pharmacy intern on behalf of a licensed pharmacist employed by the pharmacy;

(b) the written designation includes the pharmacy technician's or pharmacy intern's:

(i) full name;

(ii) professional license number assigned by the Division;

(iii) email address;

(iv) contact phone number;

(v) pharmacy name and location;

(vi) pharmacy DEA number;

(vii) pharmacy phone number;

(c) the written designation includes the pharmacist-in-charge's (PIC's):

(i) full name;

(ii) professional license number assigned by the Division;

(iii) email address;

(iv) contact phone number;

(d) the written designation includes the assigned pharmacist's:

(i) full name;

(ii) professional license number assigned by the Division;

(iii) email address;

(iv) contact phone number; and

(e) the written designation includes the following signatures:

(i) pharmacy technician or pharmacy intern;

(ii) pharmacist-in-charge (PIC); and

(iii) assigned pharmacist if different than the PIC.

(13) The Utah Department of Health may access Database information for purposes of scientific study regarding public health. To access information, the scientific investigator shall:

(a) demonstrate to the satisfaction of the Division that the research is part of an approved project of the Utah Department of Health;

(b) provide a description of the research to be conducted, including:

(i) a research protocol for the project; and

(ii) a description of the data needed from the Database to conduct that research;

(c) provide assurances and a plan that demonstrates all Database information will be maintained securely, with access being strictly restricted to the requesting scientific investigator;

(d) provide for electronic data to be stored on a secure database computer system with access being strictly restricted to the requesting scientific investigator; and

(e) pay all relevant expenses for data transfer and manipulation.

(14) Database information that may be disseminated under Section 58-37f-301 may be disseminated by the Database staff either:

(a) verbally;

(b) by facsimile;

(c) by email;

(d) by U.S. mail; or

(e) by electronic access, where adequate technology is in place to ensure that a record will not be compromised, intercepted, or misdirected.

(15)(a) A designating practitioner or other person that employs a designee authorized to obtain Database information, shall submit to the Division a notice of disassociation of designee as soon as practicable after that designee ceases employment or is otherwise no longer designated.

(b) The notice of disassociation of designee shall be on a form provided by the Division, and include:

(i) the designee's full name;

(ii) the designee's email address;

(iii) the designating practitioner's:

(A) name;

(B) DEA number;

(C) DOPL license number;

(D) email address;

(iv) the establishment's:

(A) name;

(B) phone number, and fax number if any; and

(C) address;

(v) the reason for disassociation; and

(vi) the signature of the designating practitioner or person authorized to sign on their behalf.

R156-37f-302. Other Restrictions on Access to Database.

Subsection 58-37f-302(2), which prohibits any individual or organization with lawful access to the data from being compelled to testify with regard to the data, includes deposition testimony.

R156-37f-303. Access to Opioid Prescription Information Via an Electronic Data System.

In accordance with Subsection 58-37f-301(1) and Section 58-37f-303:

(1) Pursuant to Subsection 58-37f-303(4)(a)(i), to access

opioid prescription information in the database, an electronic data system must:

(a) interface with the database through the Division-approved Prescription Monitoring Program (PMP) Hub system; and

(b) comply with all restrictions on database access and use of database information, as established by the Utah Controlled Substances Database Act and the Controlled Substance Database Act Rule.

(2) Pursuant to Subsection 58-37f-303(4)(a)(ii), to access opioid prescription information in the database via an electronic data system (EDS), an EDS user must:

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

(b) use the unique user name and password associated with the account created for the EDS user to access database information through the original internet access system;

(c) comply with all restrictions on database access established by the Utah Controlled Substance Database Act and the Controlled Substance Database Act Rule; and

(d) use opioid prescription information in the database only for the purposes and uses designated in Section 58-37f-201, and as more particularly described in the Utah Controlled Substances Database Act and the Controlled Substances Database Act Rule.

(3) The Division may immediately suspend, without notice or opportunity to be heard, an electronic data system's or an EDS user's access to the database, if the Division determines by audit or other means that such access may lead to a violation of Section 58-37f-601 or may otherwise compromise the integrity, privacy, or security of the database's opioid prescription information. This remedy shall be in addition to the criminal and civil penalties imposed by Section 58-37f-601 for unlawful release or use of database information, and the Division's obligation under Subsections 58-37f-303(5) and (6) to immediately suspend or revoke database access and pursue appropriate corrective or disciplinary action against a non-compliant electronic data system or EDS user.

KEY: controlled substance database, licensing
December 9, 2019 58-1-106(1)(a)
Notice of Continuation December 21, 2017 58-37f-301(1)

R156. Commerce, Occupational and Professional Licensing.
R156-44a. Nurse Midwife Practice Act Rule.
R156-44a-101. Title.

This rule is known as the "Nurse Midwife Practice Act Rule."

R156-44a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 44a, as used in Title 58, Chapters 1 and 44a or this rule:

(1) "Approved certified nurse midwifery education program" means an educational program which is accredited by the American Midwifery Certification Board (AMCB), affiliated with the American College of Nurse-Midwives (ACNM).

(2) "CNM" means a certified nurse midwife.

(3) "Delegation" means transferring to an individual the authority to perform a selected nursing task in a selected situation. The nurse retains accountability for the delegation.

(4) "Direct supervision" as used in Section 58-44a-305 means that the person providing supervision shall be available on the premises at which the supervisee or consultee is engaged in practice.

(5) "Generally recognized scope and standards of nurse midwifery" means the scope and standards of practice set forth in the "Core Competencies for Basic Midwifery Practice", June 2012, and the "Standards for the Practice of Midwifery", September 2011, published by the American College of Nurse-Midwives which are hereby adopted and incorporated by reference, or as established by the professional community.

(6) "Intrapartum referral plan":

(a) is as defined in Section 58-44a-102; and

(b) as provided in Section 58-44a-102, does not require the signature of a physician.

(7) "Supervision" in Section R156-44a-601 means the provision of guidance or direction, evaluation and follow up by the certified nurse midwife for accomplishment of tasks delegated to unlicensed assistive personnel or other licensed individuals.

(8) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 44a, is further defined in Section R156-44a-502.

R156-44a-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 44a.

R156-44a-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.

R156-44a-302. Qualifications for Licensure - Examination Requirements.

In accordance with Subsection 58-44a-302(6), the examination required for licensure is the national certifying examination administered by the American Midwifery Certification Board, Inc.

R156-44a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 44a is established by rule in Section R156-1-308a(1).

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

(3) Each applicant for licensure renewal shall hold a valid certification from the American Midwifery Certification Board, Inc.

R156-44a-305. Inactive Licensure.

(1) A licensee may apply for inactive licensure status in accordance with Sections 58-1-305 and R156-1-305.

(2) To reactivate a license which has been inactive for five years or less, the licensee must document current compliance with the continuing competency requirements as established in Subsection R156-44a-303(3).

(3) To reactivate a license which has been inactive for more than five years, the licensee must document one of the following:

(a) active licensure in another state or jurisdiction;

(b) completion of a refresher program approved by the American College of Nurse Midwives; or

(c) passing score on the required examinations as defined in Section R156-44a-302 within six months prior to making application to reactivate a license.

R156-44a-402. Administrative Penalties.

In accordance with Subsections 58-44a-102(1), 58-44a-402(1), and 58-44a-503(3), unless otherwise ordered by the presiding officer, the following fine schedule shall apply:

TABLE

FINE SCHEDULE

VIOLATION	FIRST OFFENSE	SUBSEQUENT OFFENSE
58-44a-501(1)	$ 2,000 - $ 5,000	$ 5,000 - $10,000
58-44a-501(2)	$ 100 - $ 500	$ 200 - $ 1,000
58-44a-501(3)	$ 100 - $ 500	$ 200 - $ 1,000
58-44a-501(4)	$ 2,000 - $ 5,000	$ 5,000 - $10,000
58-44a-502(1)	$ 100 - $ 500	$ 200 - $ 1,000
58-44a-502(2)	$ 500 - $ 2,000	$ 2,000 - $10,000
58-44a-502(3)	$ 500 - $ 2,000	$ 2,000 - $10,000
58-44a-502(4)	$ 100 - $ 500	$ 200 - $ 1,000
58-44a-502(5)	$ 200 - $ 1,000	$ 500 - $ 2,000
58-44a-502(6)	Double the original penalty amount, up to $10,000	
58-44a-502(7)	$ 500 - $ 1,000	$ 500 - $ 1,000
58-44a-502(8)(a)	$ 500 - $ 1,000	$ 500 - $ 2,000
58-44a-502(8)(b)	$ 500 - $ 1,000	$ 500 - $ 2,000
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)	$ 500 - $ 2,000	$ 2,000 - $10,000
58-1-502(2)(a)	$ 500 - $ 2,000	$ 2,000 - $10,000
58-1-502(2)(b)	$ 500 - $ 2,000	$ 2,000 - $10,000
58-1-502(2)(c)	$ 500 - $ 2,000	$ 2,000 - $10,000
58-1-502(2)(d)	$ 100 - $ 500	$ 200 - $ 1,000
58-1-502(2)(e)	$ 100 - $ 500	$ 200 - $ 1,000
58-1-502(2)(f)	$ 100 - $ 500	$ 200 - $ 1,000
58-1-502(2)(g)	$ 500 - $ 2,000	$ 2,000 - $10,000
58-1-502(2)(h)	$ 100 - $ 500	$ 200 - $ 1,000
58-1-502(2)(i)	$ 100 - $ 500	$ 200 - $ 1,000
58-1-502(2)(j)	$ 100 - $ 500	$ 200 - $ 1,000
58-1-502(2)(k)	$ 100 - $ 500	$ 200 - $ 1,000
R156-44a-502(1)	$ 100 - $ 500	$ 200 - $ 1,000
R156-44a-502(2)	$ 250	$ 500 - $ 1,000
Ongoing offense(s)	$ 1,000 per day but not less than the second offense.	
Any other conduct which constitutes unprofessional or unlawful conduct:	$ 100 - $ 500	$ 200 - $ 1,000

R156-44a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failure to abide by the "Code of Ethics" published by the American College of Nurse-Midwives, June 2015, which is hereby adopted and incorporated by reference;

(2) failing to discuss the risks of using an opiate with a patient or the patient's guardian before issuing an initial opiate prescription, in accordance with Section 58-37-19.

R156-44a-601. Delegation of Nursing Tasks.

In accordance with Subsection 58-44a-102(11), the delegation of nursing tasks is further defined, clarified, or established as follows:

(1) The certified nurse midwife delegating tasks retains the accountability for the appropriate delegation of tasks and for the nursing care of the patient/client. The licensed nurse shall not delegate any task requiring the specialized knowledge, judgment

and skill of a licensed nurse to an unlicensed assistive personnel. It is the licensed nurse who shall use professional judgment to decide whether or not a task is one that must be performed by a nurse or may be delegated to an unlicensed assistive personnel. This precludes a list of nursing tasks that can be routinely and uniformly delegated for all patients/clients in all situations. The decision to delegate must be based on careful analysis of the patient's/client's needs and circumstances.

(2) The licensed nurse who is delegating a nursing task shall:

(a) verify and evaluate the orders;

(b) perform a nursing assessment;

(c) determine whether the task can be safely performed by an unlicensed assistive personnel or whether it requires a licensed health care provider;

(d) verify that the delegatee has the competence to perform the delegated task prior to performing it;

(e) provide instruction and direction necessary to safely perform the specific task; and

(f) provide ongoing supervision and evaluation of the delegatee who is performing the task.

(3) The delegator shall evaluate the situation to determine the degree of supervision required to ensure safe care.

(a) The following factors shall be evaluated to determine the level of supervision needed:

(i) the stability of the condition of the patient/client;

(ii) the training and capability of the delegatee;

(iii) the nature of the task being delegated; and

(iv) the proximity and availability of the delegator to the delegatee when the task will be performed.

(b) The delegating nurse or another qualified nurse shall be readily available either in person or by telecommunication. The delegator responsible for the care of the patient/client shall make supervisory visits at appropriate intervals to:

(i) evaluate the patient's/client's health status;

(ii) evaluate the performance of the delegated task;

(iii) determine whether goals are being met; and

(iv) determine the appropriateness of continuing delegation of the task.

(4) Nursing tasks, to be delegated, shall meet the following criteria as applied to each specific patient/client situation:

(a) be considered routine care for the specific patient/client;

(b) pose little potential hazard for the patient/client;

(c) be performed with a predictable outcome for the patient/client;

(d) be administered according to a previously developed plan of care; and

(e) not inherently involve nursing judgment which cannot be separated from the procedure.

(5) If the nurse, upon review of the patient's/client's condition, complexity of the task, ability of the unlicensed assistive personnel and other criteria as deemed appropriate by the nurse, determines that the unlicensed assistive personnel cannot safely provide care, the nurse shall not delegate the task.

R156-44a-609. Standards for Out-of-State Programs Providing Certified Nurse Midwife Clinical Experiences in Utah.

(1) In order to qualify for the exemption set forth in Subsection 58-1-304(1)(b), approval of a nurse midwifery education program located in another state that uses Utah health care facilities for clinical experiences with certified nurse midwives for one or more students shall, prior to placing a student, submit a request for approval in writing to the Certified Nurse Midwife Board and demonstrate to the satisfaction of the Board that the program:

(a) has been approved, if required, by the regulatory body responsible for certified nurse midwives in the program's home state;

(b) holds current accreditation from the Accreditation Commission for Midwifery Education (ACME);

(c) has clinical faculty who are employed by the nurse midwifery education program;

(d) is affiliated with an institution of higher education; and

(e) has established criteria for selection and supervision of:

(i) onsite preceptors; and

(ii) the clinical activities.

(2) Following approval by the Board, the nurse midwifery program shall:

(a) reapply for Board review and approval when the program's ACME accreditation is reaffirmed; and

(b) notify the Board, in writing, of any change in its accreditation status.

KEY: licensing, midwifery, certified nurse midwife
December 9, 2019 58-1-106(1)(a)
Notice of Continuation August 28, 2018 58-1-202(1)(a)
58-44a-101

R156. Commerce, Occupational and Professional Licensing.
R156-46b. Division Utah Administrative Procedures Act Rule.
R156-46b-101. Title.

This rule is known as the "Division Utah Administrative Procedures Act Rule."

R156-46b-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Title 63G, Chapter 4, Subsection 58-1-108(1), and Subsection 58-1-106(1)(a). The purposes of this rule include:

(a) classifying Division adjudicative proceedings;

(b) clarifying the identity of presiding officers at Division adjudicative proceedings; and

(c) defining procedures for Division adjudicative proceedings which are consistent with the requirements of Titles 58 and 63G and Rule R151-4.

R156-46b-201. Formal Adjudicative Proceedings.

(1) The following adjudicative proceedings initiated by a request for agency action are classified as formal adjudicative proceedings:

(a) special appeals board held in accordance with Section 58-1-402;

(b) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as a formal adjudicative proceeding; and

(c) board of appeal held in accordance with Subsection 15A-1-207(3).

(2) The following adjudicative proceedings initiated by a Notice of Agency Action are classified as formal adjudicative proceedings:

(a) disciplinary proceedings, except those classified as informal proceedings under Section R156-46b-202, that result in the following sanctions:

(i) revocation of licensure;

(ii) suspension of licensure;

(iii) restricted licensure;

(iv) probationary licensure;

(v) issuance of a cease and desist order except when imposed through a citation;

(vi) administrative fine except when imposed through a citation; and

(vii) issuance of a public reprimand;

(b) unilateral modification of a disciplinary order; and

(c) termination of diversion agreements.

R156-46b-202. Informal Adjudicative Proceedings.

(1) The following adjudicative proceedings initiated by other than a notice of agency action are classified as informal adjudicative proceedings:

(a) approval or denial of an application for:

(i) initial licensure;

(ii) renewal or reinstatement of licensure;

(iii) relicensure;

(iv) inactive or emeritus licensure status;

(v) a tax credit certificate by a psychiatrist, psychiatric mental health nurse practitioner, or volunteer retired psychiatrist under Section 58-1-111; or

(vi) criminal history determination;

(b) favorable or unfavorable determination, based on an application for criminal history determination pursuant to Section 58-1-310;

(c) board of appeal under Subsection 15A-1-207(3);

(d) approval or denial of claims against the Residence Lien Recovery Fund created under Title 38, Chapter 11;

(e) payment of approved claims against the Residence Lien Recovery Fund described in Subparagraph (f);

(f) approval or denial of a request:

(i) to surrender licensure;

(ii) for entry into diversion program under Section 58-1-404;

(iii) for modification of a disciplinary order;

(iv) for correction of procedural or clerical mistakes; or

(v) for correction of other than procdural or clerical mistakes;

(g) matters relating to diversion program;

(h) citation hearings held in accordance with citation authority established under Title 58;

(i) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as an informal adjudicative proceeding;

(j) disciplinary sanctions imposed in a stipulation or memorandum of understanding with an applicant for licensure; and

(k) all other requests for agency action permitted by statute or rule governing the Division not specifically classified as formal adjudicative proceedings in Subsection R156-46b-201(1).

(2) The following adjudicative proceedings initiated by a notice of agency action are classified as informal adjudicative proceedings:

(a) nondisciplinary proceeding which results in cancellation of licensure;

(b) disciplinary proceedings against:

(i) a contractor, plumber, electrician, or alarm company licensed under Title 58, Chapter 55;

(ii) a controlled substance licensee under Subsection 58-37-6(4)(g); and

(iii) a contract security company or armored car company for failure to replace a qualifier as required under Section 58-63-306;

(c) disciplinary proceedings initiated by a notice of agency action and order to show cause concerning violations of an order governing a license;

(d) disciplinary proceedings initiated by a notice of agency action in which the allegations of misconduct are limited to one or more of the following:

(i) Subsection 58-1-501(2)(c) or (d); or

(ii) Subsections R156-1-501(1) through (5); and

(e) disciplinary proceedings initiated by a notice of agency action concerning evaluation or verification of documentation showing completion of or compliance with renewal requirements under Subsection 58-1-308(4)(b).

R156-46b-301. Designation.

The presiding officers for Division adjudicative proceedings are as defined at Subsection 63G-4-103(1)(h) and as specifically established by Section 58-1-109 and by Section R156-1-109.

R156-46b-401. In General.

(1) The procedures for formal Division adjudicative proceedings are set forth in Sections 63G-4-204 through 63G-4-208, Rule R151-4, and this rule.

(2) The procedures for informal Division adjudicative proceedings are set forth in Section 63G-4-203, Rule R151-4, and this rule.

R156-46b-402. Response to Notice of Agency Action in an Informal Proceeding.

A written response or answer to the allegations in a notice of agency action or incorporated by reference into a notice of agency action that initiates an informal adjudicative proceeding may, as set forth in a notice of agency action, be required to be filed within 30 days of the mailing date of the notice of agency

action or other date specified in the notice of agency action.

R156-46b-403. Evidentiary Hearings in Informal Adjudicative Proceedings.

(1) Evidentiary hearings are not required for informal Division adjudicative proceedings unless required by statute or rule, or permitted by rule and requested by a party within the time prescribed by rule.

(2) Unless otherwise provided, a request for an evidentiary hearing permitted by rule must be submitted in writing no later than 20 days following the issuance of the notice of agency action if the proceeding was initiated by the Division, or together with the request for agency action if the proceeding was not initiated by the Division.

(3) An evidentiary hearing is required for the following informal proceedings:

(a) R156-46b-202(1)(f), board of appeal held in accordance with Subsection 15A-1-207(3); and

(b) R156-46b-202(1)(l), citation hearings held in accordance with Title 58.

(4) An evidentiary hearing is permitted for an informal proceeding pertaining to matters relating to a diversion program in accordance with R156-46b-202(1)(k).

(5) Unless otherwise agreed by the parties, no evidentiary hearing shall be held in an informal adjudicative proceeding unless timely notice of the hearing has been served upon the parties as required by Subsection 63G-4-203(1)(d). Timely notice means service of a Notice of Hearing upon all parties not later than ten days prior to any scheduled evidentiary hearing.

(6) Parties shall be permitted to testify, present evidence, and comment on the issues at an evidentiary hearing in a Division informal adjudicative proceeding.

R156-46b-404. Orders in Informal Adjudicative Proceedings.

(1) Orders issued in Division informal adjudicative proceedings shall comply with Subsection 63G-4-203(1)(i).

(2) Issuance of a license or approval of related requests in response to a request for agency action is sufficient to satisfy the requirements of Subsection 63G-4-203(1)(i).

(3) Issuance of a letter denying a license or related requests is sufficient to satisfy the requirements of Subsection 63G-4-203(1)(i). The letter must explain the reasons for the denial and the rights of the parties to seek agency review, including the time limits for requesting review.

(4) Unless otherwise specified by the director, the fact finder who serves as the presiding officer at an evidentiary hearing convened in Division informal adjudicative proceedings shall issue a final order.

(5) Orders issued in Division informal adjudicative proceedings in which an evidentiary hearing is convened shall comply with the requirements of Subsection 63G-4-208(1).

R156-46b-405. Informal Agency Advice.

(1) The Division may issue an informal guidance letter in response to a request for advice unless the request specifically seeks a declaratory order.

(2) A notice shall appear in the informal guidance letter notifying the subject of the letter that the letter is an informal guidance letter only and is not intended as a formal declaratory order. The notice shall also provide the citation where the requirements which govern declaratory orders are found.

KEY: administrative procedures, government hearings, occupational licensing
December 23, 2019 63G-4-102(6)
Notice of Continuation January 5, 2016 58-1-106(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-67. Utah Medical Practice Act Rule.
R156-67-101. Title.

This rule shall be known as the "Utah Medical Practice Act Rule".

R156-67-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 67, as used in Title 58, Chapters 1 and 67 or this rule:

(1) "ACCME" means the Accreditation Council for Continuing Medical Education.

(2) "Alternate medical practices", as used in Section R156-67-603, means treatment or therapy which is determined in an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to be:

(a) not generally recognized as standard in the practice of medicine;

(b) not shown by current generally accepted medical evidence to present a greater risk to the health, safety, or welfare of the patient than does prevailing treatment considered to be the standard in the profession of medicine; and

(c) supported by a body of current generally accepted written documentation demonstrating the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given.

(3) "AMA" means the American Medical Association.

(4) "Collaborative practice arrangement contract" means a written, signed contract between a collaborating physician licensed and in good standing under Section 58-67-302, and an associate physician holding a restricted license in accordance with Section 58-67-302.8, that:

(a) includes the terms and conditions required by Section 58-67-807 and Section R156-67-807; and

(b) is approved by the Division in accordance with Section 58-67-807 and Section R156-67-807.

(5) "FLEX" means the Federation of State Medical Boards Licensing Examination.

(6) "FMGEMS" means the Foreign Medical Graduate Examination in Medical Science.

(7) "FSMB" means the Federation of State Medical Boards.

(8) "Homeopathic medicine" means a system of medicine employing and limited to substances prepared and prescribed in accordance with the principles of homeopathic pharmacology as described in the Homeopathic Pharmacopoeia of the United States, its compendia, addenda, and supplements, as officially recognized by the federal Food, Drug and Cosmetic Act, Public Law 717.21 U.S. Code Sec. 331 et seq., as well as the state of Utah's food and drug laws and Controlled Substances Act.

(9) "LMCC" means the Licentiate of the Medical Council of Canada.

(10) "NBME" means the National Board of Medical Examiners.

(11) "Supervision form" means the form provided by the Division to document completion of the "continuously present" or "on-site" supervision required by Subsection 58-67-807(1)(d) for an associate physician practicing in a medically underserved area.

(12) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 67 is further defined in accordance with Subsection 58-1-203(1)(e), in Section R156-67-502.

(13) "USMLE" means the United States Medical Licensing Examination.

R156-67-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 67.

R156-67-104. Organization - Relationship to Rule R156-1.

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

R156-67-302a. Qualifications for Licensure - Practitioner Data Banks.

In accordance with Subsections 58-67-302(1)(a)(i) and 58-1-401(2), applicants applying for licensure under Subsections 58-67-302(1) and (2) shall include the following:

(1) Federation Credentials Verification Service (FCVS) report;

(2) American Medical Association Profile;

(3) Federation of State Medical Boards Disciplinary Inquiry report; and

(4) National Practitioner Data Bank Report of Action.

R156-67-302d. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-67-302(1)(f), the required licensing examination sequence is as follows:

(a) the FLEX components I and II on which the applicant shall have achieved a score of not less than 75 on each component part;

(b) the NBME examination parts I, II, and III on which the applicant shall achieve a passing score of not less than 75 on each part;

(c) the USMLE, steps 1, 2 and 3 on which the applicant shall achieve a score of not less than 75 on each step;

(d) the LMCC examination, Parts 1 and 2;

(e) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the NBME part III or the USMLE step 3;

(f) the FLEX component 1 and the USMLE step 3; or

(g) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the FLEX component 2.

(h) In accordance with Subsection 58-67-302.5(1)(g), all applicants who are foreign medical graduates shall pass the FMGEMS unless they pass the USMLE steps 1 and 2.

(i) Candidates who fail any combination of the USMLE, FLEX and NBME three times must provide a narrative regarding the failure and may be requested to meet with the Board and Division.

(2) In accordance with Subsections 58-67-302(1)(g) and (2)(e), an applicant may be required to take the SPEX examination if the applicant:

(a) has not practiced in the past five years;

(b) has had disciplinary action within the past five years; or

(c) has had a substance abuse disorder or physical or mental impairment within the past five years which may affect the applicant's ability to safely practice.

(3) In accordance with Subsection (2) above, the passing score on the SPEX examination is 75.

R156-67-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 67 is established by rule in Section R156-1-308a.

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

R156-67-304. Qualified Continuing Professional Education.

(1) In accordance with Subsection 58-67-304(1), the qualified continuing professional education requirements shall consist of 40 hours during each two-year licensure cycle, as follows:

(a) A minimum of 34 of the required hours shall be in category 1 offerings as established by the ACCME.

(b) A maximum of six hours of continuing education may come from the Division of Occupational and Professional Licensing.

(c) Up to 15% of the required hours may come from providing volunteer health care services within the scope of the licensee's license at a qualified location, in accordance with Section 58-13-3 concerning charity health care. One hour of continuing education credit may be earned for every four documented hours of volunteer services.

(d) Participation in a residency program approved by the AOA or the ACCME shall meet the continuing education requirement in a pro-rata amount equal to any part of the two-year period.

(2) Continuing education under this section shall:

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

(b) be prepared and presented by individuals who are qualified by education, training and experience to provide medical continuing education; and

(c) have a method of verification of attendance and completion which may include a "CME Self Reporting Log".

(3) Credit for continuing education shall be recognized in 50-minute hour blocks of time for education completed in formally established classroom courses, seminars, lectures, conferences or training sessions which meet the criteria listed in Subsection (2) above.

(4) A licensee must be able to document completion of the continuing professional education upon the request of the Division. Such documentation shall be retained until the next renewal cycle.

R156-67-306. Exemptions from Licensure.

In accordance with Subsection 58-1-307(1), exemptions from licensure as a physician and surgeon include the following:

(1) any physician exempted from licensure, who engages in prescribing, dispensing, or administering a controlled substance outside of a hospital, shall be required to apply for and obtain a Utah Controlled Substance License as a condition precedent to them administering, dispensing or prescribing a controlled substance;

(2) any person engaged in a competent public screening program making measures of physiologic conditions including serum cholesterol, blood sugar and blood pressure, shall be exempt from licensure and shall not be considered to be engaged in the practice of medicine conditioned upon compliance with all of the following:

(a) all instruments or devices used in making measures are approved by the Food and Drug Administration of the U.S. Department of Health, to the extent an approval is required, and the instruments and devices are used in accordance with those approvals;

(b) the facilities and testing protocol meet any standards or personnel training requirements of the Utah Department of Health;

(c) unlicensed personnel shall not interpret results of measures or tests nor shall they make any recommendation with respect to treatment or the purchase of any product;

(d) licensed personnel shall act within the lawful scope of practice of their license classification;

(e) unlicensed personnel shall conform to the referral and follow-up protocol approved by the Utah Department of Health for each measure or test;

(f) information provided to those persons measured or tested for the purpose of permitting them to interpret their own test results shall be only that approved by the Utah Department of Health;

(3) non-licensed public safety individuals not having emergency medical technician (EMT) certification who are designated by appropriate city, county, or state officials as responders may be issued and allowed to carry the Mark I automatic injector antidote kits and may administer the antidote to himself or his designated first response "buddy". Prior to being issued the kits, the designated responders must successfully complete a course on the use of auto-injectors. The kits may be issued to the responder only by his employing agency and procured through the Utah Department of Health; and

(4) in accordance with Section 58-67-305, a medical assistant, while working under the indirect supervision of a licensed physician and surgeon, may not additionally engage in:

(a) diagnosing; or

(b) establishing a treatment plan.

R156-67-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) prescribing for oneself any Schedule II or III controlled substance; however, nothing in this rule shall be interpreted by the division or the board to prevent a licensee from using, possessing or administering to himself a Schedule II or III controlled substance which was legally prescribed for him by a licensed practitioner acting within his scope of licensure when it is used in accordance with the prescription order and for the use for which it was intended;

(2) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(1)(s) unless permitted by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate;

(3) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered;

(4) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them;

(5) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative;

(6) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Medical Practice Act;

(7) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon who is equally qualified to provide that care;

(8) billing a global fee for a procedure without providing the requisite care;

(9) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Board of Radiology. However, nothing in this subsection shall be interpreted to prevent a licensed physician and surgeon from reviewing the results of any breast screening by diagnostic mammography procedure upon a patient for the purpose of considering those results in determining appropriate care and

treatment of that patient if the results are interpreted by a physician and surgeon qualified under this subsection and a timely written report is prepared by the interpreting physician and surgeon in accordance with the standards and ethics of the profession;

(10) failing of a licensee under Title 58, Chapter 67, without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as a medical doctor;

(11) failing of a licensee under Title 58, Chapter 67, without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure;

(12) a physician providing services to a department of health by participating in a system under which the physician provides the department with completed and signed prescriptions without the name and address of the patient, or date the prescription is provided to the patient when the prescription form is to be completed by authorized registered nurses employed by the department of health which services are not in accordance with the provisions of Section 58-17b-620;

(13) failing to keep the division informed of a current address and telephone number;

(14) engaging in alternate medical practice except as provided in Section R156-67-603;

(15) violation of any provision of the American Medical Association (AMA) "Code of Medical Ethics", 2012-2013 edition, which is hereby incorporated by reference;

(16) failing to timely submit an annual written report to the division indicating that the physician has reviewed at least annually the dispensing practices of those authorized by the physician to dispense an opiate antagonist pursuant to Section R156-67-604; and

(17) failing to discuss the risks of using an opiate with a patient or the patient's guardian before issuing an initial opiate prescription, in accordance with Section 58-37-19.

R156-67-503. Administrative Penalties.

(1) In accordance with Sections 58-1-502 and 58-67-503, 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)	$ 5,000 - $10,000	$10,000
58-1-501(2)(a)	$ 100 - $ 500	$ 500 - $ 3,000
58-1-501(2)(b)	$ 500 - $ 5,000	$ 1,500 - $10,000
58-1-501(2)(c)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(d)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(e)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(f)	$ 500 - $ 5,000	$ 1,500 - $10,000
58-1-501(2)(g)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(h)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(i)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(j)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(k)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(l)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(m)	$ 5,000 - $10,000	$10,000
58-1-501.5 (5)	$ 500 - $ 1,500	$ 1,500 - $10,000
58-37-8	$ 500 - $ 5,000	$ 5,000 - $10,000
58-67-501(1)	$ 1,000 - $5,000	$ 2,000 - $10,000
58-67-502 (1)	$ 500 - $5,000	$ 5,000 - $10,000
58-67-502.5(1)	$ 5,000	$10,000
58-67-502.5(2)	$ 5,000	$10,000
58-67-502.5(3)	$ 5,000 - $10,000	$10,000
R156-1-501(1)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-1-501(2)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-1-501(3)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-1-501(4)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-1-501(5)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-1-501(6)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-1-501(7)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-1-501(8)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-1-501(9)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-37-502(1)(a)	$ 5,000 - $10,000	$10,000
R156-37-502(1)(b)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-37-502(2)	$ 500 - $ 5,000	$ 1,500 - $10,000
R156-37-502(3)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-37-502(4)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-37-502(5)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-37-502(6)	$ 5,000 - $10,000	$10,000
R156-37-502(7)	$ 5,000 - $10,000	$10,000
R156-37-502(8)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-37-502(9)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-67-502(1)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-67-502(2)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-67-502(3)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-67-502(4)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-67-502(5)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-67-502(6)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-67-502(7)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-67-502(8)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-67-502(9)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-67-502(10)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-67-502(11)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-67-502(12)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-67-502(13)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-67-502(14)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-67-502(15)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-67-502(16)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-67-502(17)	$ 500 - $ 1,500	$ 1,500 - $10,000
Any other conduct that constitutes unprofessional or unlawful conduct	$ 500 - $ 1,500	$ 1,500 - $10,000
Ongoing offense(s):	$ 2,000 per day but not less than second offense	

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-67-602. Medical Records.

In accordance with Subsection 58-67-803(1), medical records shall be maintained to be consistent with the following:

(1) all applicable laws, regulations, and rules; and

(2) the "AMA Code of Medical Ethics", 2012-2013 edition, which is hereby incorporated by reference.

R156-67-603. Alternate Medical Practice.

(1) A licensed physician and surgeon may engage in alternate medical practices as defined in Subsection R156-67-102(2) and shall not be considered to be engaged in unprofessional conduct on the basis that it is not in accordance with generally accepted professional or ethical standards as unprofessional conduct defined in Subsection 58-1-501(2)(b), if the licensed physician and surgeon:

(a) possesses current generally accepted written documentation, which in the opinion of the board, demonstrates the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given;

(b) possesses the education, training, and experience to competently and safely administer the alternate medical treatment or therapy;

(c) has advised the patient with respect to the alternate medical treatment or therapy, in writing, including:

(i) that the treatment or therapy is not in accordance with generally recognized standards of the profession;

(ii) that on the basis of current generally accepted medical evidence, the physician and surgeon finds that the treatment or therapy presents no greater threat to the health, safety, or welfare of the patient than prevailing generally recognized standard medical practice; and

(iii) that the prevailing generally recognized standard medical treatment or therapy for the patient's condition has been offered to be provided, or that the physician and surgeon will refer the patient to another physician and surgeon who can provide the standard medical treatment or therapy; and

(d) has obtained from the patient a voluntary informed consent consistent with generally recognized current medical and legal standards for informed consent in the practice of medicine, including:

(i) evidence of advice to the patient in accordance with Subsection (c); and

(ii) whether the patient elects to receive generally recognized standard treatment or therapy combined with alternate medical treatment or therapy, or elects to receive alternate medical treatment or therapy only.

(2) Alternate medical practice includes the practice of homeopathic medicine.

R156-67-604. Required Reporting of Annual Review of Physician of Dispensing Practices of Those Authorized to Dispense an Opiate Antagonist.

(1) In accordance with Subsection 26-55-105(2)(c), a physician who issues a standing prescription drug order authorizing the dispensing of an opiate antagonist shall annually submit a written report to the division indicating that he has reviewed at least annually the dispensing practices of those authorized by the physician to dispense the opiate antagonist.

(2) The report described above shall be submitted no later than January 31 of each calendar year and shall continue as long as the standing order remains in effect. Null reporting is not required.

(3) A physician shall be considered to have satisfactorily reviewed the dispensing practices of those authorized by the physician to dispense the opiate antagonist by reviewing the report of the licensee dispensing the opiate antagonist specified in Subsection R156-17b-625(1).

R156-67-807. Collaborative Practice Arrangement Contract - Duties and Responsibilities of Collaborating Physician and Associate Physician.

In accordance with Section 58-67-807, the Division's approval of a collaborative practice arrangement, and the educational methods and programs required of an associate physician throughout the duration of a collaborative practice arrangement, are established as follows:

(1) Collaborative practice arrangement contract.

(a) Before beginning a collaborative practice arrangement, the prospective collaborating physician and associate physician shall sign a written collaborative practice arrangement contract, which the associate physician shall submit to the Division for approval.

(b) A collaborative practice arrangement contract shall include at least the following:

(i) all of the terms and conditions required by Section 58-67-807, including:

(A) a description of how the health care services to be rendered by the associate physician under the collaborative practice arrangement will be consistent with the associate physician's skill, training, and competence;

(B) a description of the medically underserved population or medically underserved area within the state where the associate physician will provide primary care services;

(C) if the associate physician will practice in a medically underserved area, a plan for documenting completion of the "continuously present" or"on-site" supervision required by Subsection 58-67-807(1)(d), using the Division-provided supervision forms;

(D) if the associate physician will prescribe Schedule III through V controlled substances, documentation of the associate physician's mid-level practitioner Federal Drug Administration (DEA) registration; and

(E) a provision requiring the associate physician to notify the Division in writing within 10 days of any modifications to the collaborative practice arrangement contract, and providing that any changes shall become effective only upon receipt of written notice from the Division approving the changes;

(ii) in accordance with Subsection 58-67-807(4), a plan establishing educational methods and programs that the associate physician shall complete throughout the duration of the collaborative practice arrangement contract, which:

(A) will facilitate the advancement of the associate physician's medical knowledge and abilities; and

(iii) remedies in the event of breach of contract by either the collaborating physician or associate physician, including procedures for contract termination and written notification to the Division.

(c) Before an associate physician may render any health care services under a collaborative practice arrangement, the parties must have obtained the Division's written approval of the collaborative practice arrangement contract.

(d) In evaluating a collaborative practice arrangement contract, the Division shall consider whether it sufficiently complies with all of the terms and conditions required by Section 58-67-807 and this section to adequately protect the public health, safety, and welfare.

(2) Collaborating physician duties and responsibilities.

A collaborating physician overseeing an associate physician shall have the following duties and responsibilities:

(a) ensure that the collaborating physician and associate physician:

(i) are both appropriately licensed; and

(ii) are practicing pursuant to a Division-approved collaborative practice arrangement contract in accordance with Subsection (1);

(b) ensure that during the term of the collaborative practice arrangement contract the collaborating physician does not enter into a collaborative practice arrangement with more than three full-time equivalent associate physicians as required by Subsection 58-67-807(3)(b);

(c) maintain a relationship with the associate physician in which the collaborating physician is independent from control by the associate physician, and in which the ability of the collaborating physician to supervise and direct the health care services rendered by the associate physician is not compromised;

(d) be available to the associate physician for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total of the profession and the requirements suggested by the total circumstances, including consideration of the associate physician's level of skill, training, and competence and other factors known to the associate physician and collaborating physician;

(e) ensure periodic review of the charts documenting the associate physician's delivery of health care services, in compliance with Subsection 58-67-807(1)(b)(xii);

(f) monitor the associate physician's performance for compliance with the laws, rules, standards, and ethics of the profession, and report violations to the Division; and

(g) upon request, submit appropriate documentation to the Division with respect to practice hours completed by the associate physician evidencing the "continuously present" or "on-site" supervision required by Subsection 58-67-807(1)(d).

(3) Associate physician duties and responsibilities.

An associate physician shall have the following duties and responsibilities:

(a) prior to beginning a collaborative practice arrangement and rendering any health care services, enter into a Division-

approved collaborative practice arrangement contract with a collaborating physician in accordance with Subsection (1);

(b) maintain required licensure and any DEA registration;

(c) be professionally responsible for the acts and practices of the associate physician; and

(d) comply with all applicable laws, rules, standards, and ethics of the profession.

(4)(a) A collaborating physician shall submit to the Division a written explanation outlining the collaborating physician's concerns if the collaborating physician:

(i) terminates a collaborative practice arrangement contract for cause;

(ii) does not support continuance of a license for an associate physician to practice; or

(iii) has other concerns regarding the associate physician that the collaborating physician believes requires input from the Division and Board.

(b) Upon receipt of written concerns from a collaborating physician with respect to an associate physician, the Division shall:

(i) provide the associate physician an opportunity to respond in writing to the Division regarding the collaborating physician's concerns;

(ii) review the written statements from the collaborating physician and associate physician with the Board; and

(iii) in consultation with the Board, take any appropriate licensure action.

KEY: physicians, licensing
December 23, 2019 **58-67-101**
Notice of Continuation February 8, 2016 **58-1-106(1)(a)**
58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-68. Utah Osteopathic Medical Practice Act Rule.
R156-68-101. Title.

This rule shall be known as the "Utah Osteopathic Medical Practice Act Rule."

R156-68-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 68, as used in Title 58, Chapters 1 and 68 or this rule:

(1) "AAPS" means American Association of Physician Specialists.

(2) "ABMS" means American Board of Medical Specialties.

(3) "ACCME" means Accreditation Council for Continuing Medical Education.

(4) "Alternate medical practices" as used in Section R156-68-603, means treatment or therapy which is determined in an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to be:

(a) not generally recognized as standard in the practice of medicine;

(b) not shown by current generally accepted medical evidence to present a greater risk to the health, safety or welfare of the patient than does prevailing treatment considered to be the standard in the profession of medicine; and

(c) supported by a body of current generally accepted written documentation demonstrating the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given.

(5) "AMA" means the American Medical Association.

(6) "AOA" means American Osteopathic Association.

(7) "Collaborative practice arrangement contract" means a written, signed contract between a collaborating physician licensed and in good standing under Section 58-68-302, and an associate physician holding a restricted license in accordance with Section 58-68-302.5, that:

(a) includes the terms and conditions required by Section 58-68-807 and Section R156-68-807; and

(b) is approved by the Division in accordance with Section 58-68-807 and Section R156-68-807.

(8) "COMLEX" means the Comprehensive Osteopathic Medical Licensing Examination.

(9) "FLEX" means the Federation of State Medical Boards Licensure Examination.

(10) "FMGEMS" means the Foreign Medical Graduate Examination in Medical Science.

(11) "FSMB" means the Federation of State Medical Boards.

(12) "Homeopathic medicine" means a system of medicine employing and limited to substances prepared and prescribed in accordance with the principles of homeopathic pharmacology as described in the Homeopathic Pharmacopoeia of the United States, its compendia, addenda, and supplements, as officially recognized by the federal Food, Drug and Cosmetic Act, Public Law 717.21 U.S. Code Sec. 331 et seq., as well as the state of Utah's food and drug laws and Controlled Substances Act.

(13) "LMCC" means the Licentiate of the Medical Council of Canada.

(14) "NBME" means the National Board of Medical Examiners.

(15) "NBOME" means the National Board of Osteopathic Medical Examiners.

(16) "NPDB" means the National Practitioner Data Bank.

(17) "Supervision form" means the form provided by the Division to document completion of the "continuously present" or "on-site" supervision required by Subsection 58-68-807(1)(d) for an associate physician practicing in a medically underserved area.

(18) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 68, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-68-502.

(19) "USMLE" means the United States Medical Licensing Examination.

R156-68-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 68.

R156-68-104. Organization - Relationship to Rule R156-1.

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

R156-68-302a. Qualifications for Licensure - Application Requirements.

In accordance with Subsections 58-68-301(1)(a)(i), submissions by the applicant of information maintained by practitioner data banks shall include the following:

(1) American Osteopathic Association Profile or American Medical Association Profile;

(2) Federation of State Medical Boards Disciplinary Inquiry form;

(3) Federation Credentials Verification (FCVS) report; and

(4) National Practitioner Data Bank Report of Action.

R156-68-302b. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-68-302(1)(g), the required licensing examination sequence is the following:

(a) the NBOME parts I, II and III;

(b) the NBOME parts I, II and the NBOME COMPLEX Level III;

(c) the NBOME part I and the NBOME COMLEX Level II and III;

(d) the NBOME COMLEX Level I, II and III;

(e) the FLEX components I and II on which the applicant shall achieve a score of not less than 75 on each component;

(f) the NBME examination parts I, II and III on which the applicant shall achieve a score of not less than 75 on each part;

(g) the USMLE, steps 1, 2 and 3 on which the applicant shall achieve a score of not less than 75 on each step;

(h) the LMCC examination, Parts 1 and 2;

(i) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the NBME part III or the USMLE step 3;

(j) the FLEX component 1 and the USMLE step 3; or

(k) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the FLEX component 2.

(l) A candidate who fails any combination of the USMLE, FLEX, NBME and NBOME three times shall provide a narrative regarding the failure and may be requested to meet with the Board and Division.

(2) In accordance with Subsections 58-68-302(1)(g), (2)(c) and (3)(d), an applicant may be required to take the SPEX examination if the applicant:

(a) has not practiced in the past five years;

(b) has had disciplinary action within the past five years; or

(c) has had a substance use disorder, physical or mental impairment within the past five years which may affect the applicant's ability to safely practice.

(3) In accordance with Subsection (2) above, the passing score on the SPEX examination is 75.

(4) In accordance with Subsection 58-68-302(2)(c), the medical specialty certification shall be current certification in an AOA, ABMS, or AAPS member specialty board.

R156-68-302c. Qualifications for Licensure - Requirements for Admission to the Examinations.

(1) Admission to the NBOME examination shall be in accordance with policies and procedures of the NBOME. The division and the board have no responsibility for or ability to facilitate an individual's admission to the NBOME examination.

(2) Admission to the USMLE steps 1 and 2 shall be in accordance with policies and procedures of the FSMB and the NBME. The division and the board have no responsibility for or ability to facilitate an individual's admission to steps 1 and 2 of the USMLE.

(3) Requirements for admission to the USMLE step 3 are:

(a) completion of the education requirements as set forth in Subsection 58-68-302(1)(d) and (e);

(b) passing scores on USMLE steps 1 and 2, or the FLEX component I, or the NBME parts I and II;

(c) have passed the first USMLE step taken, either 1 or 2, within seven years; and

(d) have not failed a combination of USMLE step 3, FLEX component II and NBME part III, three times.

R156-68-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 68, is established by rule in Section R156-1-308a.

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

R156-68-304. Qualified Continuing Professional Education.

(1) In accordance with Subsection 58-68-304(1), the qualified continuing professional education requirements shall consist of 40 hours during each two-year licensure cycle as follows:

(a) A minimum of 34 of the required hours shall be in category 1 offerings as established by the AOA or ACCME.

(b) A maximum of 6 hours of continuing education may come from the Division of Occupational and Professional Licensing.

(c) Up to 15% of the required hours may come from providing volunteer health care services within the scope of the licensee's license at a qualified location, in accordance with Section 58-13-3 concerning charity health care. One hour of continuing education credit may be earned for every four documented hours of volunteer services.

(d) Participation in a residency program approved by the AOA or the ACCME shall meet the continuing education requirement in a pro-rata amount equal to any part of the two-year period.

(2) Continuing education under this section shall:

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

(b) be prepared and presented by individuals who are qualified by education, training and experience to provide medical continuing education; and

(c) have a method of verification of attendance and completion which may include a "CME Self Reporting Log".

(3) Credit for continuing education shall be recognized in 50-minute hour blocks of time for education completed in formally established classroom courses, seminars, lectures, conferences or training sessions which meet the criteria listed in Subsection (2) above.

(4) A licensee must be able to document completion of the continuing professional education upon the request of the Division. Such documentation shall be retained until the next renewal cycle.

R156-68-306. Exemptions From Licensure.

In accordance with Subsection 58-1-307(1), exemptions from licensure as an osteopathic physician include the following:

(1) any physician exempted from licensure, who engages in prescribing, dispensing, or administering a controlled substance outside of a hospital, shall be required to apply for and obtain a Utah Controlled Substance License as a condition precedent to them administering, dispensing or prescribing a controlled substance;

(2) any person engaged in a competent public screening program making measures of physiologic conditions including serum cholesterol, blood sugar and blood pressure, shall be exempt from licensure and shall not be considered to be engaged in the practice of osteopathic medicine conditioned upon compliance with all of the following:

(a) all instruments or devices used in making measures are approved by the Food and Drug Administration of the U.S. Department of Health, to the extent approval is required, and the instruments and devices are used in accordance with those approvals;

(b) the facilities and testing protocol meet any standards or personnel training requirements of the Utah Department of Health;

(c) unlicensed personnel shall not interpret results of measures or tests nor shall they make any recommendation with respect to treatment or the purchase of any product;

(d) licensed personnel shall act within the lawful scope of practice of their license classification;

(e) unlicensed personnel shall conform to the referral and follow-up protocol approved by the Utah Department of Health for each measure or test;

(f) information provided to those persons measured or tested for the purpose of permitting them to interpret their own test results shall be only that approved by the Utah Department of Health.

(3) non-licensed public officials not having emergency medical technician (EMT) certification who are designated by appropriate county officials as first responders may be issued and allowed to carry the Mark I automatic antidote injector kits and may administer the antidote to himself or his designated first response "buddy". Prior to being issued the kits, the certified first responders would successfully complete the Army/FEMA course on the "Use of Auto-Injectors by Civilian Emergency Medical Personnel". The kits would be issued to the responder only by his employing government agency and procured through the Utah Division of Comprehensive Emergency Management. No other individuals, whether licensed or not, shall prescribe or issue these antidote kits; and

(4) In accordance with Section 58-68-305, a medical assistant, while working under the indirect supervision of a licensed osteopathic physician and surgeon, may not additionally engage in:

(a) diagnosing; or

(b) establishing a treatment plan.

R156-68-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) the prescribing for oneself any Schedule II or III controlled substance; however, nothing in this rule shall be interpreted by the division or the board to prevent a licensee from using, possessing, or administering to himself a Schedule II or III controlled substance which was legally prescribed for him by a licensed practitioner acting within his scope of licensure when it is used in accordance with the prescription order and for the use for which it was intended;

(2) knowingly, prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(1)(s) unless permitted by law and when it is prescribed, dispensed, or administered

according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate;

(3) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered;

(4) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations, or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them;

(5) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative;

(6) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by osteopathic physicians licensed under the Utah Osteopathic Medical Practice Act;

(7) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon or osteopathic physician who is equally qualified to provide that care;

(8) billing a global fee for a procedure without providing the requisite care;

(9) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Osteopathic Board of Radiology or the American Board of Radiology. However, nothing in this subsection shall be interpreted to prevent a licensed physician from reviewing the results of any breast screening by diagnostic mammography procedure upon a patient for the purpose of considering those results in determining appropriate care and treatment of that patient if the results are interpreted by a physician qualified under this subsection and a timely written report is prepared by the interpreting physician in accordance with the standards and ethics of the profession;

(10) failing of a licensee under Title 58, Chapter 68, without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as an osteopathic physician;

(11) failing of a licensee under Title 58, Chapter 68, without just cause to comply with the terms of any written agreement in which the licensee's education or training as an osteopathic physician is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure;

(12) a physician providing services to a department of health by participating in a system under which the physician provides the department with completed and signed prescriptions without the name and address of the patient, or date the prescription is provided to the patient when the prescription form is to be completed by authorized registered nurses employed by the department of health which services are not in accordance with the provisions of Section 58-17b-620;

(13) engaging in alternative medical practice except as provided in Section R156-68-603;

(14) violation of any provision of the American Medical Association's (AMA) "Code of Medical Ethics", 2012-2013 edition, which is hereby incorporated by reference;

(15) failing to timely submit an annual written report to the division indicating that the osteopathic physician has reviewed at least annually the dispensing practices of those authorized by the osteopathic physician to dispense an opiate antagonist, pursuant to Section R156-68-604; and

(16) failing to discuss the risks of using an opiate with a patient or the patient's guardian before issuing an initial opiate prescription, in accordance with Section 58-37-19.

R156-68-503. Administrative Penalties.

(1) In accordance with Section 58-68-503, 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)	$ 5,000 - $10,000	$10,000
58-1-501(2)(a)	$ 100 - $ 500	$ 500 - $ 3,000
58-1-501(2)(b)	$ 500 - $ 5,000	$ 1,500 - $10,000
58-1-501(2)(c)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(d)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(e)	$ 500 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(f)	$ 500 - $ 5,000	$ 1,500 - $10,000
58-1-501(2)(g)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(h)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(i)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(j)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(k)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(l)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
58-1-501(2)(m)	$ 5,000 - $10,000	$10,000
58-37-8	$ 500 - $ 5,000	$ 1,500 - $10,000
58-68-501(1)	$ 1,000 - $5,000	$ 2,000 - $10,000
58-68-502 (1)	$ 500 - $5,000	$ 5,000 - $10,000
58-68-502.5(1)	$ 5,000	$10,000
58-68-502.5(2)	$ 5,000	$10,000
58-68-502.5(3)	$ 5,000 - $10,000	$10,000
58-1-501.5 (5)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-1-501(1)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-1-501(2)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-1-501(3)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-1-501(4)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-1-501(5)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-1-501(6)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-37-502(1)(a)	$ 5,000 - $10,000	$10,000
R156-37-502(1)(b)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-37-502(2)	$ 500 - $ 5,000	$ 1,500 - $10,000
R156-37-502(3)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-37-502(4)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-37-502(5)	$ 1,000 - $ 5,000	$ 5,000 - $10,000
R156-37-502(6)	$ 5,000 - $10,000	$10,000
R156-37-502(7)	$ 5,000 - $10,000	$10,000
R156-68-502(1)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-68-502(2)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-68-502(3)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-68-502(4)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-68-502(5)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-68-502(6)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-68-502(7)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-68-502(8)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-68-502(9)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-68-502(10)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-68-502(11)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-68-502(12)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-68-502(13)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-68-502(14)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-68-502(15)	$ 500 - $ 1,500	$ 1,500 - $10,000
R156-68-502(16)	$ 500 - $ 1,500	$ 1,500 - $10,000
Any other conduct that constitutes unprofessional or unlawful conduct	$ 500 - $ 1,500	$ 1,500 - $10,000
Ongoing offense(s):	$ 2,000 per day but not less than second offense	

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-68-602. Medical Records.

In accordance with Subsection 58-68-803(1), medical records shall be maintained to be consistent with the following:

(1) all applicable laws, regulations, and rules; and

(2) the AMA "Code of Medical Ethics", 2012-2013 edition, which is hereby incorporated by reference.

R156-68-603. Alternate Medical Practice.

(1) A licensed osteopathic physician may engage in alternate medical practices as defined in Subsection R156-68-102(4) and shall not be considered to be engaged in unprofessional conduct on the basis that it is not in accordance with generally accepted professional or ethical standards as unprofessional conduct defined in Subsection 58-1-501(2)(b), if the licensed osteopathic physician:

(a) possesses current generally accepted written documentation, which in the opinion of the board, demonstrates the treatment or therapy has reasonable potential to be of benefit to the patient to whom the therapy or treatment is to be given;

(b) possesses the education, training, and experience to competently and safely administer the alternate medical treatment or therapy;

(c) has advised the patient with respect to the alternate medical treatment or therapy, in writing, including:

(i) that the treatment or therapy is not in accordance with generally recognized standards of the profession;

(ii) that on the basis of current generally accepted medical evidence, the physician and surgeon finds that the treatment or therapy presents no greater threat to the health, safety, or welfare of the patient than prevailing generally recognized standard medical practice; and

(iii) that the prevailing generally recognized standard medical treatment or therapy for the patient's condition has been offered to be provided, or that the physician and surgeon will refer the patient to another physician and surgeon who can provide the standard medical treatment or therapy; and

(d) has obtained from the patient a voluntary informed consent consistent with generally recognized current medical and legal standards for informed consent in the practice of medicine, including:

(i) evidence of advice to the patient in accordance with Subsection (c); and

(ii) whether the patient elects to receive generally recognized standard treatment or therapy combined with alternate medical treatment or therapy, or elects to receive alternate medical treatment or therapy only.

(2) Alternate medical practice includes the practice of homeopathic medicine.

R156-68-604. Required Reporting of Annual Review by Osteopathic Physicians of Dispensing Practices of Those Authorized to Dispense an Opiate Antagonist.

(1) In accordance with Subsection 26-55-105(2)(c), an osteopathic physician who issues a standing prescription drug order authorizing the dispensing of an opiate antagonist shall annually submit a written report to the division indicating that he has reviewed at least annually the dispensing practices of those authorized by the osteopathic physician to dispense the opiate antagonist.

(2) The report described above shall be submitted no later than January 31 of each calendar year and shall continue as long as the standing order remains in effect. Null reporting is not required.

(3) An osteopathic physician shall be considered to have satisfactorily reviewed the dispensing practices of those authorized by the osteopathic physician to dispense the opiate antagonist by reviewing the report of the licensee dispensing the opiate antagonist specified in Subsection R156-17b-625(1).

R156-68-807. Collaborative Practice Arrangement Contract - Duties and Responsibilities of Collaborating Physician and Associate Physician.

In accordance with Section 58-68-807, the Division's approval of a collaborative practice arrangement, and the educational methods and programs required of an associate physician throughout the duration of a collaborative practice arrangement, are established as follows:

(1) Collaborative practice arrangement contract.

(a) Before beginning a collaborative practice arrangement, the prospective collaborating physician and associate physician shall sign a written collaborative practice arrangement contract, which the associate physician shall submit to the Division for approval.

(b) A collaborative practice arrangement contract shall include at least the following:

(i) all of the terms and conditions required by Section 58-68-807, including:

(A) a description of how the health care services to be rendered by the associate physician under the collaborative practice arrangement will be consistent with the associate physician's skill, training, and competence;

(B) a description of the medically underserved population or medically underserved area within the state where the associate physician will provide primary care services;

(C) if the associate physician will practice in a medically underserved area, a plan for documenting completion of the "continuously present" or"on-site" supervision required by Subsection 58-68-807(1)(d), using the Division-provided supervision forms;

(D) if the associate physician will prescribe Schedule III through V controlled substances, documentation of the associate physician's mid-level practitioner Federal Drug Administration (DEA) registration; and

(E) a provision requiring the associate physician to notify the Division in writing within 10 days of any modifications to the collaborative practice arrangement contract, and providing that any changes shall become effective only upon receipt of written notice from the Division approving the changes;

(ii) in accordance with Subsection 58-68-807(4), a plan establishing educational methods and programs that the associate physician shall complete throughout the duration of the collaborative practice arrangement contract, which:

(A) will facilitate the advancement of the associate physician's medical knowledge and abilities; and

(iii) remedies in the event of breach of contract by either the collaborating physician or associate physician, including procedures for contract termination and written notification to the Division.

(c) Before an associate physician may render any health care services under a collaborative practice arrangement, the parties must have obtained the Division's written approval of the collaborative practice arrangement contract.

(d) In evaluating a collaborative practice arrangement contract, the Division shall consider whether it sufficiently complies with all of the terms and conditions required by Section 58-68-807 and this section to adequately protect the public health, safety, and welfare.

(2) Collaborating physician duties and responsibilities.

A collaborating physician overseeing an associate physician shall have the following duties and responsibilities:

(a) ensure that the collaborating physician and associate physician:

(i) are both appropriately licensed; and

(ii) are practicing pursuant to a Division-approved collaborative practice arrangement contract in accordance with Subsection (1);

(b) ensure that during the term of the collaborative practice arrangement contract the collaborating physician does not enter into a collaborative practice arrangement with more than three full-time equivalent associate physicians as required by Subsection 58-68-807(3)(b);

(c) maintain a relationship with the associate physician in which the collaborating physician is independent from control by the associate physician, and in which the ability of the collaborating physician to supervise and direct the health care services rendered by the associate physician is not compromised;

(d) be available to the associate physician for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total of the profession and the requirements suggested by the total circumstances, including consideration of the associate physician's level of skill, training, and competence and other factors known to the associate physician and collaborating physician;

(e) ensure periodic review of the charts documenting the associate physician's delivery of health care services, in compliance with Subsection 58-68-807(1)(b)(xii);

(f) monitor the associate physician's performance for compliance with the laws, rules, standards, and ethics of the profession, and report violations to the Division; and

(g) upon request, submit appropriate documentation to the Division with respect to practice hours completed by the associate physician evidencing the "continuously present" or "on-site" supervision required by Subsection 58-68-807(1)(d).

(3) Associate physician duties and responsibilities.

An associate physician shall have the following duties and responsibilities:

(a) prior to beginning a collaborative practice arrangement and rendering any health care services, enter into a Division-approved collaborative practice arrangement contract with a collaborating physician in accordance with Subsection (1);

(b) maintain required licensure and any DEA registration;

(c) be professionally responsible for the acts and practices of the associate physician; and

(d) comply with all applicable laws, rules, standards, and ethics of the profession.

(4)(a) A collaborating physician shall submit to the Division a written explanation outlining the collaborating physician's concerns if the collaborating physician:

(i) terminates a collaborative practice arrangement contract for cause;

(ii) does not support continuance of a license for an associate physician to practice; or

(iii) has other concerns regarding the associate physician that the collaborating physician believes requires input from the Division and Board.

(b) Upon receipt of written concerns from a collaborating physician with respect to an associate physician, the Division shall:

(i) provide the associate physician an opportunity to respond in writing to the Division regarding the collaborating physician's concerns;

(ii) review the written statements from the collaborating physician and associate physician with the Board; and

(iii) in consultation with the Board, take any appropriate licensure action.

KEY: osteopaths, licensing, osteopathic physician
December 23, 2019 58-1-106(1)(a)
Notice of Continuation January 8, 2018 58-1-202(1)(a)
58-68-101

R277. Education, Administration.
R277-108. Annual Assurance of Compliance by Local School Boards.
R277-108-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law and allows the Board to interrupt disbursements of state aid to any district which fails to comply with rules adopted in accordance with the law.

(2) The purpose of this rule is to provide local school boards with a list of laws requiring local school board action and a means of assuring that local boards are in compliance.

R277-108-2. Definitions.

(1) "Assurance document" means the Annual Assurances of Compliance list outlined in Subsection R277-108-3.

R277-108-3. Incorporation of Annual Assurances of Compliance.

(1) This rule incorporates by reference the Local Education Agency (LEA) Compliance and Assurance Checklist for 2019-2020 School Year (09/06/2019), which lists the required state and federal compliance information for identified programs and funds, including:

(a) Board Rule;

(b) State statute;

(c) Federal Code of Regulations; and

(d) Federal Law.

(2) A copy of the current Annual Assurances of Compliance List is located at:

(a) https://www.schools.utah.gov/financialoperations/formsapplications?mid=2382&tid=2; and

(b) the Utah State Board of Education - 250 East 500 South, Salt Lake City, Utah 84111.

R277-108-4. Assurance Document Creation and Availability.

(1) The Superintendent shall provide a list of laws and a list of State Board of Education Administrative Rules which require action or compliance by June 1 of each year to school district superintendents, the superintendent for the Utah School for the Deaf and the Blind and charter school directors.

(2) The list described in Subsection (1) shall be approved by the Board and shall identify laws and rules along with required compliance dates and reporting forms, if different or necessary than or in addition to the annual assurance document.

(3) The Superintendent shall consolidate all required reporting and compliance forms and provide for electronic reporting, to the extent possible and ensure the assurance document is available publicly.

R277-108-5. Process, Procedures, and Penalties.

(1) An LEA shall submit the required annual responses to the assurance document and other compliance forms on or before dates identified by the Board.

(2) An LEA's assurance document shall contain a signed attestation by the appropriate authority attesting to the accuracy and validity of all responses and assurances provided by an LEA.

(3) In the event that an LEA is unable to provide required assurances, compliance information or forms by required dates, an LEA shall provide to the Superintendent a written explanation of the LEA's inability and provide an anticipated submission date.

(4) An LEA's request for additional time to provide the assurance shall be reviewed by the Superintendent and accepted or rejected in a timely manner.

(5) The Superintendent shall request a written explanation from an LEA and identified schools that fail to meet the reporting and compliance deadlines and that have not provided an explanation and request for a delayed submission date.

(6) Following an opportunity to provide explanations and request a delayed submission date, an LEA and identified schools shall be notified of penalties assessed by the Board against the LEA in accordance with rule R277-114, state law, or federal law.

R277-108-6. Reporting Deadlines.

Responses for the assurance document from an LEA are due to the Superintendent no later than July 1 of each year.

R277-108-7. Record Retention.

(1) Responses to the assurance document, as required by the Board, shall be kept on file by the Superintendent for five years, together with letters of explanation and documentation of penalties, as directed by the Board.

KEY: local school boards, compliance
December 10, 2019 Art X Sec 3
Notice of Continuation September 13, 2017 53E-3-401(4)

R277. Education, Administration.
R277-407. School Fees.
R277-407-1. Authority and Purpose.

(1) This rule is authorized under:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Article X, Section 2 of the Utah Constitution, which provides that:

(i) public elementary schools shall be free; and

(ii) secondary schools shall be free, unless the Legislature authorizes the imposition of fees;

(c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;

(d) Subsection 53G-7-503(2), which requires the Board to adopt rules regarding student fees; and

(e) Subsection 53G-7-504 which authorizes waiver of fees for eligible students with appropriate documentation.

(2) This rule also serves to comply with the order arising from the Permanent Injunction issued in Doe v. Utah State Board of Education, Civil No. 920903376 (3rd District 1994).

(3) The purpose of this rule is to:

(a) permit the orderly establishment of a system of reasonable fees;

(b) provide adequate notice to students and families of fees and fee waiver requirements; and

(c) prohibit practices that would:

(i) exclude those unable to pay from participation in school-sponsored activities; or

(ii) create a burden on a student or family as to have a detrimental impact on participation.

R277-407-2. Definitions.

(1) "Co-curricular activity" means an activity, course, or program, outside of school hours, that also includes a required regular school day program or curriculum.

(2) "Extracurricular activity" means an activity or program for students, outside of the regular school day, that:

(a) is sponsored, recognized, or sanctioned by an LEA; and

(b) supplements or compliments, but is not part of, the LEA's required program or regular curriculum.

(3)(a) "Fee" means something of monetary value requested or required by an LEA as a condition to a student's participation in an activity, class, or program provided, sponsored, or supported by a school.

(b) "Fee" includes money or something of monetary value raised by a student or the student's family through fundraising.

(4)(a) "Fundraiser," "fundraising," or "fundraising activity" means an activity or event provided, sponsored, or supported by a school that uses students to generate funds to raise money to:

(i) provide financial support to a school or any of the school's classes, groups, teams, or programs; or

(ii) benefit a particular charity or for other charitable purposes.

(b) "Fundraiser," "fundraising," or "fundraising activity" may include:

(i) the sale of goods or services;

(ii) the solicitation of monetary contributions from individuals or businesses; or

(iii) other lawful means or methods that use students to generate funds.

(c) "Fundraiser," "fundraising," or "fundraising activity" does not include an alternative method of raising revenue without students.

(5) "Group fundraiser" or "group fundraising" means a fundraising activity where the money raised is used for the benefit of the group, team, or organization.

(6) "Individual fundraiser" or "individual fundraising" means a fundraising activity where money is raised by each individual student to pay the individual student's fees.

(7)(a) "Instructional equipment" means an activity, course, or program-related tool or instrument that:

(i) is required for a student to use as part of a secondary activity, course, or program;

(ii) typically becomes the property of the student upon exiting the activity, course, or program; and

(iii) is subject to fee waiver.

(b) "Instructional equipment" includes:

(i) shears or styling tools;

(ii) a band instrument;

(iii) a camera;

(iv) a stethoscope; and

(v) sports equipment, including a bat, mitt, or tennis racquet.

(c) "Instructional equipment" does not include school equipment.

(8)(a) "Instructional supply" means a consumable or non-reusable supply that is necessary for a student to use as part of a secondary activity, course, or program.

(b) "Instructional supply" includes:

(i) prescriptive footwear;

(ii) brushes or other art supplies, including clay, paint, or art canvas;

(iii) wood for wood shop;

(iv) Legos for Lego robotics;

(v) film; and

(vi) filament used for 3D printing.

(9) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(10) "Noncurricular club" has the same meaning as that term is defined in Section 53G-7-701.

(11) "Non-waivable charge" means a cost, payment, or expenditure that:

(a) is a personal discretionary charge or purchase, including:

(i) a charge for insurance, unless the insurance is required for a student to participate in an activity, class, or program;

(ii) a charge for college credit related to the successful completion of:

(A) a concurrent enrollment class; or

(B) an advanced placement examination; or

(iii) except when requested or required by an LEA, a charge for a personal consumable item such as a yearbook, class ring, letterman jacket or sweater, or other similar item;

(b) is subject to sales tax as described in Utah State Tax Commission Publication 35, Sales Tax Information for Public and Private Elementary and Secondary Schools; or

(c) by Utah Code, federal law, or Board rule is designated not to be a fee, including:

(i) a school uniform as provided in Section 53G-7-801;

(ii) a school lunch; or

(iii) a charge for a replacement for damaged or lost school equipment or supplies.

(12)(a) "Provided, sponsored, or supported by a school" means an activity, class, program, fundraiser, club, camp, clinic, or other event that:

(i) is authorized by an LEA or school, according to local education board policy; or

(ii) satisfies at least one of the following conditions:

(A) the activity, class, program, fundraiser, club, camp, clinic, or other event is managed or supervised by an LEA or school, or an LEA or school employee in the employee's school employment capacity;

(B) the activity, class, program, fundraiser, club, camp, clinic, or other event uses, more than inconsequentially, the LEA or school's facilities, equipment, or other school resources; or

(C) the activity, class, program, fundraising event, club, camp, clinic, or other event is supported or subsidized, more than inconsequentially, by public funds, including the school's activity funds or minimum school program dollars.

(b) "Provided, sponsored, or supported by a school" does not include an activity, class, or program that meets the criteria of a noncurricular club as described in Title 53G, Chapter 7, Part 7, Student Clubs.

(13)(a) "Provision in lieu of fee waiver" means an alternative to fee payment or waiver of fee payment.

(b) "Provision in lieu of fee waiver" does not include a plan under which fees are paid in installments or under some other delayed payment arrangement.

(14) "Regular school day" has the same meaning as the term "school day" described in Section R277-419-2.

(15) "Requested or required by an LEA as a condition to a student's participation" means something of monetary value that is impliedly or explicitly mandated or necessary for a student, parent, or family to provide so that a student may:

(a) fully participate in school or in a school activity, class, or program;

(b) successfully complete a school class for the highest grade; or

(c) avoid a direct or indirect limitation on full participation in a school activity, class, or program, including limitations created by:

(i) peer pressure, shaming, stigmatizing, bullying, or the like; or

(ii) withholding or curtailing any privilege that is otherwise provided to any other student.

(16) "School day" has the same meaning as defined in R277-419-2.

(17)(a) "School equipment" means a durable school-owned machine, equipment, or tool used by a student as part of a secondary activity, course, or program.

(b) "School equipment" includes a saw, machine, and 3D printer.

(18)(a) "Something of monetary value" means a charge, expense, deposit, rental, fine, or payment, regardless of how the payment is termed, described, requested or required directly or indirectly, in the form of money, goods or services.

(b) "Something of monetary value" includes:

(i) charges or expenditures for a school field trip or activity trip, including related transportation, food, lodging, and admission charges;

(ii) payments made to a third party that provide a part of a school activity, class, or program;

(iii) classroom supplies or materials; and

(iv) a fine, except for a student fine specifically approved by an LEA for:

(A) failing to return school property;

(B) losing, wasting, or damaging private or school property through intentional, careless, or irresponsible behavior; or

(C) improper use of school property, including a parking violation.

(19)(a) "Student supplies" means items which are the personal property of a student which, although used in the instructional process, are also commonly purchased and used by persons not enrolled in the class or activity in question and have a high probability of regular use in other than school-sponsored activities.

(b) "Student supplies" include:

(i) pencils;

(ii) paper;

(iii) notebooks;

(iv) crayons;

(v) scissors;

(vi) basic clothing for healthy lifestyle classes; and

(vii) similar personal or consumable items over which a student retains ownership.

(c) "Student supplies" does not include items listed in Subsection(18)(b) if the requirement from the school for the student supply includes specific requirements such as brand, color, or a special imprint in order to create a uniform appearance not related to basic function.

(20) "Supplemental kindergarten" means an LEA program for students in kindergarten who voluntarily elect to receive additional hours of instruction beyond the LEA's regular school day for kindergarten students for an additional fee.

(21) "Supplemental Security Income for children with disabilities" or "SSI" means a benefit administered through the Social Security Administration that provides payments for qualified children with disabilities in low income families.

(22) "Temporary Assistance for Needy Families" or "TANF," means a program, formerly known as AFDC, which provides monthly cash assistance and food stamps to low-income families with children under age 18 through the Utah Department of Workforce Services.

(23)(a) "Textbook" means instructional material necessary for participation in a course or program, regardless of the format of the material.

(b) "Textbook" includes:

(i) hardcopy book or printed pages of instructional material, including a consumable workbook;

(ii) computer hardware, software, or digital content; and

(iii) the maintenance costs of school equipment.

(c) "Textbook" does not include:

(i) instructional equipment; or

(ii) instructional supplies.

(24) "Waiver" means a full release from the requirement of payment of a fee and from any provision in lieu of fee payment.

R277-407-3. Classes and Activities During the Regular School Day.

(1) No fee may be charged in kindergarten through grade six for:

(a) materials;

(b) textbooks;

(c) supplies, except for student supplies described in Subsection (6); or

(d) any class or regular school day activity, including assemblies and field trips.

(2)(a) An LEA may charge a fee in connection with an activity, class, or program provided, sponsored, or supported by a school for a student in a secondary school that takes place during the regular school day if the fee is approved as provided in this R277-407.

(b) All fees are subject to the fee waiver provisions of Section R277-407-8.

(3)(a) Notwithstanding, Subsection (1) and except as provided in Subsection (3)(b), a school may charge a fee to a student in grade six if the student attends a school that includes any of grades seven through twelve.

(b) A school that provides instruction to students in grades other than grades six through twelve may not charge fees for grade six unless the school follows a secondary model of delivering instruction to the school's grade six students.

(c) If a school charges fees in accordance with Subsection (3)(a), the school shall annually provide notice to parents that the school will collect fees from grade six students and that the fees are subject to waiver.

(4) If a class is established or approved, which requires payment of fees or purchase of items in order for students to participate fully and to have the opportunity to acquire all skills and knowledge required for full credit and highest grades, the fees or costs for the class shall be subject to the fee waiver

provisions of Rule R277-407-8.

(5)(a) In project related courses, projects required for course completion shall be included in the course fee.

(b) A school may require a student at any grade level to provide materials or pay for an additional discretionary project if the student chooses a project in lieu of, or in addition to a required classroom project.

(c) A school shall avoid allowing high cost additional projects, particularly if authorization of an additional discretionary project results in pressure on a student by teachers or peers to also complete a similar high cost project.

(d) A school may not require a student to select an additional project as a condition to enrolling, completing, or receiving the highest possible grade for a course.

(6) An elementary school or elementary school teacher may provide to a student's parent or guardian, a suggested list of student supplies for use during the regular school day so that a parent or guardian may furnish, on a voluntary basis, student supplies for student use, provided that, in accordance with Section 53G-7-503, the following notice is provided with the list:

"NOTICE: THE ITEMS ON THIS LIST WILL BE USED DURING THE REGULAR SCHOOL DAY. THEY MAY BE BROUGHT FROM HOME ON A VOLUNTARY BASIS, OTHERWISE, THEY WILL BE FURNISHED BY THE SCHOOL."

(7) A school may require a secondary student to provide student supplies, subject to the provisions of Section R277-407-8.

(8) Except as provided in Subsection (9), if a school requires special shoes or items of clothing that meet specific requirements, including requesting a specific color, style, fabric, or imprints, the cost of the special shoes or items of clothing are:

(a) considered a fee; and

(b) subject to fee waiver.

(9) As provided in Subsection 53G-7-802(4), an LEA's school uniform policy, including a requirement for a student to wear a school uniform, is not considered a fee for either an elementary or a secondary school if the LEA's school uniform policy is consistent with the requirements of Title 53G, Chapter 7, Part 8, School Uniforms.

R277-407-4. School Activities Outside of the Regular School Day.

(1) A school may charge a fee, subject to the provisions of Section R277-407-8, in connection with any school-sponsored activity, that does not take place during the regular school day, regardless of the age or grade level of the student, if participation in the activity is voluntary and does not affect a student's grade or ability to participate fully in any course taught during the regular school day.

(2) A fee related to a co-curricular or extracurricular activity may not exceed the maximum fee amounts for the co-curricular or extracurricular activity adopted by the LEA governing board as described in Subsection R277-407-6(3).

(3) A school may only collect a fee for an activity, class, or program provided, sponsored, or supported by a school consistent with LEA policies and state law.

(4) An LEA that provides, sponsors, or supports an activity, class, or program outside of the regular school day or school calendar is subject to the provisions of this rule regardless of the time or season of the activity, class, or program.

(5)(a) An LEA may charge a fee related to a student's enrollment in supplemental kindergarten.

(b) An LEA's fee for supplemental kindergarten described in Subsection (5)(a) is subject to fee waiver.

R277-407-5. Fee-Waivable Activities, Classes, or Programs Provided, Sponsored, or Supported by a School.

Fees for the following are waivable:

(1) an activity, class, or program that is:

(a) primarily intended to serve school-age children; and

(b) taught or administered, more than inconsequentially, by a school employee as part of the employee's assignment;

(2) an activity, class, or program that is explicitly or implicitly required:

(a) as a condition to receive a higher grade, or for successful completion of a school class or to receive credit, including a requirement for a student to attend a concert or museum as part of a music or art class for extra credit; or

(b) as a condition to participate in a school activity, class, program, or team, including, a requirement for a student to participate in a summer camp or clinic for students who seek to participate on a school team, such as cheerleading, football, soccer, dance, or another team;

(3) an activity or program that is promoted by a school employee, such as a coach, advisor, teacher, school-recognized volunteer, or similar person, during school hours where it could be reasonably understood that the school employee is acting in the employee's official capacity;

(4) an activity or program where full participation in the activity or program includes:

(a) travel for state or national educational experiences or competitions;

(b) debate camps or competitions; or

(c) music camps or competitions;

(5) a concurrent enrollment, CTE, or AP course; and

(6) the cost to access software, digital content, or other instructional materials required as part of an activity, course or program.

R277-407-6. LEA Requirements to Establish a Fee Schedule -- Maximum Fee Amounts -- Notice to Parents.

(1) An LEA, school, school official, or employee may not charge or assess a fee or request or require something of monetary value in connection with an activity, class, or program provided, sponsored, or supported by, and including for a co-curricular or extracurricular activity, unless the fee:

(a) has been set and approved by the LEA's governing board;

(b) is equal to or less than the maximum fee amount established by the LEA governing board as described in Subsection (4); and

(c) is included in an approved fee schedule or notice in accordance with this rule.

(2)(a) If an LEA charges a fee, on or before April 1 and in consultation with stakeholders, the LEA governing board shall annually adopt a fee schedule and fee policies for the LEA in a regularly scheduled public meeting.

(b) Before approving the LEA's fee schedule described in this Section, an LEA shall provide an opportunity for the public to comment on the proposed fee schedule during a minimum of two public LEA governing board meetings.

(c) An LEA shall:

(i) provide public notice of the meetings described in Subsections (2)(a) and (b) in accordance with Title 52, Chapter 4, Open and Public Meetings Act; and

(ii) encourage public participation in the development of fee schedules and waiver policies.

(d) In addition to the notice requirements of Subsection(2)(c), an LEA shall provide notice to parents and students of the meetings described in Subsections (2)(a) and (b) using the same form of communication regularly used by the LEA to communicate with parents, including notice by e-mail, text, flyer, or phone call.

(e) An LEA shall keep minutes of meetings during which fee and waiver policies are developed or adopted, together with

copies of approved policies, in accordance with Section 52-4-203.

(3) After the fee schedule described in Subsection (2)(a) is adopted, an LEA may amend the LEA's fee schedule if the LEA follows the process described in Subsection (2) before approving the amended fee schedule.

(4)(a) As part of an LEA's fee setting process, the LEA shall establish a per student annual maximum fee amount that the LEA's schools may charge a student for the student's participation in all courses, programs, and activities provided, sponsored, or supported by a school for the year.

(b) An LEA shall establish:

(i) a maximum fee amount per student for each activity; and

(ii) a maximum total aggregate fee amount per student per school year.

(c) The amount of revenue raised by a student through an individual fundraiser shall be included as part of the maximum fee amount per student for the activity and maximum total aggregate fee amount per student.

(d) An LEA shall include the total per student amount expected to be received through required group fundraising as part of the maximum fee amount for an activity described in Subsection (4)(b)(i).

(e) An LEA may establish a reasonable number of activities, courses, or programs that will be covered by the annual maximum fee amount described in Subsection (4)(a).

(5) As part of an LEA's fee setting process described in this Section, the LEA may review and consider the following per school:

(a) the school's cost to provide the activity, class, or program;

(b) the school's student enrollment;

(c) the median income of families:

(i) within the school's boundary; or

(ii) enrolled in the school;

(d) the number and monetary amount of fee waivers, designated by individual fee, annually granted within the prior three years;

(e) the historical participation and school interest in certain activities;

(f) the prior year fee schedule;

(g) the amount of revenue collected from each fee in the prior year;

(h) fund-raising capacity;

(i) prior year community donors; and

(j) other resources available, including through donations and fundraising.

(6)(a) An LEA shall annually provide written notice to a parent or guardian of each student who attends a school within the LEA of all current and applicable fee schedules and fee waiver policies.

(7)(a) If an LEA charges a fee, the LEA shall:

(i) annually publish the LEA's fee waiver policies and fee schedule, including the fee maximums described in Subsection(4), on each of the LEA's schools' websites;

(ii) annually include a copy of the LEA's fee schedule and fee waiver policies with the LEA's registration materials; and

(iii) provide a copy of the LEA's fee schedule and fee waiver policies to a student's parent who enrolls a student after the initial enrollment period.

(b) If an LEA's student or parent population in a single language other than English exceeds 20%, the LEA shall also publish the LEA's fee schedule and fee waiver policies in the language of those families.

(c) An LEA representative shall meet personally with each student's parent or family and make available an interpreter for the parent to understand the LEA's fee waiver schedules and policies if:

(i) the student or parent's first language is a language other than English; and

(ii) the LEA hasn't published the LEA's fee schedule and fee waiver policies in the parent's first language.

(8) A notice described in Subsection (6)(a) shall:

(a) be in a form approved by the Board; and

(b) include the following:

(i) for a school serving elementary students:

(A) School Fees Notice for Families of Children in Elementary School;

(B) Fee Waiver applications (Elementary School);

(C) Fee Waiver Decision and Appeals Form; and

(D) the Board's elementary school poster; and

(ii) for a school serving secondary students:

(A) School Fees Notice For Families of Students in a Secondary School;

(B) Fee Waiver Application (Secondary School);

(C) Application for Fee Waivers and Community Service (Secondary School);

(D) Community Service Assignments and Notice of Appeal Rights;

(E) Appeal of Community Service Assignment; and

(F) the Board's secondary school poster.

(9)(a) An LEA policy shall include easily understandable procedures for obtaining a fee waiver and for appealing an LEA's denial of a fee waiver, as soon as possible before the fee becomes due.

(b) If an LEA denies a student or parent request for a fee waiver, the LEA shall provide the student or parent:

(i) the LEA's decision to deny a waiver; and

(ii) the procedure for the appeal in the form approved by the Board.

(10)(a) A school may not deny a present or former student receipt of transcripts or a diploma, nor may a school refuse to issue a grade for a course for failure to pay school fees.

(b) A school may impose a reasonable charge to cover the cost of duplicating, mailing, or transmitting transcripts and other school records.

(c) A school may not charge for duplicating, mailing, or transmitting copies of school records to an elementary or secondary school in which a former student is enrolled or intends to enroll.

(11) To preserve equal opportunity for all students and to limit diversion of money and school and staff resources from the basic school program, each LEA's fee policies shall be designed to limit student expenditures for school-sponsored activities, including expenditures for activities, uniforms, clubs, clinics, travel, and subject area and vocational leadership organizations, whether local, state, or national.

R277-407-7. Donations in Lieu of Fees.

(1)(a) A school may not request or accept a donation in lieu of a fee from a student or parent unless the activity, class, or program for which the donation is solicited will otherwise be fully funded by the LEA and receipt of the donation will not affect participation by an individual student.

(b) A donation is a fee if a student or parent is required to make the donation as a condition to the student's participation in an activity, class, or program.

(c) An LEA may solicit and accept a donation or contribution in accordance with the LEA's policies, but all such requests must clearly state that donations and contributions by a student or parent are voluntary.

(2) If an LEA solicits donations, the LEA:

(a) shall solicit and handle donations in accordance with policies established by the LEA; and

(b) may not place any undue burden on a student or family in relation to a donation.

(3) An LEA may raise money to offset the cost to the LEA

attributed to fee waivers granted to students through the LEA's foundation.

(4) An LEA shall direct donations provided to the LEA through the LEA's foundation in accordance with the LEA's policies governing the foundation.

(5) If an LEA accepts a donation, the LEA shall prevent potential inequities in schools within the LEA when distributing the donation.

R277-407-8. Fee Waivers.

(1)(a) All fees are subject to waiver.

(b) Fees charged for an activity, class, or program held outside of the regular school day, during the summer, or outside of an LEA's regular school year are subject to waiver.

(c) Non-waivable charges are not subject to waiver.

(2)(a) Except as provided in Subsection (2)(b), beginning with the 2020-21 school year, an LEA may not use revenue collected through fees to offset the cost of fee waivers by requiring students and families who do not qualify for fee waivers to pay an increased fee amount to cover the costs of students and families who qualify for fee waivers.

(b) An LEA may notify students and families that the students and families may voluntarily pay an increased fee amount or provide a donation to cover the costs of other students and families.

(c) For an LEA with multiple schools, the LEA shall distribute the impact of fee waivers across the LEA so that no school carries a disproportionate share of the LEA's total fee waiver burden.

(3) An LEA shall provide, as part of any fee policy or schedule, for adequate waivers or other provisions in lieu of fee waivers to ensure that no student is denied the opportunity to participate in a class or school-sponsored or supported activity because of an inability to pay a fee.

(4) An LEA shall designate at least one person at an appropriate administrative level in each school to review and grant fee waiver requests.

(5) An LEA shall administer the process for obtaining a fee waiver or pursuing an alternative fairly, objectively, without delay, and in a manner that avoids stigma, embarrassment, undue attention, and unreasonable burdens on students and parents.

(6) An LEA may not treat a student receiving a fee waiver or provision in lieu of a fee waiver differently from other students.

(7) A school may not identify a student on fee waiver to students, staff members, or other persons who do not need to know.

(8)(a) An LEA shall ensure that a fee waiver or other provision in lieu of fee waiver is available to any student whose parent is unable to pay a fee.

(b) A school or LEA administrator shall verify fee waivers consistent with this rule.

(9) An LEA shall submit school fee compliance forms to the Superintendent for each school that affirm compliance with the permanent injunction, consistent with Doe v. Utah State Board of Education, Civil No. 920903376 (3rd District 1994).

(10) An LEA shall adopt a fee waiver policy for review and appeal of fee waiver requests which:

(a) provides parents the opportunity to review proposed alternatives to fee waivers;

(b) establishes a timely appeal process, which shall include the opportunity to appeal to the LEA or its designee; and

(c) suspends any requirement that a given student pay a fee during any period for which the student's eligibility for waiver is under consideration or during which an appeal of denial of a fee waiver is in process.

(11) An LEA may pursue reasonable methods for collecting student fees, but may not, as a result of unpaid fees:

(a) exclude a student from a school, an activity, class, or program that is provided, sponsored, or supported by a school during the regular school day;

(b) refuse to issue a course grade; or

(c) withhold official student records, including written or electronic grade reports, diplomas or transcripts.

(12)(a) A school may withhold student records in accordance with Subsection 53G-8-212(2)(a).

(b) Notwithstanding Subsection (12)(a), a school may not withhold any records required for student enrollment or placement in a subsequent school.

(13) A school is not required to waive a non-waivable charge.

R277-407-9. Service In Lieu of Fees -- Voluntary Requests for Installment Plans.

(1) Subject to the provisions of Subsection (2), an LEA may allow a student to perform service in lieu of a fee, but service in lieu of a fee may not be required.

(2) An LEA may allow a student to perform service in lieu of a fee if:

(a) the LEA establishes a service policy that ensures that a service assignment is appropriate to the:

(i) age of the student;

(ii) physical condition of the student; and

(iii) maturity of the student;

(b) the LEA's service policy is consistent with state and federal laws, including:

(i) Section 53G-7-504; and

(ii) the Federal Fair Labor Standards Act, 29 U.S.C. 201;

(c) the service can be performed within a reasonable period of time; and

(d) the service is at least equal to the minimum wage for each hour of service.

(3)(a) A student who performs service may not be treated differently than other students who pay a fee.

(b) The service may not create an unreasonable burden for a student or parent and may not be of such a nature as to demean or stigmatize the student.

(4) An LEA shall transfer a student's service credit to:

(a) another school within the LEA; or

(b) another LEA upon request of the student.

(5)(a) An LEA may make an installment payment plan available to a parent or student to pay for a fee.

(b) An installment payment plan described in Subsection (5)(a) may not be required in lieu of a fee waiver.

(6) An LEA that charges fees shall adopt policies that include at least the following:

(a) a process for obtaining waivers or pursuing alternatives that is administered fairly, objectively, and without delay, and avoids stigma and unreasonable burdens on students and families;

(b) a process with no visible indicators that could lead to identification of fee waiver applicants;

(c) a process that complies with the privacy requirements of The Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 123g (FERPA);

(d) a student may not collect fees or assist in the fee waiver approval process;

(e) a standard written decision and appeal form is provided to every applicant; and

(f) during an appeal the requirement that the fee be paid is suspended.

R277-407-10. Individual and Group Fundraising Requirements.

(1) An LEA governing board shall establish a fundraising policy that includes a fundraising activity approval process.

(2) An LEA's fundraising policy described in Subsection

(1):

(a) may not authorize, establish, or allow for required individual fundraising;

(b) may provide optional individual fundraising opportunities for students to raise money to offset the cost of the student's fees;

(c) may allow for required group fundraisers;

(d) may not deny a student membership on a team or group, based on the student's non-participation in a fundraiser;

(e) shall require compliance with the requirements of Rule R277-113 when using alternative methods of raising revenue that do not include students; and

(f) shall include a requirement that a school notify parents of required group fundraising, letting parents and students know how and when specific details, as described in Subsection (3), will be provided.

(3) The specific details described in Subsection (2)(f) shall include a description of the nature of the required group fundraiser and the estimated participation time required of the student or parent for the required group fundraiser.

R277-407-11. Fee Waiver Eligibility.

(1) A student is eligible for fee waiver if an LEA receives verification that:

(a) in accordance with Subsection 53G-7-504(4), based on the family income levels established by the Superintendent as described in Subsection (2);

(b) the student to whom the fee applies receives SSI;

(c) the family receives TANF funding;

(d) the student is in foster care through the Division of Child and Family Services; or

(e) the student is in state custody.

(2) The Superintendent shall annually establish income levels for fee waiver eligibility and publish the income levels on the Board's website.

(3) In lieu of income verification, an LEA may require alternative verification under the following circumstances:

(a) If a student's family receives TANF, an LEA may require a letter of decision covering the period for which a fee waiver is sought from the Utah Department of Workforce Services;

(b) If a student receives SSI, an LEA may require a benefit verification letter from the Social Security Administration;

(c) If a student is in state custody or foster care, an LEA may rely on the youth in care required intake form and school enrollment letter or both provided by a case worker from the Utah Division of Child and Family Services or the Utah Juvenile Justice Department.

(d) An LEA may not subject a family to unreasonable demands for re-qualification.

(4) A school may grant a fee waiver to a student, on a case by case basis, who does not qualify for a fee waiver under Subsection (1), but who, because of extenuating circumstances is not reasonably capable of paying the fee.

(5) An LEA may charge a proportional share of a fee or reduced fee if circumstances change for a student or family so that fee waiver eligibility no longer exists.

R277-407-12. Fees for Textbooks and Remediation.

(1) Beginning with the 2022-23 school year, an LEA may not charge a fee for a textbook as provided in Section 53G-7-603, except for a textbook used for a concurrent enrollment or advanced placement course as described in Subsection (2).

(2)(a) An LEA may charge a fee for a textbook used for a concurrent enrollment or advanced placement.

(b) A fee for a textbook used for a concurrent enrollment or advanced placement course is fee waivable as described in Section R277-407-8.

R277-407-13. Budgeting and Spending Revenue Collected Through Fees -- Fee Revenue Sharing Requirements.

(1) An LEA shall follow the general accounting standards described in Rule R277-113 for treatment of fee revenue.

(2) An LEA shall:

(a) establish a spend plan for the revenue collected from each fee charged; and

(b) if the LEA has two or more schools within the LEA, share revenue lost due to fee waivers across the LEA.

(3)(a) A spend plan described in Subsection (2)(a) provides students, parents, and employees transparency by identifying a fee's funding uses.

(b) An LEA or school's spend plan shall identify the needs of the activity, course, or program for the fee being charged and shall include a list or description of anticipated types of expenditures, for the current fiscal year or as carryover for use in a future fiscal year, funded by the fee charged.

(4)(a) Financial inequities or disproportional impact of fee waivers may not fall inequitably on any one school within an LEA.

(b) An LEA that has multiple schools shall establish a procedure to identify and address potential inequities due to the impact of the number of students who receive fee waivers within each of the LEA's schools.

R277-407-14. Fee Waiver Reporting Requirements.

(1) An LEA shall attach the following to the LEA's annual year end report for inclusion in the Superintendent's annual report:

(a) a summary of:

(i) the number of students in the LEA given fee waivers;

(ii) the number of students who worked in lieu of a waiver; and

(iii) the total dollar value of student fees waived by the LEA;

(b) a copy of the LEA's fee and fee waiver policies;

(c) a copy of the LEA's fee schedule for students; and

(d) the notice of fee waiver criteria provided by the LEA to a student's parent or guardian.

(e) a fee waiver compliance form approved by the Superintendent for each school and LEA.

R277-407-15. Superintendent and LEA Policy and Training Requirements.

(1) The Superintendent shall provide ongoing training, informational materials, and model policies, as available, for use by LEAs.

(2) The Superintendent shall provide online training and resources for LEAs regarding:

(a) an LEA's fee approval process;

(b) LEA notification requirements;

(c) LEA requirements to establish maximum fees;

(d) fundraising practices;

(e) fee waiver eligibility requirements, including requirements to maintain student and family confidentiality; and

(f) community service or fundraising alternatives for students and families who qualify for fee waivers.

(3) An LEA governing board shall annually review the LEA's policies on school fees, fee waivers, fundraising, and donations.

(4) An LEA shall develop a plan for, at a minimum, annual training of LEA and school employees on fee related policies enacted by the LEA specific to each employee's job function.

R277-407-16. Enforcement.

(1) The Superintendent shall monitor LEA compliance with this rule:

(a) through the compliance reports provided in Section

R277-407-14; and

(b) by such other means as the Superintendent may reasonably request at any time.

(2) If an LEA fails to comply with the terms of this rule or request of the Superintendent, the Superintendent shall send the LEA a first written notice of non-compliance, which shall include a proposed corrective action plan.

(3) Within 45 days of the LEA's receipt of a notice of non-compliance, the LEA shall:

(a) respond to the allegations of noncompliance described in Subsection (2); and

(b) work with the Superintendent on the Superintendent's proposed corrective action plan to remedy the LEA's noncompliance.

(4)(a) Within fifteen days after receipt of a proposed corrective action plan described in Subsection (3)(b), an LEA may request an informal hearing with the Superintendent to respond to allegations of noncompliance or to address the appropriateness of the proposed corrective action plan.

(b) The form of an informal hearing described in Subsection (4)(a) shall be as directed by the Superintendent.

(5) The Superintendent shall send an LEA a second written notice of non-compliance and request for the LEA to appear before a Board standing committee if:

(a) the LEA fails to respond to the first notice of non-compliance within 60 days; or

(b) the LEA fails to comply with a corrective action plan described in Subsection (3)(b) within the time period established in the LEA's corrective action plan.

(6) If an LEA that failed to respond to a first notice of non-compliance receives a second written notice of non-compliance, the LEA may:

(a)(i) respond to the notice of non-compliance described in Subsection (5); and

(ii) work with the Superintendent on a corrective action plan within 30 days of receiving the second written notice of non-compliance; or

(b) seek an appeal as described in Subsection (8)(b).

(7) If an LEA that failed to respond to a first notice of non-compliance fails to comply with either of the options described in Subsection (6), the Superintendent shall impose one of the financial consequences described in Subsection (10).

(8)(a) Prior to imposing a financial consequence described in Subsection (10), the Superintendent shall provide an LEA thirty days' notice of any proposed action.

(b) The LEA may, within fifteen days after receipt of a notice described in Subsection (8)(a), request an appeal before the Board.

(9) If the LEA does not request an appeal described in Subsection (8)(b), or if after the appeal the Board finds that the allegations of noncompliance are substantially true, the Superintendent may continue with the suggested corrective action, formulate a new form of corrective action or additional terms and conditions which must be met and may proceed with the appropriate remedy which may include an order to return funds improperly collected.

(10) A financial consequence may include:

(a) requiring an LEA to repay an improperly charged fee, commensurate with the level of non-compliance;

(b) withholding all or part of an LEA's monthly Minimum School Program funds until the LEA comes into full compliance with the corrective action plan; and

(c) suspending the LEA's authority to charge fees for an amount of time specified by the Superintendent or Board in the determination.

(11) The Board's decision described in Subsection (9) is final and no further appeals are provided.

R277-407-17. Enforceable Date.

(1) This rule will be enforceable beginning January 1, 2020.

KEY: education, school fees
December 10, 2019 Art X Sec 2
Notice of Continuation July 19, 2017 Art X Sec 3
53E-3-401(4)
53G-7-503
Doe v. Utah State Board of Education, Civil No. 920903376

R277. Education, Administration.
R277-468. Parents Review of Public Education Curriculum and Review of Complaint Process.
R277-468-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board; and

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to direct an LEA to include parents in the adoption and review of an LEA's primary instructional materials including the review of complaints specific to curriculum materials.

R277-468-2. Definitions.

B. "Instructional materials" means the same as the term is defined in Section 53E-4-401.

R277-468-3. Parental Involvement with Instructional Material.

(1) An LEA shall involve parents, who have a student who attends a school within the LEA, and instructional staff in the consideration of LEA-purchased instructional materials.

(2) An LEA shall include parents, who have a student who attends a school within the LEA, in reviewing complaints specific to instructional materials.

(3) An LEA may seek assistance from parent organizations or associations or other groups to recruit and select parent members for the purposes described in subsection (1) and (2).

R277-468-4. Parental Involvement Resources.

(1) An LEA may request the Board provide the LEA resources for effective parent participation in the instructional materials review or complaint process.

(2) An LEA may request the Board assist the LEA in policy development regarding parental involvement in the instructional materials review or complaint process.

KEY: parents, committees, curriculum, complaints
December 10, 2019 Art X Sec 3
Notice of Continuation October 7, 2019 53E-3-401(3)

R277. Education, Administration.
R277-484. Data Standards.
R277-484-1. 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-3-401(8)(a), which allows the Board to take corrective action against an education entity that fails to comply with Board rules; and

(d) Subsection 53E-3-511(8), which requires the Board to ensure LEA inclusion of data in an LEA's Student Information System.

(2) The Superintendent is required to perform certain data collection related duties essential to the operation of statewide educational accountability and financial systems as mandated in state and federal law.

(3) The purpose of this rule is to support the operation of required educational accountability and financial systems by ensuring timely submission of data by LEAs.

R277-484-2. Definitions.

(1) "Annual Financial Report" means an account of LEA revenue and expenditures by source and fund sufficient to meet the reporting requirements specified in Subsections 53E-3-301(3)(d) and (e).

(2) "Annual Program Report" means an account of LEA revenue and expenditures by source and program sufficient to meet the reporting requirements specified in Subsections 53E-3-301(3)(d) and (e).

(3) "Comprehensive Administration of Credentials for Teachers in Utah Schools" or "CACTUS" means the same as that term is defined in Subsection R277-512(1)(a).

(4) "Data Warehouse" means the database of demographic information, course taking, and test results maintained by the USOE on all students enrolled in Utah schools.

(5) "EDEN" means the Education Data Exchange Network, the mechanism by which state education agencies are mandated to submit data to the U.S. Department of Education.

(6) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(7) "MSP" means Minimum School Program, the set of state supported K-12 public school funding programs.

(8) "Schools interoperability framework" or "SIF" means an open global standard for seamless, real time data transfer and usage for Utah public schools.

(9) "Student achievement backpack" has the same meaning as that term is defined in Subsection 53E-3-511(1)(d).

(10) "Student information system" or "SIS" means a student data collection system used for Utah public schools.

(11) "Utah eTranscript and Record Exchange" or "UTREx" means a system that allows individual detailed student records to be exchanged electronically between public education LEAs and the Board, and allows 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.

(12) "Utah Student Record Store" has the same meaning as that term is defined in Subsection 53E-3-511(e).

(13) "Year" means both the school year and the fiscal year for a Utah LEA, which runs from July 1 through June 30.

R277-484-3. Deadlines for Data Submission.

(1) An LEA shall submit student level data to the Board through UTREx.

(2) An LEA shall by 5:00 p.m. Mountain Standard Time on the date specified in Table 1 submit reports in the format specified by the Superintendent.

(3) If a deadline in Table 1 falls on a weekend or state holiday in a given year, an LEA shall submit the report on the next business day following the date specified in Table 1.

TABLE 1

Reporting Deadlines

Report	Deadline
Adult Education - Final Report - Prior Year	July 15
Adult Education - Final Audit Report - Prior Year	September 15
Annual Assurance Letter - R277-108	October 1
Annual Financial Report - Prior Year	October 1
Annual Program Report - Prior Year	October 1
Bus Driver Credentials Report - Current Year	December 15
Bus Inventory Report	July 15
CACTUS - Final Update - Current Year	June 29
CACTUS - Midyear Update - Current Year	November 15
Charter School Projections	September 15
Classified Personnel Report - Prior Year	July 15
Community Development and Renewal Agency Representative List	February 28
Driver Education Report - Prior Year	July 15
Emergency Preparedness Compliance Statement - Prior Year	July 1
Emergency Response Plan - Prior Year	July 1
Enrollment and Transfer Student Documentation Audit - Current Year	November 1
ESEA Choice and Supplemental Services Report - Prior Year	July 15
Financial Audit Report - Prior Year	November 30
Fire Drill Compliance Statement - Prior Year	July 1
Free and Reduced Price Lunch October 31 Enrollment Survey - Current Year	November 15
Home Schooled Students Report - Prior Year	July 15
Immunization Status Report (to Utah Department of Health) - Final	June 15
Immunization Status Report - Current Year	November 1
LEA Budget - Next Fiscal Year	July 15
LEA Budget - Next Fiscal Year - Planned Truth in Taxation Process	August 15
Membership Audit Report - Prior Year	September 15
Negotiations Report - Current Year	November 1
Other Emergency (Earthquake and School Violence) Drills Compliance Statement - Prior Year	July 1
Pupil Transportation - Schedule A1 (Miles, Minutes, Students Report) - Current Year Projected	November 1
Pupil Transportation Schedule B (Miscellaneous Expenditure Report) - Prior Year	November 1
Pupil Transportation Statistics Year End Report- Prior Year	July 15
Redevelopment Agency Taxing Entity Committee Representative List	February 28
UTREx - Complete December 1 Update - Current Year	December 10
UTREx - Complete October 1 Update - Current Year	October 10
UTREx - Revised December 1 Update - Current Year - Significant Errors Identified by the Superintendent or LEA	December 15
UTREx - Revised October 1 Update - Current Year Significant Errors Identified by the Superintendent or LEA	October 15
UTREx - Final Comprehensive Update - Prior Year	July 7

R277-484-4. Adjustments to Deadlines.

(1) An LEA may seek an extension of a deadline to ensure continuation of funding and provide more accurate information to allocation formulas by submitting a written request to the Superintendent no later than 24 hours before the specified deadline in Table 1.

(2) An extension request shall include:

(a) The reasons for the extension request;

(b) The signatures of the LEA business administrator and superintendent or director; and

(c) The date by which the LEA proposes to submit the report.

(3) If an LEA requests an extension under Subsection (1), the Superintendent may do any of the following after taking into consideration the pattern of LEA compliance with reporting deadlines and the urgency of the need for the data to be submitted:

(a) Approve the request and allow the MSP fund transfer process to continue; or

(b) Deny the request and stop the MSP fund transfer process; or

(c) Recommend corrective action to the Board in accordance with Rule R277-114.

(4) If, after receiving an extension, an LEA fails to submit the report by the designated date, the MSP fund transfer process shall be stopped and the procedures described in Section R277-484-7 shall apply.

(5) An extension shall apply only to the specific reports and dates for which an extension was requested.

(6) The Superintendent may not extend deadlines for the following reports:

(a) AFR;

(b) APR;

(c) Mid-year or Final CACTUS updates;

(d) a Financial Audit Report; or

(e) any UTREx updates.

R277-484-5. Official Data Source and Required LEA Compatibility.

(1) The Superintendent shall load operational data collections into the Data Warehouse as of the submission deadlines specified.

(2) The Data Warehouse shall be the sole official source of data for annual:

(a) school performance reports required under Section 53E-5-204;

(b) determination of state and federal accountability reports; and

(c) submission of data files to the U.S. Department of Education via EDEN.

(3)(a) An LEA shall use an SIS approved by the Superintendent to ensure compatibility with Board data collection systems.

(b) The Superintendent shall maintain a list of approved student information systems.

(4) Prior to the Superintendent granting approval for an LEA to initiate or replace a student information system that was not previously approved, the LEA shall:

(a) send written request for approval to the Superintendent no later than November 15 of the year prior to the year the LEA proposes to use the SIS for production software;

(b) submit documentation to the Superintendent that the new or modified student information system is SIF certified;

(c) submit documentation to the Superintendent that an SIF agent can meet the UTREx specifications profile for Vertical Reporting Framework (VRF) and eTranscripts;

(d) ensure that a new student information system can generate valid data collection by submitting an actual file to the Superintendent for review;

(e) ensure that the new student information system can generate the Statewide Student Identifier (SSID) request file by submitting an actual file to the Superintendent for review.

(5)(a) The Superintendent shall review documentation and grant or deny an LEA submission under Subsection (4) within 30 calendar days.

(b) An approved replacement system shall run in parallel to a state-approved system for a period of at least three months and be able to generate duplicate reports to previously generated information.

(6) An LEA shall submit daily updates to the Board Clearinghouse using all School Interoperability Framework (SIF) objects defined in the UTREx Clearinghouse specification.

(7) An LEA shall electronically submit all public high school transcripts requested by a public education post-secondary school if the post-secondary school is capable of receiving transcripts through the electronic transcript service designated by the Superintendent.

(8) No later than June 30, 2017, an LEA shall ensure that data collected in the Utah Student Record Store for a Student Achievement Backpack is integrated into the LEA's SIS and is made available to a student's parent or guardian and an authorized LEA user in an easily accessible viewing format.

(9) Failure to comply with any of the requirements of this Section R277-484-5 may result in a recommendation for corrective action in accordance with Rule R277-114.

R277-484-6. Adjustments to Summary Statistics Based on Compliance Audits.

(1) For the purpose of allocating MSP funds and projecting enrollment, the Superintendent may modify LEA level aggregate membership and fall enrollment counts on the basis of the values in the Membership and Enrollment audit reports, respectively, when an audit report review team agrees that an adjustment is warranted by the evidence of an audit.

(2) An audit report review team shall make a determination under Subsection (1) within 60 working days of the authorized audit report deadline.

(3) The Superintendent may only adjust values downward if an audit report is received after an authorized deadline.

R277-484-7. Financial Consequences of Failure to Submit Reports on Time.

(1) If an LEA fails to submit a report by its deadline as specified in Table 1, consistent with procedures outlined in R277-114, the Superintendent may recommend corrective action, including stopping the LEA's MSP funds transfer process, unless the LEA has obtained an extension of the deadline in accordance with the procedure described in Section R277-484-4.

(2) The Superintendent may recommend loss of up to 1.0 WPU from Kindergarten or Grades 1-12 programs, depending on the grade level and aggregate membership of the student, in the current year Mid Year Update for each student whose prior year immunization status was not accounted for in accordance with Utah Code 53G-9-302 as of June 15.

KEY: data standards, reports, deadlines
August 7, 2017 **Art X Sec 3**
Notice of Continuation June 6, 2017 **53E-3-301(d) and (e)**
53E-3-401
53E-3-401(8)(a)
53E-3-511(8)

R277. Education, Administration.
R277-494. Charter, Online, Home, and Private School Student Participation in Extracurricular or Co-curricular School Activities.
R277-494-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;

(b) Subsection 53E-3-401(4), which permits the Board to adopt rules in accordance with its responsibilities;

(c) Subsection 53G-6-704(6)(a), which directs the Board to make rules establishing fees for a charter school student's participation in extracurricular or co-curricular activities at certain public schools; and

(d) Subsection 53G-6-705(6), which directs the Board to make rules establishing fees for an online student's participation in extracurricular or co-curricular activities at certain public schools.

(2) The purpose of this rule is to inform school districts, charter and online schools, and parents of:

(a) school participation fees; and

(b) state-determined requirements for a charter school or a public online school student to participate in an extracurricular activity at a student's boundary school.

R277-494-2. Definitions.

(1) "Activity fee" means a fee that:

(a) is approved by a local school board or public school;

(b) is charged to all students to participate in an extracurricular or co-curricular activity sponsored by or through the public school; and

(c) entitles a public school student to:

(i) participate in a school activity;

(ii) try out for an extracurricular or co-curricular school activity;

(iii) receive transportation to an activity; and

(iv) attend a regularly scheduled public school activity.

(2) "Co-curricular activity" means a school district or school activity, course, or experience that includes a required regular school day component and an after school component, including a special program or activity such as a program for a gifted and talented student, a summer program, and a science or history fair.

(3) "Extracurricular activity" means an athletic program or activity sponsored by a public school and offered, competitively or otherwise, to a public school student outside of the regular school day or program.

(4) "Online school" means a formally constituted public school that offers full-time education delivered primarily over the internet.

(5) "Qualifying school" means:

(a) for purposes of a charter school student, a school described in Subsection 53G-6-704(1);

(b) for purposes of an online school student, a school described in Subsection 53G-6-705(2); and

(c) for purposes of a private or home school student, a school described in Subsection 53G-6-703(2)(c).

(6) "School of enrollment" means the public school that maintains the student's cumulative file, enrollment information and transcript for purposes of high school graduation.

(7) "School participation fee" means the fee paid by a charter or online school to a qualifying school consistent with Subsections R277-494-3(2) or R277-494-4(2) for the charter or online school student's participation in an extracurricular or co-curricular activity.

(8) "Student activity specific fee" means the activity fee charged to all participating students by a qualifying school for a designated extracurricular or co-curricular activity consistent with Rule R277-407.

R277-494-3. Charter and Online School Student Participation in Extracurricular Activities at Another Public School.

(1) A charter or online school student may participate in an extracurricular activity at a qualifying school if:

(a) the extracurricular activity is not offered by the student's charter or online school;

(b) the student satisfies:

(i) for a charter school student, the requirements of Subsection 53G-6-704(3);

(ii) for an online school student, the requirements of Subsection 53G-6-705(3); and

(iii) the requirements of this rule;

(c) the student meets the qualifying school's standards and requirements; and

(d) the student's parent agrees to provide the student transportation to the qualifying school for the extracurricular activity.

(2)(a) A charter or online school student's school of enrollment shall pay a one-time annual school participation fee of $75.00 per student to the qualifying school at which the charter or online school student desires to participate.

(b) Upon annual payment of the school participation fee, the student may participate in all extracurricular or co-curricular school activities at the school during the school year for which the student is qualified and eligible.

(3) The school participation fee described in Subsection (2)(a) is in addition to:

(a) a student activity specific fee for a specific extracurricular activity; and

(b) the activity fee charged to all students in a qualifying school to supplement a school activity as assessed by the school consistent with this rule.

(4) Except as provided in Subsection (7), a charter or online school student who participates in an extracurricular activity at a qualifying school shall pay all required student activity specific fees to the qualifying school in accordance with deadlines set by the qualifying school.

(5) All fees, including school participation fees and student activity specific fees shall be paid prior to a charter or online school student's participation in an activity at the qualifying school.

(6) A charter or online school of enrollment shall cooperate fully with all qualifying schools:

(a) regarding students' participation in try-outs, practices, pep rallies, team fund raising efforts, scheduled games, and required travel; and

(b) by providing complete and prompt reports of student academic and citizenship progress or grades, upon request.

(7)(a) If a participating charter or online school student qualifies for a fee waiver, in accordance with Rule R277-407, the charter or online student's school of enrollment shall pay the school participation fee described in Subsection (2)(a) and any waived student activity specific fees to the qualifying school.

(b) A charter or online school that is required to pay a fee waiver student's participation fee or student activity specific fee as described in Subsection (7)(a) shall pay the student participation fee and any student activity specific fees to the qualifying school before the charter or online school student may begin to participate in the extracurricular activity at the qualifying school.

R277-494-4. Charter or Online School Student Participation in Co-Curricular Activities.

(1)(a) A charter or online school student may participate in a co-curricular activity at a qualifying school if:

(i) the co-curricular activity is not offered by the student's

charter or online school;

(ii) the student satisfies:

(A) for a charter school student, the requirements of Subsection 53G-6-704(3);

(B) for an online school student, the requirements of Subsection 53G-6-705(3); and

(C) the requirements of this rule;

(iii) the student meets the qualifying school's standards and requirements; and

(iv) the student's parent agrees to provide the student transportation to the qualifying school for the co-curricular activity.

(b) A charter or online school may negotiate with a public school other than a school described in Subsection (1) to participate in a co-curricular activity at the other public school, including:

(i) a debate, drama, or choral program;

(ii) a specialized course or program offered during the regular school day; and

(iii) a school's sponsored enrichment program or activity.

(c) A student who participates in a co-curricular activity described in Subsection (1)(b) shall meet:

(i) the same attendance, discipline, and course requirements expected of the public school's full-time students;

(ii) for a charter school student, the requirements of Subsection 53G-6-704(3); and

(iii) for an online school student, the requirements of Subsection 53G-6-705(3).

(2)(a) A charter or online school of enrollment shall determine if the school will allow students to participate in co-curricular school activities at qualifying schools.

(b) If a charter or online school allows one student to participate in a co-curricular activity at a qualifying school, the charter or online school shall allow all interested students to participate.

(3)(a) A charter or online school student's school of enrollment shall pay a one-time annual school participation fee of $75.00 per student to the qualifying school at which the charter or online school student desires to participate.

(b) If a charter or online school of enrollment pays a $75.00 school participation fee to a qualifying school as described in Subsection R277-494-3(2)(a), the charter or online school of enrollment is not required to pay an additional $75.00 school participation fee described in Subsection (3)(a) to the qualifying school in the same year.

(4) A charter or online school student participating under this rule shall:

(a) pay the required student activity specific fees for each co-curricular activity; and

(b) meet all eligibility requirements and timelines of the public school.

(5)(a) If a participating charter or online school student qualifies for a fee waiver, in accordance with Rule R277-407, the charter or online student's school of enrollment shall pay any waived student activity specific fees to the qualifying school.

(b) A charter or online school that is required to pay a fee waiver student's activity specific fees as described in Subsection (5)(a), shall pay the student activity specific fees to the qualifying school before the charter or online school student may begin to participate in the co-curricular activity at the qualifying school.

R277-494-5. Private or Home School Student Participation in Extracurricular Activities.

(1) In accordance with Section 53G-6-703, a private or home school student may participate in an extracurricular activity at a qualifying school if:

(a) for a private school student, the extracurricular activity is not offered by the student's private school;

(b) the student satisfies the requirements of:

(i) Section 53G-6-703; and

(ii) this rule; and

(c) the student meets the qualifying school's standards and requirements.

(2) Except as provided in Subsection (3), a private or home school student shall pay the required student activity specific fees for each extracurricular activity to the qualifying school:

(a) before the student may participate in the extracurricular activity at the qualifying school; and

(b) in accordance with deadlines set by the qualifying school.

(3) If a private or home school student qualifies for a fee waiver in accordance with Rule R277-407, the qualifying school shall waive any required student activity specific fees in accordance with the requirements of Rule R277-407, School Fees.

R277-494-6. Private or Home School Student Participation in Co-curricular Activities.

A private or home school student may participate in a co-curricular activity at a public school in accordance with the dual enrollment provisions of rule R277-438.

KEY: extracurricular, co-curricular, activities, student participation

March 9, 2016 **Art X Sec 3**

Notice of Continuation October 15, 2015 **53E-3-401(4)**

53G-6-704(5)

53G-6-705(6)

R277. Education, Administration.
R277-927. Teacher and Student Success Act (TSSA) Program.
R277-927-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision of public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Section 53F-2-416, which requires the Board to calculate and distribute student and teacher success program money to LEAs;

(d) Section 53G-7-1304, which requires the Board to make rules for an LEA governing board to calculate and distribute a school's allocation of program money for each school within the LEA; and

(e) Section 53G-7-1306, which require the Board to determine:

(i) a threshold of points under the statewide school accountability system that designates a school as succeeding in school performance and student academic achievement; and

(ii) performance standards for certain schools.

(2) The purpose of this rule is to:

(a) set standards for the Board's distribution of student and teacher success program money to LEAs;

(b) set standards governing an LEA's distribution of student and teacher success program money to each school within the LEA; and

(c) to establish certain accountability standards related to the student and teacher success program.

R277-927-2. Definitions.

(1) As used in Subsection 53G-7-1304, "capital expenditures" are funds used to acquire, maintain, or upgrade physical assets like property, building, technology, or equipment and may include:

(a) improvements to a building or school grounds;

(b) a school bus;

(c) rent, lease, or bond payments; and

(d) a portable classroom or costs related to moving a portable classroom.

(2) As used in Subsection 53G-7-1304(1), "early childhood education" includes preschool programs.

(3) "Program" means the student and teacher success program created in Section 53G-7-1302.

(4) "Satellite school" means the same as that term is defined in R277-550.

(5) "School personnel who work directly with and support students in an academic role" does not include:

(a) school level administrative or operational staff;

(b) building and maintenance staff, including custodial and grounds staff;

(c) transportation staff;

(d) child nutrition services staff;

(e) operational or facility support staff;

(f) financial staff;

(g) information technology staff;

(h) legal staff;

(i) secretarial staff; or

(j) other district level staff paid on an administrative salary schedule.

R277-927-3. Program Requirements and Board Distribution of Program Money.

(1)(a) For the 2019-20 school year, the Superintendent shall distribute an LEA's annual program allocation, in equal payment amounts, to an LEA once the LEA submits the LEA's student success framework through the Board's grant management system.

(b) If an LEA amends the LEA's student success framework, the LEA shall submit the amended student success framework through the Board's grant management system.

(2) Beginning with the 2020-21 school year, if the LEA previously submitted a student success framework, before the LEA receives the LEA's annual program allocation, the LEA shall submit annual assurances in accordance with the requirements of R277-108.

(3) If an LEA fails to submit the LEA's student success framework as described in Subsection (1) or annual assurances described in Subsection (2) to the Superintendent by November 1 of a fiscal year:

(a) the LEA may not receive a program allocation for that fiscal year; and

(b) the undistributed balance will be included with the new year appropriation and distributed in the following fiscal year according to the formula described in Subsection 53F-2-416(3).

(4) For purposes of calculating the formula described in Subsection 53F-2-416(3), "weighted pupil units" means:

(a) for a school district or charter school:

(i) the weighted pupil units for the current year budget request for the minimum school basic program; minus

(ii) the weighted pupil units allocated to LEAs for foreign exchange students; and

(b) for the Utah Schools for the Deaf and Blind, USDB's prior year October 1 headcount multiplied by two.

(5) For a new LEA or new charter satellite campus in the LEA or charter school satellite's second year of operation, the Superintendent shall increase or decrease the new LEA or charter school satellite's first year distribution of funds in the LEA or charter school satellite's second year to reflect the LEA or charter school satellite's actual first year October 1 counts.

(6) For purposes of determining whether a school district in a county of the first, second, or third class has an approved board local levy for the maximum amount allowed for the purposes described in Subsection 53G-7-1304(2)(c)(i)(A), the school district meets the property tax requirements of Subsection 53G-7-1304(2)(a)(i) if in the applicable fiscal year:

(a) the school district's rate imposed for the board local levy is equal to the maximum amount allowed under Section 53F-8-302; or

(b)(i) meets or exceeds an amount equal to the certified board local levy rate; and

(ii) the school district's board local levy rate equaled the maximum amount allowed under Section 53F-8-302 sometime within the prior five fiscal years.

(7) For purposes of determining whether a school district in a county of the first, second, or third class increased the school district's board local levy by at least .0001 per dollar of taxable value as described in Subsection 53G-7-1304(2)(c)(i)(B), a school district that does not meet the property tax requirements of Subsection (6), the school district meets the requirements of Subsection 53G-7-1304(2)(c)(i)(B) if the school district's board local levy rate for the current fiscal year is at least .0001 per dollar of taxable value more than the school district's board local levy rate imposed in the prior fiscal year.

(8) For fiscal year 2020, "state average teacher salary" means a weighted calculation of the statewide teacher salary expenditures reported on the annual financial report by LEA from fiscal year 2018 divided by the number of full-time equivalent educators or FTEs from the most recent educator cactus submission.

(9) Except as provided in Subsection (10), for fiscal year 2020, "LEA's average teacher salary" means the LEA's teacher salary expenditures reported on the annual financial report from fiscal year 2018 divided by the LEA's number of full-time

equivalent educators or FTEs from the most recent educator cactus submission.

(10) For a new LEA in the new LEA's first or second year of operation, the new LEA's average teacher salary is equal to the state average teacher salary.

R277-927-4. LEA Financial Reporting and Prohibited Uses of Program Funds.

(1) An LEA shall report expenditures of program money by location according to the Board approved chart of accounts.

(2) An LEA may not use program money:

(a) for a purpose described in Subsection 53G-7-1304(1);

(b) to support adult education; or

(c) to pay for contracted services commonly performed by the following staff:

(i) school level administration staff;

(ii) building and maintenance staff, including custodial staff;

(iii) transportation staff;

(iv) child nutrition services staff;

(v) operational or facility support staff; or

(vi) district level staff.

(3) As used in Subsection 53G-7-1304(2), "district administration costs" does not include salary driven benefits for school personnel charged at the district level.

(4) An LEA may carry over restricted program funds into the next fiscal year to support a purpose identified by the LEA governing board student success framework. Any funds carried over must be reported according to the Board approved chart of accounts.

R277-927-5. LEA Allocations to Schools.

(1) An LEA with two or more schools shall establish a policy that defines how the LEA will calculate and distribute program allocations based on prior year average daily membership as determined by the Superintendent, to all schools within the LEA, including how the LEA will calculate allocations for new schools within the LEA.

(2) For a new school within an LEA, the LEA shall calculate and distribute school's allocation based on the school's projected October 1 headcount for the applicable school year.

(3) After calculating an LEA's school level allocations, an LEA may make adjustments to individual school ADM values and school level allocations due to changes in current year student enrollment for reasons including:

(a) changes in school boundaries;

(b) changes to feeder school patterns;

(c) changes in grade levels offered; or

(d) significant student growth of 30% or more.

R277-927-6. Accountability Performance Standards.

(1) For purposes of determining the threshold of points that designates a school as succeeding in school performance as described in Subsection 53G-7-1306(1)(a), a school is succeeding in school performance if, in the most recently published overall school accountability ratings the school is designated as a commendable or exemplary school as described in Section R277-497-2.

(2) For purposes of determining the performance standards for a school described in Section 53G-7-1306(1)(b), a school meets the performance standards if the school meets the criteria described in Section 53E-5-203(2).

KEY: Teacher and Student Success Act (TSSA), program money, allocation

December 10, 2019 **Art X Sec 3**
53E-3-401(4)
53F-2-416
53G-7-1304
53G-7-1306

R307. Environmental Quality, Air Quality.
R307-103. Administrative Procedures.
R307-103-1. Administrative Procedures.

Administrative proceedings under Utah Air Quality Act are governed by Rule R305-7.

KEY: air pollution, administrative procedures, administrative proceedings, hearings
August 29, 2011 63G-4
Notice of Continuation December 9, 2019

R307. Environmental Quality, Air Quality.
R307-110. General Requirements: State Implementation Plan.
R307-110-1. Incorporation by Reference.

To meet requirements of the Federal Clean Air Act, the Utah State Implementation Plan (SIP) must be incorporated by reference into these rules. Copies of the SIP are available on the division's website.

R307-110-2. Section I, Legal Authority.

The Utah State Implementation Plan, Section I, Legal Authority, as most recently amended by the Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-3. Section II, Review of New and Modified Air Pollution Sources.

The Utah State Implementation Plan, Section II, Review of New and Modified Air Pollution Sources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-4. Section III, Source Surveillance.

The Utah State Implementation Plan, Section III, Source Surveillance, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-5. Section IV, Ambient Air Monitoring Program.

The Utah State Implementation Plan, Section IV, Ambient Air Monitoring Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-6. Section V, Resources.

The Utah State Implementation Plan, Section V, Resources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-7. Section VI, Intergovernmental Cooperation.

The Utah State Implementation Plan, Section VI, Intergovernmental Cooperation, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-8. Section VII, Prevention of Air Pollution Emergency Episodes.

The Utah State Implementation Plan, Section VII, Prevention of Air Pollution Emergency Episodes, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-9. Section VIII, Prevention of Significant Deterioration.

The Utah State Implementation Plan, Section VIII, Prevention of Significant Deterioration, as most recently amended by the Utah Air Quality Board on March 8, 2006, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-10. Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter, as most recently amended by the Utah Air Quality Board on December 4, 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
December 5, 2019 19-2-104
Notice of Continuation January 27, 2017

R307. Environmental Quality, Air Quality.
R307-165. Emission Testing.
R307-165-1. Purpose.

R307-165 establishes the frequency of emission testing requirements for all areas in the state.

R307-165-2. Testing Every 5 Years.

Emission testing is required at least once every five years of all sources with established emission limitations specified in approval orders issued under R307-401 or in section IX, Part H of the Utah state implementation plan. In addition, if the director has reason to believe that an applicable emission limitation is being exceeded, the director may require the owner or operator to perform such emission testing as is necessary to determine actual compliance status. Sources approved in accordance with R307-401 will be tested within six months of start-up. The Board may grant exceptions to the mandatory testing requirements of R307-165-2 that are consistent with the purposes of R307.

R307-165-3. Notification of DAQ.

At least 30 days prior to conducting any emission testing required under any part of R307, the owner or operator shall notify the director of the date, time and place of such testing and, if determined necessary by the director, the owner or operator shall attend a pretest conference.

R307-165-4. Test Conditions.

All tests shall be conducted while the source is operating at the maximum production or combustion rate at which such source will be operated. During the tests, the source shall burn fuels or combinations of fuels, use raw materials, and maintain process conditions representative of normal operations. In addition, the source shall operate under such other relevant conditions as the director shall specify.

R307-165-5. Rejection of Test Results.

The director may reject emissions test data if they are determined to be incomplete, inadequate, not representative of operating conditions specified for the test, or if the director was not provided an opportunity to have an observer present at the test.

KEY: air pollution, emission testing
September 2, 2005 19-2-104(1)
Notice of Continuation December 9, 2019

R307. Environmental Quality, Air Quality.

R307-201. Emission Standards: General Emission Standards.

R307-201-1. Purpose.

R307-201 establishes emission standards for all areas of the state except for sources listed in section IX, Part H of the state implementation plan or located in a PM10 nonattainment or maintenance area.

R307-201-2. Applicability.

R307-201 applies statewide to any sources of emissions except for sources listed in section IX, Part H of the state implementation plan or located in a PM10 nonattainment or maintenance area.

R307-201-3. Visible Emissions Standards.

(1) Visible emissions from installations constructed on or before April 25, 1971, except diesel engines, shall be of a shade or density no darker than 40% opacity, except as otherwise provided in these rules.

(2) Visible emissions from installations constructed after April 25, 1971, except diesel engines shall be of a shade or density no darker than 20% opacity, except as otherwise provided in these rules.

(3) Visible emissions for all incinerators, no matter when constructed, shall be of shade or density no darker than 20% opacity.

(4) No owner or operator of a gasoline powered engine or vehicle shall allow, cause or permit visible emissions.

(5) Emissions from diesel engines, except locomotives, manufactured after January 1, 1973, shall be of a shade or density no darker than 20% opacity, except for starting motion no farther than 100 yards or for stationary operation not exceeding three minutes in any hour.

(6) Emissions from diesel engines manufactured before January 1, 1973, shall be of a shade or density no darker than 40% opacity, except for starting motion no farther than 100 yards or for stationary operation not exceeding three minutes in any hour.

(7) Visible emissions exceeding the opacity standards for short time periods as the result of initial warm-up, soot blowing, cleaning of grates, building of boiler fires, cooling, etc., caused by start-up or shutdown of a facility, installation or operation, or unavoidable combustion irregularities which do not exceed three minutes in length (unavoidable combustion irregularities which exceed three minutes in length must be handled in accordance with R307-107), shall not be deemed in violation provided that the director finds that adequate control technology has been applied. The owner or operator shall minimize visible and non-visible emissions during start-up or shutdown of a facility, installation, or operation through the use of adequate control technology and proper procedures.

(8) Compliance Method. Emissions shall be brought into compliance with these requirements by reduction of the total weight of pollutants discharged per unit of time rather than by dilution of emissions with clean air.

(9) Opacity Observation. Opacity observations of emissions from stationary sources shall be conducted in accordance with EPA Method 9. Opacity observers of mobile sources and intermittent sources shall use procedures similar to Method 9, but the requirement for observations to be made at 15 second intervals over a 6-minute period shall not apply.

R307-201-4. Automobile Emission Control Devices.

Any person owning or operating any motor vehicle or motor vehicle engine registered or principally operated in the State of Utah on which is installed or incorporated a system or device for the control of crankcase emissions or exhaust emissions in compliance with the Federal motor vehicle rules, shall maintain the system or device in operable condition and shall use it at all times that the motor vehicle or motor vehicle engine is operated. No person shall remove or make inoperable the system or device or any part thereof, except for the purpose of installing another system or device, or part thereof, which is equally or more effective in reducing emissions from the vehicle to the atmosphere.

KEY: air pollution, PM10
December 15, 2015 19-2-101
Notice of Continuation December 9, 2019 19-2-104

R307. Environmental Quality, Air Quality.
R307-202. Emission Standards: General Burning.
R307-202-1. Applicability.

R307-202-4 through R307-202-8 applies to general burning within incorporated community under the authority of county or municipal fire authority.

R307-202-2. Definitions.

The following additional definitions apply only to R307-202.

"Attainment areas" means any area that meets the national primary and secondary ambient air quality standard (NAAQS) for the pollutant.

"County or municipal fire authority" means the public official so designated with the responsibility, authority, and training to protect people, property, and the environment from fire, within their respective area of jurisdiction.

"Federal Class I Area" means an area that consists of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. See Clean Air Act section 162(a).

"Fire hazard" means a hazardous condition involving combustible, flammable, or explosive material that represents a substantial threat to life or property if not immediately abated, as declared by the county or municipal fire authority.

"Native American spiritual advisor" means a person who leads, instructs, or facilitates a Native American religious ceremony or service; or provides religious counseling; is an enrolled member of a federally recognized Native American tribe; and is recognized as a spiritual advisor by a federally recognized Native American tribe. "Native American spiritual advisor" includes a sweat lodge leader, medicine person, traditional religious practitioner, or holy man or woman.

R307-202-3. Exclusions.

As provided in Section 19-2-114, the provisions of R307-202 are not applicable to:

(1) Except for areas zoned as residential, burning incident to horticultural or agricultural operations of:

(a) Prunings from trees, bushes, and plants; and

(b) Dead or diseased trees, bushes, and plants, including stubble.

(2) Burning of weed growth along ditch banks for clearing these ditches for irrigation purposes;

(3) Controlled heating of orchards or other crops during the frost season to lessen the chances of their being frozen so long as the emissions from this heating do not cause or contribute to an exceedance of any national ambient air quality standards and is consistent with the federally approved State Implementation Plan; and

(4) The controlled burning of not more than two structures per year by an organized and operating fire department for the purpose of training fire service personnel when the National Weather Service clearing index is above 500. See also Section 11-7-1(2)(a).

(5) Ceremonial burning is excluded from R307-202-4(2) when conducted by a Native American spiritual advisor.

R307-202-4. Prohibitions.

(1) No open burning shall be done at sites used for disposal of community trash, garbage and other wastes.

(2) No person shall burn under this rule when the director issues a public announcement under R307-302. The director will distribute such announcement to the local media notifying the public that a mandatory no-burn period is in effect for the area where the burning is to occur.

R307-202-5. General Requirements.

(1) Except as otherwise provided in this rule, no person shall set or use an open outdoor fire for the purpose of disposal or burning of petroleum wastes; demolition or construction debris; residential rubbish; garbage or vegetation; tires; tar; trees; wood waste; other combustible or flammable solid, liquid or gaseous waste; or for metal salvage or burning of motor vehicle bodies.

(2) The county or municipal fire authority shall approve burning based on the predicted meteorological conditions and whether the emissions would impact the health and welfare of the public or cause or contribute to an exceedance of any national ambient air quality standard.

(3) Nothing in this regulation shall be construed as relieving any person conducting open burning from meeting the requirements of any applicable federal, state or local requirements concerning disposal of any combustible materials.

(4) The county or municipal fire authority that approves any open burning permit will retain a copy of each permit issued for one year.

R307-202-6. Open Burning - Without Permit.

The following types of open burning do not require a permit when not prohibited by other local, state or federal laws and regulations, when it does not create a nuisance, as defined in Section 76-10-803, and does not impact the health and welfare of the public.

(1) Devices for the primary purpose of preparing food such as outdoor grills and fireplaces;

(2) Campfires and fires used solely for recreational purposes where such fires are under control of a responsible person and the combustible material is clean, dry wood or charcoal; and

(3) Indoor fireplaces and residential solid fuel burning devices except as provided in R307-302-2.

R307-202-7. Open Burning - With Permit.

(1) No person shall knowingly conduct open burning unless the open burning activities may be conducted without a permit pursuant to R307-202-6 or the person has a valid permit for burning on a specified date or period, issued by the county or municipal fire authority having jurisdiction in the area where the open burning will take place.

(2) A permit applicant shall provide information as requested by the county or municipal fire authority. No permit or authorization shall be deemed valid unless the issuing authority determines that the applicant has provided the required information.

(3) Persons seeking an open burning permit shall submit to the county or municipal fire authority an application on a form provided by the director for each separate burn.

(4) A permit shall be valid only on the lands specified on the permit.

(5) No material shall be burned unless it is clearly described and quantified as material to be burned on a valid permit.

(6) No burning shall be conducted contrary to the conditions specified on the permit.

(7) Any permit issued by a county or municipal fire authority shall be subject to the local, state, and federal rules and regulations.

(8) Open burning is authorized by the issuance of a permit, as stipulated within this rule, for specification in R307-202-7(10). These permits can only be issued when not prohibited by other local, state, or federal laws and regulations and when a nuisance as defined in Section 76-10-803 is not created and does not impact the health and welfare of the public.

(9) Individual permits, as stipulated within this rule, for the types of burning listed in R307-202-7(10) may be issued by a county or municipal fire authority when the clearing index is

500 or greater. When the clearing index is below 500, all permits issued for that day will be null and void until further notice from the county or municipal fire authority. Additionally, anyone burning on the day when the clearing index is below 500 or is found to be violating any part of this rule shall be liable for a fine in accordance with R307-130.

(10) Types of open burning for which a permit may be granted are:

(a) Except in nonattainment and maintenance areas, open burning of tree cuttings and slash in forest areas where the cuttings accrue from pulping, lumbering, and similar operations, but excluding waste from sawmill operations such as sawdust and scrap lumber.

(b) Open burning of trees and brush within railroad rights-of-way provided that dirt is removed from stumps before burning, and that tires, oil more dense than #2 fuel oil, tar, or other materials which can cause severe air pollution are not present in the materials to be burned, and are not used to start fires or to keep fires burning.

(c) Open burning of a fire hazard that a county or municipal fire authority determines cannot be abated by any other viable option.

(d) Open burning of highly explosive materials when a county or municipal fire authority, law enforcement agency or governmental agency having jurisdiction determines that onsite burning or detonation in place is the only reasonably available method for safely disposing of the material.

(e) Open burning for the disposal of contraband in the possession of public law enforcement personnel provided they demonstrate to the county or municipal fire authority that open burning is the only reasonably available method for safely disposing of the material.

(f) Open burning of clippings, bushes, plants and prunings from trees incident to property clean-up activities, including residential cleanup, provided that the following conditions have been met:

(i) Within only the counties of Washington, Kane, San Juan, Iron, Garfield, Beaver, Piute, Wayne, Grand and Emery, the county or municipal fire authority may issue a permit between March 1 and May 30 when the clearing index is 500 or greater. The county or municipal fire authority may issue a permit between September 15 to November 15 for such burning to occur when the state forester has approved the burning window under Section 65A-8-211 and the clearing index is 500 or greater.

(ii) In all other areas of the state, the county or municipal fire authority may issue a permit between March 30 and May 30 for such burning to occur when the clearing index is 500 or greater. The county or municipal fire authority may issue a permit between September 15 and October 30 for such burning to occur when the state forester has approved the burning window under Section 65A-8-211 and the clearing index is 500 or greater.

(iii) Such burnings occur in accordance with state and federal requirements;

(iv) Materials to be burned are thoroughly dry; and

(v) No trash, rubbish, tires, or oil are included in the material to be burned, used to start fires, or used to keep fires burning.

(g) Except for nonattainment and maintenance areas, the director may grant a permit for types of open burning not specified in R307-202-7(3) on written application if the director finds that the burning is consistent with the federally approved State Implementation Plan and does not cause or contribute to an exceedance of any national ambient air quality standards.

(i) This permit may be granted once the director has reviewed the written application with the requirements and criteria found within this rule at R307-202-7.

(ii) Open Burning Permit Criteria.

(A) The director or the county or municipal fire authority shall consider the following factors in determining whether, and upon what conditions, to issue an open burning permit:

(I) The location and proximity of the proposed burning to any building, other structures, the public, and federal Class I areas that might be impacted by the smoke and emissions from the burn;

(II) Burning will only be conducted when the clearing index is 500 or above; and

(III) Whether there is any practical alternative method for the disposal of the material to be burned.

(B) Methods to minimize emissions and smoke impacts may include, but are not limited to:

(I) The use of clean auxiliary fuel;

(II) Drying the material prior to ignition; and

(III) Separation for alternative disposal of materials that produce higher levels of emissions and smoke during the combustion process.

(C) Open burning permits are not valid during periods when the clearing index is below 500 or publicly announced air pollution emergencies or alerts have been declared in the area of the proposed burn.

(D) For burns of piled material, all piles shall be reasonably dry and free of dirt.

(E) Open burns shall be supervised by a responsible person who shall notify the local fire department and have available, either on-site or by the local fire department, the means to suppress the burn if the fire does not comply with the terms and conditions of the permit.

(F) All open burning operations shall be subject to inspection by the director or county or municipal fire authority. The permittee shall maintain at the burn site the original or a copy of the permit that shall be made available without unreasonable delay to the inspector.

(G) If at any time the director or the county or municipal fire authority granting the permit determines that the permittee has not complied with any term or condition of the permit, the permit is subject to partial or complete suspension, revocation or imposition of additional conditions. All burning activity subject to the permit shall be terminated immediately upon notice of suspension or revocation. In addition to suspension or revocation of the permit, the director or county or municipal fire authority may take any other enforcement action authorized under state or local law.

R307-202-8. Special Conditions.

(1) Open burning for special purposes or under unusual or emergency circumstances may be approved by the director if it is consistent with the federally approved State Implementation Plan and does not cause or contribute to an exceedance of any national ambient air quality standards.

(a) This permit may be granted once the director has reviewed the written application with the requirements and criteria in R307-202-7.

KEY: air pollution, open burning, fire authority

October 6, 2014 **19-2-104**
Notice of Continuation December 9, 2019 **11-7-1(2)(a)**
65A-8-211
76-10-803

R307. Environmental Quality, Air Quality.
R307-203. Emission Standards: Sulfur Content of Fuels.
R307-203-1. Commercial and Industrial Sources.

(1) Any coal, oil, or mixture thereof, burned in any fuel burning or process installation not covered by New Source Performance Standards for sulfur emissions shall contain no more than 1.0 pound sulfur per million gross BTU heat input for any mixture of coal nor .85 pounds sulfur per million gross BTU heat input for any oil.

(a) In the case of fuel oil, it shall be sufficient to record the following specifications for each purchase of fuel oil from the vendor: weight percent sulfur, gross heating value (btu per unit volume), and density. These parameters shall be ascertained in accordance with the methods of the American Society for Testing and Materials.

(b) In the case of coal, it shall be necessary to obtain a representative grab sample for every 24 hours of operation and the sample shall be tested in accordance with the methods of the American Society for Testing and Materials.

(c) All sources located in the SO_2 nonattainment area covered by Section IX, Part H of the Utah State Implementation Plan which are required to comply with specific fuel (oil or coal) sulfur content limitations must demonstrate compliance with their limitations in accordance with (a) and (b) above.

(d) Records of fuel sulfur content shall be kept for all periods when the plant is in operation and shall be made available to the director upon request, and shall include a period of two years ending with the date of the request.

(e) If the owner/operator of the source can demonstrate to the director that the inherent variability of the coal they are receiving from the vendor is low enough such that the testing requirements outlined above may be deemed excessive, then an alternative testing plan may be approved for use with the same source of coal.

(f) Any person may apply to the director for approval of an alternative test method, an alternative method of control, an alternative compliance period, an alternative emission limit, or an alternative monitoring schedule. The application must include a demonstration that the proposed alternative produces an equal or greater air quality benefit than that required by R307-203, or that the alternative test method is equivalent to that required by R307-203. The director shall obtain concurrence from EPA when approving an alternative test method, an alternative method of control, an alternative compliance period, an alternative emission limit, or an alternative monitoring schedule.

(2) Any person engaged in operating fuel burning equipment using coal or fuel oil, which is not covered by New Source Performance Standards for sulfur emissions, may apply for an exemption from the sulfur content restrictions of (1) above. The applicant shall furnish evidence, that the fuel burning equipment is operating in such a manner as to prevent the emission of sulfur dioxide in amounts greater than would be produced under the limitations of (1) above. Control apparatus to continuously prevent the emission of sulfur greater than provided by (1) above must be specified in the application for an exemption.

(3) In case an exemption is granted, the operator shall install continuous emission monitoring devices approved by the director. The operator shall provide the director with a monthly summary of the data from such monitors. This summary shall be such as to show the degree of compliance with (1) above. It shall be submitted no later than the calendar month succeeding its recording. When exemptions from (1) above are granted, the source's application for such exemption must specify the test method for determining sulfur emissions. The test method must agree with the NSPS test method for the same industrial category.

(4) Methods for determining sulfur content of coal and fuel oil shall be those methods of the American Society for Testing and Materials.

(a) For determining sulfur content in coal, ASTM Methods D3177-75 or D4239-85 are to be used.

(b) For determining sulfur content in oil, ASTM Methods D2880-71 or D4294-89 are to be used.

(c) For determining the gross calorific (or BTU) content of coal, ASTM Methods D2015-77 or D3286-85 are to be used.

R307-203-2. Sulfur and Ash Content of Coal for Residential Use.

(1) After July 1, 1987, no person shall sell, distribute, use or make available for use any coal or coal containing fuel for direct space heating in residential solid fuel burning devices and fireplaces which exceeds the following limitations as measured by the American Society for Testing Materials Methods:

(a) 1.0 pound sulfur per million BTU's, and

(b) 12% volatile ash content.

(2) Any person selling coal or coal containing fuel used for direct residential space heating within the State of Utah shall provide written documentation to the coal consumer of the sulfur and volatile ash content of the coal being purchased.

R307-203-3. Emissions Standards.

Other provisions of R307 may require more stringent controls than listed herein, in which case those requirements must be met.

KEY: air pollution, fuel composition*, fuel oil*
September 15, 1998 19-2-104
Notice of Continuation December 9, 2019

R307. Environmental Quality, Air Quality.
R307-204. Emission Standards: Smoke Management.
R307-204-1. Purpose and Goals.

(1) The purpose of R307-204 is to establish by rule procedures that mitigate the impacts on air quality and visibility from prescribed fire.

R307-204-2. Applicability.

(1) R307-204 applies to all persons using prescribed fire on land they own or manage.

(2) R307-204 does not apply to agricultural activities specified in 19-2-114 and to those regulated under R307-202, or to activities otherwise permitted under R307.

R307-204-3. Definitions.

The following additional definitions apply only to R307-204.

"Annual Emissions Goal" means the annual establishment of a planned quantitative value of emissions reductions from prescribed fire.

"Best Management Practices" means smoke management and dispersion techniques used during a prescribed fire that affect the direction, duration, height or density of smoke.

"Burn Window" means the period of time during which the prescribed fire is scheduled for ignition.

"Emission Reduction Techniques (ERT)" mean techniques for controlling emissions from prescribed fires to minimize the amount of emission output per unit or acre burned.

"Federal Class I Area" means any Federal land that is federally classified or reclassified Class I.

"Land Manager" means any federal, state, local or private entity that owns, administers, directs, oversees or controls the use of public or private land, including the application of fire to the land.

"Non-burning Alternatives to Fire" means non-burning techniques that are used to achieve a particular land management objective, including but not limited to reduction of fuel loading, manipulation of fuels, enhancement of wildlife habitat, and ecosystem restructuring. These alternatives are designed to replace the use of fire for at least five years.

"Nonfull suppression event" means a naturally ignited wildland fire (wildfire) for which a land manager secures less than full suppression to accomplish a specific prestated resource management objective in a predefined geographic area.

"Particulate Matter" means the liquid or solid particles such as dust, smoke, mist, or smog found in air emissions.

"Pile" means natural materials or debris resulting from some type of fuels management practice that have been relocated either by hand or machinery into a concentrated area.

"Pile Burn" means burning of individual piles.

"Prescribed Fire or Prescribed Burn" means a wildland fire originating from a planned ignition to meet specific objectives identified in a written, approved, prescribed fire plan.

"Prescribed Fire Plan" means the plan required for each fire application ignited by managers. It must be prepared by qualified personnel and approved by the appropriate agency administrator prior to implementation. Each plan follows specific agency direction and must include critical elements described in agency manuals.

"Prescription" means the measurable criteria that define conditions under which a prescribed fire may be ignited, guide selection of appropriate management responses, and indicates other required actions. Prescription criteria may include safety, economic, public health, environmental, geographic, administrative, social, or legal considerations.

"Smoke Sensitive Receptors" means population centers such as towns and villages, campgrounds and trails, hospitals, nursing homes, schools, roads, airports, Class I areas, nonattainment and maintenance areas, areas whose air quality monitoring data indicate pollutant levels that are close to health standards, and any other areas where smoke and air pollutants can adversely affect public health, safety and welfare.

"Wildfire" means unplanned ignition of a wildland fire (such as a fire caused by lightning, volcanoes, unauthorized and accidental human-caused fires) and escaped prescribed fires.

"Wildland" means an area in which development is essentially non-existent, except for pipelines, power lines, roads, railroads, or other transportation or conveyance facilities. Structures, if any, are widely scattered.

"Wildland Fire" means any non-structure fire that occurs in the wildland.

R307-204-4. General Requirements.

(1) Management of On-Going Fires. The land manager shall notify the Division of all wildfires, including nonfull suppression events. If, after consultation with the land manager, the Director determines that a prescribed fire, wildfire, or any smoke transported from other locations, is degrading air quality to levels that could violate the National Ambient Air Quality Standards or burn plan conditions, the land manager shall promptly stop igniting additional prescribed fires.

(2) Non-burning Alternatives to Fire. Each land manager shall submit to the Director annually, by March 15, a list of areas treated using non-burning alternatives to fire during the previous calendar year, including the number of acres, the specific types of alternatives used, and the location of these areas.

(3) Annual Emissions Goal. The Director shall provide an opportunity for an annual meeting with land managers for the purpose of evaluation and adoption of the annual emission goal. The annual emission goal shall be developed in cooperation with states, federal land management agencies and private entities, to control prescribed fire emissions increases to the maximum feasible extent.

(4) Long-term Fire Projections. Each land manager shall provide to the Director by March 15 annually long-term projections of future prescribed fire activity for annual assessment of visibility impairment.

R307-204-5. Burn Schedule.

(1) Any land manager planning prescribed fire burning more than 50 acres per year shall submit a burn schedule to the Director on forms provided by the Division, and shall include the following information for all prescribed fires including those smaller than 20 acres:

(a) Project name and de minimis status;

(b) Latitude and longitude;

(c) Acres for the year, fuel type, and planned use of emission reduction techniques to support establishment of the annual emissions goal; and

(d) Expected burn dates and burn duration.

(2) Each land manager shall submit each year's burn schedule no later than March 15 of that year.

(3) Any land manager who makes changes to the burn schedule shall submit an amendment to the burn schedule within 10 days after the change.

R307-204-6. Small Prescribed Fires (de minimis).

(1) A prescribed fire that covers less than 20 acres per burn or less than 30,000 cubic feet of piled material shall only be ignited either when the clearing index is 500 or greater or when the clearing index is between 400 and 499, if;

(a) The prescribed fire is recorded as a de minimis prescribed fire on the annual burn schedule;

(b) The land manager obtains approval from the Director by e-mail or phone prior to ignition of the burn; and

(c) The land manager submits to the Director hourly photographs, a record of any complaints, hourly meteorological

conditions and an hourly description of the smoke plume.

R307-204-7. Large Prescribed Fires.

(1) For a prescribed fire that covers 20 acres or more per burn or 30,000 cubic feet of piled material or more, the land manager shall submit to the Director a prescribed fire plan at least one week before the beginning of the burn window. The plan shall include a prescription and description of other state, county, municipal, or federal resources available on scene, or for contingency purposes.

(2) The land manager shall submit pre-burn information to the Director at least two weeks before the beginning of the burn window. The pre-burn information shall be submitted to the Director on the appropriate form provided by the Division and shall include the following information:

(a) The project name, total acres, and latitude and longitude;

(b) Summary of ignition method, burn type, and burn objectives, such as restoration or maintenance of ecological functions or hazardous fuel reduction;

(c) Any sensitive receptor within 15 miles, including any Class I or nonattainment or maintenance area, and distance and direction in degrees from the project site;

(d) The smoke dispersion or visibility model used and results;

(e) The estimated amount of total particulate matter anticipated;

(f) A description of how the public and land managers in neighboring states will be notified;

(g) A map depicting both the daytime and nighttime smoke path and down-drainage flow for a minimum of 15 miles from the burn site with smoke-sensitive areas delineated;

(h) Safety and contingency plans for addressing any smoke intrusions;

(i) Planned use of emission reduction techniques to support establishment of an annual emissions goal, if not already submitted under R307-204-5; and

(j) Any other information needed by the Director for smoke management purposes, or for assessment of contribution to visibility impairment in any Class I area.

(3) Burn Request.

(a) The land manager shall submit to the Director a burn request on the form provided by the Division by 1000 hours at least two business days before the planned ignition time. The form must include the following information:

(i) The project name;

(ii) The date submitted and by whom;

(iii) The burn manager conducting the burn and phone numbers; and

(iv) The dates of the requested burn window.

(b) No large prescribed fire shall be ignited before the Director approves the burn request.

(c) If a prescribed fire is delayed, changed or not completed following burn approval, any significant changes in the burn plan shall be submitted to the Director before the burn request is submitted.

(4) Daily Emissions Report. By 0800 hours on the day following the prescribed fire, for each day of prescribed fire activity covering 20 acres or more, the land manager shall submit to the Director a daily emission report on the form provided by the Division including the following information:

(a) Project name;

(b) The date submitted and by whom;

(c) The start and end dates and times of the burn;

(d) Emission information, to include total affected acres, black acres, tons fuel consumed per acre, and tons particulate matter produced;

(e) Public interest regarding smoke;

(f) Daytime smoke behavior;

(g) Nighttime smoke behavior;

(h) Emission reduction techniques applied; and

(i) Evaluation of the techniques used by the land manager to reduce emissions or manage the smoke from the prescribed burn.

(5) Emission Reduction and Dispersion Techniques. Each land manager shall take measures to prevent smoke impacts. Such measures may include best management practices such as dilution, emission reduction or avoidance in addition to others described in the pre-burn information form provided by the Division. An evaluation of the techniques shall be included in the daily emissions report required by (4) above.

(6) Monitoring. Land managers shall monitor the effects of the prescribed fire on smoke sensitive receptors and on visibility in Class I areas, as directed by the burn plan. Hourly visual monitoring and documentation of the direction of the smoke plume shall be recorded on the form provided by the Division or on the land manager's equivalent form. Complaints from the public shall be noted in the land managers project file. Records shall be available for inspection by the Director for six months following the end of the fire.

KEY: air quality, prescribed fire, smoke
September 5, 2019 19-2-104(1)(a)
Notice of Continuation December 9, 2019

R307. Environmental Quality, Air Quality.
R307-205. Emission Standards: Fugitive Emissions and Fugitive Dust.
R307-205-1. Purpose.

R307-205 establishes minimum work practices and emission standards for sources of fugitive emissions and fugitive dust for sources located in all areas in the state except those listed in section IX, Part H of the state implementation plan or located in a PM10 nonattainment or maintenance area.

R307-205-2. Applicability.

R307-205 applies statewide to all sources of fugitive emissions and fugitive dust, except for agricultural or horticultural activities specified in 19-2-114(1)-(3) and any source listed in section IX, Part H of the state implementation plan or located in a PM10 nonattainment or maintenance area.

R307-205-3. Definitions.

The following definition applies throughout R307-205:

"Material" means sand, gravel, soil, minerals or other matter that may create fugitive dust.

R307-205-4. Fugitive Emissions.

Fugitive emissions from sources which were constructed on or before April 25, 1971, shall not exceed 40% opacity. Fugitive emissions from sources constructed or modified after April 25, 1971, shall not exceed 20% opacity.

R307-205-5. Fugitive Dust.

(1) Storage and Handling of Materials. Any person owning, operating or maintaining a new or existing material storage, handling or hauling operation shall minimize fugitive dust from such an operation. Such control may include the use of enclosures, covers, stabilization or other equivalent methods or techniques as approved by the director.

(2) Construction and Demolition Activities.

(a) Any person engaging in clearing or leveling of land greater than one-quarter acre in size, earthmoving, excavation, or movement of trucks or construction equipment over cleared land greater than one-quarter acre in size or access haul roads shall take steps to minimize fugitive dust from such activities. Such control may include watering and chemical stabilization of potential fugitive dust sources or other equivalent methods or techniques approved by the director.

(b) The owner or operator of any land area greater than one-quarter acre in size that has been cleared or excavated shall take measures to prevent fugitive particulate matter from becoming airborne. Such measures may include:

(i) planting vegetative cover,

(ii) providing synthetic cover,

(iii) watering,

(iv) chemical stabilization,

(v) wind breaks, or

(vi) other equivalent methods or techniques approved by the director.

(c) Any person engaging in demolition activities including razing homes, buildings, or other structures or removing paving material from roads or parking areas shall take steps to minimize fugitive dust from such activities. Such control may include watering and chemical stabilization or other equivalent methods or techniques approved by the director.

R307-205-6. Roads.

(1) The director may require persons owning, operating or maintaining any new or existing road, or having right-of-way easement or possessory right to use the same, to supply traffic count information as determined necessary to ascertain whether or not control techniques are adequate or additional controls are necessary.

(2) Any person who deposits materials that may create fugitive dust on a public or private paved road shall clean the road promptly.

R307-205-7. Mining Activities.

(1) Fugitive dust, construction activities, and roadways associated with mining activities are regulated under the provisions of R307-205-7 and not by R307-205-5 and 6.

(2) Any person who owns or operates a mining operation shall minimize fugitive dust as an integral part of site preparation, mining activities, and reclamation operations.

(3) The fugitive dust control measures to be used may include:

(a) periodic watering of unpaved roads,

(b) chemical stabilization of unpaved roads,

(c) paving of roads,

(d) prompt removal of coal, rock minerals, soil, and other dust-forming debris from roads and frequent scraping and compaction of unpaved roads to stabilize the road surface,

(e) restricting the speed of vehicles in and around the mining operation,

(f) revegetating, mulching, or otherwise stabilizing the surface of all areas adjoining roads that are a source of fugitive dust,

(g) restricting the travel of vehicles on other than established roads,

(h) enclosing, covering, watering, or otherwise treating loaded haul trucks and railroad cars, to minimize loss of material to wind and spillage,

(i) substitution of conveyor systems for haul trucks and covering of conveyor systems when conveyed loads are subject to wind erosion,

(j) minimizing the area of disturbed land,

(k) prompt revegetation of regraded lands,

(l) planting of special windbreak vegetation at critical points in the permit area,

(m) control of dust from drilling, using water sprays, hoods, dust collectors or other controls approved by the director,

(n) restricting the areas to be blasted at any one time,

(o) reducing the period of time between initially disturbing the soil and revegetating or other surface stabilization,

(p) restricting fugitive dust at spoil and coal transfer and loading points,

(q) control of dust from storage piles through use of enclosures, covers, or stabilization and other equivalent methods or techniques as approved by the director, or

(r) other techniques as determined necessary by the director.

R307-205-8. Tailings Piles and Ponds.

(1) Fugitive dust, construction activities, and roadways associated with tailings piles and ponds are regulated under the provisions of R307-205-8 and not by R307-205-5 and 6.

(2) Any person owning or operating an existing tailings operation where fugitive dust results from grading, excavating, depositing, or natural erosion or other causes in association with such operation shall take steps to minimize fugitive dust from such activities. Such controls may include:

(a) watering,

(b) chemical stabilization,

(c) synthetic covers,

(d) vegetative covers,

(e) wind breaks,

(f) minimizing the area of disturbed tailings,

(g) restricting the speed of vehicles in and around the tailings operation, or

(h) other equivalent methods or techniques which may be approvable by the director.

KEY: air pollution, fugitive emissions, mining, tailings
July 7, 2005 **19-2-101**
Notice of Continuation December 9, 2019 **19-2-104**
19-2-109

R307. Environmental Quality, Air Quality.
R307-206. Emission Standards: Abrasive Blasting.
R307-206-1. Purpose.

R307-206 establishes work practice and emission standards for abrasive blasting operations for sources located statewide except for those sources listed in section IX, Part H of the state implementation plan or located in a PM10 nonattainment or maintenance area.

R307-206-2. Definitions.

(1) The following additional definitions apply to R307-206:

"Abrasive Blasting" means the operation of cleaning or preparing a surface by forcibly propelling a stream of abrasive material against the surface.

"Abrasive Blasting Equipment" means any equipment utilized in abrasive blasting operations.

"Confined Blasting" means any abrasive blasting conducted in an enclosure which significantly restricts air pollutants from being emitted to the ambient atmosphere, including but not limited to shrouds, tanks, drydocks, buildings and structures.

"Multiple Nozzles" means a group of two or more nozzles being used for abrasive cleaning of the same surface in such close proximity that their separate plumes are indistinguishable.

"Unconfined Blasting" means any abrasive blasting which is not confined blasting as defined above.

R307-206-3. Applicability.

R307-206 applies statewide to any abrasive blasting operation, except for any source that is listed in Section IX, Part H of the state implementation plan or that is located in a PM10 nonattainment or maintenance area.

R307-206-4. Visible Emission Standards.

Visible emissions from abrasive blasting operations shall not exceed 40% opacity, except for an aggregate period of three minutes in any one hour.

R307-206-5. Visible Emission Evaluation Techniques.

(1) Visible emissions shall be measured using EPA Method 9. Visible emissions from intermittent sources shall use procedures similar to Method 9, but the requirement for observations to be made at 15 second intervals over a six-minute period shall not apply.

(2) Visible emissions from unconfined blasting shall be measured at the densest point of the emission after a major portion of the spent abrasive has fallen out, at a point not less than five feet nor more than twenty-five feet from the impact surface from any single abrasive blasting nozzle.

(3) An unconfined blasting operation that uses multiple nozzles shall be considered a single source unless it can be demonstrated by the owner or operator that each nozzle, measured separately, meets the emission and performance standards provided in R307-206-2 through 4.

(4) Visible emissions from confined blasting shall be measured at the densest point after the air pollutant leaves the enclosure.

KEY: air pollution, abrasive blasting, PM10
December 15, 2015 19-2-104(1)(a)
Notice of Continuation December 9, 2019

R307. Environmental Quality, Air Quality.
R307-207. Residential Fireplaces and Solid Fuel Burning Devices.
R307-207-1. Purpose and Definition.

R307-207 establishes emission standards for residential fireplaces and solid fuel burning devices.

"Solid fuel burning device" means any device used for burning wood, coal, or any other nongaseous and non-liquid fuel, including, but not limited to, wood stoves, but excluding outdoor wood boilers, which are regulated under R307-208.

R307-207-2. Applicability.

(1) R307-207 applies to residential fireplaces and solid fuel burning devices in all areas of the state, except for PM10 and PM2.5 nonattainment and maintenance areas. R307-302 applies to PM10 and PM2.5 nonattainment or maintenance areas.

R307-207-3. Opacity for Residential Heating.

Visible emissions from residential solid fuel burning devices and fireplaces shall be limited to a shade or density no darker than 20% opacity as measured by EPA Method 9, except for the following:

(1) An initial fifteen minute start-up period, and

(2) A period of fifteen minutes in any three-hour period in which emissions may exceed the 20% opacity limitation for refueling.

KEY: fireplaces, residential, solid fuel burning
November 8, 2012 19-2-101
Notice of Continuation December 9, 2019 19-2-104

R307. Environmental Quality, Air Quality.
R307-305. Nonattainment and Maintenance Areas for PM10: Emission Standards.
R307-305-1. Purpose.

This rule establishes emission standards and work practices for sources located in PM10 nonattainment and maintenance areas to meet the reasonably available control measures requirement in section 189(a)(1)(C) of the Act.

R307-305-2. Applicability.

The requirements of R307-305 apply to the owner or operator of any source that is listed in Section IX, Part H of the state implementation plan or located in a PM10 nonattainment or maintenance area.

R307-305-3. Visible Emissions.

(1) Visible emissions from existing installations except diesel engines shall be of a shade or density no darker than 20% opacity. Visible emissions shall be measured using EPA Method 9.

(2) No owner or operator of a gasoline engine or vehicle shall allow, cause or permit the emissions of visible pollutants.

(3) Emissions from diesel engines, except locomotives, shall be of a shade or density no darker than 20% opacity, except for starting motion no farther than 100 yards or for stationary operation not exceeding three minutes in any hour.

(4) Visible emissions exceeding the opacity standards for short time periods as the result of initial warm-up, soot blowing, cleaning of grates, building of boiler fires, cooling, etc., caused by start-up or shutdown of a facility, installation or operation, or unavoidable combustion irregularities which do not exceed three minutes in length (unavoidable combustion irregularities which exceed three minutes in length must be handled in accordance with R307-107), shall not be deemed in violation provided that the director finds that adequate control technology has been applied. The owner or operator shall minimize visible and non-visible emissions during start-up or shutdown of a facility, installation, or operation through the use of adequate control technology and proper procedures.

R307-305-4. Particulate Emission Limitations and Operating Parameters (PM10).

Any source with emission limits included in Section IX, Part H, of the Utah state implementation plan shall comply with those emission limitations and operating parameters. Specific limitations will be set by the director, through an approval order issued under R307-401, for installations within a source that do not have limitations specified in the state implementation plan.

R307-305-5. Compliance Testing (PM10).

Compliance testing for PM10, sulfur dioxide, and oxides of nitrogen emission limitations shall be done in accordance with Section IX, Part H of the state implementation plan. PM10 compliance shall be determined from the results of EPA test method 201 or 201a. A backhalf analysis shall be performed for inventory purposes for each PM10 compliance test in accordance with Method 202, or other appropriate EPA approved reference method.

R307-305-6. Automobile Emission Control Devices.

Any person owning or operating any motor vehicle or motor vehicle engine registered in the State of Utah on which is installed or incorporated a system or device for the control of crankcase emissions or exhaust emissions in compliance with the Federal motor vehicle rules, shall maintain the system or device in operable condition and shall use it at all times that the motor vehicle or motor vehicle engine is operated. No person shall remove or make inoperable within the State of Utah the system or device or any part thereof, except for the purpose of installing another system or device, or part thereof, which is equally or more effective in reducing emissions from the vehicle to the atmosphere.

R307-305-7. Compliance Schedule for New Nonattainment Areas.

The provisions of R307-305 shall apply to the owner or operator of a source that is located in any new PM10 nonattainment area 180 days after the area is officially designated a nonattainment area for PM10 by the Environmental Protection Agency. Provisions of R307-201 shall continue to apply to the owner or operator of a source during this transition period.

KEY: air pollution, particulate matter, PM10, PM 2.5
December 15, 2015 19-2-104(1)(a)
Notice of Continuation December 9, 2019

R307. Environmental Quality, Air Quality.
R307-306. PM10 Nonattainment and Maintenance Areas: Abrasive Blasting.
R307-306-1. Purpose.

This rule establishes requirements that apply to abrasive blasting operations in PM10 nonattainment and maintenance areas.

R307-306-2. Definitions.

The following additional definitions apply to R307-306.

"Abrasive Blasting" means the operation of cleaning or preparing a surface by forcibly propelling a stream of abrasive material against the surface.

"Abrasive Blasting Equipment" means any equipment used in abrasive blasting operations.

"Abrasives" means any material used in abrasive blasting operations including but not limited to sand, slag, steel shot, garnet or walnut shells.

"Confined Blasting" means any abrasive blasting conducted in an enclosure that significantly restricts air pollutants from being emitted to the ambient atmosphere, including but not limited to shrouds, tanks, drydocks, buildings and structures.

"Hydroblasting" means any abrasive blasting using high pressure liquid as the propelling force.

"Multiple Nozzles" means a group of two or more nozzles used for abrasive cleaning of the same surface in such close proximity that their separate plumes are indistinguishable.

"Unconfined Blasting" means any abrasive blasting that is not confined blasting as defined above.

"Wet Abrasive Blasting" means any abrasive blasting using compressed air as the propelling force and sufficient water to minimize the plume.

R307-306-3. Applicability.

R307-306 applies to any person who operates abrasive blasting equipment in a PM10 nonattainment or maintenance area, or to sources listed in Section IX, Part H of the state implementation plan.

R307-306-4. Visible Emission Standard.

(1) Except as provided in (2) below, visible emissions from abrasive blasting operations shall not exceed 20% opacity except for an aggregate period of three minutes in any one hour.

(2) If the abrasive blasting operation complies with the performance standards in R307-306-6, visible emissions from the operation shall not exceed 40% opacity, except for an aggregate period of 3 minutes in any one hour.

R307-306-5. Visible Emission Evaluation Techniques.

(1) Visible emissions shall be measured using EPA Method 9. Visible emissions from intermittent sources shall use procedures similar to Method 9, but the requirement for observations to be made at 15 second intervals over a six minute period shall not apply.

(2) Visible emissions from unconfined blasting shall be measured at the densest point of the emission after a major portion of the spent abrasive has fallen out at a point not less than five feet nor more than twenty-five feet from the impact surface from any single abrasive blasting nozzle.

(3) An unconfined blasting operation that uses multiple nozzles shall be considered a single source unless it can be demonstrated by the owner or operator that each nozzle, measured separately, meets the visible emission standards in R307-306-4.

(4) Emissions from confined blasting shall be measured at the densest point after the air pollutant leaves the enclosure.

R307-306-6. Performance Standards.

(1) To satisfy the requirements of R307-306-4(2), the abrasive blasting operation shall use at least one of the following performance standards:

(a) confined blasting;

(b) wet abrasive blasting;

(c) hydroblasting; or

(d) unconfined blasting using abrasives as defined in (2) below.

(2) Abrasives.

(a) Abrasives used for dry unconfined blasting referenced in (1) above shall comply with the following performance standards:

(i) Before blasting, the abrasive shall not contain more than 1% by weight material passing a #70 U.S. Standard sieve.

(ii) After blasting the abrasive shall not contain more than 1.8% by weight material 5 microns or smaller.

(b) Abrasives reused for dry unconfined blasting are exempt from (a)(ii) above, but must conform with (a)(i) above.

(3) Abrasive Certification. Sources using the performance standard of (1)(d) above to meet the requirements of R307-306-4(2) must demonstrate they have obtained abrasives from a supplier who has certified (submitted test results) to the director at least annually that such abrasives meet the requirements of (2) above.

R307-306-7. Compliance Schedule.

The provisions of R307-306 shall apply in any new PM10 nonattainment area 180 days after the area is officially designated a nonattainment area for PM10 by the Environmental Protection Agency. Provisions of R307-206 shall continue to apply to the owner or operator of a source during this transition period.

KEY: air pollution, abrasive blasting, PM10
December 15, 2015 19-2-101(1)(a)
Notice of Continuation December 9, 2019

R307. Environmental Quality, Air Quality.
R307-307. Road Salting and Sanding.
R307-307-1. Applicability.

R307-307 applies to all persons who apply salt or abrasives such as crushed slag and sand to roads in PM10 and PM2.5 nonattainment and maintenance areas as defined in 40 CFR 81.345 (July 1, 2011) and geographically described as all regions of Davis, Salt Lake, and Utah counties; all portions of the Cache Valley; all regions in Weber County west of the Wasatch mountain range; in Box Elder County, from the Wasatch mountain range west to the Promontory mountain range and south of Portage; and in Tooele County, from the northernmost part of the Oquirrh mountain range to the northern most part of the Stansbury mountain range and north of Route 199.

R307-307-2. Definitions.

The following additional definition applies to R307-307:

"Arterial roadway" has the same meaning as outlined in U.S. DOT Federal Highway Administration Publication No. FHWA-ED-90-006, Revised March 1989, "Highway Functional Classification: Concepts, Criteria, and Procedures" as interpreted by Utah Department of Transportation and shown in the following maps: Salt Lake Urbanized Area, Provo-Orem Urbanized Area, and Ogden Urbanized Area (1992 or later).

R307-307-3. Records.

(1) Any person who applies salt or abrasives such as crushed slag and sand to roads in PM10 and PM2.5 nonattainment and maintenance areas shall maintain records of the material applied.

(a) For salt, the records shall include the quantity applied, the percent by weight of insoluble solids in the salt, and the percentage of the material that is sodium chloride (Nacl), magnesium chloride (MgCl2), calcium chloride (CaCl2), or potassium chloride (KCl).

(b) For abrasives such as sand or crushed slag, the records shall include the quantity applied and the percent by weight of fine material which passes the number 200 sieve in a standard gradation analysis.

(2) All records shall be maintained for a period of at least two years, and the records shall be made available to the director or his designated representative upon request.

R307-307-4. Content.

(1) After October 1, 1993, any salt applied to roads in Salt Lake, Davis, or Utah counties shall be at least 92% NaCl, MgCl2, CaCl2, and/or KCl.

(2) After January 1, 2014, any salt applied to roads in all other areas specified in R307-307-1 shall be no less than 92% by weight NaCl, MgCl2, CaCl2, and/or KCl.

R307-307-5. Alternatives.

(1) After October 1, 1993, any person who applies an abrasive such as crushed slag, or sand or who applies salt that is less than 92% by weight NaCl, MgCl2, CaCl2 and/or KCl to roads in Salt Lake, Davis, or Utah Counties shall either:

(a) demonstrate to the director that the material applied has no more PM10 or PM2.5 emissions than salt which is at least 92% NaCl, MgCl2, CaCl2, and/or KCl; or

(b) vacuum sweep every arterial roadway (principal and minor) to which the material was applied within three days of the end of the storm for which the application was made.

(2) After January 1, 2014,any person who applies an abrasive such as crushed slag or sand, or who applies salt that is less than 92% by weight NaCl, MgCl2, and/or CaCl2 to roads in all other areas specified in R307-307-1 shall comply with the requirements of either R307-307-5(1)(a) or (b).

R307-307-6. Exemptions.

(1) In the interest of public safety, any person who applies an abrasive such as crushed slag or sand to arterial roadways because salt alone would not ensure safe driving conditions due to steepness of grade or extreme weather is exempt from the requirements in R307-307-4.

(2) The following roads are specifically excluded from the requirements of R307-307-5(1):

(a) all canyon roads;

(b) the portion of Interstate 15 near Point of the Mountain;

(c) I-15, from Exit 385 northward to the Idaho Border;

(d) I-84 from Exit 17 eastward to Exit 40 at Tremonton;

(e) SR-39 from Harrison Boulevard eastward into Ogden Canyon;

(f) I-84 from the junction with US-89 eastward into Weber Canyon;

(g) I-80 near Black Rock, from the junction with SR-36 to the junction with SR-202;

(h) SR-199; and

(i) SR-196.

KEY: air pollution, roads, particulate
February 1, 2013 19-2-104
Notice of Continuation December 9, 2019

R307. Environmental Quality, Air Quality.
R307-309. Nonattainment and Maintenance Areas for PM10 and PM2.5: Fugitive Emissions and Fugitive Dust.
R307-309-1. Purpose.

This rule establishes minimum work practices and emission standards for sources of fugitive emissions and fugitive dust.

R307-309-2. Definitions.

The following additional definition applies to R307-309:

"Material" means sand, gravel, soil, minerals, and other matter that may create fugitive dust.

R307-309-3. Applicability.

(1) R307-309 applies to all new or existing sources of fugitive dust one-quarter acre or greater and any sources of fugitive emissions located in PM10 or PM2.5 nonattainment or maintenance plan areas as defined in 40 CFR 81.345 (July 1, 2011). Collectively, the PM10 and PM2.5 nonattainment and maintenance plan areas are geographically defined as all regions of Salt Lake and Davis counties; all portions of the Cache Valley; all regions in Weber County west of the Wasatch mountain range; all regions of Utah County; in Box Elder County, from the Wasatch mountain range west to the Promontory mountain range and south of Portage; and in Tooele County, from the northernmost part of the Oquirrh mountain range to the northern most part of the Stansbury mountain range and north of Route 199.

(2) Exemptions.

(a) Agriculturally derived fugitive dust sources, including agricultural or horticultural activities specified in 19-2-114 (1)-(3) are exempt from the provisions of R307-309.

(b) Any activity subject to R307-307, Road Salting and Sanding, is exempt from R307-309.

R307-309-4. Fugitive Emissions.

(1) Fugitive emissions from any source shall not exceed 15% opacity.

(2) Opacity observations of fugitive emissions from stationary sources shall be conducted in accordance with EPA Method 9.

(3) For intermittent sources and mobile sources, opacity observations shall be conducted using Method 9; however, the requirement for observations to be made at 15 second intervals over a six-minute period shall not apply. The number of observations and the time period shall be determined by the length of the intermittent or mobile source operation.

R307-309-5. General Requirements for Fugitive Dust.

(1) Except as provided in R307-309-5(3), opacity caused by fugitive dust shall not exceed:

(a) 10% at the property boundary; and

(b) 20% on site

(2) Any person owning or operating a new or existing source of fugitive dust one-quarter acre or greater in size shall submit a fugitive dust control plan to the director in accordance with R307-309-6.

(3) Opacity in R307-309-5(1) shall not apply when the wind speed exceeds 25 miles per hour if the owner or operator has implemented, and continues to implement, the accepted fugitive dust control plan in R307-309-6 and administers one or more of the following contingency measures:

(a) Pre-event watering;

(b) Hourly watering;

(c) Additional chemical stabilization;

(d) Cease or reduce fugitive dust producing operations to the extent practicable.

(4) Wind speed shall be measured by an anemometer.

(5) Opacity observations of fugitive dust from any source shall be measured at the densest point of the plume.

(a) For mobile sources, visible emissions shall be measured at a point not less than 1/2 vehicle length behind the vehicle and not less than 1/2 the height of the vehicle.

(b) Opacity observations of emissions from stationary sources shall be measured in accordance with EPA Method 9.

(c) For intermittent sources, opacity observations shall be conducted using Method 9; however, the requirement for observations to be made at 15 second intervals over a six-minute period shall not apply. The number of observations and the time period shall be determined by the length of the intermittent or mobile source operation.

R307-309-6. Fugitive Dust Control Plan.

(1) Any person owning or operating a new or existing source of fugitive dust, including storage, hauling or handling operations, clearing or leveling of land one-quarter acre or greater in size, earthmoving, excavation, moving trucks or construction equipment over cleared land one-quarter acre or greater in size or access haul roads, or demolition activities including razing homes, buildings or other structures, shall submit a fugitive dust control plan on a form provided by the director or another format approved by the director.

(a) A fugitive dust control plan that has been submitted to and accepted by the director prior to December 3, 2012, will fulfill the requirements of R307-309-6 for that source.

(2) Activities regulated by R307-309 shall not commence before the fugitive dust control plan is approved by the director.

(a) Successful completion of the web-based division-sponsored fugitive dust control plan tool shall constitute plan approval.

(b) Hard copy fugitive control plan submission must be reviewed and approved by the director prior to commencing activities regulated by R307-309.

(3) Sources with an existing fugitive dust control plan who make site modifications that result in emission changes shall submit an updated fugitive dust control plan.

(4) Minimum fugitive dust control plan requirements. At a minimum, a fugitive dust control plan must include the following requirements as they apply to a source:

(a) Backfilling.

(i) Stabilize backfill material when not actively handling.

(ii) Stabilize backfill material during handling.

(iii) Stabilize soil at completion of backfilling activity.

(iv) Stabilize material while using pipe padder equipment.

(b) Blasting.

(i) Stabilize surface soils where drills, support equipment and vehicles will operate.

(ii) Stabilize soil during blast preparation activities.

(iii) Stabilize soil after blasting.

(c) Clearing.

(i) Stabilize surface soils where support equipment and vehicles will operate.

(ii) Stabilize disturbed soil immediately after clearing and grubbing activities.

(iii) Stabilize slopes at completion of activity.

(d) Clearing forms, foundations and slabs.

(i) Use water, sweeping and vacuum to clear.

(e) Crushing.

(i) Stabilize surface soils where support equipment and vehicles will operate.

(ii) Stabilize material before, during and after crushing.

(iii) Traffic mileage or speed controls.

(iv) Minimize transfer height.

(f) Cut and fill.

(i) Stabilize surface soils where support equipment and vehicles will operate.

(ii) Pre-water soils.

(iii) Stabilize soil during and after cut activities.

(g) Demolition-implosion.

(i) Stabilize surface area where support equipment and vehicles will be operated.
(ii) Stabilize demolition debris immediately following blast and safety clearance.
(iii) Stabilize and clean surrounding area immediately following blast and safety clearance.
(h) Demolition-mechanical and manual.
(i) Stabilize surface areas where support equipment and vehicles will operate.
(ii) Stabilize demolition debris during handling.
(iii) Stabilize debris following demolition.
(iv) Stabilize surrounding area following demolition.
(i) Disturbed soil.
(i) Limit disturbance of soils where possible.
(ii) Stabilize and maintain stability of all disturbed soil throughout construction site.
(j) Hauling materials.
(i) Limit visible dust opacity from vehicular operations.
(ii) Stabilize materials during transport on site.
(iii) Clean wheels and undercarriage of haul trucks prior to leaving construction site.
(k) Paving subgrade preparation.
(i) Stabilize adjacent disturbed soils following paving activities by applying water, chemical stabilizer and/or synthetic cover.
(l) Sawing and cutting materials.
(i) Limit visible emissions using water or vacuum.
(m) Screening.
(i) Stabilize surface soils where support equipment and vehicles will operate.
(ii) Pre-treat material prior to screening.
(iii) Stabilize material during screening.
(iv) Stabilize material and surrounding area immediately after screening.
(v) Minimize transfer height.
(n) Staging areas.
(i) Limit visible dust opacity from vehicular operations.
(ii) Stabilize staging area soils during use.
(iii) Stabilize staging area soils at project completion.
(o) Stockpiling.
(i) Stabilize stockpile materials during and after handling.
(ii) Stabilize surface soils where support equipment and vehicles will operate.
(p) Trackout prevention and cleanup.
(i) Install and maintain trackout control devices in effective condition at all access points where paved and unpaved access or travel routes intersect.
(q) Traffic on unpaved routes and parking areas.
(i) Stabilize surface soils where support equipment and vehicles will operate.
(r) Trenching.
(i) Stabilize surface soils where trenching equipment, support equipment and vehicles will operate.
(ii) Stabilize soils after trenching.
(s) Truck loading.
(i) Empty loader bucket slowly and keep loader bucket close to the truck to minimize the drop height while dumping.
(ii) Stabilize surface soils where support equipment and vehicles will operate.
(5) The fugitive dust control plan must include contact information, site address, total area of disturbance, expected start and completion dates, identification of dust suppressant and plan certification by signature of a responsible person.

R307-309-7. Storage, Hauling and Handling of Aggregate Materials.

Any person owning, operating or maintaining a new or existing material storage, handling or hauling operation shall prevent, to the maximum extent possible, and in accordance with R307-309-6, material from being deposited onto any paved road other than a designated deposit site. Any such person who deposits materials that may create fugitive dust on a public or private paved road shall clean the road promptly.

R307-309-8. Construction and Demolition Activities.

Any person engaging in clearing or leveling of land with an area of one-quarter acre or more, earthmoving, excavating, construction, demolition, or moving trucks or construction equipment over cleared land or access haul roads shall prevent, to the maximum extent possible, and in accordance with R307-309-6, material from being deposited onto any paved road other than a designated deposit site. Any such person who deposits materials that may create fugitive dust on a public or private paved road shall clean the road promptly.

R307-309-9. Roads.

(1) Any person responsible for construction or maintenance of any existing road or having right-of-way easement or possessing the right to use the same whose activities result in fugitive dust from the road shall minimize fugitive dust to the maximum extent possible and in accordance with R307-309-6. Any such person who deposits materials that may create fugitive dust on a public or private paved road shall clean the road promptly.
(2) Unpaved Roads. Any person responsible for construction or maintenance of any new or existing unpaved road shall prevent, to the maximum extent possible, the deposit of material from the unpaved road onto any intersecting paved road during construction or maintenance. Any person who deposits materials that may create fugitive dust on a public or private paved road shall clean the road promptly.

R307-309-10. Mining Activities.

(1) In addition to the requirements under R307-309-1 through R307-309-6, fugitive dust, construction activities, and roadways associated with mining activities are regulated under the provisions of R307-309-10.
(2) Any person who owns or operates a mining operation shall minimize fugitive dust as an integral part of site preparation, mining activities, and reclamation operations.
(3) The fugitive dust control measures to be used shall include:
(a) Periodic watering of unpaved roads or;
(b) Use of chemical stabilizers on unpaved roads or;
(c) Paving of roads.
(d) Immediate removal of coal, rock minerals, soil, and other dust-forming debris from roads and frequent scraping and compaction of unpaved roads to stabilize the road surface.
(e) Restricting the speed of vehicles in and around the mining operation,
(f) Revegetating, mulching, or otherwise stabilizing the surface of all areas adjoining roads that are a source of fugitive dust.
(g) Restricting the travel of vehicles on other than established roads.
(h) Enclosing, covering, watering, or otherwise treating loaded haul trucks and railroad cars, to minimize loss of material to wind and spillage.
(i) Substitution of conveyor systems for haul trucks and covering of conveyor systems when conveyed loads are subject to wind erosion.
(j) Minimizing the area of disturbed land.
(k) Prompt revegetation of regraded lands.
(l) Planting of special windbreak vegetation at critical points in the permit area.
(m) Control of dust from drilling, using water sprays, hoods, dust collectors or other controls approved by the director.

(n) Restricting the areas to be blasted at any one time.

(o) Reducing the period of time between initially disturbing the soil and revegetating or other surface stabilization.

(p) Restricting fugitive dust at spoil and coal transfer and loading points.

(q) Control of dust from storage piles through use of enclosures, covers, or stabilization and other equivalent methods or other techniques as determined necessary by the director and upon concurrence by EPA.

R307-309-11. Tailings Piles and Ponds.

(1) In addition to the requirements under R307-309-1 through R307-309-6, fugitive dust, construction activities, and roadways associated with tailings piles and ponds are regulated under the provisions of R307-309-11.

(2) Any person owning or operating an existing tailings operation where fugitive dust results from grading, excavating, depositing, or natural erosion or other causes in association with such operation shall take steps to minimize fugitive dust from such activities. Such controls shall include:

(a) Watering or;

(b) Chemical stabilization or;

(c) Synthetic covers or;

(d) Vegetative covers or;

(e) Wind breaks or;

(f) A combination of R307-309-11(2)(a)-(e);

(g) Minimizing the area of disturbed tailings;

(h) Restricting the speed of vehicles in and around the tailings operation; or

(i) Other techniques which may be approvable by the director and upon concurrence by EPA.

R307-309-12. Record Keeping.

All sources subject to R307-309-5(2) and (3) shall maintain records for two years demonstrating compliance with R307-309. These records shall be available to the director upon request.

KEY: air pollution, fugitive dust

August 4, 2017 **19-2-101**

Notice of Continuation December 9, 2019 **19-2-104**

19-2-109

R307. Environmental Quality, Air Quality.
R307-310. Salt Lake County: Trading of Emission Budgets for Transportation Conformity.
R307-310-1. Purpose.

This rule establishes the procedures that may be used to trade a portion of the primary PM10 budget when demonstrating that a transportation plan, transportation improvement program, or project conforms with the motor vehicle emission budgets in the Salt Lake County portion of Section IX, Part A of the State Implementation Plan, "Fine Particulate Matter (PM10)"

R307-310-2. Definitions.

The definitions contained in 40 CFR 93.101, effective as of the date referenced in R307-101-3, are incorporated into this rule by reference. The following additional definitions apply to this rule.

"Budget" means the motor vehicle emission projections used in the attainment demonstration in the Salt Lake County portion of Section IX, Part A of the State Implementation Plan, "Fine Particulate Matter (PM10)."

"NOx" means oxides of nitrogen.

"Primary PM10" means PM10 that is emitted directly by a source. Primary PM10 does not include particulate matter that is formed when gaseous emissions undergo chemical reactions in the ambient air.

"Transportation Conformity" means a demonstration that a transportation plan, transportation improvement program, or project conforms with the emissions budgets in a state implementation plan, as outlined in 40 CFR, Chapter 1, Part 93, "Determining Conformity of Federal Actions to State or Federal Implementation Plans."

R307-310-3. Applicability.

(1) This rule applies to agencies responsible for demonstrating transportation conformity with the Salt Lake County portion of Section IX, Part A of the State Implementation Plan, "Fine Particulate Matter (PM10)."

(2) This rule does not apply to emission budgets from Section IX, Part D.2 of the State Implementation Plan, "Ozone Maintenance Plan."

(3) This rule does not apply to emission budgets from Section IX, Part C.7 of the State Implementation Plan, "Carbon Monoxide Maintenance Provisions."

R307-310-4. Trading Between Emission Budgets.

(1) The agencies responsible for demonstrating transportation conformity are authorized to supplement the budget for NOx with a portion of the budget for primary PM10 for the purpose of demonstrating transportation conformity for NOx. The NOx budget shall be supplemented using the following procedures.

(a) The metropolitan planning organization shall include the following information in the transportation conformity demonstration:

(i) The budget for primary PM10 and NOx for each required year of the conformity demonstration, before trading allowed by this rule has been applied;

(ii) The portion of the primary PM10 budget that will be used to supplement the NOx budget, specified in tons per day using a 1:1 ratio of primary PM10 to NOx, for each required year of the conformity demonstration;

(iii) The remainder of the primary PM10 budget that will be used in the conformity demonstration for primary PM10, specified in tons per day for each required year of the conformity demonstration; and

(iv) The budget for primary PM10 and NOx for each required year of the conformity demonstration after the trading allowed by this rule has been applied.

(b) Transportation conformity for NOx shall be demonstrated using the NOx budget supplemented by a portion of the primary PM10 budget as described in (a)(ii). Transportation conformity for primary PM10 shall be demonstrated using the remainder of the primary PM10 budget described in (a)(iii).

(c) The primary PM10 budget shall not be supplemented by using a portion of the NOx budget.

R307-310-5. Transition Provision.

R307-310, sections 1-4 will remain in effect until the day that EPA approves the conformity budget in the PM10 maintenance plan adopted by the board on July 6, 2005.

KEY: air pollution, transportation conformity, PM10
February 8, 2008 19-2-104
Notice of Continuation December 9, 2019

R307. Environmental Quality, Air Quality.
R307-311. Utah County: Trading of Emission Budgets for Transportation Conformity.
R307-311-1. Purpose.

This rule establishes the procedures that may be used to trade a portion of the primary PM10 budget when demonstrating that a transportation plan, transportation improvement program, or project conforms with the motor vehicle emission budgets in the Utah County portion of Section IX, Part A of the State Implementation Plan, "Fine Particulate Matter (PM10)".

R307-311-2. Definitions.

The definitions contained in 40 CFR 93.101, effective as of the date referenced in R307-101-3, are incorporated into this rule by reference. The following additional definitions apply to this rule.

"Budget" means the motor vehicle emission projections used in the attainment demonstration in the Utah County portion of Section IX, Part A of the State Implementation Plan, "Fine Particulate Matter (PM10)."

"NOx" means oxides of nitrogen.

"Primary PM10" means PM10 that is emitted directly by a source. Primary PM10 does not include particulate matter that is formed when gaseous emissions undergo chemical reactions in the ambient air.

"Transportation Conformity" means a demonstration that a transportation plan, transportation improvement program, or project conforms with the emissions budgets in a state implementation plan, as outlined in 40 CFR, Chapter 1, Part 93, "Determining Conformity of Federal Actions to State or Federal Implementation Plans."

R307-311-3. Applicability.

(1) This rule applies to agencies responsible for demonstrating transportation conformity with the Utah County portion of Section IX, Part A of the State Implementation Plan, "Fine Particulate Matter (PM10)."

(2) This rule does not apply to emission budgets from Section IX, Part C.6 of the State Implementation Plan, "Carbon Monoxide Maintenance Plan."

R307-311-4. Trading Between Emission Budgets.

(1) The agencies responsible for demonstrating transportation conformity are authorized to supplement the budget for NOx with a portion of the budget for primary PM10 for the purpose of demonstrating transportation conformity for NOx. The NOx budget shall be supplemented using the following procedures.

(a) The metropolitan planning organization shall include the following information in the transportation conformity demonstration:

(i) The budget for primary PM10 and NOx for each required year of the conformity demonstration, before trading allowed by this rule has been applied;

(ii) The portion of the primary PM10 budget that will be used to supplement the NOx budget, specified in tons per day using a 1:1 ratio of primary PM10 to NOx, for each required year of the conformity demonstration;

(iii) The remainder of the primary PM10 budget that will be used in the conformity demonstration for primary PM10, specified in tons per day for each required year of the conformity demonstration; and

(iv) The budget for primary PM10 and NOx for each required year of the conformity demonstration after the trading allowed by this rule has been applied.

(b) Transportation conformity for NOx shall be demonstrated using the NOx budget supplemented by a portion of the primary PM10 budget as described in (a)(ii). Transportation conformity for primary PM10 shall be demonstrated using the remainder of the primary PM10 budget described in (a)(iii).

(c) The primary PM10 budget shall not be supplemented by using a portion of the NOx budget.

KEY: air pollution, transportation conformity, PM10
March 5, 2015 19-2-104
Notice of Continuation December 9, 2019

R307. Environmental Quality, Air Quality.
R307-841. Residential Property and Child-Occupied Facility Renovation.
R307-841-1. Purpose.

This rule implements 40 CFR 745, regulations developed under Sections 402 and 406 of the Toxic Substances Control Act (15 U.S.C. 2682 and 2686) and applies to all renovations performed for compensation in target housing and child-occupied facilities. The purpose of this rule is to ensure the following:

(1) Owners and occupants of target housing and child-occupied facilities receive information on lead-based paint hazards before these renovations begin; and

(2) Individuals performing renovations regulated in accordance with R307-841-3 are properly trained; renovators and firms performing these renovations are certified; and the work practices in R307-841-5 are followed during these renovations.

R307-841-2. Effective Dates.

(1) Training, certification and accreditation requirements, and work practice standards. The training, certification and accreditation requirements and work practice standards in this rule are applicable as follows:

(a) Training programs. Effective April 8, 2010, no training program may provide, offer, or claim to provide training or refresher training for director certification as a renovator or a dust sampling technician without accreditation from the director under R307-842-1. Training programs may apply for accreditation under R307-842-1;

(b) Firms.

(i) Firms may apply for certification under R307-841-7 beginning April 8, 2010.

(ii) On or after April 8, 2010, no firm may perform, offer, or claim to perform renovations without certification from the director under R307-841-7 in target housing or child-occupied facilities, unless the renovation qualifies as one of the exceptions identified in R307-841-3(1).

(c) Individuals. On or after April 8, 2010, all renovations must be directed by renovators certified in accordance with R307-841-8(1) and performed by certified renovators or individuals trained in accordance with R307-841-8(2)(b) in target housing or child-occupied facilities, unless the renovation qualifies for one of the exceptions identified in R307-841-3(1).

(d) Work practices.

(i) On or after April 8, 2010 and before July 5, 2012, all renovations must be performed in accordance with the work practice standards in R307-841-5 and the associated recordkeeping requirements in R307-841-6(2)(a) and (2)(f) in target housing or child-occupied facilities, unless the renovation qualifies for the exceptions identified in R307-841-3(1). This does not apply to renovations in target housing for which the firm performing the renovation has obtained a statement signed by the owner that the renovation will occur in the owner's residence, no child under age six resides there, the housing is not a child-occupied facility, and the owner acknowledges that the work practices to be used during the renovation will not necessarily include all of the lead-safe work practices contained in EPA's renovation, repair, and painting rule. For the purposes of this section, a child resides in the primary residence of his or her custodial parents, legal guardians, and foster parents. A child also resides in the primary residence of an informal caretaker if the child lives and sleeps most of the time at the caretaker's residence.

(ii) On or after July 5, 2012, all renovations must be performed in accordance with the work practice standards in R307-841-5 and the associated recordkeeping requirements in R307-841-6(2)(a) and (2)(f) in target housing or child-occupied facilities, unless the renovation qualifies for the exception identified in R307-841-3(1).

(2) Renovation-specific pamphlet. Renovators or firms performing renovations must provide owners and occupants with "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools."

R307-841-3. Applicability.

(1) This rule applies to all renovations performed for compensation in target housing and child-occupied facilities, except for the following:

(a) Renovations in target housing or child-occupied facilities in which a written determination has been made by an inspector or risk assessor, certified pursuant to R307-842-2, that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams/per square centimeter (mg/cm^2) or 0.5% by weight, where the firm performing the renovation has obtained a copy of the determination; or

(b) Renovations in target housing or child-occupied facilities in which a certified renovator, using an EPA-recognized test kit as defined in R307-840-2 and following the kit manufacturer's instructions, has tested each component affected by the renovation and determined that the components are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm^2 or 0.5% by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.

(c) Renovations in target housing or child-occupied facilities in which a certified renovator has collected a paint chip sample from each painted component affected by the renovation and a laboratory recognized by EPA pursuant to section 405(b) of TSCA as being capable of performing analyses for lead compounds in paint chip samples has determined that the samples are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 mg/cm^2 or 0.5% by weight. If the components make up an integrated whole, such as the individual stair treads and risers of a single staircase, the renovator is required to test only one of the individual components, unless the individual components appear to have been repainted or refinished separately.

(2) The information distribution requirements in R307-841-4 do not apply to emergency renovations, which are renovation activities that were not planned but result from a sudden, unexpected event (such as non-routine failures of equipment) that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage. Interim controls performed in response to an elevated blood lead level in a resident child are also emergency renovations. Emergency renovations other than interim controls are also exempt from the warning sign, containment, waste handling, training, and certification requirements in R307-841-5, R307-841-7, and R307-841-8 to the extent necessary to respond to the emergency. Emergency renovations are not exempt from the cleaning requirements of R307-841-5(1)(e) which must be performed by certified renovators or individuals trained in accordance with R307-841-8(2)(b), the cleaning verification requirements of R307-841-5(2), which must be performed by certified renovators, and the recordkeeping requirements of R307-841-6(2)(e) and (f).

R307-841-4. Information Distribution Requirements.

(1) Renovations in dwelling units. No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the firm performing the renovation must:

(a) Provide the owner of the unit with the pamphlet, and

comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation; and

(b) If the owner does not occupy the dwelling unit, provide an adult occupant of the unit with the pamphlet, and comply with one of the following:

(i) Obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet, or certify in writing that a pamphlet has been delivered to the dwelling and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult occupant. Such certification must include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of a representative of the firm performing the renovation, and the date of signature; or

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation.

(2) Renovations in common areas. No more than 60 days before beginning renovation activities in common areas of multi-unit target housing, the firm performing the renovation must:

(a) Provide the owner with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation;

(b) Comply with one of the following:

(i) Notify in writing, or ensure written notification of, each affected unit and make the pamphlet available upon request prior to the start of renovation. Such notification shall be accomplished by distributing written notice to each affected unit. The notice shall describe the general nature and locations of the planned renovation activities, the expected starting and ending dates, and a statement of how the occupant can obtain the pamphlet and a copy of the records required by R307-841-6(3) and (4) at no cost to the occupants; or

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they are likely to be seen by the occupants of all of the affected units. The signs must be accompanied by a posted copy of the pamphlet or information on how interested occupants can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to occupants. The signs must also include information on how interested occupants can review a copy of the records required by R307-841-6(3) and (4) or obtain a copy from the renovation firm at no cost to the occupants;

(c) Prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the pamphlet; and

(d) If the scope, locations, or expected starting and ending dates of the planned renovation activities change after the initial notification, and the firm provided written initial notification to each affected unit, the firm performing the renovation must provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the firm performing the renovation initiates work beyond that which was described in the original notice.

(3) Renovations in child-occupied facilities. No more than 60 days before beginning renovation activities in any child-occupied facility, the firm performing the renovation must:

(a)(i) Provide the owner of the building with the pamphlet, and comply with one of the following:

(A) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(B) Obtain a certificate of mailing at least 7 days prior to the renovation;

(ii) If the adult representative of the child-occupied facility is not the owner of the building, provide an adult representative of the child-occupied facility with the pamphlet, and comply with one of the following:

(A) Obtain, from the adult representative, a written acknowledgment that the adult representative has received the pamphlet, or certify in writing that a pamphlet has been delivered to the facility and that the firm performing the renovation has been unsuccessful in obtaining a written acknowledgment from an adult representative. Such certification must include the address of the child-occupied facility undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., representative refuses to sign), the signature of a representative of the firm performing the renovation, and the date of signature; or

(B) Obtain a certificate of mailing at least 7 days prior to the renovation;

(b) Provide the parents and guardians of children using the child-occupied facility with the pamphlet and information describing the general nature and locations of the renovation and the anticipated completion date and information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required by R307-841-6(3) and (4) or obtain a copy from the renovation firm at no cost to the parents or guardians by complying with one of the following:

(i) Mail or hand-deliver the pamphlet and the renovation information to each parent or guardian of a child using the child-occupied facility; or

(ii) While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation and the anticipated completion date. These signs must be posted in areas where they can be seen by the parents or guardians of the children frequenting the child-occupied facility. The signs must be accompanied by a posted copy of the pamphlet or information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the pamphlet or obtain a copy from the renovation firm at no cost to the parents or guardians. The signs must also include information on how interested parents or guardians of children frequenting the child-occupied facility can review a copy of the records required by R307-841-6(3) and (4) or obtain a copy from the renovation firm at no cost to the parents or guardians.

(c) The renovation firm must prepare, sign, and date a statement describing the steps performed to notify all parents and guardians of the intended renovation activities and to provide the pamphlet.

(4) Written acknowledgment. The written acknowledgments required by paragraphs (1)(a)(i), (1)(b)(i), (2)(a)(i), (3)(a)(i)(A), and (3)(a)(ii)(A) of this section must:

(a) Include a statement recording the owner or occupant's name and acknowledging receipt of the pamphlet prior to the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature;

(b) Be either a separate sheet or part of any written contract or service agreement for the renovation; and

(c) Be written in the same language as the text of the contract or agreement for the renovation or, in the case of non-owner occupied target housing, in the same language as the lease or rental agreement or the pamphlet.

R307-841-5. Work Practice Standards.

(1) Standards for renovation activities. Renovations must be performed by firms certified under R307-841-7 using renovators certified under R307-841-8. The responsibilities of certified firms are set forth in R307-841-7(4) and the responsibilities of certified renovators are set forth in R307-841-8(2).

(a) Occupant protection. Firms must post signs clearly defining the work area and warning occupants and other persons not involved in renovation activities to remain outside of the work area. To the extent practicable, these signs must be in the primary language of the occupants. These signs must be posted before beginning the renovation, must remain in place, and must be readable until the renovation and the post-renovation cleaning verification have been completed. If warning signs have been posted in accordance with 24 CFR 35.1345(b)(2) or 29 CFR 1926.62(m), additional signs are not required by this section.

(b) Containing the work area. Before beginning the renovation, the firm must isolate the work area so that no dust or debris leaves the work area while the renovation is being performed. In addition, the firm must maintain the integrity of the containment by ensuring that any plastic or other impermeable materials are not torn or displaced, and taking any other steps necessary to ensure that no dust or debris leaves the work area while the renovation is being performed. The firm must also ensure that containment is installed in such a manner that it does not interfere with occupant and worker egress in an emergency.

(i) Interior renovations. The firm must:

(A) Remove all objects from the work area, including furniture, rugs, and window coverings, or cover them with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed;

(B) Close and cover all duct openings in the work area with taped-down plastic sheeting or other impermeable material;

(C) Close windows and doors in the work area. Doors must be covered with plastic sheeting or other impermeable material. Doors used as an entrance to the work area must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area;

(D) Cover the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater. Floor containment measures may stop at the edge of the vertical barrier when using a vertical containment system consisting of impermeable barriers that extend from the floor to the ceiling and are tightly sealed at joints with the floor, ceiling, and walls; and

(E) Use precautions to ensure that all personnel, tools, and other items, including the exterior of containers of waste, are free of dust and debris before leaving the work area.

(ii) Exterior renovations. The firm must:

(A) Close all doors and windows within 20 feet of the renovation. On multi-story buildings, close all doors and windows within 20 feet of the renovation on the same floor as the renovation, and close all doors and windows on all floors below that are the same horizontal distance from the renovation;

(B) Ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area;

(C) Cover the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering. Ground containment measures may stop at the edge of the vertical barrier when using a vertical containment system; and

(D) If the renovation will affect surfaces within 10 feet of the property line, the renovation firm must erect vertical containment or equivalent extra precautions in containing the work area to ensure that dust and debris from the renovation does not contaminate adjacent buildings or migrate to adjacent properties. Vertical containment or equivalent extra precautions in containing the work area may also be necessary in other situations in order to prevent contamination of other buildings, other areas of the property, or adjacent buildings or properties.

(c) Prohibited and restricted practices. The work practices listed below are prohibited or restricted during a renovation as follows:

(i) Open-flame burning or torching of painted surfaces is prohibited;

(ii) The use of machines designed to remove paint or other surface coatings through high speed operation such as sanding, grinding, power planning, needle gun, abrasive blasting, or sandblasting, is prohibited on painted surfaces unless such machines have shrouds or containment systems and are equipped with a HEPA vacuum attachment to collect dust and debris at the point of generation. Machines must be operated so that no visible dust or release of air occurs outside the shroud or containment system; and

(iii) Operating a heat gun on painted surfaces is permitted only at temperatures below 1,100 degrees Fahrenheit.

(d) Waste from renovations.

(i) Waste from renovation activities must be contained to prevent releases of dust and debris before the waste is removed from the work area for storage or disposal. If a chute is used to remove waste from the work area, it must be covered.

(ii) At the conclusion of each work day and at the conclusion of the renovation, waste that has been collected from renovation activities must be stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

(iii) When the firm transports waste from renovation activities, the firm must contain the waste to prevent release of dust and debris.

(e) Cleaning the work area. After the renovation has been completed, the firm must clean the work area until no dust, debris, or residue remains.

(i) Interior and exterior renovations. The firm must:

(A) Collect all paint chips and debris and, without dispersing any of it, seal this material in a heavy-duty bag; and

(B) Remove the protective sheeting. Mist the sheeting before folding it, fold the dirty side inward, and either tape shut to seal or seal in heavy-duty bags. Sheeting used to isolate contaminated rooms from non-contaminated rooms must remain in place until after the cleaning and removal of other sheeting. Dispose of the sheeting as waste.

(ii) Additional cleaning for interior renovations. The firm must clean all objects and surfaces in the work area and within 2 feet of the work area in the following manner, cleaning from higher to lower:

(A) Walls. Clean walls starting at the ceiling and working down to the floor by either vacuuming with a HEPA vacuum or wiping with a damp cloth;

(B) Remaining surfaces. Thoroughly vacuum all remaining surfaces and objects in the work area, including furniture and fixtures, with a HEPA vacuum. The HEPA vacuum must be equipped with a beater bar when vacuuming carpets and rugs; and

(C) Wipe all remaining surfaces and objects in the work area, except for carpeted or upholstered surfaces, with a damp

cloth. Mop uncarpeted floors thoroughly, using a mopping method that keeps the wash water separate from the rinse water, such as the 2-bucket mopping method, or using a wet mopping system.

(2) Standards for post-renovation cleaning verification.

(a) Interiors.

(i) A certified renovator must perform a visual inspection to determine whether dust, debris, or residue is still present. If dust, debris, or residue is present, these conditions must be removed by re-cleaning and another visual inspection must be performed.

(ii) After a successful visual inspection, a certified renovator must:

(A) Verify that each windowsill in the work area has been adequately cleaned, using the following procedure.

(I) Wipe the windowsill with a wet disposable cleaning cloth that is damp to the touch. If the cloth matches or is lighter than the cleaning verification card, the windowsill has been adequately cleaned.

(II) If the cloth does not match and is darker than the cleaning verification card, re-clean the windowsill as directed in paragraphs (1)(e)(ii)(B) and (1)(e)(ii)(C) of this section, then either use a new cloth or fold the used cloth in such a way that an unused surface is exposed, and wipe the surface again. If the cloth matches or is lighter than the cleaning verification card, that windowsill has been adequately cleaned.

(III) If the cloth does not match and is darker than the cleaning verification card, wait for 1 hour or until the surface has dried completely, whichever is longer.

(IV) After waiting for the windowsill to dry, wipe the windowsill with a dry disposable cleaning cloth. After this wipe, the windowsill has been adequately cleaned.

(B) Wipe uncarpeted floors and countertops within the work area with a wet disposable cleaning cloth. Floors must be wiped using application device with a long handle and a head to which the cloth is attached. The cloth must remain damp at all times while it is being used to wipe the surface for post-renovation cleaning verification. If the surface within the work area is greater than 40 square feet, the surface within the work area must be divided into roughly equal sections that are each less than 40 square feet. Wipe each such section separately with a new wet disposable cleaning cloth. If the cloth used to wipe each section of the surface within the work area matches the cleaning verification card, the surface has been adequately cleaned.

(I) If the cloth used to wipe a particular surface section does not match the cleaning verification card, re-clean that section of the surface as directed in paragraphs (1)(e)(ii)(B) and (1)(e)(ii)(C) of this section, then use a new wet disposable cleaning cloth to wipe that section again. If the cloth matches the cleaning verification card, that section of the surface has been adequately cleaned.

(II) If the cloth used to wipe a particular surface section does not match the cleaning verification card after the surface has been re-cleaned, wait for 1 hour or until the entire surface within the work area has dried completely, whichever is longer.

(III) After waiting for the entire surface within the work area to dry, wipe each section of the surface that has not yet achieved post-renovation cleaning verification with a dry disposable cleaning cloth. After this wipe, that section of the surface has been adequately cleaned.

(iii) When the work area passes the post-renovation cleaning verification, remove the warning signs.

(b) Exteriors. A certified renovator must perform a visual inspection to determine whether dust, debris, or residue is still present on surfaces in and below the work area, including windowsills and the ground. If dust, debris, or residue is present, these conditions must be eliminated and another visual inspection must be performed. When the area passes the visual inspection, remove the warning signs.

(3) Optional dust clearance testing. Cleaning verification need not be performed if the contract between the renovation firm and the person contracting for the renovation or another federal, state, territorial, tribal, or local law or regulation requires:

(a) The renovation firm to perform dust clearance sampling at the conclusion of a renovation covered by this rule.

(b) The dust clearance samples are required to be collected by a certified inspector, risk assessor, or dust sampling technician.

(c) The renovation firm is required to re-clean the work area until the dust clearance sample results are below the clearance standards in R307-842-3(5)(h) or any local standard.

(4) Activities conducted after post-renovation cleaning verification. Activities that do not disturb paint, such as applying paint to walls that have already been prepared, are not regulated by this rule if they are conducted after post-renovation cleaning verification has been performed.

R307-841-6. Recordkeeping and Reporting Requirements.

(1) Firms performing renovations must retain and, if requested, make available to the director all records necessary to demonstrate compliance with this rule for a period of 3 years following completion of the renovation. This 3-year retention requirement does not supersede longer obligations required by other provisions for retaining the same documentation.

(2) Records that must be retained pursuant to paragraph (1) of this section shall include (where applicable):

(a) Records or reports certifying that a determination had been made that lead-based paint is not present on the components affected by the renovation, as described in R307-841-3(1). These records or reports include:

(i) Reports prepared by a certified inspector or certified risk assessor certified pursuant to R307-842-2.

(ii) Records prepared by a certified renovator after using EPA-recognized test kits, including an identification of the manufacturer and model of any test kits used, a description of the components that were tested including their locations, and the result of each test kit used.

(iii) Records prepared by a certified renovator after collecting paint chip samples, including a description of the components that were tested including their locations, the name and address of the NLLAP-recognized entity performing the analysis, and the results for each sample.

(b) Signed and dated acknowledgments of receipt as described in R307-841-4(1)(a)(i), (1)(b)(i), (2)(a)(i), (3)(a)(i)(A), and (3)(a)(ii)(A).

(c) Certifications of attempted delivery as described in R307-841-4(1)(b)(i) and (3)(a)(ii)(A).

(d) Certificates of mailing as described in R307-841-4(1)(a)(ii), (1)(b)(ii), (2)(a)(ii), (3)(a)(i)(B), and (3)(a)(ii)(B).

(e) Records of notification activities performed regarding common area renovations, as described in R307-841-4(2)(c) and (2)(d), and renovations in child-occupied facilities, as described in R307-841-4(3)(b).

(f) Documentation of compliance with the requirements of R307-841-5, including documentation that a certified renovator was assigned to the project, that the certified renovator provided on-the-job training for workers used on the project, that the certified renovator performed or directed workers who performed all of the tasks described in R307-841-5(1), and that the certified renovator performed the post-renovation cleaning verification described in R307-841-5(2). If the renovation firm was unable to comply with all of the requirements of this rule due to an emergency as defined in R307-841-3, the firm must document the nature of the emergency and the provisions of the rule that were not followed. This documentation must include a copy of the certified renovator's current Utah Lead-Based

Paint Renovator certification card, and a certification by the certified renovator assigned to the project that:

(i) Training was provided to workers (topics must be identified for each worker).

(ii) Warning signs were posted at the entrances to the work area.

(iii) If test kits were used, that the specified brand of kits was used at the specified locations and that the results were as specified.

(iv) If paint chip samples were collected, that the samples were collected at the specified locations, that the specified NLLAP-recognized laboratory analyzed the samples, and that the results were as specified.

(v) The work area was contained by:

(A) Removing or covering all objects in the work area (interiors);

(B) Closing and covering all HVAC ducts in the work area (interiors);

(C) Closing all windows in the work area (interiors) or closing all windows in and within 20 feet of the work area (exteriors);

(D) Closing and sealing all doors in the work area (interiors) or closing and sealing all doors in and within 20 feet of the work area (exteriors);

(E) Covering doors in the work area that were being used to allow passage but prevent spread of dust;

(F) Covering the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater (interiors) or covering the ground with plastic sheeting or other disposable impermeable material anchored to the building extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering, weighted down by heavy objects (exteriors); and

(G) Installing (if necessary) vertical containment to prevent migration of dust and debris to adjacent property (exteriors).

(vi) Waste was contained on-site and while being transported off-site.

(vii) The work area was properly cleaned after the renovation by:

(A) Picking up all chips and debris, misting protective sheeting, folding it dirty side inward, and taping it for removal; and

(B) Cleaning the work area surfaces and objects using a HEPA vacuum and/or wet cloths or mops (interiors).

(viii) The certified renovator performed the post-renovation cleaning verification (the results of which must be briefly described, including the number of wet and dry cloths used).

(3)(a) When the final invoice for the renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier, the renovation firm must provide information pertaining to compliance with this rule to the following persons:

(i) The owner of the building; and, if different,

(ii) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.

(b) When performing renovations in common areas of multi-unit target housing, renovation firms must post the information required by this rule or instructions on how interested occupants can obtain a copy of this information. This information must be posted in areas where it is likely to be seen by the occupants of all of the affected units.

(c) The information required to be provided by paragraph (3) of this section may be provided by completing the sample form titled "Sample Renovation Recordkeeping Checklist" or a similar form containing the test kit information required by R307-841-6(2)(a)(ii) and the training and work practice compliance information required by R307-841-6(2)(f).

(4) If dust clearance sampling is performed in lieu of cleaning verification as permitted by R307-841-5(3), the renovation firm must provide, when the final invoice for the renovation is delivered or within 30 days of the completion of the renovation, whichever is earlier, a copy of the dust sampling report to:

(a) The owner of the building; and, if different,

(b) An adult occupant of the residential dwelling, if the renovation took place within a residential dwelling, or an adult representative of the child-occupied facility, if the renovation took place within a child-occupied facility.

(c) When performing renovations in common areas of multi-unit target housing, renovation firms must post these dust sampling reports or information on how interested occupants of the housing being renovated can obtain a copy of the report. This information must be posted in areas where they are likely to be seen by the occupants of all of the affected units.

R307-841-7. Firm Certification.

(1) Initial certification.

(a) Firms that perform renovations for compensation must apply to the director for certification to perform renovations or dust sampling. To apply, a firm must submit to the director a completed "Lead-Based Paint Certification Application for Firms," signed by an authorized agent of the firm, and pay the correct amount of fees.

(b) After the director receives a firm's application, the director will take one of the following actions within 90 days of the date the application is received:

(i) The director will approve a firm's application if the director determines that it is complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. An application is complete if it contains all of the information requested on the form and includes at least the correct amount of fees. When the director approves a firm's application, the director will issue the firm a certificate with an expiration date not more than 5 years from the date the application is approved;

(ii) The director will request a firm to supplement its application if the director determines that the application is incomplete. If the director requests a firm to supplement its application, the firm must submit the requested information or pay the additional fees within 30 days of the date of the request; and

(iii) The director will not approve a firm's application if the firm does not supplement its application in accordance with paragraph (1)(b)(ii) of this section or if the director determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. The director will send the firm a letter giving the reason for not approving the application. The director will not refund the application fees. A firm may reapply for certification at any time by filing a new, complete application that includes the correct amount of fees.

(2) Re-certification. To maintain its certification, a firm must be re-certified by the director.

(a) Timely and complete application. To be re-certified, a firm must submit a complete application for re-certification. A complete application for re-certification includes a completed "Lead-Based Paint Certification Application for Firms" which

contains all of the information requested by the form and is signed by an authorized agent of the firm, noting on the form that it is submitted as a re-certification. A complete application must also include the correct amount of fees.

(i) An application for re-certification is timely if it is postmarked 90 days or more before the date the firm's current certification expires. If the firm's application is complete and timely, the firm's current certification will remain in effect until its expiration date or until the director has made a final decision to approve or disapprove the re-certification application, whichever is later.

(ii) If the firm submits a complete re-certification application less than 90 days before its current certification expires, and the director does not approve the application before the expiration date, the firm's current certification will expire and the firm will not be able to conduct renovations until the director approves its re-certification application.

(iii) If the firm fails to obtain re-certification before the firm's current certification expires, the firm must not perform renovations or dust sampling until it is certified anew pursuant to paragraph (1), of this section.

(b) Director's action on an application. After the director receives a firm's application for re-certification, the director will review the application and take one of the following actions within 90 days of receipt:

(i) The director will approve a firm's application if the director determines that it is timely and complete and that the environmental compliance history of the firm, its principals, or its key employees does not show an unwillingness or inability to maintain compliance with environmental statutes or regulations. When the director approves a firm's application for re-certification, the director will issue the firm a new certificate with an expiration date not more than 5 years from the date that the firm's current certification expires.

(ii) The director will request a firm to supplement its application if the director determines that the application is incomplete.

(iii) The director will not approve a firm's application if it is not received or is not complete as of the date that the firm's current certification expires, or if the director determines that the environmental compliance history of the firm, its principals, or its key employees demonstrates an unwillingness or inability to maintain compliance with environmental statutes or regulations. The director will send the firm a letter giving the reason for not approving the application. The director will not refund the application fees. A firm may reapply for certification at any time by filing a new application and paying the correct amount of fees.

(3) Amendment of certification. A firm must amend its certification within 90 days of the date a change occurs to information included in the firm's most recent application. If the firm fails to amend its certification within 90 days of the date the change occurs, the firm may not perform renovations or dust sampling until its certification is amended.

(a) To amend a certification, a firm must submit a completed "Lead-Based Paint Certification Application for Firms," signed by an authorized agent of the firm, noting on the form that it is submitted as an amendment and indicating the information that has changed. The firm must also pay at least the correct amount of fees.

(b) If additional information is needed to process the amendment, or the firm did not pay the correct amount of fees, the director will request the firm to submit the necessary information or fees. The firm's certification is not amended until the firm complies with the request.

(c) Amending a certification does not affect the certification expiration date.

(4) Firm responsibilities. Firms performing renovations must ensure that:

(a) All individuals performing renovation activities on behalf of the firm are either certified renovators or have been trained by a certified renovator in accordance with R307-841-8;

(b) A certified renovator is assigned to each renovation performed by the firm and discharges all of the certified renovator responsibilities identified in R307-841-8;

(c) All renovations performed by the firm are performed in accordance with the work practice standards in R307-841-5;

(d) The pre-renovation education requirements of R307-841-4 have been performed; and

(e) The recordkeeping requirements of R307-841-6 are met.

R307-841-8. Renovator Certification and Dust Sampling Technician Certification.

(1) Renovator certification and dust sampling technician certification.

(a) To become a certified renovator or certified dust sampling technician, an individual must successfully complete an initial lead-based paint renovator or dust-sampling technician course accredited by the director under R307-842-1, the EPA under 40 CFR 745.225, or a state or tribal program that has been authorized by EPA pursuant to subpart Q of 40 CFR 745.

(b) Individuals who have successfully completed an accredited abatement worker or supervisor course, or individuals who successfully completed a director, EPA, HUD, or EPA/HUD model renovation training course before October 4, 2011, but no later than the training course expiration date found on that training certificate, may take an accredited refresher renovator training course that includes hands-on training in lieu of the initial renovator training course to become a certified renovator.

(c) Individuals who have successfully completed an accredited lead-based paint inspector or risk assessor course before October 4, 2011, but no later than the training course expiration date found on that training certificate, may take an accredited refresher dust sampling technician course in lieu of the initial training to become a certified dust sampling technician. Individuals who are currently certified as lead-based paint inspectors or risk assessors may act as certified dust sampling technicians without further training.

(d) To maintain renovator certification or dust sampling technician certification, an individual must complete a renovator or dust sampling technician refresher course accredited by the director under R307-842-1, the EPA under 40 CFR 745.225, or by a state or tribal program that is authorized under subpart Q of 40 CFR 745 within 5 years of the date the individual completed the initial course described in paragraph (1)(a) of this section. If the individual does not complete a refresher course within this time, the individual must re-take the initial course to become certified again. Individuals who complete a renovator course accredited by the director under R307-842-1, the EPA or an EPA authorized program on or before March 31, 2010, must complete a renovator refresher course accredited by the director under R307-842-1, the EPA or an EPA authorized program on or before March 31, 2016, to maintain renovator certification. Individuals who completed a renovator course accredited by the director under R307-842-1, the EPA or an EPA authorized program between April 1, 2010 and March 31, 2011, will have one year added to their original 5-year training certificate expiration date. Individuals who take a renovator refresher course that does not include hands-on training will have a training course certificate expiration date 3 years from the date they complete the training. Individuals who take a refresher training course that includes hands-on training will have a training course certificate expiration date 5 years from the date they complete the training. Individuals who take the renovator refresher course without hands-on training must, for their next renovator refresher course, take a course that includes hands-on

training.

(e) An individual shall be re-certified as a renovator or a dust sampling technician if the individual successfully completes the appropriate lead-based paint accredited refresher training course and submits a valid copy of the appropriate refresher course completion certificate. During the time period when the individual is not certified by the director, that individual cannot perform any regulated work activities that requires individual certification.

(2) Renovator responsibilities. Certified renovators are responsible for ensuring compliance with R307-841-5 at all renovations to which they are assigned. A certified renovator:

(a) Must perform all of the tasks described in R307-841-5(2) and must either perform or direct workers who perform all of the tasks described in R307-841-5(1);

(b) Must provide training to workers on the work practices required by R307-841-5(1) that they will be using in performing their assigned tasks;

(c) Must be physically present at the work site when the signs required by R307-841-5(1)(a) are posted, while the work area containment required by R307-841-5(1)(b) is being established, and while the work area cleaning required by R307-841-5(1)(e) is performed;

(d) Must regularly direct work being performed by other individuals to ensure that the work practices required by R307-841-5(1) are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area;

(e) Must be available, either on-site or by telephone, at all times that renovations are being conducted;

(f) When requested by the party contracting for renovation services, must use an acceptable test kit to determine whether components to be affected by the renovation contain lead-based paint;

(g) Must have with them at the work site their current Utah Lead-Based Paint Renovator certification card; and

(h) Must prepare the records required by R307-841-6(2)(a)(ii), (iii), and (f).

(3) Dust sampling technician responsibilities. When performing optional dust clearance sampling under R307-841-5(3), a certified dust sampling technician:

(a) Must collect dust samples in accordance with R307-842-3(5)(h), must send the collected samples to a laboratory recognized by EPA under TSCA Section 405(b), and must compare the results to the clearance levels in accordance with R307-842-3(5)(h); and

(b) Must have with them at the work site their current Utah Lead-Based Paint Dust Sampling Technician certification card.

R307-841-9. Suspending, Revoking, or Modifying an Individual's or Firm's Certification.

(1) Grounds for suspending, revoking, or modifying an individual's certification. The director may suspend, revoke, or modify an individual's certification if the individual fails to comply with state lead-based paint administrative rules. The director may also suspend, revoke, or modify a certified renovator's certification if the renovator fails to ensure that all assigned renovations comply with R307-841-5. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(2) Grounds for suspending, revoking, or modifying a firm's certification. The director may suspend, revoke, or modify a firm's certification if the firm:

(a) Submits false or misleading information to the director in its application for certification or re-certification,

(b) Fails to maintain or falsifies records required in R307-841-6, or

(c) Fails to comply, or an individual performing a renovation on behalf of the firm fails to comply, with state lead-based paint administrative rules. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

KEY: paint, lead-based paint, lead-based paint renovation
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R307. Environmental Quality, Air Quality.

R307-842. Lead-Based Paint Activities.

R307-842-1. Accreditation of Training Programs: Target Housing and Child-Occupied Facilities.

(1) Scope.

(a) A training program may seek accreditation to offer courses in any of the following disciplines: inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. A training program may also seek accreditation to offer refresher courses for each of the above listed disciplines. Training courses taught in Utah must be accredited by the director. All e-learning renovator refresher courses originating from companies based in Utah must also be accredited by the director.

(b) Training programs may apply to the director for accreditation of their lead-based paint activities courses or refresher courses pursuant to this section. Training programs may apply to the director for accreditation of their renovator or dust sampling technician courses or refresher courses pursuant to this section.

(c) A training program must not provide, offer, or claim to provide director-accredited lead-based paint activities courses without applying for and receiving accreditation from the director as required under paragraph (2) of this section. A training program must not provide, offer, or claim to provide director-accredited renovator or dust sampling technician courses without applying for and receiving accreditation from the director as required under paragraph (2) of this section.

(d) Accredited training programs, training program managers, and principal instructors must comply with all of the requirements of this section including approved terms of the application and all the requirements and limitations specified in any accreditation documents issued to training programs.

(2) Application process. The following are procedures a training program must follow to receive director accreditation to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses:

(a) A training program seeking accreditation shall submit a written application to the director containing the following information:

(i) The training program's name, address, and telephone number;

(ii) A list of courses for which it is applying for accreditation. For the purposes of this section, courses taught in different languages and electronic learning courses are considered different courses, and each must independently meet the accreditation requirements;

(iii) The name and documentation of the qualifications of the training program manager;

(iv) The name(s) and documentation of qualifications of any principal instructor(s); and

(v) A statement signed by the training program manager certifying that the training program meets the requirements established in paragraph (3) of this section. If a training program uses EPA-recommended model training materials, the training program manager shall include a statement certifying that, as well; or

(vi) If a training program does not use EPA-recommended model training materials, its application for accreditation shall also include:

(A) A copy of the student and instructor manuals, or other materials to be used for each course;

(B) A copy of the course agenda for each course; and

(C) When applying for accreditation of a course in a language other than English, a signed statement from a qualified, independent translator that they had compared the course to the English language version and found the translation to be accurate;

(vii) All training programs shall include in their application for accreditation the following:

(A) A description of the facilities and equipment to be used for lecture and hands-on training;

(B) A copy of the course test blueprint for each course;

(C) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course; and

(D) A copy of the quality control plan as described in paragraph (3)(i) of this section.

(b) If a training program meets the requirements in paragraph (3) of this section, then the director shall approve the application for accreditation no more than 180 days after receiving a complete application from the training program. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, the director may, at its discretion, work with the applicant to address inadequacies in the application for accreditation. The director may also request additional materials retained by the training program under paragraph (8) of this section. If a training program's application is disapproved, the program may reapply for accreditation at any time.

(c) A training program may apply for accreditation to offer initial courses or refresher courses in as many disciplines as it chooses. A training program may seek accreditation for additional courses at any time as long as the program can demonstrate that it meets the requirements of this section.

(d) A training program applying for accreditation must submit the appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(3) Requirements for the accreditation of training programs. A training program accredited by the director to offer lead-based paint activities courses, renovator courses, or dust sampling technician courses must meet the following requirements:

(a) The training program shall employ a training manager who has:

(i) At least 2 years of experience, education, or training in teaching workers or adults; or

(ii) A bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, education, business administration or program management or a related field; or

(iii) Two years of experience in managing a training program specializing in environmental hazards; and

(iv) Demonstrated experience, education, or training in the construction industry including: lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(b) The training manager shall designate a qualified principal instructor for each course who has:

(i) Demonstrated experience, education, or training in teaching workers or adults; and

(ii) Successfully completed at least 16 hours of any director-accredited, EPA-accredited, or EPA-authorized state or tribal-accredited lead-specific training for instructors of lead-based paint activities courses or 8 hours of any director-accredited, EPA-accredited or EPA-authorized state or tribal-accredited lead-specific training for instructors of renovator or dust sampling technician courses; and

(iii) Demonstrated experience, education, or training in lead or asbestos abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

(c) The principal instructor shall be responsible for the organization of the course, course delivery, and oversight of the teaching of all course material. The training manager may designate guest instructors as needed for a portion of the course

to provide instruction specific to the lecture, hands-on activities, or work practice components of a course. However, the principal instructor is primarily responsible for teaching the course materials and must be present to provide instruction (or oversight of portions of the course taught by guest instructors) for the course for which he or she has been designated the principal instructor.

(d) The following documents shall be recognized by the director as evidence that training managers and principal instructors have the education, work experience, training requirements or demonstrated experience, specifically listed in paragraphs (3)(a) and (3)(b) of this section. This documentation must be submitted with the accreditation application and retained by the training program as required by the recordkeeping requirements contained in paragraph (8) of this section. Those documents include the following:

(i) Official academic transcripts or diploma as evidence of meeting the education requirements;

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements; and

(iii) Certificates from train-the-trainer courses and lead-specific training courses, as evidence of meeting the training requirements.

(e) The training program shall ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment and facilities as needed.

(f) To become accredited in the following disciplines, the training program shall provide initial training courses that meet the following training requirements:

(i) The initial inspector course shall last a minimum of 24 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the initial inspector course are contained in paragraph (4)(a) of this section;

(ii) The initial risk assessor course shall last a minimum of 16 training hours, with a minimum of 4 hours devoted to hands-on training activities. The minimum curriculum requirements for the initial risk assessor course are contained in paragraph (4)(b) of this section;

(iii) The initial supervisor course shall last a minimum of 32 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the initial supervisor course are contained in paragraph (4)(c) of this section;

(iv) The initial project designer course shall last a minimum of 8 training hours. The minimum curriculum requirements for the initial project designer course are contained in paragraph (4)(d) of this section;

(v) The initial abatement worker course shall last a minimum of 16 training hours, with a minimum of 8 hours devoted to hands-on training activities. The minimum curriculum requirements for the initial abatement worker course are contained in paragraph (4)(e) of this section;

(vi) The initial renovator course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the initial renovator course are contained in paragraph (4)(f) of this section; and

(vii) The initial dust sampling technician course must last a minimum of 8 training hours, with a minimum of 2 hours devoted to hands-on training activities. The minimum curriculum requirements for the initial dust sampling technician course are contained in paragraph (4)(g) of this section.

(viii) Electronic learning and other alternative course delivery methods are permitted for the classroom portion of renovator, dust sampling technician, or lead-based paint activities courses but not the hands-on portion of these courses, or for final course tests or proficiency tests described in paragraph (3)(g) of this section. Electronic learning courses must comply with the following requirements:

(A) A unique identifier must be assigned to each student for them to use to launch and re-launch the course;

(B) The training provider must track each student's course log-ins, launches, progress, and completion, and maintain these records in accordance with paragraph (8) of this section;

(C) The course must include periodic knowledge checks equivalent to the number and content of the knowledge checks contained in EPA's model course, but at least 16 over the entire course. The knowledge checks must be successfully completed before the student can go on to the next module;

(D) There must be a test of at least 20 questions at the end of the electronic learning portion of the course, of which 80% must be answered correctly by the student for successful completion of the electronic learning portion of the course. The test must be designed so that students do not receive feedback on their test answers until after they have completed and submitted the test; and

(E) Each student must be able to save or print a copy of an electronic learning course completion certificate. The electronic certificate must not be susceptible to easy editing.

(g) For each course offered, the training program shall conduct either a course test at the completion of the course, and if applicable, a hands-on skills assessment, or in the alternative, a proficiency test for that discipline. Each student must successfully complete the hands-on skills assessment and receive a passing score on the course test to pass any course, or successfully complete a proficiency test.

(i) The training manager is responsible for maintaining the validity and integrity of the hands-on skills assessment or proficiency test to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics contained in paragraph (4) of this section;

(ii) The training manager is responsible for maintaining the validity and integrity of the course test to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics; and

(iii) The course test shall be developed in accordance with the test blueprint submitted with the training accreditation application.

(h) The training program shall issue unique course completion certificates to each individual who passes the training course. The course completion certificate shall include:

(i) The name, a unique identification number, and address of the individual;

(ii) The name of the particular course that the individual completed;

(iii) Dates of course completion/test passage;

(iv) For initial inspector, risk assessor, project designer, supervisor, or abatement worker course completion certificates, the expiration date of interim certification, which is 6 months from the date of course completion;

(v) The name, address, and telephone number of the training program;

(vi) The language in which the course was taught;

(vii) For renovator and dust sampling technician course completion certificates, a photograph of the individual. The photograph must be an accurate and recognizable image of the individual. As reproduced on the certificate, the photograph must not be smaller than 1 square inch; and

(viii) For renovator, dust sampling technician, or lead-based paint activities course completion certificates, the expiration date of the training certificate.

(i) The training manager shall develop and implement a

quality control plan. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:

(i) Procedures for periodic revision of training materials and the course test to reflect innovations in the field; and

(ii) Procedures for the training manager's annual review of principal instructor competency.

(j) Courses offered by the training program must teach the work practice standards contained in R307-841-5 or R307-842-3, as applicable, in such a manner that trainees are provided with the knowledge needed to perform the renovations or lead-based paint activities they will be responsible for conducting.

(k) The training manager shall be responsible for ensuring that the training program complies at all times with all of the requirements in this section.

(l) The training manager shall allow the director or the director's authorized representative to audit the training program to verify the contents of the application for accreditation as described in paragraph (2) of this section.

(m) The training manager must provide notification of renovator, dust sampling technician, or lead-based paint activities courses offered.

(i) The training manager must provide the director with notification of all renovator, dust sampling technician, or lead-based paint activities courses offered except for any renovator course without hands-on training delivered via electronic learning. The original notification must be received by the director at least 7 business days prior to the start date of any renovator, dust sampling technician, or lead-based paint activities course;

(ii) The training manager must provide the director updated notification when renovator, dust sampling technician, or lead-based paint activities courses will begin on a date other than the start date specified in the original notification, as follows:

(A) For renovator, dust sampling technician, or lead-based paint activities courses beginning prior to the start date provided to the director, an updated notification must be received by the director at least 7 business days before the new start date; and

(B) For renovator, dust sampling technician, or lead-based paint activities courses beginning after the start date provided to the director, an updated notification must be received by the director at least 2 business days before the start date provided to the director;

(iii) The training manager must update the director of any change in location of renovator, dust sampling technician, or lead-based paint activities courses at least 7 business days prior to the start date provided to the director;

(iv) The training manager must update the director regarding any course cancellations, or any other change to the original notification. Updated notifications must be received by the director at least 2 business days prior to the start date provided to the director;

(v) Each notification, including updates, must include the following:

(A) Notification type (original, update, or cancellation);

(B) Training program name, address, and telephone number;

(C) Course discipline, type (initial/refresher), and the language in which instruction will be given;

(D) Date(s) and time(s) of training;

(E) Training location(s) telephone number, and address;

(F) Principal instructor's name; and

(G) Training manager's name and signature;

(vi) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Utah Division of Air Quality electronic notification system. Written notification of renovator, dust sampling technician, or lead-based paint activities course schedules can be accomplished by using either the sample form titled "Renovator, Dust Sampling Technician, or Lead-Based Paint Activities Training Course Notification Form" or a similar form containing the information required in paragraph (3)(m)(v) of this section. All written notifications must be delivered to the director by United States Postal Service, fax, commercial delivery service, hand delivery, or by email. Instructions and sample forms can be obtained from the Utah Division of Air Quality Lead-Based Paint Program web site;

(vii) Renovator, dust sampling technician, or lead-based paint activities courses must not begin on a date, or at a location other than that specified in the original notification unless an updated notification identifying a new start date or location is submitted, in which case the course must begin on the new start date and/or location specified in the updated notification; and

(viii) No training program shall provide renovator, dust sampling technician, or lead-based paint activities courses without first notifying the director of such activities in accordance with the requirements of this paragraph.

(n) The training manager must provide notification following completion of renovator, dust sampling technician, or lead-based paint activities courses.

(i) The training manager must provide the director notification after the completion of any renovator, dust sampling technician, or lead-based paint activities course. This notification must be received by the director no later than 10 business days following course completion. Notifications for any e-learning renovator refresher course that does not include hands-on training must be submitted via written notification or electronically using the Utah Division of Air Quality electronic notification system no later than the 10th day of the month and include all students trained in the previous month. Written notification for any e-learning renovator refresher course, can be accomplished by using either the sample form titled "Renovator, Dust Sampling Technician, or Lead-Based Paint Activities Training Course Notification Form" or a similar form containing the information required in paragraph (3)(n)(ii) of this section. All written notifications must be delivered to the director by United States Postal Service, fax, commercial delivery service, hand delivery, or by email. Instructions and sample forms can be obtained from the Utah Division of Air Quality Lead-Based Paint Program web site;

(ii) The notification must include the following:

(A) Training program name, address, and telephone number;

(B) Course discipline and type (initial/refresher);

(C) Date(s) of training;

(D) The following information for each student who took the course:

(I) Name,

(II) Address,

(III) Date of birth,

(IV) Course completion certificate number,

(V) Course test score,

(VI) For renovator or dust sampling technician courses, a digital photograph of the student, and

(VII) For renovator refresher courses, the expiration date of the training certificate;

(E) Training manager's name and signature; and

(F) Utah Division of Air Quality Lead-Based Paint Program training verification statement.

(iii) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Utah Division of Air Quality electronic notification system. Written notification following renovator, dust sampling technician, or lead-based paint activities training courses can be accomplished by using either the sample form titled "Renovator, Dust Sampling Technician, or Lead-Based Paint Activities Training Course Notification Form" or a similar form containing

the information required in paragraph (3)(n)(ii) of this section. All written notifications must be delivered to the director by United States Postal Service, fax, commercial delivery service, hand delivery, or by email. Instructions and sample forms can be obtained from the Utah Division of Air Quality Lead-Based Paint Program web site.

(4) Minimum training curriculum requirements. A training program accredited by the director to offer lead-based paint courses in the specific disciplines listed in paragraph (4) must ensure that its courses of study include, at a minimum, the following course topics.

(a) Inspector. Instruction in the topics described in paragraphs (4)(a)(iv), (v), (vi), and (vii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of an inspector;

(ii) Background information on lead and its adverse health effects;

(iii) Background information on federal, state, and local regulations and guidance that pertains to lead-based paint and lead-based paint activities;

(iv) Lead-based paint inspection methods, including selection of rooms and components for sampling or testing;

(v) Paint, dust, and soil sampling methodologies;

(vi) Clearance standards and testing, including random sampling;

(vii) Preparation of the final inspection report; and

(viii) Recordkeeping.

(b) Risk assessor. Instruction in the topics described in paragraphs (4)(b)(iv), (vi), and (vii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of a risk assessor;

(ii) Collection of background information to perform a risk assessment;

(iii) Sources of environmental lead contamination such as paint, surface dust and soil, water, air, packaging, and food;

(iv) Visual inspection for the purposes of identifying potential sources of lead-based paint hazards;

(v) Lead hazard screen protocol;

(vi) Sampling for other sources of lead exposure;

(vii) Interpretation of lead-based paint and other lead sampling results, including all applicable federal or state guidance or regulations pertaining to lead-based paint hazards;

(viii) Development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards; and

(ix) Preparation of a final risk assessment report.

(c) Supervisor. Instruction in the topics described in paragraphs (4)(c)(v), (vii), (viii), (ix), and (x) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of a supervisor;

(ii) Background information on lead and its adverse health effects;

(iii) Background information on federal, state, and local regulations and guidance that pertain to lead-based paint abatement;

(iv) Liability and insurance issues relating to lead-based paint abatement;

(v) Risk assessment and inspection report interpretation;

(vi) Development and implementation of an occupant protection plan and abatement report;

(vii) Lead-based paint hazard recognition and control;

(viii) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices;

(ix) Interior dust abatement/cleanup or lead-based paint hazard control and reduction methods;

(x) Soil and exterior dust abatement or lead-based paint hazard control and reduction methods;

(xi) Clearance standards and testing;

(xii) Cleanup and waste disposal; and

(xiii) Recordkeeping.

(d) Project designer.

(i) Role and responsibilities of a project designer;

(ii) Development and implementation of an occupant protection plan for large-scale abatement projects;

(iii) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices for large-scale abatement projects;

(iv) Interior dust abatement/cleanup or lead hazard control and reduction methods for large-scale abatement projects;

(v) Clearance standards and testing for large scale abatement projects; and

(vi) Integration of lead-based paint abatement methods with modernization and rehabilitation projects for large scale abatement projects.

(e) Abatement worker. Instruction in the topics described in paragraphs (4)(e)(iv), (v), (vi), and (vii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibilities of an abatement worker;

(ii) Background information on lead and its adverse health effects;

(iii) Background information on federal, state, and local regulations and guidance that pertain to lead-based paint abatement;

(iv) Lead-based paint hazard recognition and control;

(v) Lead-based paint abatement and lead-based paint hazard reduction methods, including restricted practices;

(vi) Interior dust abatement methods/cleanup or lead-based paint hazard reduction; and

(vii) Soil and exterior dust abatement methods or lead-based paint hazard reduction.

(f) Renovator. Instruction in the topics described in paragraphs (4)(f)(iv), (vi), (vii), and (viii) of this section must be included in the hands-on portion of the course.

(i) Role and responsibility of a renovator;

(ii) Background information on lead and its adverse health effects;

(iii) Background information on EPA, HUD, OSHA, and other federal, state, and local regulations and guidance that pertains to lead-based paint and renovation activities;

(iv) Procedures for using acceptable test kits to determine whether paint is lead-based paint;

(v) Procedures for collecting a paint chip sample and sending it to a laboratory recognized by EPA under section 405(b) of TSCA;

(vi) Renovation methods to minimize the creation of dust and lead-based paint hazards;

(vii) Interior and exterior containment and cleanup methods;

(viii) Methods to ensure that the renovation has been properly completed, including cleaning verification, and clearance testing;

(ix) Waste handling and disposal;

(x) Providing on-the-job training to other workers; and

(xi) Record preparation.

(g) Dust sampling technician. Instruction in the topics described in paragraphs (4)(g)(iv) and (vi) of this section must be included in the hands-on portion of the course.

(i) Role and responsibility of a dust sampling technician;

(ii) Background information on lead and its adverse health effects;

(iii) Background information on federal, state, and local regulations and guidance that pertains to lead-based paint and renovation activities;

(iv) Dust sampling methodologies;

(v) Clearance standards and testing; and

(vi) Report preparation.

(5) Requirements for the accreditation of refresher training programs. A training program may seek accreditation to offer

refresher training courses in any of the following disciplines: Inspector, risk assessor, supervisor, project designer, abatement worker, renovator, and dust sampling technician. A training program accredited by the director to offer refresher training must meet the following minimum requirements:

(a) Each refresher course shall review the curriculum topics of the full-length courses listed under paragraph (4) of this section, as appropriate. In addition, to become accredited to offer refresher training courses, training programs shall ensure that their courses of study include, at a minimum, the following:

(i) An overview of current safety practices relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline;

(ii) Current laws and regulations relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline; and

(iii) Current technologies relating to lead-based paint in general, as well as specific information pertaining to the appropriate discipline;

(b) Refresher courses for inspector, risk assessor, supervisor, and abatement worker must last a minimum of 8 training hours. Refresher courses for project designer, renovator, and dust sampling technician must last a minimum of 4 training hours. Refresher courses for all disciplines except renovator and project designer must include a hands-on component. Renovators must take a refresher course that includes hands-on training at least every other re-certification;

(c) Except for e-learning renovator refresher courses and project designer courses, for all other courses offered, the training program shall conduct a hands-on assessment. With the exception of project designer courses, the training program shall conduct a course test at the completion of the course. Renovators must take a refresher course that includes hands-on training at least every other re-certification;

(d) A training program may apply for accreditation of a refresher course concurrently with its application for accreditation of the corresponding initial training course as described in paragraph (2) of this section. If so, the director shall use the approval procedure described in paragraph (2) of this section. In addition, the minimum requirements contained in paragraphs (3)(a) through (3)(e), (3)(f)(viii), and (3)(g) through (3)(n), and (5)(a) through (5)(c) of this section shall also apply; and

(e) A training program seeking accreditation to offer refresher training courses only shall submit a written application to the director containing the following information:

(i) The refresher training program's name, address, and telephone number;

(ii) A list of courses for which it is applying for accreditation;

(iii) The name and documentation of the qualifications of the training program manager;

(iv) The name(s) and documentation of the qualifications of the principal instructor(s);

(v) A statement signed by the training program manager certifying that the refresher training program meets the minimum requirements established in paragraph (3) of this section, except for the requirements in paragraph (3)(f) of this section. If a training program uses EPA-developed model training materials, the training manager shall include a statement certifying that, as well;

(vi) If the refresher training course materials are not based on EPA-developed model training materials, the training program's application for accreditation shall include:

(A) A copy of the student and instructor manuals to be used for each course; and

(B) A copy of the course agenda for each course;

(vii) All refresher training programs shall include in their application for accreditation the following:

(A) A description of the facilities and equipment to be used for lecture and hands-on training;

(B) A copy of the course test blueprint for each course;

(C) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course (if applicable); and

(D) A copy of the quality control plan as described in paragraph (3)(i) of this section;

(viii) The requirements in paragraphs (3)(a) through (3)(e), (3)(f)(viii) and (3)(g) through (3)(n) of this section apply to refresher training providers; and

(ix) If a refresher training program meets the requirements listed in this paragraph, then the director shall approve the application for accreditation no more than 180 days after receiving a complete application from the refresher training program. In the case of approval, a certificate of accreditation shall be sent to the applicant. In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, the director may, at the director's discretion, work with the applicant to address inadequacies in the application for accreditation. The director may also request additional materials retained by the refresher training program under paragraph (8) of this section. If a refresher training program's application is disapproved, the program may reapply for accreditation at any time.

(6) Re-accreditation of training programs.

(a) Unless re-accredited, a training program's accreditation, including refresher training accreditation, shall expire 4 years after the date of issuance. If a training program meets the requirements of this section, the training program shall be re-accredited.

(b) A training program seeking re-accreditation shall submit an application to the director no later than 180 days before its accreditation expires. If a training program does not submit its application for re-accreditation by that date, the director cannot guarantee that the program will be re-accredited before the end of the accreditation period.

(c) The training program's application for re-accreditation shall contain:

(i) The training program's name, address, and telephone number;

(ii) A list of courses for which it is applying for re-accreditation;

(iii) The name and qualifications of the training program manager;

(iv) The name(s) and qualifications of the principal instructor(s);

(v) A description of any changes to the training facility, equipment or course materials since its last application was approved that adversely affects the students' ability to learn;

(vi) A statement signed by the program manager stating:

(A) That the training program complies at all times with all requirements in paragraphs (3) and (5) of this section, as applicable; and

(B) The recordkeeping and reporting requirements of paragraph (8) of this section shall be followed; and

(vii) A payment of appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(d) Upon request, the training program shall allow the director or the director's authorized representative to audit the training program to verify the contents of the application for re-accreditation as described in paragraph (6)(c) of this section.

(7) Suspension, revocation, and modification of accredited training programs.

(a) The director may, after notice and an opportunity, for hearing, suspend, revoke, or modify training program accreditation, including refresher training accreditation, if a training program, training manager, or other person with

supervisory authority over the training program has:

(i) Misrepresented the contents of a training course to the director and/or the student population;

(ii) Failed to submit required information or notifications in a timely manner;

(iii) Failed to maintain required records;

(iv) Falsified accreditation records, instructor qualifications, or other accreditation-related information or documentation;

(v) Failed to comply with the training standards and requirements in this section;

(vi) Failed to comply with federal, state, or local lead-based paint statutes or regulations; or

(vii) Made false or misleading statements to the director in its application for accreditation or re-accreditation which the director relied upon in approving the application.

(b) In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action constitutes, for purposes of this section, evidence of a failure to comply with relevant statutes or regulations.

(8) Training program recordkeeping requirements.

(a) Accredited training programs shall maintain, and make available to the director or the director's authorized representative, upon request, the following records:

(i) All documents specified in paragraph (3)(d) of this section that demonstrate the qualifications listed in paragraphs (3)(a) and (3)(b) of this section of the training manager and principal instructors;

(ii) Current curriculum/course materials and documents reflecting any changes made to these materials;

(iii) The course test blueprint;

(iv) Information regarding how the hands-on assessment is conducted including, but not limited to:

(A) Who conducts the assessment;

(B) How the skills are graded;

(C) What facilities are used; and

(D) The pass/fail rate;

(v) The quality control plan as described in paragraph (3)(i) of this section;

(vi) Results of the students' hands-on skills assessments and course tests, and a record of each student's course completion certificate;

(vii) Any other material not listed in paragraphs (8)(a)(i) through (8)(a)(vi) of this section that was submitted to the director as part of the program's application for accreditation.

(viii) For renovator refresher and dust sampling technician refresher courses, a copy of each trainee's prior course completion certificate showing that each trainee was eligible to take the refresher course; and

(ix) For course modules delivered in an electronic format, a record of each student's log-ins, launches, progress, and completion, and a copy of the electronic learning completion certificate for each student.

(b) The training program must retain records pertaining to renovator, dust sampling technician and lead-based paint activities courses at the address specified on the training program accreditation application (or as modified in accordance with paragraph (8)(c) of this section) for the following minimum periods:

(i) Records pertaining to lead-based paint activities courses must be retained for a minimum of 3 years and 6 months;

(ii) Records pertaining to renovator or dust sampling technician courses offered must be retained for a minimum of 5 years and 6 months.

(c) The training program shall notify the director in writing within 30 days of changing the address specified on its training program accreditation application or transferring the records from that address.

(9) Amendment of accreditation.

(a) A training program must amend its accreditation within 90 days of the date a change occurs to information included in the program's most recent application. If the training program fails to amend its accreditation within 90 days of the date the change occurs, the program may not provide renovator, dust sampling technician, or lead-based paint activities training until its accreditation is amended.

(b) To amend an accreditation, a training program must submit a completed Division of Air Quality Lead-Based Paint Application for Course Accreditation, signed by an authorized agent of the training provider, noting on the form that it is submitted as an amendment and indicating the information that has changed.

(c) Training managers, principal instructors, permanent training locations. If the amendment includes a new training program manager, any new or additional principal instructor(s), or any new permanent training location(s), the training provider is not permitted to provide training under the new training manager or offer courses taught by any new principal instructor(s) or at the new training location(s) until the director either approves the amendment or 30 days have elapsed, whichever occurs earlier. Except:

(i) If the amendment includes a new training program manager or new or additional principal instructor that was identified in a training provider accreditation application that the director has already approved under this section, the training provider may begin to provide training under the new training manager or offer courses taught by the new principal instructor on an interim basis as soon as the provider submits the amendment to the director. The training provider may continue to provide training under the new training manager or offer courses taught by the new principal instructor if the director approves the amendment or if the director does not disapprove the amendment within 30 days.

(ii) If the amendment includes a new permanent training location, the training provider may begin to provide training at the new permanent training location on an interim basis as soon as the provider submits the amendment to the director. The training provider may continue to provide training at the new permanent training location if the director approves the amendment or if the director does not disapprove the amendment within 30 days.

R307-842-2. Certification of Individuals and Firms Engaged in Lead-Based Paint Activities: Target Housing and Child-Occupied Facilities.

(1) Certification of individuals.

(a) Individuals seeking certification by the director to engage in lead-based paint activities must either:

(i) Submit to the director an application demonstrating that they meet the requirements established in paragraphs (2) or (3) of this section for the particular discipline for which certification is sought; or

(ii) Submit to the director an application with a copy of a valid lead-based paint activities certification (or equivalent) from the EPA or a state or tribal program that has been authorized by EPA pursuant to subpart Q of 40 CFR 745; or

(iii) For supervisor, inspector, and/or risk assessor certification, submit to the director an application with a copy of a valid lead-based paint training certificate from an EPA-accredited, or EPA-authorized state or tribal-accredited lead-specific training in the appropriate discipline and pass the certification exam in the appropriate discipline offered by the director.

(b) Following the submission of an application demonstrating that all the requirements of this section have been met, the director shall certify an applicant as an inspector, risk assessor, supervisor, project designer, or abatement worker, as

appropriate.

(c) Upon receiving director certification, individuals conducting lead-based paint activities shall comply with the work practice standards for performing the appropriate lead-based paint activities as established in R307-842-3.

(d) It shall be a violation of state administrative rules for an individual to conduct any of the lead-based paint activities described in R307-842-3 if that individual has not been certified by the director pursuant to this section to do so.

(e) Individuals applying for certification must submit the appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(2) Inspector, risk assessor or supervisor.

(a) To become certified by the director as an inspector, risk assessor, or supervisor, pursuant to paragraph (1)(a)(i) of this section, an individual must:

(i) Successfully complete an accredited initial training course in the appropriate discipline and receive a course completion certificate from an accredited training program;

(ii) Pass the certification exam in the appropriate discipline offered by the director; and

(iii) Meet or exceed the following experience and/or education requirements:

(A) Inspectors. No additional experience and/or education requirements;

(B) Risk assessors.

(I) Successful completion of an accredited initial training course for inspectors; and

(II) Bachelor's degree and 1 year of experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction), or an Associates degree and 2 years experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction); or

(III) Certification as an industrial hygienist, professional engineer, registered architect and/or certification in a related engineering/health/environmental field (e.g., safety professional, environmental scientist); or

(IV) A high school diploma (or equivalent), and at least 3 years of experience in a related field (e.g., lead, asbestos, environmental remediation work or construction);

(C) Supervisor.

(I) One year of experience as a certified lead-based paint abatement worker; or

(II) At least 2 years of experience in a related field (e.g., lead, asbestos, or environmental remediation work) or in the building trades.

(b) The following documents shall be recognized by the director as evidence of meeting the requirements listed in (2)(b)(iii) of this paragraph:

(i) Official academic transcripts or diploma, as evidence of meeting the education requirements;

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements; and

(iii) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.

(c) In order to take the certification examination for a particular discipline an individual must:

(i) Successfully complete an accredited initial training course in the appropriate discipline and receive a course completion certificate from an accredited training program; and

(ii) Meet or exceed the education and/or experience requirements in paragraph (2)(a)(iii) of this section.

(d) The initial training course completion certificate shall serve as interim certification for an individual until the next available opportunity to take the certification exam. Such interim certification shall expire 6 months after issuance.

(e) After passing the appropriate certification exam and submitting an application demonstrating that he/she meets the appropriate training, education, and/or experience prerequisites described in paragraph (2)(a) of this section, an individual shall be issued a certificate by the director. To maintain certification, an individual must be re-certified as described in paragraph (4) of this section.

(f) An individual may take the certification exam no more than three times within 6 months of receiving an initial training course completion certificate.

(g) If an individual does not pass the certification exam and receive a certificate within 6 months of receiving his/her initial training course completion certificate, the individual must retake the appropriate initial training course from an accredited training program before reapplying for certification from the director.

(3) Abatement worker and project designer.

(a) To become certified by the director as an abatement worker or project designer, pursuant to paragraph (1)(a)(i) of this section, an individual must:

(i) Successfully complete an accredited initial training course in the appropriate discipline and receive a course completion certificate from an accredited training program; and

(ii) Meet or exceed the following additional experience and/or education requirements:

(A) Abatement workers. No additional experience and/or education requirements; and

(B) Project designers.

(I) Successful completion of an accredited initial training course for supervisors;

(II) Bachelor's degree in engineering, architecture, or a related profession, and 1 year of experience in building construction and design or a related field; or

(III) Four years of experience in building construction and design or a related field.

(b) The following documents shall be recognized by the director as evidence of meeting the requirements listed in this paragraph:

(i) Official academic transcripts or diploma, as evidence of meeting the education requirements;

(ii) Resumes, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements; and

(iii) Course completion certificates from lead-specific or other related training courses, issued by accredited training programs, as evidence of meeting the training requirements.

(c) The initial training course completion certificate shall serve as an interim certification until certification from the director is received, but shall be valid for no more than 6 months from the date of completion.

(d) After successfully completing the appropriate initial training courses and meeting any other qualifications described in paragraph (3)(a) of this section, an individual shall be issued a certificate from the director. To maintain certification, an individual must be re-certified as described in paragraph (4) of this section.

(4) Re-certification.

(a) To maintain certification in a particular discipline, a certified individual shall apply to and be re-certified by the director in that discipline by the director either:

(i) Every 3 years if the individual completed a training course with a course test and hands-on assessment; or

(ii) Every 5 years if the individual completed a training course with a proficiency test.

(b) An individual shall be re-certified if the individual successfully completes the appropriate accredited refresher training course and submits a valid copy of the appropriate refresher training course completion certificate. For the supervisor, inspector, or risk assessor disciplines, if more than 3 years but less than 4 years have passed since certification or

re-certification for an individual that completed an initial or a refresher training course with a course test and hands-on assessment, or if more than 5 years but less than 6 years have passed since certification or re-certification for an individual that completed an initial or a refresher training course with a proficiency test, then the individual must also pass the certification exam in the appropriate discipline offered by the director. During the time period when the individual is not certified by the director, that individual cannot perform any regulated work activities that requires individual certification.

(c) Individuals applying for re-certification must submit the appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(5) Certification of firms.

(a) All firms which perform or offer to perform any of the lead-based paint activities or renovations described in R307-842-3 shall be certified by the director.

(b) A firm seeking certification shall submit to the director a letter attesting that the firm shall only employ appropriately certified employees to conduct lead-based paint activities, and that the firm and its employees shall follow the work practice standards in R307-842-3 for conducting lead-based paint activities.

(c) From the date of receiving the firm's letter requesting certification, the director shall have 90 days to approve or disapprove the firm's request for certification. Within that time, the director shall respond with either a certificate of approval or a letter describing the reasons for disapproval.

(d) The firm shall maintain all records pursuant to the requirements in R307-842-3.

(e) Firms may apply to the director for certification to engage in lead-based paint activities pursuant to this section.

(f) Firms applying for certification or re-certification must submit the appropriate fees in accordance with the current Department of Environmental Quality Fee Schedule.

(6) Suspension, revocation, and modification of certifications of individuals engaged in lead-based paint activities.

(a) The director may, after notice and opportunity for hearing, suspend, revoke, or modify an individual's certification if an individual has:

(i) Obtained training documentation through fraudulent means;

(ii) Gained admission to and completed an accredited training program through misrepresentation of admission requirements;

(iii) Obtained certification through misrepresentation of certification requirements or related documents dealing with education, training, professional registration, or experience;

(iv) Performed work requiring certification at a job site without having proof of certification;

(v) Permitted the duplication or use of the individual's own certificate by another;

(vi) Performed work for which certification is required, but for which appropriate certification has not been received;

(vii) Failed to comply with the appropriate work practice standards for lead-based paint activities at R307-842-3; or

(viii) Failed to comply with federal, state, or local lead-based paint statutes or regulations.

(b) In addition to an administrative or judicial finding of violation, for purposes of this section only, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

(7) Suspension, revocation, and modification of certifications of firms engaged in lead-based paint activities.

(a) The director may, after notice and opportunity for hearing, suspend, revoke, or modify a firm's certification if a firm has:

(i) Performed work requiring certification at a job site with individuals who are not certified;

(ii) Failed to comply with the work practice standards established in R307-842-3;

(iii) Misrepresented facts in its letter of application for certification to the director;

(iv) Failed to maintain required records; or

(v) Failed to comply with federal, state, or local lead-based paint statutes or regulations.

(b) In addition to an administrative or judicial finding of violation, for purposes of this section only, execution of a consent agreement in settlement of an enforcement action constitutes evidence of a failure to comply with relevant statutes or regulations.

R307-842-3. Work Practice Standards for Conducting Lead-Based Paint Activities: Target Housing and Child-Occupied Facilities.

(1) Effective date, applicability, and terms.

(a) All lead-based paint activities shall be performed pursuant to the work practice standards contained in this section.

(b) When performing any lead-based paint activity described by the certified individual as an inspection, lead-hazard screen, risk assessment, or abatement, a certified individual must perform that activity in compliance with the appropriate requirements below.

(c) Documented methodologies that are appropriate for this section are found in the following: the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil, the EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling (EPA report number 7474-R-95-001), and other equivalent methods and guidelines.

(d) Clearance levels are appropriate for the purposes of this section may be found in the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead Contaminated Soil or other equivalent guidelines.

(2) Inspection.

(a) An inspection shall be conducted only by a person certified by the director as an inspector or risk assessor and, if conducted, must be conducted according to the procedures in this paragraph.

(b) When conducting an inspection, the following locations shall be selected according to documented methodologies and tested for the presence of lead-based paint:

(i) In a residential dwelling and child-occupied facility, each component with a distinct painting history and each exterior component with a distinct painting history shall be tested for lead-based paint, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint; and

(ii) In a multi-family dwelling or child-occupied facility, each component with a distinct painting history in every common area, except those components that the inspector or risk assessor determines to have been replaced after 1978, or to not contain lead-based paint.

(c) Paint shall be sampled in the following manner:

(i) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies which incorporate adequate quality control procedures; and/or

(ii) All collected paint chip samples shall be analyzed according to paragraph (6) of this section to determine if they contain detectable levels of lead that can be quantified numerically.

(d) The certified inspector or risk assessor shall prepare an inspection report which shall include the following information:

(i) Date of each inspection;

(ii) Address of building;
(iii) Date of construction;
(iv) Apartment numbers (if applicable);
(v) Name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;
(vi) Name, signature, and certification number of each certified inspector and/or risk assessor conducting testing;
(vii) Name, address, and telephone number of the certified firm employing each inspector and/or risk assessor, if applicable;
(viii) Each testing method and device and/or sampling procedure employed for paint analysis, including quality control data and, if used, the serial number of any x-ray fluorescence (XRF) device;
(ix) Specific locations of each painted component tested for the presence of lead-based paint; and
(x) The results of the inspection expressed in terms appropriate to the sampling method used.
(3) Lead hazard screen.
(a) A lead hazard screen shall be conducted only by a person certified by the director as a risk assessor.
(b) If conducted, a lead hazard screen shall be conducted as follows:
(i) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under shall be collected;
(ii) A visual inspection of the residential dwelling or child-occupied facility shall be conducted to:
(A) Determine if any deteriorated paint is present; and
(B) Locate at least two dust sampling locations;
(iii) If deteriorated paint is present, each surface with deteriorated paint, which is determined, using documented methodologies, to be in poor condition and to have a distinct painting history, shall be tested for the presence of lead;
(iv) In residential dwellings, two composite dust samples shall be collected, one from the floors and the other from the windows, in rooms, hallways, or stairwells where one or more children, age 6 and under, are most likely to come in contact with dust; and
(v) In multi-family dwellings and child-occupied facilities, in addition to the floor and window samples required in paragraph (3)(b)(iv) of this section, the risk assessor shall also collect composite dust samples from common areas where one or more children, age 6 and under, are most likely to come into contact with dust.
(c) Dust samples shall be collected and analyzed in the following manner:
(i) All dust samples shall be taken using documented methodologies that incorporate adequate quality control procedures; and
(ii) All collected dust samples shall be analyzed according to paragraph (6) of this section to determine if they contain detectable levels of lead that can be quantified numerically.
(d) Paint shall be sampled in the following manner:
(i) The analysis of paint to determine the presence of lead shall be conducted using documented methodologies which incorporate adequate quality control procedures; and/or
(ii) All collected paint chip samples shall be analyzed according to paragraph (6) of this section to determine if they contain detectable levels of lead that can be quantified numerically.
(e) The risk assessor shall prepare a lead hazard screen report, which shall include the following information:
(i) The information required in a risk assessment report as specified in paragraph (4) of this section, including paragraphs (4)(k)(i) through (4)(k)(xiv), and excluding paragraphs (4)(k)(xv) through (4)(k)(xviii) of this section. Additionally, any background information collected pursuant to paragraph (3)(b)(i) of this section shall be included in the lead hazard screen report; and
(ii) Recommendations, if warranted, for a follow-up risk assessment, and as appropriate, any further actions.
(4) Risk assessment.
(a) A risk assessment shall be conducted only by a person certified by the director as a risk assessor and, if conducted, must be conducted according to the procedures in this paragraph.
(b) A visual inspection for risk assessment of the residential dwelling or child-occupied facility shall be undertaken to locate the existence of deteriorated paint, assess the extent and causes of the deterioration, and other potential lead-based paint hazards.
(c) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under shall be collected.
(d) The following surfaces which are determined, using documented methodologies, to have a distinct painting history, shall be tested for the presence of lead:
(i) Each friction surface or impact surface with visibly deteriorated paint; and
(ii) All other surfaces with visibly deteriorated paint.
(e) In residential dwellings, dust samples (either composite or single-surface samples) from the interior window sill(s) and floor shall be collected and analyzed for lead concentration in all living areas where one or more children, age 6 and under, are most likely to come into contact with dust.
(f) For multi-family dwellings and child-occupied facilities, the samples required in paragraph (4)(d) of this section shall be taken. In addition, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in the following locations:
(i) Common areas adjacent to the sampled residential dwelling or child-occupied facility; and
(ii) Other common areas in the building where the risk assessor determines that one or more children, age 6 and under, are likely to come into contact with dust.
(g) For child-occupied facilities, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in each room, hallway, or stairwell utilized by one or more children, age 6 and under, and in other common areas in the child-occupied facility where one or more children, age 6 and under, are likely to come into contact with dust.
(h) Soil samples shall be collected and analyzed for lead concentrations in the following locations:
(i) Exterior play areas where bare soil is present;
(ii) The rest of the yard (i.e., non-play areas) where bare soil is present; and
(iii) Dripline/foundation areas where bare soil is present.
(i) Any paint, dust, or soil sampling or testing shall be conducted using documented methodologies that incorporate adequate quality control procedures.
(j) Any collected paint chip, dust, or soil samples shall be analyzed according to paragraph (6) of this section to determine if they contain detectable levels of lead that can be quantified numerically.
(k) The certified risk assessor shall prepare a risk assessment report which shall include the following information:
(i) Date of assessment;
(ii) Address of each building;
(iii) Date of construction of buildings;
(iv) Apartment number (if applicable);

(v) Name, address, and telephone number of each owner of each building;

(vi) Name, signature, and certification number of the certified risk assessor conducting the assessment;

(vii) Name, address, and telephone number of the certified firm employing each certified risk assessor if applicable;

(viii) Name, address, and telephone number of each recognized laboratory conducting analysis of collected samples;

(ix) Results of the visual inspection;

(x) Testing method and sampling procedure for paint analysis employed;

(xi) Specific locations of each painted component tested for the presence of lead;

(xii) All data collected from on-site testing, including quality control data and, if used, the serial number of any XRF device.

(xiii) All results of laboratory analysis on collected paint, soil, and dust samples;

(xiv) Any other sampling results;

(xv) Any background information collected pursuant to paragraph (4)(c) of this section;

(xvi) To the extent that they are used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint-related hazards;

(xvii) A description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards; and

(xviii) A description of interim controls and/or abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

(5) Abatement.

(a) An abatement shall be conducted only by an individual certified by the director, and if conducted, shall be conducted according to the procedures in this paragraph.

(b) A certified supervisor is required for each abatement project and shall be onsite during all work site preparation and during the post-abatement cleanup of work areas. At all other times when abatement activities are being conducted, the certified supervisor shall be onsite or available by telephone, pager or answering service, and able to be present at the work site in no more than 2 hours.

(c) The certified supervisor and the certified firm employing that supervisor shall ensure that all abatement activities are conducted according to the requirements of this section and all other federal, state, and local requirements.

(d) A certified firm must notify the director of lead-based paint abatement activities as follows:

(i) Except as provided in paragraph (5)(d)(ii) of this section, the director must be notified prior to conducting lead-based paint abatement activities. The original notification must be received by the director at least 5 business days before the start date of any lead-based paint abatement activities;

(ii) Notification for lead-based paint abatement activities required in response to an elevated blood lead level (EBL) determination, or federal, state, tribal, or local emergency abatement order should be received by the director as early as possible before, but must be received no later than the start date of the lead-based paint abatement activities. Should the start date and/or location provided to the director change, an updated notification must be received by the director on or before the start date provided to the director. Documentation showing evidence of an EBL determination or a copy of the federal/state/tribal/local emergency abatement order must be included in the written notification to take advantage of this abbreviated notification period;

(iii) Except as provided in paragraph (5)(d)(ii) of this section, updated notification must be provided to the director for lead-based paint abatement activities that will begin on a date other than the start date specified in the original notification, as follows:

(A) For lead-based paint abatement activities beginning prior to the start date provided to the director an updated notification must be received by the director at least 5 business days before the new start date included in the notification; and

(B) For lead-based paint abatement activities beginning after the start date provided to the director an updated notification must be received by the director on or before the start date provided to the director;

(iv) Except as provided in paragraph (5)(d)(ii) of this section, updated notification must be provided to the director for any change in location of lead-based paint abatement activities at least 5 business days prior to the start date provided to the director;

(v) Updated notification must be provided to the director when lead-based paint abatement activities are canceled, or when there are other significant changes including, but not limited to, when the square footage or acreage to be abated changes by more than 20%. This updated notification must be received by the director on or before the start date provided to the director, or if work has already begun, within 24 hours of the change;

(vi) The following must be included in each notification:

(A) Notification type (original, updated, or cancellation);

(B) Date when lead-based paint abatement activities will start;

(C) Date when lead-based paint abatement activities will end (approximation using best professional judgment);

(D) Firm's name, Utah lead-based paint firm certification number, address, and telephone number;

(E) Type of building (e.g., single family dwelling, multi-family dwelling, and/or child-occupied facilities) on/in which abatement work will be performed;

(F) Property name (if applicable);

(G) Property address including apartment or unit number(s) (if applicable) for abatement work;

(H) Documentation showing evidence of an EBL determination or a copy of the federal/state/tribal/local emergency abatement order, if using the abbreviated time period as described in paragraph (5)(d)(ii) of this section;

(I) Name and Utah lead-based paint individual certification number of the project supervisor;

(J) Approximate square footage/acreage to be abated;

(K) Brief description of abatement activities to be performed; and

(L) Name, title, and signature of the representative of the certified firm who prepared the notification;

(vii) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Utah Division of Air Quality electronic notification system. Written notification can be accomplished using either the sample form titled "Lead-Based Paint Abatement Project Notification" or similar form containing the information required in paragraph (5)(d)(vi) of this section. All written notifications must be delivered by United States Postal Service, fax, commercial delivery service, hand delivery, or by email on or before the applicable date. Instructions and sample forms can be obtained from the Utah Division of Air Quality Lead-Based Paint Program web site;

(viii) Lead-based paint abatement activities shall not begin on a date, or at a location other than that specified in either an original or updated notification, in the event of changes to the original notification; and

(ix) No firm or individual shall engage in lead-based paint abatement activities, as defined in R307-840-2, prior to

notifying the director of such activities according to the requirements of this paragraph.

(e) A written occupant protection plan shall be developed for all abatement projects and shall be prepared according to the following procedures:

(i) The occupant protection plan shall be unique to each residential dwelling or child-occupied facility and be developed prior to the abatement. The occupant protection plan shall describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards; and

(ii) A certified supervisor or project designer shall prepare the occupant protection plan.

(f) The work practices listed below shall be restricted during an abatement as follows:

(i) Open-flame burning or torching of lead-based paint is prohibited;

(ii) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint is prohibited unless used with High Efficiency Particulate Air (HEPA) exhaust control which removes particles of 0.3 microns or larger from the air at 99.97% or greater efficiency;

(iii) Dry scraping of lead-based paint is permitted only in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than 2 square feet in any one room, hallway, or stairwell or totaling no more than 20 square feet on exterior surfaces; and

(iv) Operating a heat gun on lead-based paint is permitted only at temperatures below 1100 degrees Fahrenheit.

(g) If conducted, soil abatement shall be conducted in one of the following ways:

(i) If the soil is removed:

(A) The soil shall be replaced by soil with a lead concentration as close to local background as practicable, but no greater than 400 ppm; and

(B) The soil that is removed shall not be used as top soil at another residential property or child-occupied facility; or

(ii) If soil is not removed, the soil shall be permanently covered, as defined in R307-840-2.

(h) The following post-abatement clearance procedures shall be performed only by a certified inspector or risk assessor:

(i) Following an abatement, a visual inspection shall be performed to determine if deteriorated painted surfaces and/or visible amounts of dust, debris, or residue are still present. If deteriorated painted surfaces or visible amounts of dust, debris, or residue are present, these conditions must be eliminated prior to the continuation of the clearance procedures;

(ii) Following the visual inspection and any post-abatement cleanup required by paragraph (5)(h)(i) of this section, clearance sampling for lead in dust shall be conducted. Clearance sampling may be conducted by employing single-surface sampling or composite sampling techniques;

(iii) Dust samples for clearance purposes shall be taken using documented methodologies that incorporate adequate quality control procedures;

(iv) Dust samples for clearance purposes shall be taken a minimum of 1 hour after completion of final post-abatement cleanup activities;

(v) The following post-abatement clearance activities shall be conducted as appropriate based upon the extent or manner of abatement activities conducted in or to the residential dwelling or child-occupied facility:

(A) After conducting an abatement with containment between abated and unabated areas, one dust sample shall be taken from one interior window sill and from one window trough (if present) and one dust sample shall be taken from the floors of each of no less than four rooms, hallways, or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are less than four rooms, hallways, or stairwells within the containment area, then all rooms, hallways, or stairwells shall be sampled;

(B) After conducting an abatement with no containment, two dust samples shall be taken from each of no less than four rooms, hallways, or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one interior window sill and window trough (if present) and one dust sample shall be taken from the floor of each room, hallway, or stairwell selected. If there are less than four rooms, hallways, or stairwells within the residential dwelling or child-occupied facility, then all rooms, hallways, or stairwells shall be sampled; and

(C) Following an exterior paint abatement, a visible inspection shall be conducted. All horizontal surfaces in the outdoor living area closest to the abated surface shall be found to be cleaned of visible dust and debris. In addition, a visual inspection shall be conducted to determine the presence of paint chips on the dripline or next to the foundation below any exterior surface abated. If paint chips are present, they must be removed from the site and properly disposed of, according to all applicable federal, state, and local requirements;

(vi) The rooms, hallways, or stairwells selected for sampling shall be selected according to documented methodologies;

(vii) The certified inspector or risk assessor shall compare the residual lead level (as determined by the laboratory analysis) from each single surface dust sample with clearance levels in paragraph (5)(h)(viii) of this section for lead in dust on floors, interior window sills, and window troughs or from each composite dust sample with the applicable clearance levels for lead in dust on floors, interior window sills, and window troughs divided by half the number of subsamples in the composite sample. If the residual lead level in a single surface dust sample equals or exceeds the applicable clearance level or if the residual lead level in a composite dust sample equals or exceeds the applicable clearance level divided by half the number of subsamples in the composite sample, the components represented by the failed sample shall be recleaned and retested; and

(viii) The clearance levels for lead in dust are 40 ug/ft^2 for floors, 250 ug/ft^2 for interior window sills, and 400 ug/ft^2 for window troughs.

(i) In a multi-family dwelling with similarly constructed and maintained residential dwellings, random sampling for the purposes of clearance may be conducted provided:

(i) The certified individuals who abate or clean the residential dwellings do not know which residential dwelling will be selected for the random sample;

(ii) A sufficient number of residential dwellings are selected for dust sampling to provide a 95% level of confidence that no more than 5% or 50 of the residential dwellings (whichever is smaller) in the randomly sampled population exceed the appropriate clearance levels; and

(iii) The randomly selected residential dwellings shall be sampled and evaluated for clearance according to the procedures found in paragraph (5)(h) of this section.

(j) An abatement report shall be prepared by a certified supervisor or project designer no later than 30 business days after receiving the results of final clearance testing and all soil analyses (if applicable). The abatement report shall include the following information:

(i) Start and completion dates of abatement;

(ii) The name and address of each certified firm conducting the abatement and the name of each supervisor assigned to the abatement project;

(iii) The occupant protection plan prepared pursuant to paragraph (5)(e) of this section;

(iv) The name, address, and signature of each certified risk

assessor or inspector conducting clearance sampling and the date of clearance testing;

(v) The results of clearance testing and all soil analyses (if applicable) and the name of each recognized laboratory that conducted the analyses; and

(vi) A detailed written description of the abatement, including abatement methods used, locations of rooms and/or components where abatement occurred, reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulants or enclosures.

(6) Collection and laboratory analysis of samples. Any paint chip, dust, or soil samples collected pursuant to the work practice standards contained in this section shall be:

(a) Collected by persons certified by the director as an inspector or risk assessor; and

(b) Analyzed by a laboratory recognized by EPA pursuant to Section 405(b) of TSCA as being capable of performing analyses for lead compounds in paint chip, dust, and soil samples.

(7) Composite dust sampling. Composite dust sampling may only be conducted in the situations specified in paragraphs (3) through (5) of this section. If such sampling is conducted, the following conditions shall apply:

(a) Composite dust samples shall consist of at least two subsamples;

(b) Every component that is being tested shall be included in the sampling; and

(c) Composite dust samples shall not consist of subsamples from more than one type of component.

(8) Determinations.

(a) Lead-based paint is present:

(i) On any surface that is tested and found to contain lead equal to or in excess of 1.0 milligrams per square centimeter or equal to or in excess of 0.5% by weight; and

(ii) On any surface like a surface tested in the same room equivalent that has a similar painting history and that is found to be lead-based paint.

(b) A paint-lead hazard is present:

(i) On any friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill or floor) are equal to or greater than the dust hazard levels identified in the definition of "Dust-lead hazard" in R307-840-2;

(ii) On any chewable lead-based paint surface on which there is evidence of teeth marks;

(iii) Where there is any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame); and

(iv) If there is any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(c) A dust-lead hazard is present in a residential dwelling or child-occupied facility:

(i) In a residential dwelling on floors and interior window sills when the weighted arithmetic mean lead loading for all single surface or composite samples of floors and interior window sills are equal to or greater than 40 ug/ft^2 for floors and 250 ug/ft^2 for interior window sills, respectively;

(ii) On floors or interior window sills in an unsampled residential dwelling in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled residential unit on the property; and

(iii) On floors or interior window sills in an unsampled common area in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled common area in the same common area group on the property.

(d) A soil-lead hazard is present:

(i) In a play area when the soil-lead concentration from a composite play area sample of bare soil is equal to or greater than 400 parts per million; or

(ii) In the rest of the yard when the arithmetic mean lead concentration from a composite sample (or arithmetic mean of composite samples) of bare soil from the rest of the yard (i.e., non-play areas) for each residential building on a property is equal to or greater than 1,200 parts per million.

(9) Recordkeeping. All reports or plans required in this section shall be maintained by the certified firm or individual who prepared the report for no fewer than 3 years. The certified firm or individual also shall provide copies of these reports to the building owner who contracted for its services.

R307-842-4. Lead-Based Paint Activities Requirements.

Lead-based paint activities, as defined in R307-840-2, shall only be conducted according to the procedures and work practice standards contained in R307-842-3 of this rule. No individual or firm may offer to perform or perform any lead-based paint activity as defined in R307-840-2, unless certified to perform that activity according to the procedures in R307-842-2.

R307-842-5. Work Practice Requirements for Lead-Based Paint Hazards.

Applicable certification, occupant protection, and clearance requirements and work practice standards are found in R307-842 and in regulations issued by HUD at 24 CFR Part 35, Subpart R. The work practice standards in those regulations do not apply when treating paint-lead hazards of less than:

(a) Two square feet of deteriorated lead-based paint per room or equivalent,

(b) Twenty square feet of deteriorated paint on the exterior building, or

(c) Ten percent of the total surface area of deteriorated paint on an interior or exterior type of component with a small surface area.

KEY: paint, lead-based paint, lead-based paint abatement
May 9, 2017 19-2-104(1)(i)
Notice of Continuation December 9, 2019

R343. Financial Institutions, Nondepository Lenders.
R343-2. Mortgage Lenders, Brokers and Servicers Fees.
R343-2-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Section 70D-2-203.

(2) This rule applies to mortgage lenders, brokers or servicers who are required to file a written notification with the commissioner.

(3) This rule establishes the annual notification renewal and examination fees.

R343-2-2. Definitions.

(1) "Commissioner" means the Commissioner of Financial Institutions.

(2) "Department" means the Department of Financial Institutions.

R343-2-3. Annual Notification Renewal Fee.

(1) Each person required to file an annual notification renewal shall pay the commissioner a fee of $100.

R343-2-4. Examination Fee.

(1) A mortgage lender, broker or servicer who is examined by the department shall pay the commissioner a per diem assessment calculated at the rate of $55 per hour:

(i) for each examiner; and

(ii) per hour worked.

KEY: mortgage
December 22, 2009 70D-3-102
Notice of Continuation December 3, 2019

R343. Financial Institutions, Nondepository Lenders.
R343-3. Mortgage Lenders, Brokers and Servicers Definitions.
R343-3-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Section 70D-3-102.

(2) This rule applies to mortgage lenders, brokers or servicers who engage in the business of mortgage lending, brokering or servicing and are required to license with the commissioner.

(3) The purpose of this rule is to define terms.

R343-3-2. Definitions.

(1) "Affiliate" means any company which controls, is controlled by, or is under common control with a depository institution that is subject to the jurisdiction of a federal banking agency.

(2) "Form MU4" means the Uniform Individual Mortgage License/Registration and Consent form adopted by the nationwide database.

(3) "Owned and controlled by a depository institution" means a subsidiary entity that is owned by a parent financial institution that has direct or indirect power to direct or exercise a controlling influence over management or policies.

KEY: mortgage
December 22, 2009 70D-3-102
Notice of Continuation December 3, 2019

R343. Financial Institutions, Nondepository Lenders.
R343-4. Application Forms and Procedures for Mortgage Lenders.
R343-4-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Section 70D-3-203.

(2) This rule applies to mortgage lenders who engage in the business of mortgage lending and are required to license with the commissioner.

(3) This rule prescribes license application form specifications, contents and procedures for submitting the application.

R343-4-2. Mortgage Loan Originator License Application.

(1) Applicants for an initial or renewal license shall complete forms and follow procedures prescribed by the nationwide database.

KEY: mortgage
December 22, 2009 70D-3-203
Notice of Continuation December 3, 2019

R343. Financial Institutions, Nondepository Lenders.
R343-5. Mortgage Loan Originator Surety Bond Requirements.
R343-5-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Section 70D-3-205.

(2) This rule applies to mortgage loan originators who are required to license with the department.

(3) This rule establishes surety bond requirements for mortgage loan originator licensees.

R343-5-2. Surety Bond Requirements.

(1) An individual who applies for a mortgage loan originator license must be covered by a surety bond satisfactory to the department in a sum based on the dollar amount of loans originated, as shown below, to reimburse the state for expenses it may incur in connection with any administrative or judicial proceeding against a current or former licensee relating to mortgage lending activity in Utah.

(2) The annual origination volume for each individual residential mortgage loan originator is the basis for determining that individual's required bond amount. Annual origination volume is the sum of the amounts of all loans the individual originated, arranged, booked, brokered, funded, made, or otherwise included in the individual's personal loan production volume during the prior calendar year.

(3) If the annual origination volume for the individual was:

(a) up to $5 million, the required bond amount is $12,500; or

(b) $5 to $15 million, the required bond amount is $25,000; or

(c) over $15 million, the required bond amount is $50,000.

R343-5-3. Business Entity Surety Bond Requirements.

(1) This section does not require business entities to be licensed or bonded, but qualified business entities may elect to provide bond coverage on behalf of mortgage loan originators working exclusively for the entity instead of the individual originator providing a separate surety bond. To be eligible for this option:

(a) A business entity must file an acceptable notification or register with the department in accordance with Chapter 70C, Utah Consumer Credit Code; Chapter 70D, Financial Institution Mortgage Financing Regulation Act; or, other Utah statutes or rules administered by the department, and

(b) the bond must cover the activities of the licensed mortgage loan originator.

(2) The annual residential mortgage loan origination volume for the business entity is the basis for determining an entity's required bond amount. Annual origination volume is the sum of the amounts of all Utah loans the entity originated, arranged, booked, brokered, funded, made, or otherwise included in the entity's loan production volume during the prior calendar year.

(3) If the annual origination volume for the business entity was:

(a) up to $10 million, the required bond amount is $25,000; or

(b) $10 to $30 million, the required bond amount is $50,000; or

(c) over $30 million, the required bond amount is $100,000.

KEY: mortgage
December 22, 2009 70D-3-205
Notice of Continuation December 3, 2019

R343. Financial Institutions, Nondepository Lenders.
R343-6. Mortgage Loan Originator Challenge of Nationwide Database Information.
R343-6-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Section 70D-3-206.

(2) This rule applies to mortgage loan originators who are required to license with the department.

(3) This rule establishes the procedure to challenge information in the nationwide database.

R343-6-2. Challenging Information Entered by the Department in the Nationwide Database.

(1) A mortgage loan originator or applicant may challenge the factual accuracy of information entered by the department into the nationwide database.

(2) The challenge must be in writing and delivered to the commissioner. The challenge must clearly state what information is being contested and include supporting evidence.

(3) The commissioner may cause the appropriate supervisor to make an investigation and consider the merits of the challenge and provide a written response.

KEY: mortgage
December 22, 2009 70D-3-206
Notice of Continuation December 3, 2019

R343. Financial Institutions, Nondepository Lenders.

R343-7. Mortgage Loan Originator Education and Written Test Requirements.

R343-7-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Sections 70D-3-301, 70D-3-302 and 70D-3-303.

(2) This rule applies to mortgage loan originators who are required to license with the department.

(3) This rule establishes education and written test requirements.

R343-7-2. Education and Written Test Requirements.

(1) An applicant must satisfy pre-licensing education and written testing requirements to be eligible to apply for a mortgage loan originator license.

(2) An applicant must complete at least twenty (20) hours in pre-licensing education courses that are approved by the nationwide database and includes the curriculum specified in Section 70D-3-301.

(3) In order to pass a written test an applicant must achieve a test score of not less than 75 percent correct answers on a written test meeting the standards described in Section 70D-3-302.

(a) An individual who fails such a written test by scoring less than 75 percent correct may be retested up to three times provided each test is taken at least 30 days after the prior test.

(b) An individual who fails all three retests must wait at least six months before taking the written test again.

(c) A licensee who fails to maintain a valid license for a period longer than 5 years, excluding any time during which that individual is a "registered loan originator" as defined in Section 70D-3-102, must retake the written test and must achieve a score of not less than 75 percent correct in order to be eligible for license renewal.

(4) Continuing education is required for annual license renewal.

(a) Annually, a licensee must complete at least eight (8) hours of continuing education courses that are approved by the nationwide database and include curriculum specified in Section 70D-3-303.

(b) A licensee may receive credit for a course only during the year in which the course is taken. If a licensee repeats an approved course during the same or a successive year, the licensee may not receive continuing education credit for retaking the same course.

KEY: mortgage
December 22, 2009 **70D-3-301**
Notice of Continuation December 3, 2019 **70D-3-302**
70D-3-303

R343. Financial Institutions, Nondepository Lenders.
R343-8. Mortgage Loan Originator Record Requirements and Reports of Condition.
R343-8-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Section 70D-3-401.

(2) This rule applies to mortgage loan originators who are required to license with the commissioner.

(3) The purpose of this rule is to require that appropriate business records are created, maintained, submitted and produced for inspection.

R343-8-2. Record Requirements.

(1) An individual required to be licensed shall create records related to the underwriting, valuation of collateral, or extension of credit for a mortgage loan. Records must be maintained for the period specified in the statute and provided to the commissioner upon the commissioner's request.

R343-8-3. Reports of Condition.

(1) A report of condition required by the nationwide database shall be provided to the commissioner upon the commissioner's request.

KEY: mortgage
December 22, 2009 70D-3-102
Notice of Continuation December 3, 2019

R357. Governor, Economic Development.
R357-5. Motion Picture Incentive Rule.
R357-5-101. Authority.

(1) Subsection 63N-8-104(1) requires the office to make rules establishing the standards that a motion picture company and digital media company must meet to qualify for a motion picture incentive and the criteria for determining the amount of the motion picture incentive.

R357-5-102. Definitions.

The definitions below are in addition to or serve to clarify the definitions found in Utah Code Section 63N-8-102.

(1) "Cast" means performers appearing in a particular film with featured or speaking roles.

(2) "Community Film Incentive Program" means a production where a motion picture company has a maximum budget of under $500,000.

(3) "Crew" means those involved in the production of a film who are not defined as cast or extras.

(4) "Deferred Payment" means, tax credits in amounts over $2,000,000 paid in installments over a specified number of years but not to exceed three years.

(5) "Extras" means an extra or background actor is a performer in a production, who appears in a non-speaking or non-singing (silent) capacity, usually in the background.

(6) "Independent Utah CPA" means, a Certified Public Accountant (CPA) holding an active license in the state of Utah that is independent of the production and production activities.

(7) "Made-For-Television" means feature length motion pictures specifically made-for-television or streaming platforms.

(8) "Motion Pictures" means a production that is originally intended for commercial distribution and does not include:

(a) news;

(b) commercials;

(c) live broadcasts;

(d) digital media products;

(e) live sporting events;

(f) live coverage of theatrical or entertainment events; or

(g) programs that solicit funds.

(9) "Principal photography", "Producing" or "Production" means the filming of major and significant portions of a film that involves the main/lead actors/actresses.

(10) "Rural Utah" means all counties outside of Davis County, Salt Lake County, Utah County, and Weber County.

(11) "Significant Percentage of cast and crew from Utah" means:

(a) For productions that have less than $500,000 dollars left in state: that at least 85% of the cast and crew are Utah residents excluding extras.

(b) For productions that have more than $500,000 dollars left in state: that at least 75% of the cast and crew are Utah residents excluding extras and five principal cast.

(12) "State-approved production" means a production that is:

(a) approved by the office and ratified by the Governor's Office of Economic Development Board; and

(b) all or a portion of the production is produced in the state.

(13) "Total budget for the project" means the total budget for Dollars left in state of pre-production, production and post-production.

(14) "Television series" means a group of episodes of a production released on television or streaming platforms.

(15) "Treatment" means: A written description of the production.

(16) "UFC" means: the Utah Film Commission, a sub-entity of the Utah Governor's Office of Economic Development.

(17) "Utah Resident" means a person who has lived in Utah for the entire year (at least 183 days) even if temporarily outside of Utah for an extended length of time, maintains a permanent home in Utah, and is subject to State of Utah personal income tax.

R357-5-103. Motion Picture Incentive Applications: Procedures and Minimum Requirements for a Motion Picture Company.

(1) A motion picture company's application may be approved for a motion picture incentive award only if all of the following requirements are met in addition to those listed throughout 63N-8:

(a) the motion picture company is producing all or a portion of a motion picture in the state of Utah;

(b) the motion picture is a state approved production;

(c) the motion picture company guarantees UFC access to production's behind the scenes footage, interviews and still photography or allow the office to produce its own;

(d) the motion picture company guarantees the production will display the Utah logo as outlined in the incentive agreement and provide a screen shot of the logo as it appears in the credits;

(e) the motion picture company has obtained financing for 100% of the anticipated Dollars left in state for the project, and the applicant provides proof of financing in a form specified in the application documents.

(f) the motion picture company must retain financing as set forth in subsection (e) for the life of the contract with the State;

(g) the motion picture company intends to report at least $500,000 dollars left in state if applying for a film incentive pursuant to R357-5-5(1) or a maximum of under $500,000 if applying for an incentive pursuant to R357-5-5(2); and

(h) if a production has initiated principal photography prior to the Office's receipt of a completed application or will not commence principal photography for more than 90 days from date of application, the application for incentive may be denied.

(2) The motion picture incentive application shall not be construed as a property right and neither the Office nor the Board is required to approve an application.

(3) In order to receive state approval for an incentive application, a production must, in the State's sole discretion, reflect positively on the image of state of Utah.

(a) In determining whether or not a production reflects positively on the image of the state of Utah, the Office and Board may take into consideration:

(i) whether and to what extent the motion picture promotes Utah as a tourist destination;

(ii) general standards of decency and respect for the diverse beliefs and values of Utahns; and

(iii) any other factors related to the production or the motion picture company that may reasonably affect the image of the state of Utah.

(4) The Office and Board may consider the relative merit of applications, and the need to reserve its allocations for future applications.

(a) Factors that contribute to the relative merit include, but are not limited to:

(i) the overall strength and viability of the script of the production;

(ii) the industry reputation of the production or motion picture company;

(iii) the record of the motion picture company in matters of safety and responsible filmmaking;

(iv) the existence of any legal action or the likelihood of any legal action in relation to either the production or the motion picture company; and

(v) anticipated:

(A) number of jobs in Utah;

(B) number of production days in Utah;

(C) dollars left in state;

(D) local cast and crew wages;

(E) new state revenue that the film contributes in the State of Utah;

(b) Applications shall be made in the form prescribed by the Office, including required attachments or additional information.

(i) Incomplete applications will not be considered received until the application is deemed complete by the UFC.

(ii) A script is required as part of the application.

(iii) A treatment may only be submitted where a script for a project type is not possible for example the project is a documentary. The Utah Film Commission will determine in its sole discretion if a treatment can be substituted for a script.

(5) A production company may file more than one application if it has more than one production in the state, but a separate application must be filed for each production.

(6) Applications will be subject to submission deadlines, which will be posted on the Utah Film Commission Website and are available in other formats upon request.

(7) If the applicant fails to submit a completed application prior to the submission deadline, the application may be considered with the next round of submissions.

(8) Submitting an application does not guarantee approval of a film incentive.

(9) All film incentives are subject to and contingent upon the amount of available funding and/or tax credit allocation available in the Motion Picture Restricted account;

(10) Lack of state approval shall not be construed as prohibiting a production or prohibiting a motion picture company from filming in Utah.

(11) A production's eligibility for an incentive ends upon approval or denial by the Office. A production may reapply subject to compliance with program statue and rules.

R357-5-104. Motion Picture Incentive Applications: Award for a Motion Picture Production.

(1) Upon receipt of a completed application, the Office will align each project into incentive categories as set forth in R357-5-105.

(2) In calculating dollars left in the state, the Office may limit the following expenditures:

(a) all salary above $500,000 for one individual;

(b) marketing and distributions expenditures;

(c) any value beyond the depreciated amount for capital expenditures, rentals, and any purchases made where the item is used for only a portion of its useful life; and

(d) any per diem value beyond 100 percent of the current federal rate for the area.

R357-5-105. Film Categories and Conditions.

(1) Utah Motion Picture Incentive Program

(a) The Utah Motion Picture Incentive Program will have an incentive cap of 20% the dollars left in state, unless a higher cap is awarded pursuant to subsection (c).

(b) Incentives will only be awarded if the motion picture company meets criteria listed in statute, R357-5-103

(c) An additional cap of up to 5% may be granted if the motion picture company:

(i) Motion picture company has at least $1,000,000 in qualified dollars left in state, and

(ii) 75% of cast and crew are Utah residents excluding extras and five principal cast members, or

(iii) 75% of production days occur in rural Utah

(2) Community Film Incentive Program

(a) The Community Film Incentive Program will provide a maximum of a 20% post-performance cash rebate or tax incentive for dollars left in state by a community film production.

(b) Community Film Incentive Program incentives will only be awarded if the motion picture company meets criteria listed in statute, R357-5-103, has a maximum budget of under $500,000, and meets the criteria found on the Utah Film Commission Website.

(c) Applications for the Community Film Incentive Program will be reviewed monthly.

(d) Awards will be made to motion picture companies based upon the criteria outlined in the Community Film Incentive Program application provided by UFC.

(3) For applications made under either (1) or (2), the motion picture company must provide all information and documentation to show measureable outcomes as outlined in the application for any incentive listed in R357-5-105.

R357-5-106. Funding -- Post-Performance Compliance.

(1) A motion picture company may qualify for issuance of either a Post-Performance Refundable Tax Credit or Post-Performance Cash award based on the method outlined in their contract if all of the following requirements are met in addition to those listed throughout 63N-8:

(a) The motion picture company adheres to the Agreed-Upon Procedures version 1.0 dated November 1, 2019 which will be posted on the Utah Film Commission Website and hereby adopted and incorporated by reference.

R357-5-107. Funding -- Post-Performance Refundable Tax Credit.

(1) Post-performance refundable tax credits are nontransferable and can only be issued to the state-approved motion picture that submits the motion picture incentive application and is approved by the office with advice from the Board.

(2) Post-performance refundable tax credits in amounts over $2,000,000 may be paid in deferred payments over multiple years as authorized by the office within the approved board motion for the tax credit.

(a) All deferred payments for tax credits over $2,000,000 are subject to available tax credit allocation as authorized by the legislature.

(b) Each annual installment of the deferred payment amount shall be outlined in the tax credit agreement.

(c) A deferred payment plan cannot exceed three years.

R357-5-108. Request for Incentive Amendment.

(1) A motion picture company may request an incentive amendment only under the conditions prescribed by the Office.

(2) Amendments will be reviewed and approved by the UFC on a case by case basis with a written explanation for the approval or denial provided to the applicant.

KEY: economic development, motion picture, digital media, new state revenue
January 1, 2020 63N-8-104
Notice of Continuation June 9, 2016

R357. Governor, Economic Development.
R357-16a. Restoration Recreation Infrastructure Grant Program Rule.
R357-16a-101. Title.

This rule is known as the "Restoration Recreation Infrastructure Grant Program Rule."

R357-16a-102. Definitions.

In addition to the terms defined in 63N-9-102 and R357-16-3, the following terms are defined as follows:

(1) "Developed campground" includes those which have been improved or developed from a moderate to a highly developed level.

(2) "Developed recreation site" means an area which has been improved or developed for recreation.

(3) "Developed trail" includes those that are considered developed, highly developed or fully developed trails which commonly have constructed features of either native or imported materials and incorporate route identification signage as needed for user reassurance.

(4) "Developed water recreation facilities" includes those with recreational facilities for water based recreation opportunities for the use, enjoyment and safety of visitors.

(5) "OOR" means the Utah Office of Outdoor Recreation.

(6) "Partner" means two or more entities collaborating with a common interest or goal in restoring or rehabilitating recreational infrastructure.

R357-16a-103. Authority.

This rule is adopted by OOR under the authority of Subsection 63N-9-302 (3).

R357-16a-104. Application Form and Submission Process.

(1) The application will be provided by OOR and contain the following content:

(a) general submission instructions;

(b) grants available to be claimed;

(c) criteria for qualification of a grant;

(d) instructions regarding a project description including timeline;

(e) instructions for providing a budget for total project cost, highlight of funds already procured for the project; and an itemized accounting showing planned use of the grant funds being requested;

(f) instructions for reporting project impacts including community and economic impacts;

(g) the application scoring system;

(h) any required deadlines, reports, and relevant timelines; and

(i) all required documents and information necessary for verification and approval of the application.

(2)(a) The application shall be created in an electronic form available to the public on OOR's website; and

(b) shall be available in paper upon request.

(4) To be considered for review an application must be received by OOR on or before the specified deadline in the application.

(5) Staff will review applications for completeness.

R357-16a-105. Eligible Entities.

(1) Grants may be awarded to the following entities within the state of Utah:

(a) non-profit corporations physically located within the State classified under 501 (c);

(b) municipalities;

(c) counties; and

(d) tribal governments.

(2) For projects on Federal or State lands, grant applicants must be partnered with the appropriate public land management agency for projects on those lands. Such partners may include.

(3) For-profit entities may not receive a recreation restoration infrastructure grant.

R357-16a-106. Recreation Restoration Eligibility Criteria.

(1) Budget/Costs/Matching Requirements: The Office will not fund more than 50% of the proposed project's eligible costs. The grant recipient and/or their partners shall provide matching funds having a value equal to or greater than the amount of the infrastructure grant.

(2) The maximum grant request is dependent on available annual funds and will be outlined in the grant application.

(3) Non-profit corporation applicants may provide an in-kind match in lieu of cash, provided applicant partners provide the necessary cash match to qualify for the match requirement.

(4) Up to 50% of the grant recipient's match may be provided through an in-kind contribution by the grant recipient, if:

(a) approved by the executive director after consultation with the director and the advisory committee;

(b) the in-kind donation meets the requirements for an eligible match; and

(d) the in-kind donation is for services or materials that are directly related to the construction of the project.

(5) Matching requirements, eligible and ineligible matching costs, and other matching funding requirements will be provided in the grant application.

(6) At least 75% of the matching funds for the project must be secured in order for the application to be considered.

(7) Recreation restoration infrastructure projects are limited to projects that are for the reconstruction, rehabilitating, replacing, and restoration of existing recreation infrastructure to meet visitor needs.

(8) Projects that are exclusively for the construction of new infrastructure are not eligible, however projects in which a minor portion of project funds are for the construction of new infrastructure in conjunction with a restoration project may be considered.

(9) Project sites that are primitive or semi-primitive are not eligible.

(10) Rehabilitation projects shall include those in which an existing trail is re-routed for sustainability or a campsite is moved.

(11) Eligible recreational infrastructure projects include:

(a) Trail improvements such as the realignment, rerouting, and reconstruction of existing or destroyed developed trail and trail systems;

(b) the updating, repair, replacement, or improvement of existing or destroyed developed trailside amenities;

(c) the restoration or rehabilitation of developed campground infrastructure to meet the needs of visitors and improve their safety;

(d) the restoration or rehabilitation of developed recreation site for day use sites which shall include such as picnic tables, fire pit/grill areas, shade structures including pavilions for larger groups, and restrooms; and

(e) The restoration or rehabilitation of developed water recreation facilities include: pier, dock, boat ramp.

R357-16a-107. Method and Formula for Determining Grant Recipients.

(1) OOR shall use a weighted scoring system to enable the advisory committee to analyze and advise on the awarding of grant and grant amounts. The scoring system shall:

(a) be made available in the application; and

(b) assess and value general categories.

(2) OOR shall distribute the grant applications among the advisory committee members and ensure that each application will be reviewed and scored by members of the advisory

committee.

(3) OOR will use the average of the scores provided by the advisory committee members to create a prioritization matrix ranking the applications in descending order.

(4) OOR will provide a synopsis of each scored project to the advisory committee.

(5) In accordance with available funds, the advisory committee shall prioritize projects that the:

(a) advisory committee considers to be high demand outdoor recreation amenities or high priority trails; and

(b) data demonstrates that the project area receives or has received high visitation.

(6) The recommendations for grant awards will be forwarded to the executive director for final approval.

(7) OOR will notify applicants of the funding decision within two weeks of the final decision and:

(a) successful applicants will be notified of expected contractual requirements; and

(8) unsuccessful applicants will be notified of the rejection.

(9) Upon request an applicant may receive a redacted copy of the reviewers comments.

(10) An advisory committee member shall redact themselves from a project in which they have substantial interest.

R357-16a-108. Reporting and Reimbursement Requirements.

(1) Awarded entities will be required to submit, at minimum, the following documentation upon reimbursement request:

(a) a reimbursement request form on a format provided by the Office.

(b) copies of all invoices and evidence of payment (checks, bank statements or loan agreements) as well as records of volunteer labor or other in-kind donations for work completed on the project; and

(c) several photos that show the project is complete.

(d) a final report with the description of the project and data requested by the Office.

(2) Partial reimbursement payment may be made through the course of the terms of the contract, not to exceed 50% of expenses incurred during the development of the project. A request-for-funds form and itemization sheet will be required to be signed and submitted to receive the initial 50% of funds.

(3) Grant recipient shall provide a description and an itemized report detailing the expenditure of the grant or the intended expenditure of any grant funds that has not been spent.

(4) Project reports shall be provided at least every six months, and no later than 60 days after the grant agreement has expired.

(a) Each project report shall include:

(i) an accounting of project expenditures; and

(ii) assurances that all monies paid to the grant recipient were used for planning, construction, or improvements as describe in the recipient's grant application and grant agreement.

(5) Grant recipients will cooperate with reasonable requests for site visits during and after completion of the project.

KEY: economic development, recreation restoration, infrastructure grant, outdoor recreation
January 1, 2020 63N-9-302(3)

R357. Governor, Economic Development.
R357-27. Community Reinvestment Agency Report Rule.
R357-27-101. Authority.

(1) Subsection 17C-1-603 (2) (b) requires the Governor's Office of Economic Development to make rules to establish a fee schedule for administration of the database.

R357-27-102. Fee Schedule.

(1) Reserved.

KEY: counties, public funds and accounts, reporting
January 1, 2019 17C-1-603(2)(b)

R386. Health, Disease Control and Prevention, Epidemiology.
R386-80. Local Public Health Emergency Funding Protocols.
R386-80-1. Authority and Purpose.

(1) This rule establishes a local health emergency assistance program to be administered by the Utah Department of Health. This program establishes the Public Emergency Fund to be funded with money appropriated by the legislature or otherwise made available to the program fund as defined by this rule

(2) Monies that the legislature appropriates to the Program Fund are non-lapsing and must be used exclusively to provide emergency funding to local health departments. However, the Department may use money in the Program to cover its costs of administering the Program.

(3) Any interest earned on the balance of the funds in the Program shall be deposited to the General Fund.

R386-80-2. Definitions.

(1) Department - means the Utah Department of Health.

(2) Local Health Department - means a county or multicounty local health department established under Utah Code Title 26A.

(3) Local Public Health Emergency - means an unusual event or series of events causing or resulting in a substantial risk or potential risk to the health of a significant portion of the population within the boundary of a local health department.

(4) Program - means the local health emergency assistance program established under this section.

(5) Program Fund - means money that the Legislature appropriates to the Department for use in the Program and other monies otherwise made available for use in the Program.

R386-80-3. Reimbursement of Local Health Departments.

(1) Upon the occurrence of a local public health emergency by the local health officer with the concurrence by the Department's Executive Director or his Designee, the local health department is eligible to receive reimbursement through the Public Emergency Funding Program for expenses incurred in responding to a local health emergency to the extent funding is available.

(2) The request for reimbursement from the fund shall include an itemized list of expenses incurred associated with the public health emergency. The list of expenses shall be in the format directed by the Department. The local health department is required to match funds received from the Program Fund. The total of the program reimbursement and the local match cannot exceed the total dollars expended on the emergency.

(3) If the Department receives requests for emergency funding from multiple local health departments during a similar time period for the same public health emergency, and the requests exceed the balance of the funding available, the Department shall allocate the distribution of available funds by an agreed upon formula with the Local Health Officers Association. Information contained in the local health department request for funding is subject to both audit and approval by the Department.

(4) The Local Health Officers Association and the Department shall, through a Memorandum of Agreement or Contract, include more specifically what constitutes a public health emergency, types of reimbursable expenses, and the formula to be used if multiple public health emergencies occur at similar times with not enough funding available.

R386-80-4. Record Keeping.

(1) The Department shall keep all financial records related to distribution of funds to local health departments according to established rules for such financial documents.

KEY: public health emergency
December 12, 2019 26-1-38
Notice of Continuation August 22, 2019

R392. Health, Disease Control and Prevention, Environmental Services.
R392-100. Food Service Sanitation.
R392-100-1. Authority and Purpose.

(1) This rule is authorized by Sections 26-1-5, 26-1-30, and 26-15-2.

(2) This rule establishes definitions; sets standards for management and personnel, food operations, and equipment and facilities; and provides for food establishment plan review, permit issuance, inspection, employee restriction, and permit suspension to safeguard public health and provide consumers food that is safe, unadulterated, and honestly presented.

R392-100-2. Definitions.

(1) "Food Cart" means a cart:

(a) that is not motorized; and

(b) that a vendor, standing outside of the frame of the cart, uses to prepare, sell, or serve food or beverages for immediate human consumption.

(2)(a) "Food Truck" means a fully encased food service establishment:

(i) on a motor vehicle or on a trailer that a motor vehicle pulls to transport; and

(ii) from which a food truck vendor, standing within the frame of the vehicle, prepares, cooks, sells, or serves food or beverages for immediate human consumption.

(b) "Food Truck" does not include a food cart or an ice cream truck.

(3) "Ice Cream Truck" means a fully encased food service establishment:

(a) on a motor vehicle or on a trailer that a motor vehicle pulls to transport;

(b) from which a vendor, from within the frame of the vehicle, serves prepackaged ice cream products;

(c) that attracts patrons by traveling through a residential area and signaling the truck's presence in the area, including by playing music; and

(d) that may stop the vehicle to serve packaged ice cream products at the signal of a patron.

(4) "Recovery residence" has the same meaning as provided in Subsection 62A-2-101(33)(a).

(5) "Residential support" has the same meaning as provided in Subsection 62A-2-101(35).

(6) "Residential treatment" has the same meaning as provided in Subsection 62A-2-101(36).

R392-100-3. General Requirements.

(1) The following food service establishments are exempt from the requirements of this rule:

(a) Food trucks as defined in this rule and in Rule R392-102;

(b) Certified or licensed child care facilities, including residences, that provide care for 16 or fewer children; and

(c) Residential treatment programs, residential support programs, and recovery residences as defined in this rule and in Rule R392-110.

(2) Food trucks shall abide by the requirements of Rule R392-102.

(3) Certified or licensed childcare facilities, including residences, that provide care for 16 or fewer children; residential treatment programs; residential support programs; and recovery residences shall abide by the requirements of Rule R392-110.

R392-100-4. Incorporation by Reference.

(1) The Department incorporates by reference the following:

(a) Section 402 of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 342.

(b) The 2013 version of the U.S. Public Health Service, Food and Drug Administration, Model Food Code ("Model Code"), Chapters 1 through 8, Annex 1 Parts 8-6 through 8-9, with the stated exceptions and amendments set out below.

(2) Exceptions to Incorporation. The following subsections of the Model Code are not incorporated into this rule:

(a) Subsection 5-203.15(B);

(b) Subsections 5-402.11(B), (C) and (D);

(c) Subsections 8-302.14(D) and (E);

(d) Subsection 8-304.11(K);

(e) Annex 1, Section 8-905.40;

(f) Annex 1, Subparagraphs 8-905.90(A)(1) and (2);

(g) Annex 1, Section 8-909-20;

(h) Annex 1, Subparagraphs 8-911.10(B)(1) and (2).

(3) The following amendments and additions to the Model Code shall be made. All other incorporated provisions remain the same.

(a) In section 1-201.10(B), Terms Defined, a specified definition is added or the definitions or its specific subsections set out in the definition are amended as follows:

(i) Core Item(1) is amended to read:

"(1) "Core Item" also referred to as "non-critical" means a provision in the Model Code that is not designated as a Priority Item or a Priority Foundation Item."

(ii) Food Establishment(2) is amended to add paragraph (C) to read:

"(2)(c) Catering operation which is a business entity that operates from a permitted food establishment that contracts with a client for food service to be provided to a client, the client's guests and/or customers at a different location. A catering operation may cook or perform final preparation of food at the service location. A catering operation does not include routine services offered at the same location, or meal that are individually purchased with the exception of cash bars."

(iii) A definition of Potentially Hazardous Food is added to read:

"Potentially Hazardous Food means the same as Time/Temperature Control for Safety Food."

(iv) Priority Item(1) is amended to read:

"(1) "Priority Item" also referred to as "critical 1" means a provision in the Model Code whose application contributes directly to the elimination, prevention or reduction to an acceptable level, hazards associated with food borne illness or injury and there is no provision that more directly controls the hazard."

(v) Priority Foundation Item(1) is amended to read:

"(1) "Priority Foundation Item" also referred to as "critical 2" means a provision in the Model Code whose application supports, facilitates or enables one or more Priority Items."

(b) After section 2-102.12, a new section is added to read: "2-102.13 Food Employee Training. Food managers shall be trained and certified as required under Chapter 26-15a, UCA and R392-101. Food employees shall be trained in food safety as required under Section 26-15-5 and shall hold a valid food handler's card issued by a local health department."

(c) Paragraph 3-201.16(A) is amended to read:

"(A) Except as specified in paragraph (B) of this section, mushroom species picked in the wild shall not be offered for sale or service by a food establishment."

(d) Section 3-501.17 is amended to include additional paragraph (H):

"(H) A date marking system that meets the criteria stated in paragraph (A) of this section shall use one of two types of date marks, and that date mark must be used consistently throughout the food establishment. The date mark will either be of the date:

(1) before which food must be used as specified in paragraph (A) or this section; or

(2) be the date of Day 1."

(e) Subparagraph 3-501.19(B)(2) is amended to read:

"(2) Only one time marking scheme may be used, and it must be used consistently throughout the food establishment. The food shall be marked with either:

(a) the time food is removed from temperature control; or

(b) the time before which the food shall be cooked and served at any temperature if ready-to-eat, or discarded."

(f) After Section 4-204-123 a new section is added to read:

"4-204.124 Restraint of Pressurized Containers.

Carbon dioxide, helium or other similar pressurized containers must be restrained or secured to prevent the tanks from falling over."

(g) Section 5-101.12, shall be amended to add: "The process shall be in accordance with the American Water Works Association (AWWA) C651-2005 for disinfection and testing."

(h) Section 5-202.13 is deleted and replaced to read:

"(A) Where the horizontal distance from the water supply inlet to an adjacent single wall or obstruction is greater than three times the diameter of the inlet, or greater than four times for intersecting walls, an air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least twice the diameter of the water supply inlet and may not be less than 25 millimeters (1 inch).

(B) Where the horizontal distance from the water supply inlet to an adjacent single wall or obstruction is less than three times the diameter of the inlet, or less than four times for intersecting walls, and air gap between the water supply inlet and the flood level rim of the plumbing fixture, equipment, or nonfood equipment shall be at least three times the diameter of the water supply inlet and may not be less than 38 millimeters (1.5 inches)."

(i) Paragraph 5-203.15(A) is amended to read:

"(A) If not provided with an air gap as specified under Section 5-202.13, an American Society of Safety Engineers (ASSE) 1022 dual check valve with an intermediate vent shall be installed upstream from a carbonating device and downstream from any copper in the water supply."

(j) Paragraph 5-402.11(A) is amended to read:

"(A) A direct connection may not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed."

(k) Section 8-103.10 Modifications and Waivers is amended to read:

"(A) The regulatory authority may grant a variance by modifying or waiving the requirements of this Code if in the opinion of the regulatory authority a health hazard or nuisance will not result from the variance. If a variance is granted, the regulatory authority shall retain the information specified under section 8-103.11 in its records for the food establishment.

(B) A copy of the variance or waiver issued by the regulatory authority and the documentation required in section 8-103.11 shall be provided to the Utah Department of Health, Office of Epidemiology, Environmental Sanitation Program within 5 working days of issuance.

(C) A variance or waiver intended for a food establishment which is of a chain with stores in more than one local health jurisdiction in the State must be approved by the Utah Department of Health prior to issuance."

(l) Section 8-103.11 is amended to add paragraph (D) to read:

"(D) In addition, a variance from section 3-301.11 may be issued only when:

(1) the variance is limited to a specific task or work station;

(2) the applicant has demonstrated good cause why section 3-301.11 cannot be met;

(3) suitable utensils are used to the fullest extent possible with ready-to-eat foods in the rest of the establishment; and

(4) the applicant can demonstrate active managerial control of this risk factor at all times."

(m) Paragraph 8-302.14(C) is amended to read:

"A statement specifying whether the food establishment is mobile or stationary and temporary or permanent."

(n) Paragraph 8-304.10(A) is amended to read:

"(A) Upon request, the regulatory authority shall provide a copy of the food service sanitation rule according to the policy of the local regulatory agency."

(o) Paragraph 8-401.10(A) is amended to read:

"(A) Except as specified in paragraphs (B) and (C) of this section, the regulatory authority shall inspect a food establishment at least once every 6 months and twice in a season for seasonal operations."

(p) Subparagraph 8-401.10(B)(2) is amended to read:

"(2) The food establishment is assigned a less frequent inspection frequency based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction; or"

(q) Section 8-501.10 is amended to read:

"(B) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected food employee or conditional employee; and

(C) Meeting reporting requirements under Communicable Disease Rule R386-702 and Injury Reporting Rule R386-703."

(r) Annex 1, Section 8-601.10 is amended to read:

"Due process and equal protection shall be afforded as required by law in all enforcement and regulatory actions."

(s) Annex 1, Section 8-801.30 is amended to read:

"Service is effective at the time the notice is served or when service is made as specified in Paragraph 8-801-20(B)."

(t) Annex 1, Section 8-903.10 is amended to read:

"8-903.10 Impoundment of Adulterated Food Products Authorized.

(A) The impoundment of adulterated food is authorized under Section 26-15-9, UCA.

(B) The regulatory authority may impound, by use of a hold order, any food product found in places where food or drink is handled, sold, or served to the public, but is found or is suspected of being adulterated and unfit for human consumption.

(C) Upon five days notice and a reasonable opportunity for a hearing to the interested parties, to condemn and destroy the same if deemed necessary for the protection of the public health.

(D) If the regulatory authority has reasonable cause to believe that the hold order will be violated, or finds that the order is violated, the regulatory authority may remove the food that is subject to the hold order to a place of safekeeping.

(E) Within the limits set in paragraphs (B), (C), and (D) of this section, the regulatory authority may impound, by use of a hold order, molluscan shellfish that are not tagged or labeled according to Paragraph 3-202.18(A) of this code. Other actions may be taken in accordance with Paragraph 3-202.18(B) of this code."

(u) Annex 1, Section 8-903.60 is amended to read:

"The regulatory authority may examine, sample, and test food in order to determine its compliance with this Code in section 8-402.11."

(v) Annex 1, Section 8-903.90 is amended to read:

"The regulatory authority shall issue a notice of release from a hold order and shall physically remove the hold tags, labels, or other identification from the food if the hold order is vacated."

(w) Annex l Section 8-904.30 heading is amended to read:

"8-904.30 Contents of the Summary Suspension Notice."

(x) Annex 1, Paragraph 8-905.10(A) is amended to read:

"(A) A person who receives a notice of hearing shall file a response within 10 calendar days from the date of service. Failure to respond may result in license suspension, license

revocation, or other administrative penalties."

(y) Annex 1, Section 8-905.20 is amended to read:

"A response to a hearing notice or a request for a hearing as specified in section 8-905.10 shall be in written form and contain the following:

(A) Response to a notice of hearing must include:

(1) An admission or denial of each allegation of fact;

(2) A statement as to whether the respondent waives the right to a hearing;

(3) A statement of defense, mitigation, or explanation concerning all claims; and

(4) A statement as to whether the respondent wishes to settle some or all of the claims made by the regulatory authority.

(B) A request for hearing must include:

(1) A statement of the issues of fact specified in section 8-905.30 paragraph (B) for which a hearing is requested; and

(2) A statement of defense, mitigation, denial, or explanation concerning each allegation of fact.

(C) Witnesses - In addition to the above requirements, if witnesses are requested, the response to a notice of hearing and a request for hearing must include the name, address, telephone number, and a brief statement of the expected testimony for each witness.

(D) Legal Representation - Legal counsel is allowed, but not required. All documents filed by the respondent must include the name, address, and telephone number of the respondent's legal counsel, if any."

(z) Annex 1, Subparagraph 8-905.50(A)(1) is amended to read:

"(1) Except as provided in paragraph (B) of this section, within 5 calendar days after receiving a written request for an appeal hearing from:"

(aa) Annex 1, Subparagraph 8-905.50(A)(2)is amended to read:

"(2) Within 30 calendar days after the service of a hearing notice to consider administrative remedies for other matters as specified in section 8-905.10(C) or for matters as determined necessary by the regulatory authority."

(ab) Annex 1, Section 8-905.60 heading is amended to read:

"8-905.60 Notice of Hearing Contents."

(ac) Annex 1, Section 8-905.80 heading is amended to read:

"8-905.80 Expeditious and Impartial Hearing."

(ad) Annex 1, Section 8-905.90 heading is amended to read:

"8-905.90 Confidentiality of Hearing and Proceedings."

(ae) Annex 1, Paragraph 8-905.90(A) is amended to read:

"(A) Hearings will be open to the public unless compelling circumstances, such as the need to discuss a person's medical or mental health condition, a food establishment's trade secrets, or any other matter private or protected under federal or state law."

(af) Amend section 8-906.30 paragraph (B) to read:

"(B) Unless a party appeals to the head of the regulatory authority within 10 calendar days of the hearing or a lesser number of days specified by the hearing officer:"

(ag) Annex 1, Section 8-907.60 is amended to read:

"Documentary evidence may be received in the form of a copy or excerpt if provided to the hearing officer and opposing party prior to the hearing as ordered by the hearing officer."

(ah) Annex 1, Section 8-908.20 is amended to read:

"Respondents accepting a consent agreement waive their rights to a hearing on the matter, including judicial review."

(ai) Annex 1, Subparagraphs(B)(1) and (2) are deleted and Paragraph 8-911.10(B) is amended to read:

"(B) Any person who violates any provision of this rule may be assessed a civil penalty as provided in section 26-23-6, UCA."

(aj) Annex 1, Section 8-913.10 headline is amended to read:

"8-913.10 Petitions, Penalties, Contempt, and Continuing Violations."

(ak) Annex 1, Paragraph 8-913.10(B) is amended to read:

"In addition to any criminal fines and sentences imposed as specified in Paragraph 8-911.10, or to being enjoined as specified in Paragraph 8-912.10, a person who violates a provision of this code, any rule or regulation adopted in accordance with law related to food establishments within the scope of this code, or to any term, condition, or limitation of a permit issued as specified in Paragraphs 8-303.10 and 8-303.20 is subject to a civil penalty not exceeding $5,000."

(al) Annex 1, Section 8-913.10 is amended to add the paragraph (D) to read:

"(D) The adjudicative body, upon proper findings, shall assess violators a fee for each day the violation remains in contempt of its order."

R392-100-5. Construction Standards.

(1) All parts of the food establishment shall be designed, constructed, maintained, and operated to meet the requirements of Title 15A, State Construction and Fire Codes Act.

KEY: public health, food services, sanitation
December 12, 2019 26-1-30(2)
Notice of Continuation November 7, 2016 26-15-2

R392. Health, Disease Control and Prevention, Environmental Services.

R392-510. Utah Indoor Clean Air Act.

R392-510-1. Authority.

(1) This rule is authorized by Sections 26-1-30(2), 26-15-12, and Title 26 Chapter 38.

(2) This rule does not preempt other restrictions on smoking that are otherwise allowed by law.

R392-510-2. Definitions.

(1) "Agent" means the person to whom a building owner has delegated the maintenance and care of the building.

(2) "Area" means a three dimensional space.

(3) "Building" means an entire free standing structure enclosed by exterior walls.

(4) "Building owner" means the person(s) who has an ownership interest in any public or private building.

(5) "E-cigarette" means any electronic oral device that provides a vapor of nicotine or other substance and which simulates smoking through its use or through inhalation of the device; and includes an oral device that is composed of a heating element, battery, or electronic circuit and marketed, manufactured, distributed, or sold as an e-cigarette, e-cigar, e-pipe, or any other product name or descriptor, if the function of the product meets the definition of an electronic oral device.

(6) "Employer" means any individual, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such person or persons.

(7) "Enclosed" means space between a floor and ceiling which is designed to be surrounded on all sides at any time by solid walls, screens, windows or similar structures (exclusive of doors and passageways) which extend from the floor to the ceiling.

(8) "Executive Director" means the Executive Director of the Utah Department of Health or his designee.

(9) "Facility" means any part of a building, or an entire building.

(10) "HVAC system" means the collective components of a heating, ventilation and air conditioning system.

(11) "Lighted Tobacco" means both tobacco that is under self sustained combustion and tobacco that is heated to a point of smoking or vaporizing.

(12) "Local Health Officer" means the director of the jurisdictional local health department as defined in Title 26A, Chapter 1, or his designee.

(13) "Nonsmoker" means a person who has not smoked a tobacco product in the preceding 30 days.

(14) "Non-tobacco shisha" means any product that does not contain tobacco or nicotine and is smoked or intended to be smoked in a hookah or water pipe.

(15) "Operator" means a person who leases a place from a building owner or controls, operates or supervises a place.

(16) "Place of public access" or "Place" means any enclosed indoor place of business, commerce, banking, financial service, or other service-related activity, whether publicly or privately owned and whether operated for profit or not, to which persons not employed at the place of public access have general and regular access or which the public uses, including:

(a) buildings, offices, shops, elevators, or restrooms;

(b) means of transportation or common carrier waiting rooms;

(c) restaurants, cafes, or cafeterias;

(d) taverns as defined in Section 32B-1-102, or cabarets;

(e) shopping malls, retail stores, grocery stores, or arcades;

(f) libraries, theaters, concert halls, museums, art galleries, planetariums, historical sites, auditoriums, or arenas;

(g) barber shops, hair salons, or laundromats;

(h) sports or fitness facilities;

(i) common areas of nursing homes, hospitals, resorts, hotels, motels, "bed and breakfast" lodging facilities, and other similar lodging facilities, including the lobbies, hallways, elevators, restaurants, cafeterias, other designated dining areas, and restrooms of any of these;

(j)(i) any child care facility or program subject to licensure or certification under this title, including those operated in private homes, when any child cared for under that license is present; and

(ii) any child care, other than child care as defined in Section 26-39-102, that is not subject to licensure or certification under this title, when any child cared for by the provider, other than the child of the provider, is present;

(k) public or private elementary or secondary school buildings and educational facilities or the property on which those facilities are located;

(l) any building owned, rented, leased, or otherwise operated by a social, fraternal, or religious organization when used solely by the organization members or their guests or families;

(m) any facility rented or leased for private functions from which the general public is excluded and arrangements for the function are under the control of the function sponsor;

(n) any workplace that is not a place of public access or a publicly owned building or office but has one or more employees who are not owner-operators of the business;

(o) any area where the proprietor or manager of the area has posted a conspicuous sign stating "no smoking", "thank you for not smoking", or similar statement; and

(p) a holder of a bar establishment license, as defined in Section 32B-1-102.

(17) "Publicly owned building or office" means any enclosed indoor place or portion of a place owned, leased, or rented by any state, county, or municipal government, or by any agency supported by appropriation of, or by contracts or grants from, funds derived from the collection of federal, state, county, or municipal taxes.

(18) "Shisha" means any product that contains tobacco or nicotine and is smoked or intended to be smoked in a hookah or water pipe.

(19) "Smoking" means:

(a) the possession of any lighted or heated tobacco product in any form;

(b) inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or hookah that contains:

(i) tobacco or any plant product intended for inhalation;

(ii) shisha or non-tobacco shisha;

(iii) nicotine;

(iv) a natural or synthetic tobacco substitute; or

(v) a natural or synthetic flavored tobacco product;

(c) using an e-cigarette; or

(d) using an oral smoking device intended to circumvent the prohibition of smoking in this rule.

(20) "Workplace" means any enclosed space, including a vehicle, in which one or more individuals perform any type of service or labor for consideration of payment under any type of employment relationship. This includes such places wherein individuals gratuitously perform services for which individuals are ordinarily paid.

R392-510-3. Responsibility for Compliance.

Where this rule imposes a duty on a building owner, agent, or operator, each is independently responsible to assure compliance and each may be held liable for noncompliance.

R392-510-4. Proprietor Right to Prohibit Smoking.

(1) The owner, agent or operator of a place may prohibit

smoking anywhere on the premises.

(2) The owner, agent or operator of a place may also prohibit smoking anywhere outdoors on the premises.

R392-510-5. Smoking Prohibited Entirely in Places of Public Access and Publicly Owned Buildings and Offices.

(1) Places listed in Section 26-38-2(3)(a) through (p) are places of public access and smoking is prohibited in them except as provided for in Section 26-38-3(2).

(2) It is the responsibility of the owner or operator to provide evidence to the local health department upon request that the facility is in compliance with this rule.

R392-510-6. Requirements for Smoking Permitted Areas.

(1) Any enclosed area where smoking is permitted must be designed and operated to prevent exposure of persons outside the area to tobacco smoke generated in the area.

(2) If a lodging facility permits smoking as provided in Section 26-38-3(2)(b) in designated smoking-allowed guest rooms, or if a nursing home, assisted living facility, small health care facility, or hospital with a certified swing-bed program permits smoking as provided in Section 26-38-3(2)(b) in designated smoking-allowed private residential sleeping rooms, the facility's air handling system or systems must not allow air from any smoking-allowed area to mix with air in or to be used in:

(a) any part of the facility defined as a place of public access in Section 26-38-2(3);

(b) another room designated as a non-smoking room; or

(c) common areas of the facility, including dining areas, lobby areas and hallways.

(d) If an operator of a lodging facility chooses to modify the status of a room from a smoking to a non- smoking room, then the operator shall perform a full deep cleaning of the room. The deep cleaning shall include cleaning of carpets, bedding, drapes, walls, and any other object in the room which absorbs smoking particles or smoking fumes.

R392-510-7. HVAC System Documentation.

(1) If a building has a smoking-permitted area under Section 26-38-3(2), the building owner must obtain and keep on file a signed statement from an air balancing firm certified by the Associated Air Balance Council or the National Environmental Balancing Bureau, or an industrial hygienist certified by the American Board of Industrial Hygiene that the smoking permitted area meets the requirements of Subsections R392-510-6(1). If a building's HVAC System is altered in any way, the building owner must obtain new certification on the system.

(2) The building owner must provide the information required in Subsection R392-510-7(1) within three working days upon request from the operator, executive director or local health officer.

(3) The operator must provide the information required in Subsection R392-510-7(1) within five working days upon the request of the executive director or local health officer.

(4) The building owner must provide the HVAC operation specifications and maintenance guidelines to the HVAC operation and maintenance personnel or contractor. The maintenance guidelines must include the manufacturer's recommended procedures and time lines for maintenance of HVAC system components. If the manufacturer's recommended procedures for operation and maintenance of the HVAC system are not available, the building owner must obtain and use guidelines developed by a mechanical engineer licensed by the State of Utah who has expertise in the design and evaluation of HVAC systems or by a mechanical contractor licensed by the State of Utah who has expertise in the repair and maintenance of HVAC systems.

(5) The building owner must maintain HVAC inspection and maintenance records or logs for the three previous years and must make them available to the operator, executive director or local health officer within three working days of a request.

(6) The operator must make the record or logs required in Subsection R392-510-7(5) available to the executive director or local health officer within five working days of a request.

(7) The records or logs required in Subsection R392-510-7(5) must include:

(a) The specific maintenance and repair action taken, and reasons for actions taken;

(b) The name and affiliation of the individual performing the work; and

(c) The date of the inspection or maintenance activity.

R392-510-8. Operation and Maintenance of HVAC Systems.

(1) The building owner, agent, or operator of a place where smoking is permitted under Section 26-38-3(2) shall identify a person responsible for the operation and maintenance of the HVAC system.

(2) The building owner, agent, or operator of a place where smoking is permitted under Section 26-38-3(2) must maintain and operate the HVAC system to meet the requirements of Subsections R392-510-6.

(3) The building owner, agent, or operator of a place where smoking is permitted under Section 26-38-3(2) must cause the HVAC system components to be inspected, adjusted, cleaned, and calibrated according to the manufacturer's recommendations, or replaced as specified in the maintenance guidelines required in Subsection R392-510-7(4). The building owner, agent, or operator's experience with the HVAC system may establish that more frequent maintenance activities are required.

(4) Visual or olfactory observation is sufficient to determine whether a smoking-permitted area meets the requirements of Section R392-510-6.

R392-510-9. Protection of Air Used for Ventilation.

(1) Smoking is not permitted within 25 feet of any entrance-way, exit, open window, or air intake of a building where smoking is prohibited.

(2) Ashtrays may be placed near entrances only if they have durable and easily readable signage indicating that the ashtray is provided for convenience only and the area around it is not a smoking area. The sign shall include a reference to the 25 foot prohibition.

(3) An employer shall establish a policy to prohibit employee smoking within 25 feet of any entrance-way, exit, open window, or air intake of a building where smoking is prohibited.

R392-510-10. Educational and Cultural Activities Not Exempted.

(1) Educational facilities, as used in the Utah Indoor Clean Air Act, means any facility used for instruction of people, including preschools, elementary and middle schools, junior and senior high schools.

(2) Smoking is prohibited in facilities used by, vocational schools, colleges and universities, and any other facility or educational institution operated by a commercial enterprise or nonprofit entity, including hotel, motel, and convention center rooms, for the purpose of providing academic classroom instruction, trade, craft, computer or other technical or professional training, or instruction in dancing, artistic, musical or other cultural skills as well as all areas supportive of instruction including classrooms, lounges, lecture halls, study areas and libraries.

R392-510-11. Private Dwellings Which Are Places of

Employment.

(1) A private dwelling is subject to these rules while an individual who does not reside in the dwelling is engaged to perform services in the dwelling on a regular basis is present. This includes situations where an individual performs services such as, but not limited to:

(a) domestic services;

(b) secretarial services for a home-based business; or

(c) bookkeeping services for a home-based business.

(2) In a private dwelling in which a business or service is operated and into which the public enters for purposes related to the business or service smoking is prohibited in the business or service area during hours when the dwelling is open to the public.

(3) A private dwelling in which an individual is employed on a nonregular basis only is not subject to these rules. This includes situations where individuals perform services such as:

(a) baby-sitting services;

(b) trade services for the owner of the dwelling or individuals residing in the dwelling such as those services performed by plumbers, electricians and remodelers;

(c) emergency medical services;

(d) home health services; and

(e) part-time housekeeping services.

R392-510-12. Signs and Public Announcements.

Signs required in this section must be easily readable and must not be obscured in any way. The words "No Smoking" must be not less than 1.5 inches in height. If the international "No Smoking" symbol is used alone, it must be at least 4 inches in diameter.

(1) In a place where smoking is prohibited entirely, the building owner, agent, or operator must conspicuously post a sign using the words, "No smoking is permitted in this establishment" or a similar statement, which shall also include the international no-smoking symbol, on all entrances or in a position clearly visible on entry into the place.

(2) In a place where smoking is partially allowed, the building owner, agent, or operator must conspicuously post a sign using the words, "No smoking is permitted except in designated areas" or a similar statement, which shall also include the international no-smoking symbol, on all entrances or in a position clearly visible on entry into the place.

(3) In a place where smoking is allowed in its entirety, the building owner, agent, or operator must conspicuously post a sign using the words, "This establishment is a smoking area in its entirety" or similar statement.

(4) The building owner, agent, or operator must post a sign at all smoking-permitted areas provided for under Section 26-38-3(2)(a), (b), and (c). The sign must have the words, "smoking permitted" or similar wording and include the international smoking symbol.

(5) The building owner, agent, or operator must post a sign inside the exit of all smoking-permitted areas, if the exit leads to a smoking-prohibited area. The sign must have the words, "smoking not permitted beyond this point" or similar wording and include the international no-smoking symbol.

(6) In public lodging facilities that designate guest rooms as smoking allowed, the building owner, agent, or operator must conspicuously post a permanent sign on the smoking-allowed guest room door and meet the requirements of R392-510-6(1) and (2).

(7) In nursing homes, assisted living facilities, small health care facilities and hospitals with a certified swing-bed program that designate private residential sleeping rooms as "smoking allowed," the building owner, agent, or operator must conspicuously post a permanent sign on the door and meet the requirements of R392-510-6(1) and (2).

(8) The building owner, agent, or operator of an airport terminal, bus station, train station, or similar place must provide announcements on a public address system as often as necessary but not less than four times per hour during the hours that the place is open to the public, as follows:

(a) If smoking is not permitted, the announcements shall convey that the Utah Indoor Clean Air Act prohibits smoking in the place.

(b) If smoking is partially permitted, the announcements shall convey that the Utah Indoor Clean Air Act requires smokers to smoke only in those areas specifically designated for smoking.

(9) The building owner, agent, or operator of a sports arena, convention center, special events center, concert hall or other similar place must provide announcements on a public address system prior to the beginning of any event, at intermissions, at the conclusion of the event and any other break in the program or event, as follows:

(a) If smoking is not permitted, the announcements shall convey that the Utah Indoor Clean Air Act prohibits smoking in the place.

(b) If smoking is partially permitted, the announcements shall convey that the Utah Indoor Clean Air Act requires smokers to smoke only in those areas specifically designated for smoking.

(10) The building owner, agent, or operator of a large place, such as an airport, university, hotel or motel, or sports arena may, in writing, request the assistance of the local health officer to establish an effective signage and public announcements plan. The local health officer may cause the plan to be modified at any time to protect nonsmokers from being exposed to tobacco smoke.

(11) Buildings that are places of worship operated by a religious organization are not required to post signs.

(12) In a place of public access where the smoking of non-tobacco products is allowed and smoking of tobacco is prohibited, a sign shall be posted indicating that tobacco products may not be smoked.

R392-510-13. Discrimination.

An employer may not discriminate or take any adverse action against an employee or applicant because that person has sought enforcement of the provisions of Title 26, Chapter 38, Rule R392-510, the smoking policy of the workplace or otherwise protests the smoking of others.

R392-510-14. Enforcement action by Proprietors.

An owner, agent, or employee of the owner of a place where smoking is prohibited by this rule who observes a person smoking in apparent violation of this rule shall request the person to stop smoking. If the person fails to comply, the proprietor, agent, or employee shall ask the person to leave the premises.

KEY: public health, indoor air pollution, smoking, ventilation

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Notice of Continuation March 15, 2017 26-15-1 et seq.
26-38-1

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-23. Provider Enrollment.
R414-23-1. Introduction and Authority.

This rule is authorized by Sections 26-1-5 and 26-18-3, and implements requirements for provider revalidation as set forth in the Code of Federal Regulations and in the Patient Protection and Affordable Care Act.

R414-23-2. Definitions.

(1) "Provider" means an individual or entity that has been approved by the Department to provide services to Medicaid members, and has signed a provider agreement with the Department.

(2) "Revalidation" means the mandatory process of screening enrolled providers of medical services, other items, and suppliers, as required by Section 6401 of the Patient Protection and Affordable Care Act.

(3) "PRISM" means Provider Reimbursement Information System for Medicaid.

(4) "CFR" means Code of Federal Regulations.

R414-23-3. Revalidation Requirements.

(1) An enrolled provider must revalidate with Medicaid through PRISM at intervals not to exceed five years as required by 42 CFR 424.515, depending on the provider's risk level.

(2) The Department shall notify a provider, when it is time to revalidate, with a letter mailed to the pay-to address in the PRISM system.

(3) A provider must complete and submit the revalidation process within 60 days from the date of the letter, or the Department will place a temporary payment hold on the provider account.

(4) The Department shall terminate a provider that fails to revalidate within 90 days from the date on the letter. The provider, however, has the option to request a fair hearing.

(5) A provider terminated for any reason must reenroll and be approved as a new provider.

(6) The Department may only reimburse a provider for services rendered during an enrollment period.

R414-23-4. Auto Closure of Provider Contracts.

The Department may automatically close a provider contract for any of the following reasons:

(1) Failure to revalidate within the required five-year cycle as directed by 42 CFR 424.515;

(2) Expiration of professional license, or expiration of any license associated with the program for clinical laboratory improvement amendments (CLIA);

(3) Upon state or federal reporting of a deceased provider; or

(4) Failure to bill Medicaid for one or more years without notification.

KEY: Medicaid
January 1, 2020 **26-1-5**
26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-60. Medicaid Policy for Pharmacy Program.
R414-60-1. Introduction.

The Medicaid Pharmacy program reimburses for covered outpatient drugs dispensed to eligible Medicaid clients by a pharmacy enrolled with Utah Medicaid pursuant to a prescription from an enrolled prescriber operating within the scope of the prescriber's license.

R414-60-2. Definitions.

(1) "Covered outpatient drug" means a drug that meets all of the following criteria:

(a) Requires a prescription for dispensing;

(b) Has a National Drug Code number;

(c) Is eligible for Federal Medical Assistance Percentages funds;

(d) Has been approved by the Food and Drug Administration; and

(e) Is listed in the nationally recognized drug pricing index under contract with the Department.

(2) "Full-benefit dual eligible beneficiary" means an individual who has Medicare and Medicaid benefits.

(3) "Rural pharmacy" means a pharmacy located in the state of Utah, which is outside of Weber County, Davis County, Utah County, and Salt Lake County.

(4) "Urban pharmacy" means a pharmacy located in Weber County, Davis County, Utah County, Salt Lake County, or in another state.

(5) "Usual and customary charge" is the lowest amount a pharmacy charges the general public for a covered outpatient drug, which reflects all advertised savings, discounts, special promotions, or any other program available to the general public.

R414-60-3. Client Eligibility Requirements.

(1) Medicaid covers prescription drugs for individuals who are categorically and medically needy under the Medicaid program.

(2) Outpatient drugs included in the Medicare Prescription Drug Benefit-Part D for full-benefit dual eligible beneficiaries will not be covered under Medicaid in accordance with Subsection 1935(a) of the Social Security Act. Certain limited drugs provided in accordance with Subsection 1927(d)(2) of the Social Security Act to all Medicaid recipients, but not included in the Medicare Prescription Drug Benefit-Part D, are payable by Medicaid.

(3) Outpatient drugs included in contracts with the Accountable Care Organization (ACO) must be obtained through the ACO for clients enrolled in an ACO.

R414-60-4. Program Coverage.

(1) Covered outpatient drugs eligible for Federal Medical Assistance Percentages funds are included in the pharmacy benefit; however, covered outpatient drugs may be subject to limitations and restrictions.

(2) In accordance with Subsection 58-17b-606(4), when a multi-source A-rated legend drug is available in the generic form, Medicaid will only reimburse for the generic form of the drug unless:

(a) reimbursing for the non-generic brand-name legend drug will result in a financial benefit to the State; or

(b) the treating physician demonstrates a medical necessity for dispensing the non-generic, brand-name legend drug.

(3) Prescriptions that are not executed electronically must be written on tamper-resistant prescription forms. Tamper-resistant prescription forms must include all of the following:

(a) One or more industry-recognized features designed to prevent unauthorized copying of a completed or blank prescription form;

(b) One or more industry-recognized features designed to prevent the erasure or modification of information written on the prescription by the prescriber; and

(c) One or more industry-recognized features designed to prevent the use of counterfeit prescription forms.

(d) Documentation by the pharmacy of verbal confirmation of a prescription not written on a tamper resistant prescription form by the prescriber or the prescriber's agent satisfies the tamper-resistant requirement. Documentation of the verbal confirmation must include the date, time, and name of the individual who verified the validity of the prescription.

(e) Pharmacies must maintain documentation of receipt of a prescription by a Medicaid client or the client's authorized representative. The documentation must clearly identify the covered outpatient drug received by the client, the date the covered outpatient drug was received, and who received the covered outpatient drug.

(f) Claims for covered outpatient drugs not dispensed to a Medicaid client or the client's authorized representative within 14 days must be reversed and any payment from Medicaid must be returned.

R414-60-5. Limitations.

(1) Limitations may be placed on drugs in accordance with 42 U.S.C. 1396r-8 or in consultation with the Drug Utilization Review (DUR) Board. Limitations are included in the Pharmacy Services Provider Manual and attachments, incorporated by reference in Section R414-1-5, and may include:

(a) Quantity limits or cumulative limits for a drug or drug class for a specified period of time;

(b) Therapeutic duplication limits may be placed on drugs within the same or similar therapeutic categories;

(c) Step therapy, including documentation of therapeutic failure with one drug before another drug may be used; or

(d) Prior authorization.

(2) A covered outpatient drug that requires prior authorization may be dispensed for up to a 72-hour supply without obtaining prior authorization during a medical emergency.

(3) Drugs listed as non-preferred on the Preferred Drug List may require prior authorization as authorized by Section 26-18-2.4.

(4) Drugs may be restricted and are reimbursable only when dispensed by an individual pharmacy or pharmacies.

(5) Medicaid does not cover drugs not eligible for Federal Medical Assistance Percentages funds.

(6) Medicaid does not cover outpatient drugs included in the Medicare Prescription Drug Benefit-Part D for full-benefit dual eligible beneficiaries.

(7) Drugs provided to clients during inpatient hospital stays are not covered as an outpatient pharmacy benefit nor separately payable from the Medicaid payment for the inpatient hospital services.

(8) Medicaid covers prescription cough and cold preparations meeting the definition of a covered outpatient drug:

(9) Medicaid will pay for no more than a one-month supply of a covered outpatient drug per dispensing, except for the following:

(a) Medications included on the Utah Medicaid Three-Month Supply Medication List attachment to the Pharmacy Services Provider Manual may be covered for up to a three-month supply per dispensing.

(b) Prenatal vitamins for pregnant women, multiple vitamins with or without fluoride for children through five years of age, and fluoride supplements may be covered for up to a three-month supply per dispensing.

(c) Medicaid may cover contraceptives for up to a three-

month supply per dispensing.

(d) Medicaid may cover long-acting injectable antipsychotic drugs in accordance with Section R414-60-12 for up to a three-month supply per dispensing.

(10) Medicaid will pay for a prescription refill only when 80% of the previous prescription has been exhausted, with the exception of narcotic analgesics. Medicaid will pay for a prescription refill for narcotic analgesics after 100% of the previous prescription has been exhausted.

(11) Medicaid does not cover the following drugs:

(a) Drugs forweight loss;

(b) Drugs to promote fertility;

(c) Drugs for the treatment of sexual dysfunction;

(d) Drugs for cosmetic purposes;

(e) Vitamins; except for prenatal vitamins for pregnant women, vitamin drops for children through five years of age, and fluoride supplements;

(f) Over-the-counter drugs not included in the Utah Medicaid Over-the-Counter Drug List attachment to the Pharmacy Services Provider Manual;

(g) Drugs for which the manufacturer requires, as a condition of sale, that associated tests and monitoring services are purchased exclusively from the manufacturer or its designee;

(h) Drugs given by a hospital to a patient at discharge;

(i) Breast milk, breast milk substitutes, baby food, or medical foods. Prescription metabolic products for congenital errors of metabolism are covered through the Durable Medical Equipment benefit;

(j) Drugs available only through single-source distribution programs, unless the distributor is enrolled with Medicaid as a pharmacy provider.

(12) Opioid claims used for the treatment of non-cancer pain are subject to limitations or restrictions set forth by the department such as:

(a) Initial fill limits;

(b) Monthly limits;

(c) Quantity limits;

(d) Additional limits in children and pregnant women;

(e) Morphine Milligram Equivalents (MME) and cumulative Morphine Equivalents Daily (MED) limits; or

(f) Concurrent use of opioids with high-risk drugs as defined by the Division of Medicaid and Health Financing.

(13) Antipsychotic medications prescribed to Medicaid members who are 19 years of age or younger are limited as follows:

(a) No use of multiple antipsychotic drugs;

(b) No off-label use;

(c) No use outside established age guidelines; and

(d) No doses higher than FDA recommendations.

(14) Exceptions may be granted as appropriate through the prior authorization process.

R414-60-6. Copayment Policy.

Medicaid clients are to pay any applicable copayment amount that complies with the requirements of the Utah Medicaid State Plan and Rule R414-1.

R414-60-7. Reimbursement.

(1) A pharmacy may not submit a charge to Medicaid that exceeds the pharmacy's usual and customary charge.

(2) Covered-outpatient drugs are reimbursed at the lesser of the following:

(a) The Wholesale Acquisition Cost;

(b) The Federal Upper Limit assigned by the Centers for Medicare and Medicaid Services;

(c) The Utah Maximum Allowable Cost; and

(d) The submitted ingredient cost.

(e) If a prescriber obtains prior authorization for a brand-name version of a multi-source drug in accordance with 42 CFR 447.512 or if a brand-name drug is covered because a financial benefit will accrue to the State in accordance with Section 58-17b-606, then Medicaid will not apply the Utah Maximum Allowable Cost or Federal Upper Limit to the claim.

(f) Pharmacies participating in the 340B program and using medications obtained through the 340B program to bill Medicaid must submit the actual acquisition cost of the medication on the claim.

(g) Pharmacies that participate in the Federal Supply Schedule and use medications obtained through the schedule to bill Utah Medicaid, must submit the actual acquisition cost of the medication on the claim unless the claim is reimbursed as a bundled charge or All Inclusive Rate.

(h) Pharmacies that obtain and use medications at a nominal price must submit the actual acquisition cost of the medication on the claim.

(i) The Utah Maximum Allowable Cost (UMAC) for drugs for which the Centers for Medicare and Medicaid Services (CMS) publishes a National Average Drug Acquisition Cost (NADAC), is the NADAC itself. The UMAC for which CMS does not publish a NADAC is calculated by the Department.

(3) Dispensing fees are as outlined in the Utah State Plan, Attachment 4.19-B as approved by CMS and as follows:

(a) Medicaid will pay the lesser of the assigned dispensing fee or the submitted dispensing fee;

(b) Medicaid will only pay one dispensing fee per 24 days per covered outpatient drug per pharmacy.

(4) Medicaid will pay the lesser of the sum of the allowed amount for the covered outpatient drug and dispensing fee or the billed charges.

(5) Immunizations provided to Medicaid clients who are at least 19 years of age will be paid for the cost of the immunization plus a dispensing fee. Medicaid will pay the lesser of the allowed or submitted charges.

(6) Immunizations provided to Medicaid clients who are 18 years old or younger will only be eligible for a dispensing fee with no reimbursement for the immunization. Immunizations for Medicaid clients who are 18 years old or younger must be obtained through the Vaccines for Children program.

(7) Blood glucose test strips listed as preferred on the Utah Medicaid Preferred Drug List will be reimbursed at the lesser of the Wholesale Acquisition Cost with no dispensing fee or the billed charges.

R414-60-8. Mandatory Patient Counseling.

(1) Medicaid clients, or their representatives, must receive counseling that fulfills the requirements of 42 U.S.C. 1396r-8 each time a covered outpatient medication is dispensed.

(2) Counseling is not required if a Medicaid client, or their representative, refuses the offer to counsel.

(3) The offer to counsel must be documented and producible upon request.

R414-60-9. New Drug Products.

A new drug product, including a new size or strength of an existing approved product, may be reviewed by the DUR Board to determine whether the drug should be subject to restrictions or limitations. New drugs may be withheld from coverage for no more than twelve weeks while restrictions or limitations are being evaluated.

R414-60-10. Over-the-Counter Drugs.

Medicaid covers over-the-counter drugs when the drug is listed on the Utah Medicaid Over-the-Counter Drug List attachment to the Pharmacy Services Provider Manual, incorporated by reference in Section R414-1-5.

R414-60-11. Compounds.

(1) Compounded non-sterile prescriptions are a covered

benefit if at least one ingredient is a covered-outpatient drug that would otherwise qualify for coverage.

(2) Compounded sterile prescriptions are a covered benefit if at least one ingredient is a covered-outpatient drug that would otherwise qualify for coverage, and is prepared by a pharmacy that has certified to Utah Medicaid that it adheres to the United States Pharmacopeia/National Formulary chapter <797> standard, and tests the final product for sterility, potency and purity.

R414-60-12. Provider-Administered Long-Acting Injectable Antipsychotic Drugs and Drugs for the Treatment of Opioid Use Disorders.

A pharmacy may bill Medicaid for any covered, provider-administered drug not directly dispensed to a patient for a long-acting injectable antipsychotic drug or for the treatment of an opioid use disorder. The pharmacy may only release the drug to the administering provider or the provider's staff for treatment.

KEY: Medicaid
January 1, 2020 **26-18-3**
Notice of Continuation April 28, 2017 **26-1-5**

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-302. Eligibility Requirements.
R414-302-1. Authority and Purpose.

This rule is authorized by Section 26-1-5 and Section 26-18-3 and establishes eligibility requirements for Medicaid and the Medicare Cost Sharing programs.

R414-302-2. Definitions.

The definitions in Rules R414-1 and R414-301 apply to this rule.

R414-302-3. Citizenship and Alienage.

(1) The Department incorporates by reference 42 CFR 435.406 October 1, 2012 ed., which requires applicants and recipients to be United States (U.S.) citizens or qualified aliens and to provide verification of their U.S. citizenship or lawful alien status.

(2) The Department elects to cover applicants and recipients who are under 19 years of age and lawfully present as defined in 42 U.S.C. 1396b(v) and 42 U.S.C. 1397gg(e)(1), and referenced in Section S89 of the Utah Medicaid State Plan.

(3) The Department shall decide if a public or private organization no longer exists or is unable to meet an alien's needs. The Department shall base the decision on the evidence submitted to support the claim. The documentation submitted by the alien must be sufficient to prove the claim.

(4) One adult household member must declare the citizenship status of all household members who will receive Medicaid.

(5) A qualified alien, as defined in 8 U.S.C. 1641 who was residing in the U.S. before August 22, 1996, may receive full Medicaid, Qualified Medicare Beneficiaries (QMB), Specified Low-Income Medicare Beneficiaries (SLMB), or Qualifying Individuals (QI) services.

(6) A qualified alien, as defined in 8 U.S.C. 1641 newly admitted into the U.S. on or after August 22, 1996, may receive full Medicaid, QMB, SLMB, or QI services after five years have passed from the person's date of entry into the U.S.

(7) The Department accepts as verification of citizenship documents from federally recognized Indian tribes evidencing membership or enrollment in such tribe including those with international borders as required under Section 211(b)(1) of the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111 3, or as prescribed by the Secretary.

(8) The Department provides reasonable opportunity for applicants or clients to present satisfactory documentation of citizenship as required under Section 211(b)(2) of the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111 3.

(9) The Department considers that an infant born to a mother who is eligible for Medicaid at the time of the infant's birth has provided satisfactory evidence of citizenship. The Department does not require further verification of citizenship for the infant as required under Section 211(b)(3) of the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111 3.

(10) The Department adopts and incorporates by reference 42 CFR 435.949 and 42 CFR 435.952, October 1, 2012 ed.

(a) The Department shall verify citizenship and immigration status requirements through the Federal Data Services Hub or through other electronic match systems approved by the Secretary.

(b) If the Department cannot verify citizenship or immigration status through an electronic match system or the electronic data is not reasonably compatible with the client statement, the client must provide verification of citizenship and identity as described in 42 CFR 435.407.

R414-302-4. Utah Residence.

(1) The Department adopts and incorporates by reference 42 CFR 435.403, October 1, 2012 ed. The Department also adopts and incorporates by reference Subsection 1902(b) of the Compilation of the Social Security Laws, in effect May 8, 2013.

(2) The Department considers an individual who establishes state residency to be a resident of the state during periods of temporary absence, if the individual intends to return to the state when the purpose for the temporary absence ends.

R414-302-5. Deprivation of Supports.

(1) The Department adopts and incorporates by reference the definition of "dependent child" found in 42 CFR 435.4, October 1, 2012 ed.

(2) A child who lives with two parents is deprived of support if at least one parent is working less than 100 hours a month.

(3) A child is not considered deprived of support if any of the following situations is true:

(a) The parent is absent because of military service;

(b) The parent is absent for employment, schooling, training or another temporary purpose;

(c) The parent will return to live in the home within 30 days from the date of the application;

(d) The parent is the primary child care provider and care is frequent enough that the child is not deprived of support, care and guidance.

(4) A parent is incapacitated if the parent meets one of the following criteria:

(a) The parent receives SSI;

(b) The parent is recognized as 100% disabled by the Veteran's Administration;

(c) The parent is determined disabled by the State Medicaid Disability Office or the Social Security Administration;

(d) The parent provides written documentation completed by a medical professional engaged in the practice of mental health therapy, which states that the parent is incapacitated and the incapacity is expected to last at least 30 days. The medical report must also state that the incapacity substantially reduces the parent's ability to work or care for the child. Full-time employment, however, nullifies the parent's claim of incapacity. The written documentation must be completed by one of the following medical professionals:

(i) Medical Doctor (MD);

(ii) Doctor of Osteopathy (DO);

(iii) Advanced Practice Registered Nurse (APRN);

(iv) Physician Assistant; or

(v) Mental Health Therapist who is either a psychologist, licensed clinical social worker, certified social worker, marriage and family therapist, professional counselor, MD, DO, or APRN.

R414-302-6. Residents of Institutions.

(1) For purposes of institutions, the definitions in 42 CFR 435.1010 apply.

(2) An individual who resides in a halfway house may receive Medicaid coverage if the halfway house meets the following criteria:

(a) The halfway house allows the individual to work outside the facility;

(b) The halfway house allows the individual to use community facilities at will, such as libraries, grocery stores, recreation areas, or schools; and

(c) The halfway house allows the individual to seek health care treatment in the community to the same extent as other Medicaid enrollees.

(3) The Department does not consider an individual who resides in a temporary shelter for a limited period of time as a

resident of an institution.

(4) Individuals who are inmates of public institutions are not eligible for Medicaid coverage. As described in Section R414-308-10, individuals who are incarcerated will not be denied Medicaid eligibility nor will their cases be closed, but their cases will be placed in a suspended status.

(5) Individuals who reside in an institution for mental disease (IMD) are not eligible for Medicaid coverage with the following exceptions:

(a) Individuals 65 years of age or older;

(b) Individuals under 22 years of age who receive inpatient psychiatric services as described in 42 CFR 440.160; and

(c) Individuals who reside in an IMD that is licensed as a Substance Use Disorder (SUD) residential treatment program and are receiving treatment for an SUD.

R414-302-7. Social Security Numbers.

(1) The Department adopts and incorporates by reference 42 CFR 435.910, October 1, 2012 ed., which requires the social security number (SSN) of each applicant or beneficiary, specifies the exceptions to requiring the SSN, and specifies agency verification responsibilities. The Department adopts Section 1137 of the Compilation of the Social Security Laws, in effect May 8, 2013, which is incorporated by reference.

(2) Acceptable proof of an SSN is an electronic match, a social security card, or an official document from the Social Security Administration, which identifies the correct number. Acceptable proof of an application for an SSN is a social security receipt that confirms the individual has applied for an SSN.

(3) The Department requires a new proof of application for an SSN at each recertification if the SSN has not previously been provided.

(4) The Department may assign a unique Medicaid identification number to an applicant or beneficiary who meets one of the exceptions to the requirement to provide an SSN.

R414-302-8. Application for Other Possible Benefits.

(1) The Department adopts and incorporates by reference 42 CFR 435.608, October 1, 2012 ed., which requires applicants for and recipients of medical assistance to apply for and take all reasonable steps to receive other possible benefits.

(2) The Department may not require an applicant for or recipient of medical assistance to apply for an income benefit if the applicant's or recipient's income is not counted for the purpose of determining eligibility for medical assistance for either that individual or any other household member.

(3) Individuals who may be eligible for Medicare Part B benefits must apply for Medicare Part B and, if eligible, become enrolled in Medicare Part B to be eligible for Medicaid. The state pays the applicable monthly premium and cost-sharing expenses for Medicare Part B for individuals who are eligible for both Medicaid and Medicare Part B.

(4) Individuals whose eligibility is determined using non-Modified Adjusted Gross Income (MAGI) methodologies and who may be eligible for a Veterans Administration (VA) apportionment payment of benefits, as defined by the VA, must apply for those benefits.

R414-302-9. Third Party Liability.

(1) The Department adopts and incorporates by reference 42 CFR 433.138(b), October 1, 2012 ed., on the collection of health insurance information. The Department also adopts and incorporates by reference Section 1915(b) of the Compilation of the Social Security Laws, in effect September 9, 2013.

(2) The Department requires clients to report any changes in third party liability information within 30 days.

(3) The Department considers a client uncooperative if the client knowingly withholds third party liability information without good cause.

(4) The Department shall decide whether employer provided group health insurance would be cost effective for the state to purchase as a benefit of Medicaid.

(5) The Department requires clients residing in selected communities to be enrolled in a Health Maintenance Organization as their primary care provider. The Department shall enroll clients who do not make a selection in a Health Maintenance Organization that the Department selects. The Department shall notify clients of the Health Maintenance Organization that they will be enrolled in and allowed ten days to contact the Department with a different selection. If the client fails to notify the Department to make a different selection within ten days, the enrollment shall become effective for the next benefit month.

R414-302-10. Assignment of Rights and Medical Support Enforcement.

The Department adopts and incorporates by reference 42 CFR 433.145 through 433.148, and 435.610, October 1, 2012 ed., which spell out the assignment of rights to the state to collect from liable third parties and to cooperate in establishing paternity and medical support.

R414-302-11. Financial Responsibility.

(1) The Department adopts and incorporates by reference 42 CFR 435.602(a), October 1, 2012 ed., on the financial responsibility of family members.

(2) The Department shall apply the requirements of 42 CFR 435.603 for all individuals eligible for coverage groups subject to the Modified Adjusted Gross Income (MAGI) methodology.

KEY: state residency, citizenship, third party liability, Medicaid

January 1, 2020 26-18-3

Notice of Continuation January 8, 2018

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-303. Coverage Groups.
R414-303-1. Authority and Purpose.

This rule is authorized by Sections 26-1-5 and 26-18-3 and establishes eligibility requirements for Medicaid and the Medicare Cost Sharing programs.

R414-303-2. Definitions.

(1) The definitions in Rules R414-1 and R414-301 apply to this rule. In addition, the Department adopts and incorporates by reference the following definitions as found in 42 CFR 435.4, October 1, 2012 ed.:

(a) "Caretaker relative;"

(b) "Family size;"

(c) "Modified Adjusted Gross Income (MAGI);"

(d) "Pregnant woman."

(2) A dependent child who is deprived of support is defined in Section R414-302-5.

(3) The definition of caretaker relative includes individuals of prior generations as designated by the prefix great, or great-great, etc., and children of first cousins.

(a) To qualify for coverage as a non-parent caretaker relative, the non-parent caretaker relative must assume primary responsibility for the dependent child and the child must live with the non-parent caretaker relative or be temporarily absent.

(b) The spouse of the caretaker relative may also qualify for Medicaid coverage.

R414-303-3. Medicaid for Individuals Who Are Aged, Blind or Disabled for Community and Institutional Coverage Groups.

(1) The Department provides Medicaid coverage to individuals as described in 42 CFR 435.120, 435.122, 435.130 through 435.135, 435.137, 435.138, 435.139, 435.211, 435.232, 435.236, 435.301, 435.320, 435.322, 435.324, 435.340, and 435.350, October 1, 2012 ed., which are adopted and incorporated by reference. The Department provides coverage to individuals as required by 1634(b), (c) and (d), 1902(a)(10)(A)(i)(II), 1902(a)(10)(A)(ii)(X), and 1902(a)(10)(E)(i) through (iv) of Title XIX of the Social Security Act in effect January 1, 2013, which are adopted and incorporated by reference. The Department provides coverage to individuals described in Section 1902(a)(10)(A)(ii)(XIII) of Title XIX of the Social Security Act in effect January 1, 2013, which is adopted and incorporated by reference. Coverage under Section 1902(a)(10)(A)(ii)(XIII) is known as the Medicaid Work Incentive Program.

(2) Proof of disability includes a certification of disability from the State Medicaid Disability Office, Supplemental Security Income (SSI) status, or proof that a disabled client is recognized as disabled by the Social Security Administration (SSA).

(3) An individual can request a disability determination from the State Medicaid Disability Office. The Department adopts and incorporates by reference the disability determination requirements described in 42 CFR 435.541, October 1, 2012 ed., and Social Security's disability requirements for the Supplemental Security Income program as described in 20 CFR 416.901 through 416.998, April 1, 2012 ed., to decide if an individual is disabled. The Department notifies the eligibility agency of its disability decision, which then sends a disability decision notice to the client.

(a) If an individual has earned income, the State Medicaid Disability Office shall review medical information to determine if the client is disabled without regard to whether the earned income exceeds the Substantial Gainful Activity level defined by the Social Security Administration.

(b) If, within the prior 12 months, SSA has determined that the individual is not disabled, the eligibility agency must follow SSA's decision. If the individual is appealing SSA's denial of disability, the State Medicaid Disability Office must follow SSA's decision throughout the appeal process, including the final SSA decision.

(c) If, within the prior 12 months, SSA has determined an individual is not disabled but the individual claims to have become disabled since the SSA decision, the State Medicaid Disability Office shall review current medical information to determine if the client is disabled.

(d) Clients must provide the required medical evidence and cooperate in obtaining any necessary evaluations to establish disability.

(e) Recipients must cooperate in completing continuing disability reviews as required by the State Medicaid Disability Office unless they have a current approval of disability from SSA. Medicaid eligibility as a disabled individual will end if the individual fails to cooperate in a continuing disability review.

(4) If an individual who is denied disability status by the State Medicaid Disability Office requests a fair hearing, the individual may request a reconsideration as part of the fair hearing process. The individual must request the hearing within the time limit defined in Section R414-301-7.

(a) The individual may provide the eligibility agency additional medical evidence for the reconsideration.

(b) The reconsideration may take place before the date the fair hearing is scheduled to take place.

(c) The Department may not delay the individual's fair hearing due to the reconsideration process.

(d) The State Medicaid Disability Office shall notify the individual and the Hearings Office of the reconsideration decision.

(i) If disability status is approved pursuant to the reconsideration, the eligibility agency shall complete the Medicaid eligibility determination for disability Medicaid. The individual may choose whether to pursue or abandon the fair hearing.

(ii) If disability status is denied pursuant to the reconsideration, the fair hearing process will proceed unless the individual chooses to abandon the fair hearing.

(5) If the eligibility agency denies an individual's Medicaid application because the State Medicaid Disability Office or SSA has determined that the individual is not disabled and that determination is later reversed on appeal, the eligibility agency determines the individual's eligibility back to the application that gave rise to the appeal. The individual must meet all other eligibility criteria for such past months.

(a) Eligibility cannot begin any earlier than the month of disability onset or three months before the month of application subject to the requirements defined in Section R414-306-4, whichever is later.

(b) If the individual is not receiving medical assistance at the time a successful appeal decision is made, the individual must contact the eligibility agency to request the Disability Medicaid coverage.

(c) The individual must provide any verification the eligibility agency needs to determine eligibility for past and current months for which the individual is requesting medical assistance.

(d) If an individual is determined eligible for past or current months, but must pay a spenddown or Medicaid Work Incentive (MWI) premium for one or more months to receive coverage, the spenddown or MWI premium must be met before Medicaid coverage may be provided for those months.

(6) The age requirement for Aged Medicaid is 65 years of age.

(7) For children described in Section 1902(a)(10)(A)(i)(II) of the Social Security Act in effect January 1, 2013, the

eligibility agency shall conduct periodic redeterminations to assure that the child continues to meet the SSI eligibility criteria as required by such section.

(8) Coverage for qualifying individuals described in Section 1902(a)(10)(E)(iv) of Title XIX of the Social Security Act in effect January 1, 2013, is limited to the amount of funds allocated under Section 1933 of Title XIX of the Social Security Act in effect January 1, 2013, for a given year, or as subsequently authorized by Congress under the American Taxpayer Relief Act, Pub. L. No. 112 240, signed into law on January 2, 2013. The eligibility agency shall deny coverage to applicants when the uncommitted allocated funds are insufficient to provide such coverage.

(9) To determine eligibility under Section 1902(a)(10)(A)(ii)(XIII), if the countable income of the individual and the individual's family does not exceed 250% of the federal poverty guideline for the applicable family size, the eligibility agency shall disregard an amount of earned and unearned income of the individual, the individual's spouse, and a minor individual's parents that equals the difference between the total income and the Supplemental Security Income maximum benefit rate payable.

(10) The eligibility agency shall require individuals eligible under Section 1902(a)(10)(A)(ii)(XIII) to apply for cost-effective health insurance that is available to them.

R414-303-4. Medicaid for Parents and Caretaker Relatives, Pregnant Women, Children, Adults, and Individuals Infected with Tuberculosis Using MAGI Methodology.

(1) The Department provides Medicaid coverage to individuals who are eligible as described in 42 CFR 435.110, 435.116, 435.118, and 435.139, and 42 U.S.C. 1396a(a)(10)(A)(ii)(XII). The Department uses the MAGI methodology defined in Section R414-304-5 to determine household composition and countable income for these individuals.

(2) To qualify for coverage, a parent or other caretaker relative must have a dependent child living with the parent or other caretaker relative.

(3) The Department provides Medicaid coverage to parents and other caretaker relatives as required in 42 CFR 435.110, whose countable income is equal to or below the applicable income standard for the individual's family size. For a family that exceeds 16 persons, the Department adds $62 to the income standard for each family member. The income standards are as follows:

TABLE

Family Size	Income Standard
1	$438
2	$544
3	$678
4	$797
5	$912
6	$1,012
7	$1,072
8	$1,132
9	$1,196
10	$1,257
11	$1,320
12	$1,382
13	$1,443
14	$1,505
15	$1,569
16	$1,630

(4) The Department provides Medicaid coverage to children who are zero through five years of age as required in 42 CFR 435.118, whose countable income is equal to or below 139% of the FPL.

(5) The Department provides Medicaid coverage to children who are six through 18 years of age as required in 42 CFR 435.118, whose countable income is equal to or below 133% of the FPL.

(6) The Department provides Medicaid coverage to pregnant women as required in 42 CFR 435.116.

(a) The Department elects the income limit of 139% of the FPL to determine a pregnant woman's eligibility for Medicaid.

(b) An individual, as defined in Subsection R414-302-3(2), may only receive coverage through the end of the month in which the individual turns 19 years old.

(7) The Department provides Medicaid coverage to an infant until the infant turns one-year old when born to a woman eligible for Utah Medicaid on the date of the delivery of the infant, in compliance with Sec. 113(b)(1), Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111 3. The infant does not have to remain in the birth mother's home and the birth mother does not have to continue to be eligible for Medicaid. The infant must continue to be a Utah resident to receive coverage.

(8) The Department provides Medicaid coverage to an individual who is infected with tuberculosis and who does not qualify for a mandatory Medicaid coverage group. The individual's income cannot exceed the amount of earned income an individual, or if married, a couple, can have to qualify for Supplemental Security Income.

R414-303-5. Medicaid for Parents and Caretaker Relatives, Pregnant Women, and Children Under Non-MAGI-Based Community and Institutional Coverage Groups.

(1) The Department provides Medicaid coverage to individuals who are eligible as described in 42 CFR 435.117, 435.139, 435.170 and 435.301 through 435.310, October 1, 2012 ed. and Title XIX of the Social Security Act Sections 1902(e)(1), (4), (5), (6), (7) in effect January 1, 2013, which are adopted and incorporated by reference.

(2) To qualify for coverage as a medically needy parent or other caretaker relative, the parent or caretaker relative must have a dependent child living with the parent or other caretaker relative.

(a) The parent or other caretaker relative must be determined ineligible for the MAGI-based Parent and Caretaker Relative coverage group.

(b) The parent or other caretaker relative must not have resources in excess of the medically needy resource limit defined in Section R414-305-5.

(3) The income and resources of the non-parent caretaker relative are not counted to determine medically needy eligibility for the dependent child.

(4) To qualify for Child Medically Needy coverage, the dependent child does not have to be deprived of support and does not have to live with a parent or other caretaker relative.

(5) If a child receiving SSI elects to receive Medically-Needy Child Medicaid, the child's SSI income shall be counted with other household income.

(6) The eligibility agency shall determine the countable income of the non-parent caretaker relative and spouse in accordance with Section R414-304-6 and Section R414-304-8.

(a) Countable earned and unearned income of the non-parent caretaker relative and spouse is divided by the number of family members living in the household.

(b) The eligibility agency counts the income attributed to the caretaker relative, and the spouse if the spouse is included in the coverage, to determine eligibility.

(c) The eligibility agency does not count other family members in the non-parent caretaker relative's household to determine the applicable income limit.

(d) The household size includes the caretaker relative and the spouse if the spouse also wants medical coverage.

(7) An American Indian child in a boarding school and a child in a school for the deaf and blind are considered temporarily absent from the household.

(8) An individual who is pregnant, and under 19 years of age as described in Subsection R414-302-3(2), may only receive coverage through the end of the month in which the individual turns 19 years old.

R414-303-6. 12-Month Transitional Medicaid.

The Department shall provide 12 months of extended medical assistance as set forth in 42 U.S.C. 1396r-6, when the parent or caretaker relative is eligible and enrolled in Medicaid as defined in 42 CFR 435.110, and loses eligibility as described in Subsection 1931(c)(2) of the Social Security Act.

(1) A pregnant woman who is eligible and enrolled in Medicaid as defined in 42 CFR 435.116, and who meets the income limit defined in 42 CFR 435.110 for three of the prior six months, is eligible to receive 12-month Transitional Medicaid.

(2) Children who live with the parent are eligible to receive Transitional Medicaid.

R414-303-7. Four-Month Transitional Medicaid.

(1) The Department provides coverage to individuals as described in 42 CFR 435.115. This coverage group is known as the 4 Month Extended program.

(a) A pregnant woman who is eligible and enrolled in Medicaid as defined in 42 CFR 435.116, and who meets the income limit defined in 42 CFR 435.110 for three of the prior six months, is eligible to receive four-month extended coverage.

(b) Changes in household composition do not affect eligibility for the four-month extension period. Newborn babies are considered household members even if they are not born the month the household became ineligible for Medicaid. New members added to the case will lose eligibility when the household loses eligibility. Assistance shall be terminated for household members who leave the household.

R414-303-8. Former Foster Care and Independent Foster Care Individuals.

(1) The Department provides coverage to individuals as described in 42 CFR 435.150. The coverage group is known as the Former Foster Care Individuals program.

(2) When funds are available, the Department elects to cover individuals who are under 21 years of age as described in 42 CFR 435.226. The coverage group is known as the Foster Care Independent Living program.

(3) The Department elects to cover an individual under the responsibility of any state or tribe at the time the individual turns 18 years of age, and was enrolled in Medicaid or the 1115 demonstration project at any time during the foster care period in which the individual turned 18.

(4) There is no income or asset test for eligibility under the Former Foster Care or the Foster Care Independent Living programs.

R414-303-9. Foster Care, Subsidized Adoptions, and Kinship Guardianship Children.

(1) The Department provides coverage to foster care, subsidized adoption, and kinship guardianship individuals as described in 42 CFR 435.145.

(2) The Department elects to cover individuals under a state adoption agreement as defined in 42 CFR 435.227.

(3) The Department of Human Services determines eligibility for Foster Care, Subsidized Adoption, and Kinship Guardianship Medicaid.

R414-303-10. Refugee Medicaid.

(1) The Department adopts and incorporates by reference 45 CFR 400.90 through 400.107 and 45 CFR, Part 401, October 1, 2012 ed., relating to refugee medical assistance.

(2) Child support enforcement rules do not apply.

(3) The sponsor's income and resources are not counted. In-kind service or shelter provided by the sponsor is not counted.

(4) Cash assistance payments received by a refugee from a resettlement agency are not counted.

(5) Refugees may qualify for medical assistance for eight months after entry into the United States.

R414-303-11. Presumptive Eligibility for Medicaid.

(1) The definitions found in 42 CFR 435.1101, and the provisions for presumptive eligibility found in 42 CFR 435.1103 and 42 CFR 435.1110, apply to Section R414-303-11.

(2) The following definitions also apply to this section:

(a) "covered provider" means a provider whom the Department determines is qualified to make a determination of presumptive eligibility for a pregnant woman and who meets the criteria defined in Section 1920(b)(2) of the Social Security Act. Covered provider also means a hospital that elects to be a qualified entity under a memorandum of agreement with the Department;

(b) "presumptive eligibility" means a period of eligibility for medical services based on self-declaration that the individual meets the eligibility criteria.

(3) The Department provides coverage to a pregnant woman during a period of presumptive eligibility if a covered provider determines, based on preliminary information, that the woman states she:

(a) is pregnant;

(b) meets citizenship or alien status criteria as defined in Section R414-302-3;

(c) has household income that does not exceed 139% of the federal poverty guideline applicable to her declared household size; and

(d) is not already covered by Medicaid or CHIP.

(4) A pregnant woman may only receive medical assistance during one presumptive eligibility period for any single term of pregnancy.

(5) A child born to a woman who is only presumptively eligible at the time of the infant's birth is not eligible for the one year of continued coverage defined in Section 1902(e)(4) of the Social Security Act. If the mother applies for Utah Medicaid after the birth and is determined eligible back to the date of the infant's birth, the infant is then eligible for the one year of continued coverage under Section 1902(e)(4) of the Social Security Act. If the mother is not eligible, the eligibility agency shall determine whether the infant is eligible under other Medicaid programs.

(6) A child determined presumptively eligible who is under 19 years of age may receive presumptive eligibility only through the end of the month after the presumptive determination date or until the end of the month in which the child turns 19, whichever occurs first.

(7) An individual determined presumptively eligible for former foster care children coverage may receive presumptive eligibility only through the end of the month after the presumptive determination date or until the end of the month in which the individual turns 26 years old, whichever occurs first.

(8) An individual determined presumptively eligible for adult coverage may receive presumptive eligibility through whichever of the following occurs first:

(a) Through the end of the month following the month of the presumptive determination;

(b) Through the end of the month in which the individual turns 65 years old; or

(c) Until the eligibility agency makes a determination for ongoing medical assistance.

(9) The Department shall limit the coverage groups for which a hospital may make a presumptive eligibility decision to the groups described in 42 CFR 435.110, 435.116, 435.118,

435.150, and Rule R414-312.

(10) A hospital must enter into a memorandum of agreement with the Department to be a qualified entity and receive training on policy and procedures.

(11) The hospital shall cooperate with the Department for audit and quality control reviews on presumptive eligibility determinations the hospital makes. The Department may terminate the agreement with the hospital if the hospital does not meet standards and quality requirements set by the Department.

(12) The covered provider may not count as income the following:

(a) Veteran's Administration (VA) payments;

(b) Child support payments; or

(c) Educational grants, loans, scholarships, fellowships, or gifts that a client uses to pay for education.

(13) An individual found presumptively eligible for one of the following coverage groups may only receive one presumptive eligibility period in a calendar year:

(a) Parents or caretaker relatives;

(b) Children under 19 years of age;

(c) Former foster care children;

(d) Individuals with breast or cervical cancer; and

(e) Adult expansion.

R414-303-12. Medicaid Cancer Program.

(1) The Department shall provide coverage to individuals described in Section 1902(a)(10)(A)(ii)(XVIII) of the Social Security Act in effect January 1, 2013, which the Department adopts and incorporates by reference. This coverage shall be referred to as the Medicaid Cancer Program.

(2) The Department provides Medicaid eligibility for services under this program to individuals who are screened for breast or cervical cancer under the Centers for Disease Control and Prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act and are in need of treatment.

(3) An individual who is covered for treatment of breast or cervical cancer under a group health plan or other health insurance coverage defined by the Health Insurance Portability and Accountability Act (HIPAA) of Section 2701 (c) of the Public Health Service Act, is not eligible for coverage under the program. If the individual has insurance coverage but is subject to a pre-existing condition period that prevents the receipt of treatment for breast or cervical cancer or precancerous condition, the individual is considered to not have other health insurance coverage until the pre-existing condition period ends at which time eligibility for the program ends.

(4) An individual who is eligible for Medicaid under any mandatory categorically needy eligibility group, or any optional categorically needy or medically needy program that does not require a spenddown or a premium, is not eligible for coverage under the program.

(5) An individual must be under 65 years of age to enroll in the program.

(6) Coverage for the treatment of precancerous conditions is limited to two calendar months after the month benefits are made effective.

(7) Coverage for an individual with breast or cervical cancer under Section 1902(a)(10)(A)(ii)(XVIII) ends when treatment is no longer needed for the breast or cervical cancer. At each eligibility review, eligibility workers determine whether treatment is still needed based on the doctor's statement or report.

KEY: MAGI-based, coverage groups, former foster care youth, presumptive eligibility
January 1, 2020 26-18-3
Notice of Continuation January 8, 2018 26-1-5

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-308. Application, Eligibility Determinations, Improper Medical Assistance, and Suspension of Benefits.
R414-308-1. Authority and Purpose.

(1) This rule is authorized by Section 26-18-3.

(2) The purpose of this rule is to establish requirements for medical assistance applications, eligibility decisions and reviews, eligibility period, verifications, change reporting, notification and improper medical assistance for Medicaid and Medicare cost sharing programs.

R414-308-2. Definitions.

(1) The definitions in Rules R414-1 and R414-301 apply to this rule.

(2) In addition, the following definitions apply:

(a) "Due date" means the date that a recipient is required to report a change or provide requested verification to the eligibility agency.

(b) "Eligibility review" means a process by which the eligibility agency reviews current information about a recipient's circumstances to determine whether the recipient is still eligible for medical assistance.

(c) "Open enrollment" means a period of time when the eligibility agency accepts applications.

(d) "Suspension of Benefits" means a period of time when an incarcerated individual is still Medicaid eligible, but loses Medicaid coverage.

R414-308-3. Application and Signature.

(1) The Department shall comply with the requirements in 42 CFR 435.907, concerning the application for medical assistance.

(a) The applicant or authorized representative must complete and sign the application under penalty of perjury. If an applicant cannot write, the applicant must make his mark on the application form and have at least one witness to the signature.

(b) A representative may apply on behalf of an individual. A representative may be a legal guardian, a person holding a power of attorney, a representative payee or other responsible person acting on behalf of the individual. In this case, the eligibility agency may send notices, requests and forms to both the individual and the individual's representative, or to just the individual's representative. The eligibility agency may assign someone to act as the authorized representative when the individual requires help to apply and cannot appoint a representative.

(c) If the Division of Child and Family Services (DCFS) has custody of a child and the child is placed in foster care, DCFS completes the application. DCFS determines eligibility for the child pursuant to a written agreement with the Department. DCFS also determines eligibility for children placed under a subsidized adoption agreement. The Department does not require an application for Title IV-E eligible children.

(2) The application date for medical assistance is the date that the eligibility agency receives the application during normal business hours on a week day that does not include Saturday, Sunday or a state holiday except as described below:

(a) When the individual applies through the federally facilitated marketplace (FFM) and the application is transferred from the FFM for a Medicaid eligibility determination, the date of application is the date the individual applies through the FFM.

(b) If the application is delivered to the eligibility agency after the close of business, the date of application is the next business day;

(c) If the applicant delivers the application to an outreach location during normal business hours, the date of application is that business day when outreach staff is available to receive the application. If the applicant delivers the application to an outreach location on a non-business day or after normal business hours, the date of application is the last business day that a staff person from the eligibility agency was available at the outreach location to receive or pick up the application;

(d) When the eligibility agency receives application data transmitted from the Social Security Administration (SSA) pursuant to the requirements of 42 U.S.C. Sec. 1320b-14(c), the eligibility agency shall use the date that the individual submits the application for the low-income subsidy to the SSA as the application date for Medicare cost sharing programs. The application processing period for the transmitted data begins on the date that the eligibility agency receives the transmitted data. The transmitted data meets the signature requirements for applications for Medicare cost sharing programs;

(e) If an application is filed through the "myCase" system, the date of application is the date the application is submitted to the eligibility agency online.

(3) The eligibility agency shall accept a signed application that an applicant sends by facsimile as a valid application.

(4) If an applicant submits an unsigned or incomplete application form to the eligibility agency, the eligibility agency shall notify the applicant that he must sign and complete the application no later than the last day of the application processing period. The eligibility agency shall send a signature page to the applicant and give the applicant at least ten days to sign and return the signature page. When the application is incomplete, the eligibility agency shall notify the applicant of the need to complete the application and offer ways to complete the application.

(a) The date of application for an incomplete or unsigned application form is the date that the eligibility agency receives the application if the agency receives a signed signature page and completed application within the application processing period.

(b) If the eligibility agency does not receive a signed signature page and completed application form within the application processing period, the application is void and the eligibility agency shall send a denial notice to the applicant.

(c) If the eligibility agency receives a signed signature page and completed application within 30 calendar days after the notice of denial date, the date of receipt is the new application date and the provisions of Subsection R414-308-3(2) apply.

(d) If the eligibility agency receives a signed signature page and completed application more than 30 calendar days after it sends the denial notice, the applicant must reapply by completing and submitting a new application form. The new application date is determined in accordance with this rule.

(5) The eligibility agency treats the following situations as a new application without requiring a new application form. The application date is the day that the eligibility agency receives the request or verification from the recipient. The effective date of eligibility for these situations depends on the rules for the specific program:

(a) A household with an open medical assistance case asks to add a new household member by contacting the eligibility agency;

(b) The eligibility agency ends medical assistance when the recipient fails to return requested verification, and the recipient provides all requested verification to the eligibility agency before the end of the calendar month that follows the closure date. The eligibility agency waives the requirement for the open enrollment period during that calendar month for programs subject to open enrollment;

(c) A medical assistance program other than PCN ends due to an incomplete review, and the recipient responds to the review request within the three calendar months that follow the

closure date. The provisions of Section R414-310-14 apply to recertification for PCN enrollment;

(d) Except for PCN, Targeted Adult Medicaid and UPP that are subject to open enrollment periods, the eligibility agency denies an application when the applicant fails to provide all requested verification, but provides all requested verification within 30 calendar days of the denial notice date. The new application date is the date that the eligibility agency receives all requested verification and the retroactive period is based on that date. The eligibility agency does not act if it receives verification more than 30 calendar days after it denies the application. The recipient must complete a new application to reapply for medical assistance;

(e) For PCN, Targeted Adult Medicaid and UPP applicants, the eligibility agency denies an application when the applicant fails to provide all requested verification, but provides all requested verification within 30 calendar days of the denial notice date and the eligibility agency has not stopped the open enrollment period. If the eligibility agency has stopped enrollment, the applicant must wait for an open enrollment period to reapply.

(6) For an individual who applies for and is found ineligible for Medicaid from October 1, 2013, and December 31, 2013, the eligibility agency shall redetermine eligibility under the policies that become effective January 1, 2014, using the modified adjusted gross income (MAGI)-based methodology without requiring a new application.

(a) Medicaid eligibility may begin no earlier than January 1, 2014, for an individual who becomes eligible using the MAGI-based methodology;

(b) For applications received on or after January 1, 2014, the eligibility agency shall apply the MAGI-based methodology first to determine Medicaid eligibility.

(c) The eligibility agency shall determine eligibility for other Medicaid programs that do not use MAGI-based methodology if the individual meets the categorical requirements of these programs, which may include a medically needy eligibility group for individuals found ineligible using the MAGI-based methodology.

(7) If a medical assistance case closes for one or more calendar months, the recipient must complete a new application form to reapply, except as defined in Subsection R414-308-6(7).

(8) An individual determined eligible for a presumptive eligibility period must file an application for medical assistance with the eligibility agency in accordance with the requirements of Sections 1920, 1920A and 1920B of the Social Security Act.

(9) The eligibility agency shall process low-income subsidy application data transmitted from SSA in accordance with 42 U.S.C. Sec. 1320b-14(c) as an application for Medicare cost sharing programs. The eligibility agency shall take appropriate steps to gather the required information and verification from the applicant to determine the applicant's eligibility.

(a) Data transmitted from SSA is not an application for Medicaid.

(b) An individual who wants to apply for Medicaid when contacted for information to process the application for Medicare cost sharing programs must complete and sign a Department-approved application form for medical assistance. The date of application for Medicaid is the date that the eligibility agency receives the application for Medicaid.

R414-308-4. Verification of Eligibility and Information Exchange.

(1) The Department adopts and incorporates by reference 42 CFR 435.945, 435.948, 435.949, 435.952, and 435.956, October 1, 2012 ed.

(a) The Department may seek approval from the Secretary in accordance with 42 CFR 435.945(k) to use alternative electronic data sources in lieu of using the data available from the federal data hub.

(b) Medical assistance applicants and recipients must provide identifying information that the eligibility agency needs to complete electronic data matches.

(c) The eligibility agency may request verification from applicants and recipients in accordance with the agency's verification plan that is necessary to determine eligibility.

(2) Medical assistance applicants and recipients must verify all eligibility factors requested by the eligibility agency to establish or to redetermine eligibility when the information cannot be verified through electronic data matches, or when the electronic data match information is not reasonably compatible with the client provided information.

(a) The eligibility agency shall provide the applicant or recipient a written request of the needed verification.

(b) The applicant or recipient has at least ten calendar days from the date that the eligibility agency gives or sends the verification request to provide verification.

(c) The due date for returning verification, forms or information requested by the eligibility agency is the close of business on the date that the eligibility agency sets as the due date in a written request.

(d) An applicant must provide all requested verification before the close of business on the last day of the application period. If the last day of the application processing period is a non-business day, the applicant or recipient has until the close of business on the next business day to return verification.

(e) The eligibility agency shall allow the applicant or recipient more time to provide verification if he requests more time by the due date. The eligibility agency shall set a new due date based on what the applicant or recipient needs to do to obtain the verification and whether he shows a good faith effort to obtain the verification.

(f) If an applicant or recipient does not provide verification by the due date and does not contact the eligibility agency to ask for more time to provide verification, the eligibility agency shall deny the application or review, or end eligibility.

(g) If a due date falls on a non-business day, the due date is the close of business on the next business day.

(3) The eligibility agency must receive verification of an individual's income, both unearned and earned. To be eligible under the Medicaid Work Incentive program, the eligibility agency may require proof such as paycheck stubs showing deductions of FICA tax, self-employment tax filing documents, or for newly self-employed individuals who have not filed tax forms yet, a written business plan and verification of gross receipts and business expenses, to verify that the income is earned income.

(4) If an applicant's citizenship and identity do not match through the Social Security electronic match process and the eligibility agency cannot resolve this inconsistency, the eligibility agency shall require the applicant to provide verification of his citizenship and identity in accordance with 42 U.S.C. 1396a(ee)(1)(B).

(a) The individual must provide verification to resolve the inconsistency or provide original documentation to verify his citizenship and identity within 90 days of the request.

(b) The eligibility agency shall continue to provide medical assistance during the 90-day period if the individual meets all other eligibility criteria.

(c) If the individual fails to provide verification, the eligibility agency shall end eligibility within 30 days after the 90-day period. The eligibility agency may not extend or repeat the verification period.

(d) An individual who provides false information to receive medical assistance is subject to investigation of Medicaid fraud and penalties as outlined in 42 CFR 455.13

through 455.23.

R414-308-5. Eligibility Decisions or Withdrawal of an Application.

(1) The Department adopts and incorporates by reference 42 CFR 435.911, 435.912 and 435.919, October 1, 2012 ed., regarding eligibility determinations and timely determinations. The eligibility agency shall provide proper notice about a recipient's eligibility, changes in eligibility, and the recipient's right to request a fair hearing in accordance with the provisions of 78 FR 42303, which is incorporated by reference and 42 CFR 431.206, 431.210, 431.211, 431.213, 431.214, October 1, 2012 ed., which are incorporated by reference.

(2) The eligibility agency shall extend the time limit if the applicant asks for more time to provide requested information before the due date. The eligibility agency shall give the applicant at least ten more days after the original due date to provide verifications upon the applicant's request. The eligibility agency may allow a longer period of time for the recipient to provide verifications if the agency determines that the delay is due to circumstances beyond the recipient's control.

(3) If an individual who is determined presumptively eligible files an application for medical assistance in accordance with the requirements of Sections 1920 and 1920A of the Social Security Act, the eligibility agency shall continue presumptive eligibility until it makes an eligibility decision based on that application. The filing of additional applications by the individual does not extend the presumptive eligibility period.

(4) An applicant may withdraw an application for medical assistance any time before the eligibility agency makes an eligibility decision. An individual requesting an assessment of assets for a married couple under 42 U.S.C. 1396r-5 may withdraw the request any time before the eligibility agency completes the assessment.

R414-308-6. Eligibility Period and Reviews.

(1) The eligibility period begins on the effective date of eligibility as defined in Section R414-306-4, which may be after the first day of a month, subject to the following requirements.

(a) If a recipient must pay one of the following fees to receive Medicaid, the eligibility agency shall determine eligibility and notify the recipient of the amount owed for coverage. The eligibility agency shall grant eligibility when it receives the required payment, or in the case of a spenddown or cost-of-care contribution for waivers, when the recipient sends proof of incurred medical expenses equal to the payment. The fees a recipient may owe include:

(i) a spenddown of excess income for medically needy Medicaid coverage;

(ii) a Medicaid Work Incentive (MWI) premium; or

(iii) a cost-of-care contribution for home and community-based waiver services.

(b) A required spenddown, MWI premium, or cost-of-care contribution is due each month for a recipient to receive Medicaid coverage.

(c) The recipient must make the payment or provide proof of medical expenses within 30 calendar days from the mailing date of the application approval notice, which states how much the recipient owes.

(d) For ongoing months of eligibility, the recipient has until the close of business on the tenth day of the month after the benefit month to meet the spenddown or the cost-of-care contribution for waiver services, or to pay the MWI premium. If the tenth day of the month is a non-business day, the recipient has until the close of business on the first business day after the tenth. Eligibility begins on the first day of the benefit month once the recipient meets the required payment. If the recipient does not meet the required payment by the due date, the recipient may reapply for retroactive benefits if that month is within the retroactive period of the new application date.

(e) A recipient who lives in a long-term care facility and owes a cost-of-care contribution to the medical facility must pay the medical facility directly. The recipient may use unpaid past medical bills, or current incurred medical bills other than the charges from the medical facility, to meet some or all of the cost-of-care contribution subject to the limitations in Section R414-304-9. An unpaid cost-of-care contribution is not allowed as a medical bill to reduce the amount that the recipient owes the facility.

(f) Even when the eligibility agency does not close a medical assistance case, no eligibility exists in a month for which the recipient fails to meet a required spenddown, MWI premium, or cost-of-care contribution for home and community-based waiver services.

(g) The eligibility agency shall continue eligibility for a resident of a nursing home even when an eligible resident fails to pay the nursing home the cost-of-care contribution. The resident, however, must continue to meet all other eligibility requirements.

(2) The eligibility period ends on:

(a) the last day of the month in which the eligibility agency determines that the recipient is no longer eligible for medical assistance and sends proper closure notice;

(b) the last day of the month in which the eligibility agency sends proper closure notice when the recipient fails to provide required information or verification to the eligibility agency by the due date;

(c) the last day of the month in which the recipient asks the eligibility agency to discontinue eligibility, or if benefits have been issued for the following month, the end of that month;

(d) for time-limited programs, the last day of the month in which the time limit ends;

(e) for the pregnant woman program, the last day of the month which is at least 60 days after the date the pregnancy ends, except that for pregnant woman coverage for emergency services only, eligibility ends on the last day of the month in which the pregnancy ends; or

(f) the date the individual dies.

(3) A presumptive eligibility period begins on the day the qualified entity determines an individual to be presumptively eligible. The presumptive eligibility period shall end on the earlier of:

(a) the day the eligibility agency makes an eligibility decision for medical assistance based on the individual's application when that application is filed in accordance with the requirements of Sections 1920 and 1920A of the Social Security Act; or

(b) in the case of an individual who does not file an application in accordance with the requirements of Sections 1920 and 1920A of the Social Security Act, the last day of the month that follows the month in which the individual becomes presumptively eligible.

(4) For an individual selected for coverage under the Qualified Individuals Program, the eligibility agency shall extend eligibility through the end of the calendar year if the individual continues to meet eligibility criteria and the program still exists.

(5) The eligibility agency shall complete a periodic review of a recipient's eligibility for medical assistance in accordance with the requirements of 42 CFR 435.916, October 1, 2013 ed., which the Department adopts and incorporates by reference. The Department elects to conduct reviews for non-MAGI-based coverage groups in accordance with 42 CFR 435.916(a)(3) if eligibility cannot be renewed in accordance with 42 CFR 435.916(a)(2). The eligibility agency shall review factors that are subject to change to determine if the recipient continues to be eligible for medical assistance.

(6) For non-MAGI-based coverage groups, the eligibility agency may complete an eligibility review more frequently when it:

(a) has information about anticipated changes in the recipient's circumstances that may affect eligibility;

(b) knows the recipient has fluctuating income;

(c) completes a review for other assistance programs that the recipient receives; or

(d) needs to meet workload demands.

(7) If a recipient fails to respond to a request for information to complete the review, the eligibility agency shall end eligibility effective at the end of the review month and send proper notice to the recipient.

(a) If the recipient responds to the review or reapplies within three calendar months of the review closure date, the eligibility agency shall consider the response to be a new application without requiring the client to reapply. The application processing period shall apply for the new request for coverage.

(b) If the recipient becomes eligible based on this reapplication, the recipient's eligibility becomes effective the first day of the month after the closure date if verification is provided timely. If the recipient fails to return verification timely or if the recipient is determined to be ineligible, the eligibility agency shall send a denial notice to the recipient.

(c) The eligibility agency may not continue eligibility while it makes a new eligibility determination.

(8) If the eligibility agency sends proper notice of an adverse decision in the review month, the agency shall change eligibility for the following month.

(9) If the eligibility agency does not send proper notice of an adverse change for the following month, the agency shall extend eligibility to the following month. Upon completing an eligibility determination, the eligibility agency shall send proper notice of the effective date of any adverse decision.

(10) If the recipient responds to the review in the review month and the verification due date is in the following month, the eligibility agency shall extend eligibility to the following month. The recipient must provide all verification by the verification due date.

(a) If the recipient provides all requested verification by the verification due date, the eligibility agency shall determine eligibility and send proper notice of the decision.

(b) If the recipient does not provide all requested verification by the verification due date, the eligibility agency shall end eligibility effective the end of the month in which the eligibility agency sends proper notice of the closure.

(c) If the recipient returns all verification after the verification due date and before the effective closure date, the eligibility agency shall treat the date that it receives the verification as a new application date. The agency shall then determine eligibility and send notice to the recipient.

(11) The eligibility agency shall provide ten-day notice of case closure if the recipient is determined ineligible or if the recipient fails to provide all verification by the verification due date.

(12) The eligibility agency may not extend coverage under certain medical assistance programs in accordance with state and federal law. The agency shall notify the recipient before the effective closure date.

(a) If the eligibility agency determines that the recipient qualifies for a different medical assistance program, the agency shall notify the recipient. Otherwise, the agency shall end eligibility when the permitted time period for such program expires.

(b) If the recipient provides information before the effective closure date that indicates that the recipient may qualify for another medical assistance program, the eligibility agency shall treat the information as a new application. If the recipient contacts the eligibility agency after the effective closure date, the recipient must reapply for benefits.

R414-308-7. Change Reporting and Benefit Changes.

(1) A recipient must report to the eligibility agency reportable changes as defined in Section R414-301-2 within 10 calendar days of the change.

(2) The eligibility agency shall:

(a) Act on the reported change; and

(b) Request verification from the recipient if the change cannot be verified through an electronic interface or other credible source.

(3) If verification is needed, the agency shall send a written request and give the recipient at least 10 calendar days from the notice date to respond.

(a) If the recipient does not provide verification by the due date, the agency shall end eligibility after the month in which proper notice is sent.

(b) If the recipient provides verification by the due date, the agency shall re-determine eligibility.

(c) If the recipient provides verification during the month that follows the effective closure date, the eligibility agency shall treat the date as a new application date without requiring a new application.

(d) If the recipient does not provide verification by the end of the month that follows the effective closure date, the recipient must submit a new application.

(4) If the recipient does not provide verification, or a reported change does not affect all household members, the agency may only take action on those individuals who are affected by the change.

(5) If a due date falls on a non-business day, then the due date shall be the close of the next business day.

(6) If a change has an adverse effect on the recipient, the agency shall change eligibility after the month in which proper notice is sent.

(7) If the agency can verify that a change is timely, the change becomes effective on the first day of the month of report.

(8) If the agency cannot verify that a change is timely, the change becomes effective on the first day of the month in which the agency receives verification.

(9) If a recipient requests to add a new household member, the effective date of the change is the date of request, and the following provisions apply:

(a) The agency does not require a new application; and

(b) The applicant must meet all other eligibility requirements.

(10) An overpayment may occur if the recipient does not report changes timely, or if the recipient does not return verification by the verification due date.

(a) The eligibility agency shall determine whether an overpayment has occurred based on when the agency could have made the change if the recipient had reported the change on time or returned verification by the due date.

(b) If a recipient fails to report a change timely or return verification or forms by the due date, the recipient must repay all services and benefits paid by the Department for which the recipient is ineligible.

R414-308-8. Case Closure and Redetermination.

(1) The eligibility agency shall end medical assistance when the recipient requests the agency to close his case, when the recipient fails to respond to a request to complete the eligibility review, when the recipient fails to provide all verification needed to determine continued eligibility, or when the agency determines that the recipient is no longer eligible.

(2) If a recipient fails to complete the review process in accordance with Section R414-308-6, the eligibility agency shall close the case and notify the recipient.

(3) Before terminating a recipient's medical assistance, the eligibility agency shall determine whether the recipient is eligible for any other available medical assistance provided under Medicaid, the Medicare Cost Sharing programs, the Children's Health Insurance Program (CHIP), the Primary Care Network (PCN), and Utah's Premium Partnership for Health Insurance (UPP).

(a) The eligibility agency may not require a recipient to complete a new application to make the redetermination. The agency, however, may request more information from the recipient to determine whether the recipient is eligible for other medical assistance programs. If the recipient does not provide the necessary information by the close of business on the due date, the recipient's medical assistance ends.

(b) When determining eligibility for other programs, the eligibility agency may only enroll an individual in a medical assistance program during an open enrollment period, or when that program allows a person who becomes ineligible for Medicaid to enroll during a period when enrollment is closed. Open enrollment applies only to the PCN and UPP programs.

(4) The eligibility agency shall comply with the requirements of 42 CFR 435.1200, regarding transfer of the electronic file for the purpose of determining eligibility for other insurance affordability programs.

R414-308-9. Improper Medical Coverage.

(1) Improper medical coverage occurs when:

(a) an individual receives medical assistance for which the individual is not eligible. This assistance includes benefits that an individual receives pending a fair hearing or during an undue hardship waiver when the individual fails to take actions required by the eligibility agency;

(b) an individual receives a benefit or service that is not part of the benefit package for which the individual is eligible;

(c) an individual pays too much or too little for medical assistance benefits; or

(d) the Department pays in excess or not enough for medical assistance benefits on behalf of an eligible individual.

(2) As applied in this section, services and benefits include all amounts that the Department pays on behalf of the recipient during the period in question and includes:

(a) premiums that the recipient pays to any Medicaid health plan or managed care plan including any payments for administration costs, Medicare, and private insurance plans;

(b) payments for prepaid mental health services; and

(c) payments made directly to service providers or to the recipient.

(3) If the eligibility agency determines that a recipient is ineligible for the services and benefits that he receives, the recipient must repay to the Department any costs that result from the services and benefits.

(4) The eligibility agency shall reduce the amount that the recipient must repay by the amount that the recipient pays to the eligibility agency for a Medicaid spenddown, a cost-of-care contribution, or a MWI premium for the month.

(5) If the recipient is eligible but the overpayment is because the spenddown, the MWI premium, or the cost-of-care contribution is incorrect, the recipient must repay the difference between the correct amount that the recipient should pay and the amount that the recipient has paid.

(6) If the eligibility agency determines that the recipient is ineligible due to having resources that exceed the resource limit, the recipient must pay the lesser of the cost of services or benefits that the recipient receives, or the difference between the recipient's countable resources and the resource limit for each month resources exceed the limit.

(7) A recipient may request a refund from the Department if the recipient believes that:

(a) the monthly spenddown, or cost-of-care contribution that the recipient pays to receive medical assistance is less than what the Department pays for medical services and benefits for the recipient; or

(b) the amount that the recipient pays in the form of a spenddown, an MWI premium, or a cost-of-care contribution for long-term care services, exceeds the payment requirement.

(8) Upon receiving the request, the Department shall determine whether it owes the recipient a refund.

(a) In the case of an incorrect calculation of a spenddown, MWI premium, or cost-of-care contribution, the refundable amount is the difference between the incorrect amount that the recipient pays to the Department for medical assistance and the correct amount that the recipient should pay, less the amount that the recipient owes to the Department for any other past due, unpaid claims.

(b) If the spenddown or a cost-of-care contribution for long-term care exceeds medical expenditures, the refundable amount is the difference between the correct spenddown or cost-of-care contribution that the recipient pays for medical assistance and the amount that the Department pays on behalf of the recipient for services and benefits, less the amount that the recipient owes to the Department for any other past due, unpaid claims. The Department shall issue the refund only after the 12-month time period that medical providers have to submit claims for payment.

(c) The Department may not issue a cash refund for any portion of a spenddown or cost-of- care contribution that is met with medical bills. Nevertheless, the Department may pay additional covered medical bills used to meet the spenddown or cost-of-care contribution equal to the amount of refund that the Department owes the recipient, or apply the bill amount toward a future spenddown or cost-of-care contribution.

(9) A recipient who pays a premium for the MWI program may not receive a refund even when the Department pays for services that are less than the premium that the recipient pays for MWI.

(10) If the cost-of-care contribution that a recipient pays a medical facility is more than the Medicaid daily rate for the number of days that the recipient is in the medical facility, the recipient may request a refund from the medical facility. The Department shall refund the amount that it owes the recipient only when the medical facility sends the excess cost-of-care contribution to the Department.

(11) If the sponsor of an alien does not provide correct information, the alien and the alien's sponsor are jointly liable for any overpayment of benefits. The Department shall recover the overpayment from both the alien and the sponsor.

R414-308-10. Suspension of Benefits.

Individuals who are inmates of a public institution will not be closed or denied Medicaid eligibility, but placed in a suspended status. The following apply to suspension of benefits:

(1) Suspension of benefits applies to all Medicaid coverage groups;

(2) All factors of eligibility must be met to be suspended;

(3) Reviews must be completed for all individuals in a suspended status, with the exception of an individual who is under 21 years of age, or eligible for the Former Foster Care program.

KEY: public assistance programs, applications, eligibility, Medicaid

January 1, 2020 26-18

Notice of Continuation January 8, 2018

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-504. Nursing Facility Payments.
R414-504-1. Introduction.

(1) This rule adopts a case mix or severity based payment system, commonly referred to as RUGS (Resource Utilization Group System) for nursing facilities that are not ICF/MRs. This system reimburses facilities based on the case mix index of the facility. It also establishes rates for ICF/MR facilities.

(2) This rule is authorized by Utah Code sections 26-1-5, 26-18-3, and 26-35a.

R414-504-2. Definitions.

The definitions in R414-1-2 and R414-501-2 apply to this rule. In addition:

(1) "Behaviorally complex resident" means a long-term care resident with a severe, medically based behavior disorder, including traumatic brain injury, dementia, Alzheimer's, Huntington's Chorea, which causes diminished capacity for judgment, retention of information or decision-making skills, or a resident, who meets the Medicaid criteria for nursing facility level of care and who has a medically-based mental health disorder or diagnosis and has a high level resource use in the nursing facility not currently recognized in the case mix.

(2) "Case Mix Index" means a score assigned to each facility based on the average of the Medicaid patients' RUGS scores for that facility.

(3) "Facility Case Mix Rate" means the rate the Department issues to a facility for a specified period of time. This rate utilizes the case mix index for a provider, labor wage index application and other case mix related costs.

(4) "FCP" means the Facility Cost Profile report filed by the provider on an annual basis.

(5) "Minimum Data Set" (MDS) means a set of screening, clinical and functional status elements, including common definitions and coding categories, that form the foundation of the comprehensive assessment for all residents of long term care facilities certified to participate in Medicaid.

(6) "Nursing Costs" means the most current costs from the annual FCP report reported on lines 070-012 Nursing Admin Salaries and Wages; 070-013 Nursing Admin Tax and Benefits; 070-040 Nursing Direct Care Salaries and Wages; 070-041 Nursing Direct Care Tax and Benefits, and 070-050 Purchased Nursing Services.

(7) "Nursing facility" or "facility" means a Medicaid-participating NF, SNF, or a combination thereof, as defined in 42 USC 1396r (a) (1988), 42 CFR 440.150 and 442.12 (1993), and UCA 26-21-2(15).

(8) "Patient day" means the care of one patient during a day of service, excluding the day of discharge.

(9) "Property costs" means the fair rental value (FRV) established by this rule.

(10) "RUGS" means the 34 RUG identification system based on the Resource Utilization Group System established by Medicare to measure and ultimately pay for the labor, fixed costs and other resources necessary to provide care to Medicaid patients. Each "RUG" is assigned a weight based on an assessment of its relative value as measured by resource utilization.

(11) "RUGS score" means a total number based on the individual RUGS derived from a resident's physical, mental and clinical condition, which projects the amount of relative resources needed to provide care to the resident. RUGS is calculated from the information obtained through the submission of the MDS data.

(12) "Sole community provider" means a facility that is not an urban provider and is not within 30 paved road miles of another existing facility and is the only facility:

(a) within a city, if the facility is located within the incorporated boundaries of a city; or

(b) within the unincorporated area of the county if it is located in an unincorporated area.

(13)(a) "Urban provider" means a facility located in a county which has a population greater than 90,000 persons.

(b) "Rural provider" means a facility that is not an urban provider.

(14) "FRV Data Report" means a report that provides the Department with information relating to capital improvements to be included in the FRV calculation.

(15) "Banked beds" means beds that have been taken off-line by the provider, through the process defined by Utah Department of Health, Bureau of Facility Licensing, Certification, and Resident Assessment, to reduce the operational capacity of the facility, but does not reduce the licensed bed capacity.

(16) "Bed Addition" means, as used in the fair rental value calculation, a capitalized project that adds additional beds to the facility. This must be new and complete construction. An increase in total licensed beds and new construction costs support a claim of additional beds.

(17) "Bed Replacement" means, as used in the fair rental value calculation, a capitalized project that furnishes a bed in the place of another, previously existing, bed. Room remodeling is not a replacement of beds. This must be new and complete construction.

(18) "Major Renovation" means, as used in the fair rental value calculation, a capitalized project with a cost equal to or greater than $500 per licensed bed. A renovation extends the life, increases the productivity, or significantly improves the safety (such as by asbestos removal) of a facility as opposed to repairs and maintenance which either restore the facility to, or maintain it at, it's normal or expected service life. Vehicle costs are not a major renovation capital expenditure.

R414-504-3. Principles of Facility Case Mix Rates and Other Payments.

The following principles apply to the payment of freestanding and provider based nursing facilities for services rendered to nursing care level I, II, and III Medicaid patients, as defined in Rule R414-502. This rule does not affect the system for reimbursement for intensive skilled Medicaid patient add-on amounts.

(1) Approximately 59% of total payments in aggregate to nursing facilities for nursing care level I, II and III Medicaid patients are based on a prospective facility case mix rate. In addition, these facilities shall be paid a flat basic operating expense payment equal to approximately 29% of the total payments. The balance of the total payments will be paid in aggregate to facilities as required by Section R414-504-3 based on other authorized factors, including property and behaviorally complex residents, in the proportion that the facility qualifies for the factor.

(2) Each quarter, the Department shall calculate a new case mix index for each nursing facility. The case mix index is based on three months of MDS assessment data. The newly calculated case mix index is applied to a new rate at the beginning of a quarter according to the following schedule:

(a) January, February and March MDS assessments are used for July 1 rates.

(b) April, May and June MDS assessments are used for October 1 rates.

(c) July, August and September MDS assessments are used for January 1 rates.

(d) October, November and December MDS assessments are used for April 1 rates.

(3) MDS and Optional State Assessment (OSA) data is used in calculating each facility's case mix index and Upper Payment Limit (UPL) gap. This information is required by the

State to calculate the case mix index. MDS/OSA is submitted by each facility and, as such, each facility is responsible for the accuracy of its data. The Department may exclude inaccurate or incomplete MDS data from the calculation.

(4)(a) MDS assessments for recipients who are eligible for the "Intensive Skilled" add-on are excluded from the case mix calculation.

(b) The state average case mix index excludes the following:

(i) A facility with less than 20 percent of its total census days as Medicaid days, as reported on its FCP or FRV data report; or

(ii) A facility having less than six (6) months of data reported under Rule R414-401.

(c) The state average case mix index is used to set the rate for the following facilities:

(i) A facility with less than 20 percent of its total census days as Medicaid days, as reported on its FCP or FRV data report; or

(ii) A facility having less than six (6) months of data reported under Rule R414-401.

(5) A facility may apply for a special add-on rate for behaviorally complex residents by filing a written request with the Division of Health Care Financing. The Department may approve an add-on rate if an assessment of the acuity and needs of the patient demonstrates that the facility is not adequately reimbursed by the RUGS score for that patient. The rate is added on for the specific resident's payment and is not subsumed as part of the facility case mix rate. Utah's Bureau of Health Facility Licensure, Certification and Resident Assessment will make the determination as to qualification for any additional payment. The Division of Health Care Financing shall determine the amount of any add-on.

(6) Property costs are paid separately from the RUGS rate.

(7) Reimbursement for nursing home rates is in accordance with Attachment 4.19-D of the Utah Medicaid State Plan, which is incorporated by reference in Rule R414-1.

(8) A sole community provider that is financially distressed may apply for a payment adjustment above the case mix index established rate. The maximum increase will be 7.5% above the average of the most recent Medicaid daily rate for all Medicaid residents in all freestanding nursing facilities in the state. The maximum duration of this adjustment is for no more than a total of 12 months per facility in any five-year period.

(a) The application shall propose what the adjustment should be and include a financial review prepared by the facility documenting:

(i) the facility's income and expenses for the past 12 months; and

(ii) specific steps taken by the facility to reduce costs and increase occupancy.

(b) Financial support from the local municipality and county governing bodies for the continued operation of the facility in the community is a necessary prerequisite to an acceptable application. The Department, the facility and the local governing bodies may negotiate the amount of the financial commitment from the governing bodies, but in no case may the local commitment be less than 50% of the state share required to fund the proposed adjustment. Any continuation of the adjustment beyond 6 months requires a local commitment of 100% of the state share for the rate increase above the base rate. The applicant shall submit letters of commitment from the applicable municipality or county, or both, committing to make an intergovernmental transfer for the amount of the local commitment.

(i) If the governmental agency receives donations in order to provide the financial contribution, it must document that the donations are "bona fide" as set forth in 42 CFR 433.54.

(c) The Department may conduct its own independent financial review of the facility prior to making a decision whether to approve a different payment rate.

(d) If the Department determines that the facility is in imminent peril of closing, it may make an interim rate adjustment for up to 90 days.

(e) The Department's determination shall be based on maintaining access to services and maintaining economy and efficiency in the Medicaid program.

(f) If the facility desires an adjustment for more than 90 days, it must demonstrate that:

(i) the facility has taken all reasonable steps to reduce costs, increase revenue and increase occupancy;

(ii) despite those reasonable steps the facility is currently losing money and forecast to continue losing money; and

(iii) the amount of the approved adjustment will allow the facility to meet expenses and continue to support the needs of the community it serves, without unduly enriching any party.

(g) If the Department approves an interim or other adjustment, it shall notify the facility when the adjustment is scheduled to take effect and how much contribution is required from the local governing bodies. Payment of the adjustment is contingent on the facility obtaining a fully executed binding agreement with local governing bodies to pay the contribution to the Department.

(h) The Department may withhold or deny payment of the interim or other adjustment if the facility fails to obtain the required agreement prior to the scheduled effective date of the adjustment.

(9) A provider may challenge the rate set pursuant to this rule using the appeal in Rule R410-14. This applies to which rate methodology is used as well as to the specifics of implementation of the methodology. A provider must exhaust administrative remedies before challenging rates in any other forum.

(10) In developing payment rates, the Department may adjust urban and non-urban rates to reflect differences in urban and non-urban labor costs. The urban labor costs reimbursement cannot exceed 106% of the non-urban labor costs. Labor costs are as reported on the most recent FCP but do not include FCP-reported management, consulting, director, and home office fees.

(11) The Department reimburses swing beds, transitional care unit beds, and small health care facility beds that are used as nursing facility beds, using the prior calendar year state-wide average of the daily nursing facility rate.

(12) Withholding of Title XIX payments

(a) Unless specified otherwise, the Department may withhold Title XIX payments from providers if:

(i) there is a shortage in a resident trust account managed by the facility;

(ii) the facility fails to submit a complete and accurate FCP as required by Utah State Plan Attachment 4.19-D, Section 332;

(iii) the facility fails to submit timely, accurate Minimum Data Set (MDS) data;

(iv) the facility owes money to the Division of Health Care Financing because of an overpayment, nursing care facility assessment, civil money penalty, or other offset; or

(v) the facility fails to respond within 10 business days to a written request for information.

(13) The Department shall provide written notice before withholding payments.

(14) When the Department rescinds withholding of payments to a provider, it will, without notice, resume payments according to the regular claims payment cycle.

(a) For ongoing operations, the Department will provide notice before withholding payments. The Department and provider may negotiate a repayment schedule acceptable to the Department for monies owed to the Department listed in subsection (a)(iv). The repayment schedule may not exceed 180

days.

(b) When the Department rescinds withholding of payments to a facility, it will resume payments according to the regular claims payment cycle.

R414-504-4. Quality Improvement Incentive.

(1) Reimbursement for Nursing Home Quality Improvement Incentives is in accordance with Attachment 4.19-D of the Utah Medicaid State Plan, which is incorporated by reference in Rule R414-1.

(2) Division staff are not required to request additional information relating to any application submission.

(3) Providers shall ensure all necessary information is included in the application in order to qualify.

(4) For applications received and reviewed by division staff prior to the annual submision deadline, if the application is incorrect or lacks sufficient supporting documentation, then the application shall be denied. If it is received prior to the annual submission deadline, the provider may submit a subsequent application that includes all needed supporting documentation for consideration.

(5) For applications received prior to the annual submission deadline and reviewed by division staff after the annual submission deadline, then the provider's application may be considered for qualification of a reduced amount, where possible, based on the submitted documentation.

(6) In all cases, no additional applications, documentation or explanation will be accepted if submitted after the annual submission deadline.

R414-504-5. Reimbursement for Intermediate Care Facilities for the Mentally Retarded.

The following principles apply to the payment of community-based intermediate care facilities for the mentally retarded (ICF/MRs) that are licensed under Section 26-21-13.5:

(1) The Department pays approximately 93% of the aggregate payments to ICF/MRs based on a prospective flat rate established in Utah State Plan Attachment 4.19-D. The Department pays the balance as a property cost component calculated by the Fair Rental Value system pursuant to Section R414-504-3.

(2)(a) Reimbursement for the ICF/MR Quality Improvement Incentive is in accordance with Attachment 4.19-D of the Utah Medicaid State Plan, which is incorporated by reference in Rule R414-1.

(b) Division staff are not required to request additional information relating to any application submission.

(c) Providers shall ensure all necessary information is included in the application in order to qualify.

(d) For applications received and reviewed by division staff prior to the annual submission deadline, if the application is incorrect or lacks sufficient supporting documentation, then the application shall be denied. If it is received prior to the annual submission deadline, the provider may submit a subsequent application that includes all needed supporting documentation for consideration.

(e) For applications received prior to the annual submission deadline and reviewed by division staff after the annual submission deadline, then the provider's application may be considered for qualification of a reduced amount, where possible, based on the submitted documentation.

(f) In all cases, no additional applications, documentation or explanation will be accepted if submitted after the annual submission deadline.

KEY: Medicaid
January 1, 2020 26-1-5
Notice of Continuation October 17, 2017 26-35a

R501. Human Services, Administration, Administrative Services, Licensing.
R501-18. Recovery Residence Services.
R501-18-1. Authority.

This Rule is authorized by Section 62A-2-101 et seq.

R501-18-2. Purpose.

This rule establishes:

(1) basic health and safety standards for recovery residences; and

(2) minimum administration requirements.

R501-18-3. Definitions.

(1) "Currently Enrolled Client" is an individual who is a participatory resident of the sober living environment of a recovery residence and is also referred to as "Client" in this chapter.

(2) "Manager" is an individual designated in-writing by the director to oversee the day-to-day supervision of staff and clients as well as the overall operation of the facility. The manager or substitute manager cannot be a currently enrolled client.

(3) "Recovery Residence" is as defined in Subsection 62A-2-101(22) and includes a variety of sober living settings.

R501-18-4. Legal Requirements.

(1) A recovery residence shall comply with this R501-18 and:

(a) R501-1, General Provisions;

(b) R501-2, Core Rules;

(c) R501-14 by either:

(i) participating in the background clearances for all staff; or

(ii) obtaining an approval by the Office of Licensing for an exemption as outlined in R501-14.

(d) all applicable local, state, and federal laws.

(2) A recovery residence wishing to offer clinical treatment services, shall comply with R501-19 and obtain a residential treatment license. No clinical treatment shall occur at a recovery residence site.

(3) A recovery residence wishing to offer social detoxification services shall comply with R501-11 and obtain a social detoxification license prior to offering any social detoxification services onsite. No services shall be provided to those in active withdrawl at a recovery residence site.

(4) A recovery residence shall only serve adults.

R501-18-5. Administration.

(1) The recovery residence shall ensure that clients receive supportive services from a person associated with the licensee or from a licensed professional. Supportive services include but are not limited to:

(a) vocational services;

(b) peer support;

(c) skills training;or

(d) community resource referral.

(2) A list of current clients shall be maintained on-site at all times and available to the Department of Human Services Office of Licensing upon request.

R501-18-6. Staffing.

(1) The program shall employ, contract with, or otherwise provide as needed, referral information for client access to the following:

(a) Physician

(b) Psychiatrist

(c) Mental health therapist (LCMHT); or

(d) Substance use disorder counselor (SUDSC).

(2) The recovery residence shall have an identified recovery residence director(s) who shall have:

(a) Utah licensure, in good standing, as a substance use disorder counselor, licensed clinical social worker or equivalent; or

(b) a minimum of 2 years experience in one of the following:

(i) administration of a recovery residence;

(ii) substance use disorder treatment education; or

(iii) recovery/support services education.

(3) The director's responsibilities that shall not be delegated include:

(a) monitoring all aspects of the program and operation of the facility;

(b) policy and procedure development, implementation, compliance and oversight per R501-2 Core Rule requirements and to also include:

(i) clearly defining responsibilities of the director, manager, and staff of the program;

(c) supervision, training and oversight of staff;

(d) overseeing all client activities.

(4) The recovery residence director may manage directly or employ a manager as defined in this chapter, to work under the supervision of the director.

(a) The director shall perform the manager's duties when the manager is on scheduled or unscheduled leave unless the manager designates a manager-substitute.

(5) The director is responsible for maintaining the following documentation for self and all direct service staff:

(a) 40 hours of training completed prior to working with clients and ongoing training sufficient to maintain proficiency in the topics of:

(i) recovery services in substance use disorder settings;

(ii) peer support;

(iii) emergency overdose;

(iv) recognition and response to substance-related activities; and

(v) current certification in First Aid and CPR.

(b) documented training regarding compliance with current licensing rules to include:

(i) R501-1, General Provisions;

(A) including the annual required Licensing Code of Conduct; and

(B) Client Rights;

(ii) R501-2, Core Rules;

(iii) R501-18 Recovery Residence rules; and

(iv) all current program policies and procedures.

(6) The recovery residence shall have a director or manager conduct on-site visits daily in order to ensure client safety and support clients.

(a) Site visits shall be documented per-site, not per-client;

(b) site visits shall assess and document the following:

(i) general safety;

(ii) general cleanliness;

(iii) verification that only admitted residents reside or stay overnight at the residence;

(iv) no presence of alcohol or substances of abuse unless lawfully prescribed; and

(v) medications in locked storage.

(7) The director or manager shall have documented face-to-face or telephone daily contact with each admitted client.

(8) The recovery residence director shall ensure administrative on-call availability at all times and remain able to respond to the recovery residence staff and the Office of Licensing immediately by phone, or at the residence in-person within one hour.

(b) shall have a residence director, manager or substitute on-site a minimum of 7 days per week in order to assess safety and support clients. These visits shall be scheduled and documented;

R501-18-7. Direct Service.

(1) This subsection supersedes Core Rules, Section R501-2-5. The recovery residence client records shall contain the following:

(a) name, address, telephone number, email;

(b) admission date;

(c) emergency contact information with names, address, email, and telephone numbers;

(d) all information that could affect the health, safety or well-being of the client to include:

(i) medications;

(ii) allergies;

(iii) chronic conditions; or

(iv) communicable diseases;

(e) intake documentation indicating that the client meets the admission criteria, including the following:

(i) not currently using or withdrawing from alcohol or substances of abuse; and

(ii) not presenting with a current clinical assessment that contraindicates this level of care.

(f) individual recovery plan, including the signature and title of the program representative preparing the recovery plan and the signature of the client; the recovery plan shall include the following:

(i) documentation of all services provided by the program, including a disclosure that no clinical treatment services occur on-site at the recovery residence; and

(ii) documentation of all referred supportive services, not directly associated with the recovery residence site.

(g) the signed written lease agreement for the recovery residence, if required;

(h) a signed agreement indication that the client was notified in writing prior to admission regarding:

(i) program and client responsibilities related to transportation to and location of off-site services;

(ii) program and client responsibilities related to the provision of toiletries, bedding and linens, laundry and other household items;

(iii) program and client responsibilities related to shopping, provision of food and preparation of meals;

(iv) fee disclosures included Medicaid number, insurance information and identification of any other entities who may be billed for the client's services;

(v) rules of the program;

(vi) client rights

(vii) grievance and complaint policy;

(viii) critical incident reports involving the client; and

(iv) discharge documentation.

R501-18-8. Building and Grounds.

(1) The recovery residence shall ensure that building and grounds are safe and well-maintained. Furnishings, finishings, fixtures, equipment, appliances and utilities are operational and in good condition.

(2) The recovery residence shall:

(a) have locking bathroom capability sufficient to preserve the privacy of the occupant;

(b) provide access to a toilet, sink, and a tub or shower; as follows per the International Building Code:

(i) maintain a client to toilet ratio of 1:10, and

(ii) maintain a client to tub/shower ratio of 1:8.

(c) provide a mirror secured to a wall at convenient height;

(d) ensure that each bathroom is ventilated by a screened window that opens, a working fan or heating/air conditioning duct that circulates air;

(e) provide a minimum of 60 square feet per client in a multiple occupant bedroom and 80 square feet in a single occupant bedroom. Storage space shall not be counted;

(f) ensure that sleeping areas shall have a source of natural light, and shall be ventilated by a screened window that opens, a working fan, or heating/air conditioning duct that circulates air;

(g) ensure that each client is provided with a solidly constructed bed, box spring and mattress that is maintained and provides for client comfort and is commensurate with all other client beds in the residence;

(h) ensure that male and female bedrooms are separated within the residence either by floors, walls or locking doors. If locking doors are used, a policy must identify the use of locks to delineate separation;

(i) ensure that clients shall be allowed to decorate and personalize bedrooms with respect for other clients and property;

(j) if a fire clearance is not required or provided from the local fire authority:

(i) a bedroom on the ground floor shall have a minimum of one window that may be used to evacuate the room in case of fire;

(ii) a bedroom that is not on the ground floor (this includes basements) shall have a minimum of two exits, at least one of which shall exit directly to outside the building that may be used to evacuate the room in case of fire;

(k) the recovery residences shall provide either equipment or reasonable access to equipment for washing and drying of linens and clothing;

(l) provide storage commensurate with the clients' assessed ability to safely access hazardous chemicals, materials and aerosols, including but not limited to:

(i) poisonous substances;

(ii) explosive or flammable substances;

(iii) bleach; and

(iv) cleaning supplies;

(m) maintain hazardous chemicals, materials, and aerosols in their original packaging and follow the manufacturer's instructions printed on the label.

(n) maintain a sober environment free from non-prescribed substances and alcohol.

R501-18-9. Food Service.

(1) Meals may be catered, prepared by staff or prepared by clients.

(2) The recovery residence shall have at least one kitchen.

(3) If the recovery residence allows staff or clients to prepare food for clients, it shall comply with food service requirements as follows:

(a) develop and follow a food service policy to address:

(i) how special dietary needs and food allergies will be tracked and accommodated;

(ii) how safe food preparation and cleanup will be ensured;

(b) document compliance with, or exemption from, requirements of the local health department to include:

(i) health inspections and clearances; and

(ii) food handler's permits for anyone preparing food for anyone other than self;

(c) food of sufficient nutrition and variety shall be provided;

(d) menus shall be available upon request; and

(e) this does not prohibit clients from preparing their own food and choosing to share with other clients.

(4) The recovery residence shall provide enough seating at tables or tray tables to accommodate all clients simultaneously.

R501-18-10. Medical Standards.

(1) The recovery residence shall not admit anyone who is currently in an intoxicated state or withdrawing from alcohol or drugs or otherwise unable to understand terms and consent to

reside in the recovery residence.

(2) Before admission or employment, clients and staff shall be screened for Tuberculosis by a questionnaire approved by the local health department; if further screening is indicated, clients and staff will:

(a) follow appropriate protocol according to the local health department;

(b) provide proof of negative test results for Tuberculosis; and

(c) test annually or more frequently as required.

(3) A recovery residence that manages clients' medications shall keep all prescription and non-prescription medications in locked storage that is not accessible by clients when not in active use.

(4) A recovery residence shall ensure that clients who manage their own medications keep all prescription and non-prescription medications in individually accessed locked storage that is not accessible to other clients when not in active use.

(5) Non-prescription and prescription medications shall be stored in their original manufacturer's packaging together with manufacturer/pharmacy directions and warnings.

(6) Naloxone shall be safely maintained and available onsite, and staff and clients shall be trained in its proper use.

KEY: licensing, human services, recovery residence
February 7, 2018 **62A-2-101**
Notice of Continuation December 9, 2019 **62A-2-106**

R512. Human Services, Child and Family Services.
R512-77. Child and Family Services Records.
R512-77-1. Purpose and Authority.

(1) The purpose of this rule is to define the nature of confidential information to be safeguarded by Child and Family Services, as well as to provide access to information regarding payments for services offered by Child and Family Services.

(2) This rule is authorized by Sections 62A-4a-102 and 62A-4a-112.

R512-77-2. Definitions.

(1) "GRAMA" means the Government Records Access and Management Act detailed in Section 63G, Section 2.

(2) "Record" is defined as any document that is prepared, owned, received, or retained by Child and Family Services. Records may include photographs, film, audio and video recordings, digital recordings, electronic data, books, letters, papers, maps, plans, or any other documentary material. This also includes documents received or retained by the agency, even if the agency did not draft them. Records are not personal notes received or prepared by an employee of Child and Family Services in their private capacity, temporary drafts that are made for personal use, personal items listed in a daily calendar, or material owned by the individual in their private capacity.

R512-77-3. Release of Child and Family Services Records.

(1) Release of Child and Family Services records is governed by Section 63G, Section 2, GRAMA, as well as other specific statutory provisions.

R512-77-4. Examination of Child and Family Services Payments.

(1) An individual who is a taxpayer and resident of this state and who desires to examine a payment for services offered by Child and Family shall sign a statement using a form prescribed by Child and Family Services. That statement shall include the assertion that the individual is a taxpayer and a resident, and shall include a commitment that any information obtained will not be used for commercial or political purposes. No partial or complete list of names, addresses, or amounts of payment may be made by any individual, and none of that information may be removed from the offices of Child and Family Services.

(2) Based upon GRAMA and other specific statutory guidelines, Child and Family Services may not disclose the names or addresses of any child, youth, adult, or other person who has received services or who is identified in Child and Family Services' records.

(3) This rule does not prohibit Child and Family Services or its agents, or individuals, commissions, or agencies duly authorized for that purpose, from making special studies or from issuing or publishing statistical material and reports of a general character. This rule does not prohibit Child and Family Services or its representatives or employees from conveying or providing to local, state, or federal governmental agencies written information that would affect an individual's eligibility or ineligibility for financial service, or other beneficial programs offered by that governmental agency.

(4) Access to Child and Family Services program plans, guidelines, and records, as well as consumer records and data, is governed by Section 63G, Section 2, GRAMA and other specific statutory provisions.

KEY: child welfare, government records
December 23, 2019 **62A-4a-102**
62A-4a-112
63G-2

R512. Human Services, Child and Family Services.
R512-500. Kinship Services, Placement and Background Screening.
R512-500-1. Purpose and Authority.

(1) The purpose of this rule is to establish standards for kinship placement for a child who is in Child and Family Services custody, including Preliminary Placement, evaluation of kinship caregiver capacity for ongoing care, and background screening.

(2) This rule is authorized by Sections 62A-4a-102, 62A-4a-209, 78A-6-307, and 78A-6-307.5.

R512-500-2. Definitions.

(1) "Abuse" is defined in Section 78A-6-105.

(2) "Child" is defined in Section 62A-4a-101.

(3) "Child and Family Services" means the Division of Child and Family Services, Department of Human Services.

(4) "Child and Family Team" has the same meaning as defined in Rule R512-301.

(5) "Friend" means an adult the child knows and is comfortable with, other than a non-custodial parent or relative as defined in Section 78A-6-307. A friend who is not licensed as a foster parent and who is designated a preference for care of a child by a parent or guardian or the child, if the child is of sufficient maturity to articulate his or her wishes, and in accordance with Section 62A-4a-209, must be willing to become a licensed foster parent.

(6) "Kinship caregiver" means a non-custodial parent, relative, or friend as defined in this section, who is selected for placement and care of a child in Child and Family Services custody. This may be a married couple, a single adult, or a relative who may be cohabiting.

(7) "Neglect" is defined in Section 78A-6-105.

(8) "Non-custodial parent" is a natural parent as defined in Section 78A-6-307 who is a biological or adoptive mother, an adoptive father, or a biological father who was married to the child's biological mother at the time the child was conceived or born, or who has had paternity established, who has not been granted legal custody of the child.

(9) "Non-relative" is defined in Section 62A-4a-209.

(10) "Preliminary Placement" means an out-of-home placement with a non-custodial parent, relative, or with a friend who is either a licensed foster parent or is willing to become a licensed foster parent, which is referred to in statute as an emergency placement with a non-custodial parent or relative as authorized in Section 62A-4a-209 or a post-shelter hearing placement with a non-custodial parent, relative, or friend as authorized in Section 78A-6-307.5.

(11) "Relative" is defined in Section 78A-6-307 as the child's "grandparent, great-grandparent, aunt, great-aunt, uncle, great-uncle, brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, sibling of the child, a first cousin of the child's parent, or an adult who is an adoptive parent of the child's sibling." For a Native American child, relative also includes "extended family members" as defined by the Indian Child Welfare Act (ICWA), 25 USC 1903, which is "by the law or custom of the Native American child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Native American child's grandparent, aunt, or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent."

(12) "Severe type of child abuse or neglect" is defined in Section 62A-4a-1002.

(13) "Sibling" is defined as a child who has the same biological parent or adoptive parent as the child.

(14) "Substantiated" is defined in Section 62A-4a-101.

(15) "Supported" is defined in Section 62A-4a-101.

R512-500-3. Philosophy.

(1) All children need permanency through enduring relationships that provide stability, familiarity, and support for the culture of the child; support the child's sense of self based on existing attachments; provide for the child's safety and physical care; and connect the child to their past, present, and future through continuing family relationships. First priority is to maintain a child safely at home. However, if a child cannot safely remain at home, kinship care has the potential for providing these elements of permanency by virtue of the kin's knowledge of and relationship to the family and child.

(2) The family will be involved in placement decisions and will be participants of the Child and Family Team. All kinship work is done in the context of a Child and Family Team. Kinship care includes elements of child protection, in-home services, family preservation, and out-of-home care. When a child cannot safely remain home, kinship care is preferable to other out-of-home placements if the kinship caregiver can keep the child safe and appropriately meet the child's needs.

(3) The caregiver's willingness and ability to care for and keep the child safe are fundamental. The kinship caregiver must have or acquire knowledge of the child, be able to meet the child's needs, support reunification efforts, and be able to provide the child access to parents, siblings, and other family members through visits or caring for the child and siblings as a group.

(4) Ongoing assessment of the child's safety, permanence, and well-being is important to the stability and value of kinship care. Ongoing assessment of safety is based on the components of safety decision-making, which include threats of harm, vulnerabilities of the child, and protective capacities of the kinship caregiver and their support system.

(5) During the spectrum of services provided by Child and Family Services, there will be ongoing efforts to locate, notify, and engage kin, building and sustaining continued connections and relationships for the child.

(6) Support to kinship caregivers is essential to the success of the child's placement with the family and to the family's ability to respond to the needs of the child. As members of the Child and Family Team, kinship caregivers will receive support from other family members and from informal and formal supports to provide for the child.

R512-500-4. Preferences for Placement.

(1) The following order of preference shall be used when determining the placement of a child in the custody of Child and Family Services, and is subject to the child's best interest:

(a) a non-custodial parent of the child;

(b) a relative of the child;

(c) subject to statute, a friend, if the friend is a licensed foster parent; and

(d) other placements that are consistent with the requirements of law.

(e) In determining whether a friend is a willing and appropriate temporary emergency placement for a child, Child and Family Services:

(i) is required to consider no more than one friend designated by each parent or legal guardian of the child and one friend designated by the child, if the child is of sufficient maturity to articulate the child's wishes in relation to a placement;

(ii) may limit the number of designated friends to two, one of whom shall be a friend designated by the child, if the child is of sufficient maturity to articulate the child's wishes in relation to a placement; and

(iii) shall give preference to a friend designated by the child, if:

(A) the child is of sufficient maturity to articulate the child's wishes; and

(B) Child and Family Services' basis for removing the child is sexual abuse of the child under Subsection 78A-6-105(51)(d).

(2) Preferential consideration given in accordance with Section 78A-6-307 to kinship caregivers or friends who are licensed or who become licensed expires 120 days from the date of the shelter hearing. After that time period has expired, a relative or friend who has not obtained custody or asserted an interest in the child may not be granted preferential consideration by Child and Family Services or the court. Prospective kinship caregivers or friends may be considered for placement after the 120 days has lapsed, if it is in the best interest of the child.

(3) A potential caregiver who meets the definition of friend and who is not a licensed foster parent must be willing to become a licensed foster parent. The friend must be actively engaged in the process of becoming a licensed foster parent within 60 days of the child being placed with them, and must complete all requirements of the Department of Human Services, Office of Licensing to obtain a child-specific foster care license within six months of a child being placed with them. If the child remains in the custody of Child and Family Services placed in the home of the friend, the friend must comply with all Office of Licensing requirements to receive ongoing licensure as a foster parent prior to the child-specific license expiring, or the child will be removed from the friend's care.

R512-500-5. Preliminary Placement.

(1) The requirements specified in Section 62A-4a-209 must be met for Preliminary Placement of a child with a kinship caregiver.

(2) Termination of parental rights does not terminate the right of a relative of the parents to seek placement and adoption of the child.

(3) The family will be involved in placement decisions and will be participants of the Child and Family Team. Considerations for the Preliminary Placement of a child with a kinship caregiver shall include:

(a) Approved background screening requirements specified in Rule R512-500-7.

(b) Sufficient information to determine whether:

(i) the relative or friend has any history of abusive or neglectful behavior toward other children that may indicate or present a danger to this child;

(ii) the child is comfortable with the relative or friend;

(iii) the relative or friend recognizes the parent's history of abuse and is committed to protect the child;

(iv) the relative or friend is strong enough to resist inappropriate requests by the parent for access to the child, in accordance with court orders;

(v) the relative or friend is committed to caring for the child as long as necessary; and

(vi) the relative or friend can provide a secure and stable environment for the child.

(4) Assessment of safety will be based on safety decision-making principles, which include:

(a) Potential threats of harm;

(b) Vulnerabilities of the child; and

(c) Protective capacities of the potential kinship caregiver and their support system.

(5) The limited home inspection specified in Section 62A-4a-209 is required for a non-custodial parent, relative, or friend. The limited home inspection is conducted in the home of the prospective kinship caregiver to determine if there are apparent safety risks in the home that present a potential threat of harm to the child. The limited home inspection determines if the following are met:

(a) The home is free from observable health and fire hazards.

(b) There are adequate sleeping arrangements to meet the specific needs of each child.

(c) Any firearms, ammunition, hazardous chemicals, and/or medications are secured and not accessible to children.

(6) References may be contacted to obtain input regarding placing the child with the potential kinship caregiver or information about other available relatives or friends who may care for the child.

R512-500-6. Evaluation of Capacity for Ongoing Care of a Child.

(1) The Child and Family Team will determine the most appropriate caregiver to meet the ongoing and permanency needs of the child.

(a) Since the Preliminary Placement is made in an emergency situation they may or may not be the most appropriate caregiver to meet the ongoing and permanency needs of the child.

(b) The ongoing caregiver may be the kinship caregiver who is the Preliminary Placement or may be a different prospective caregiver.

(2) Child and Family Services will evaluate with the prospective caregiver their capacity for ongoing care of the child as well as permanency if reunification efforts are not successful. The components of the evaluation process include:

(a) The child-specific home study, including:

(i) Results of the background screening specified in R512-500-7;

(ii) Obtaining positive written references from three different people known to the kinship caregiver expressing the referent's opinion about the family's ability to care for the child;

(iii) Physical and emotional ability of the kinship caregiver to provide adequate care for the child;

(iv) Understanding of family dynamics and how placement will impact relationships within the family;

(v) Ability to provide for the child's safety and well-being needs and to support a plan for permanency;

(vi) Analysis of the type of resources and support needed by the kinship caregiver to care for the child.

(vii) Ability of the home to meet required safety standards of the Office of Licensing.

(b) Providing information to the kinship caregiver to assist with considering options for ongoing care of the child, including:

(i) Educating the kinship caregiver of the expectations of caring for a child who is under the jurisdiction of the court.

(ii) Assessing the resources that may be available to assist the kinship caregiver in providing a stable placement for the child.

(iii) Becoming a licensed out-of-home care placement for the child.

(iv) Requesting temporary custody and guardianship from the court.

R512-500-7. Background Screening.

(1) Background Screening Procedure for Preliminary Placements.

(a) In order for a non-custodial parent, relative, or friend to be considered for Preliminary Placement of a child, background screening must be completed that meets the requirements of Sections 62A-4a-209, 78A-6-307, 78A-6-307.5, and 78A-6-308. If any non-relative adults live in the household, applicable background screening requirements in Sections 62A-4a-209, 78A-6-307, 78A-6-307.5, and 78A-6-308 must be met.

(b) A non-custodial parent or relative and all persons 18 years of age and older living in the household must provide the following information in order for background screening to be conducted:

(i) Full first, middle, last, maiden, alias, and all previous married names.

(ii) Social Security number, if a number has been issued.

(iii) Proof of identity verified by a government-issued photo identification.

(iv) Date of birth.

(2) Background Screening Procedure for Ongoing Care of a Child.

(a) As part of the evaluation of capacity for ongoing care of a child, in addition to background screening required for Preliminary Placement, anyone over the age of 18 years in the home must complete an FBI fingerprint-based criminal history records check.

(b) A Utah child abuse registry check will be completed or all persons over the age of 18 years residing in the home. If any person 18 years of age or older residing in the home has lived out of the state of Utah in the five years immediately preceding the date of the application, a child abuse and neglect registry check must be completed for any state in which the individual resided.

(c) All persons 18 years of age and older living in the household must provide the following information on a form provided by Child and Family Services in order for background screening to be conducted:

(i) Full first, middle, last, maiden, alias, and all previous married names.

(ii) Social Security number, if a number has been issued.

(iii) Proof of identity verified by a government-issued photo identification.

(iv) Date of birth.

(v) The potential kinship caregiver and applicable adults living in the household shall provide fingerprints from an authorized law enforcement agency or designated electronic scanning site.

(vi) If the applicant has lived outside of Utah in the five years preceding the date of the application, a list of the states the applicant has lived in will be provided.

KEY: child welfare, kinship
December 23, 2019 **62A-4a-102**
Notice of Continuation February 15, 2018 **62A-4a-105**
62A-4a-209
78A-6-307
78A-6-307.5
78A-6-308

R539. Human Services, Services for People with Disabilities.
R539-2. Service Coordination.
R539-2-1. Purpose.

(1) The purpose of this rule is to provide standards for the Division service system, including planning, developing and managing an array of services for Persons with disabilities and their families throughout the state as required by Subsection 62A-5-103(2)(a).

R539-2-2. Authority.

(1) This rule establishes standards as required by Subsection 62A-5-103(2)(b).

R539-2-3. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101 and R539-1-3.

(2) In addition:

(a) "Quality Assurance" means the Family, Provider, and Division management's role to assure accountability in areas of fiscal operations, health, safety, and contract compliance.

(b) "Quality Improvement" means the Provider's role to evaluate and improve the internal delivery of services.

(c) "Quality Enhancement" means the Division and the Team members' role in supporting a Person to experience personal life satisfaction in accordance with the Person's preferences.

R539-2-4. Waiting List.

(1) Pursuant to Subsection 62A-5-102(3), the Division shall determine a Person's eligibility for service, followed by a determination of that Person's priority relative to others who are also eligible. The Division shall use a standardized Needs Assessment to score and prioritize the Person's level of need. Persons with the highest scores shall receive support first. The Support Coordinator shall assess with the Person the array of services that may be needed. If funding is not immediately available, the Person shall be placed on a waiting list for support. Persons who have been determined eligible for the Division's Medicaid Waivers can choose to wait for Division Support services or seek services available through Medicaid in an approved facility.

(2) If the Person requires, and could use, support services on the day of intake, the Person has an immediate need; otherwise, the Person has a future need.

(3) A Needs Assessment Form shall be completed for all Persons with an immediate need for support services. The Needs Assessment calculates an aggregate score for each Person by using the following three scales:

(a) severity scale:

(i) personal care supports,

(ii) daily living supports,

(iii) personal safety supports,

(iv) behavioral supports, and

(v) prescribed medical treatments;

(b) caregiver and home environment scale; and

(c) time on waitlist scale.

(4) The Division determines the Person's score, rank orders the scores, and enters the Person's name and score on the statewide waiting list.

(5) A Person's ranking may change if the Person's needs change or as Needs Assessments are completed for new Applicants.

(6) No age limitations apply to a Person placed on the waiting list for community living support or family support.

(7) To preserve the Medicaid Waiver and state-wide service infrastructure, exceptions may be made to the person's ranking on the waiting list when authorized by the Division Director and the Department of Health.

R539-2-5. Person-Centered Process.

(1) The Division supports Person-Centered Planning, which includes assessing, planning, implementing, and evaluating. This process shall have an individualized focus and incorporate the principles of Person-Centered Planning, self-determination, informed choice, and equity. Input from the Person and the Person's Team should guide and direct this process.

(a) The Person's Team shall work with the Person to identify goals.

(i) The Person receiving supports determines the membership of the Team, which shall include the Support Coordinator.

(ii) The Team meets at least annually within the month in which the previous meeting occurred, or more often as the Person or other members of the Team determine necessary.

(b) The Person, Provider, and Family shall assess, plan, implement, and evaluate goals and supports for which they are responsible, as agreed upon and listed on Division Form 1-16 in the planning meeting.

(c) The Team shall decide the level of detail required to describe the actions involved in the assessing, planning, implementing, and evaluating needs for the supports based on the experience and expertise of the staff providing the Person's supports. The use of the philosophical Person-Centered Planning approach shall be demonstrated and documented in the Person's file.

(d) Any interested party who believes that Person-Centered Planning is not being implemented as outlined or receives a request from the Person, should contact the Support Coordinator immediately to resolve the issue informally, and, if necessary, through the administrative hearing process outlined in R539-3-8 Notice of Agency Action and Administrative Hearings.

R539-2-6. Entry Into and Movement Within Service System.

(1) The Division shall assure that an appropriate choice of supports and Providers exist for Persons entering or moving within the support system in accordance with Subsections 62A-5-103(1) and 62A-5-103(2). The Division shall coordinate, approve, and oversee all out-of-home placements.

(2) Entry into Division-funded supports:

(a) Once a Person's application for waiver services is processed by the Division, the Person is referred to the local financial eligibility office.

(b) Prior to the provision of community living supports, a Person may be required to complete a medical examination and, if under the age of 18, provide a current immunization record.

(c) Admission to Division programs from a nursing facility will be coordinated by the Division with the Person, the nursing facility social worker, the Support Coordinator, and the prospective Provider.

(d) The Division shall provide Persons with a choice of Providers by:

(i) sending Providers notice and invitation to submit offers to provide services via use of Division Form 1-6; and

(ii) assisting the Person to make an informed choice of Provider.

(e) Interested Providers may schedule and coordinate a service entry meeting that involves the Person, the Representative, Support Coordinator, and invited guests, (e.g., Developmental Center staff, school representative, and Division staff). The meeting should be held at the prospective site of placement whenever possible.

(f) The Provider shall submit an acceptance or denial letter within ten business days of the service entry meeting to the Support Coordinator and the Person. An acceptance letter shall include a written description of the following:

(i) services to be provided;

(ii) location of the service;

(iii) name and address of the primary care physician, or other medical specialists, including, for example, neurologist or dentist, if applicable;

(iv) a training and in-service schedule for the staff to meet with the Person;

(v) proposed date services will begin; and

(vi) agreed upon rate and level of support.

(g) The physical move of the Person shall be the responsibility of the Provider who is accepting the Person.

(h) The Division shall send the Person's information to the Provider five business days prior to the move.

(3) Any Team Member may initiate a request to change Provider or Developmental Center residence by asking the Support Coordinator to arrange a meeting.

(4) If a Person requests a change of Provider, the Support Coordinator shall arrange a discharge meeting that provides a ten-business-day written notice to the Person, present Provider, and Support Coordinator.

(a) The present Provider may request the opportunity to make changes in the existing relationship to address the concerns that initiated the discharge meeting.

(b) The Director shall make the final decision concerning the discharge if the parties cannot come to agreement.

(5) A Provider initiated request for discharge of a Person shall require 90 calendar days prior notification to the Person and the Division.

(6) Emergency Services Management Committee (ESMC):

(a) An Emergency Services Management Committee chairperson shall be appointed by the Division Director. Membership shall include:

(i) Division Specialists;

(ii) a representative from the Division who is skilled in crisis intervention and knowledgeable of local resources;

(iii) a representative from the Developmental Center; and

(iv) others as appointed by the Division Director.

(b) The Emergency Services Management Committee shall ensure that Persons are placed in the least restrictive most appropriate living situation as per Sections 62A-5-302 through 62A-5-312 and Subsection 62A-5-402(2)(a). Exceptions to the statute requiring children under age 11 to live only in family-like environments, as per Section 62A-5-403, require Emergency Services Management Committee review and recommendation to the Division Director for final written approval.

R539-2-7. Quality Management Procedures.

(1) The Division will oversee the three distinct functional roles of quality management, which are Quality Assurance, Quality Improvement, and Quality Enhancement.

(a) Necessary quality assurances are specified by contract with the Division. The Division may work with other offices and bureaus of the Department of Human Services and the Department of Health to assure quality.

(b) Providers are responsible to develop and implement an internal quality management system, which shall:

(i) Evaluate the Provider's programs; and

(ii) Establish a system of self-correcting feedback.

(c) The implementation of the Person's Action Plan shall be designed to enhance the Person's life. The Person and Person's Team shall:

(i) Identify and document the Person's preferences;

(ii) Plan how to support the Person's life satisfaction; and

(iii) Implement the plan with supports from the Division, such as;

(A) Technical Assistance, which involves training, mentoring, consultation, and referral through Division staff.

(B) Quality Enhancement Resource Brokerage, which involves identification and compilation of community resources, including other consumers and families, and referral to and prior approval of payment for these supports.

(C) Consumer empowerment, which involves rights education, leadership training.

(D) Team and System Process Enhancement, which involves facilitation and negotiation training, community education, and consumer satisfaction surveys.

(2) The Division shall evaluate the Person's satisfaction and statistical statewide system indicators of life enhancement.

(3) Division staff shall promote enhancement of the Person's life; support improvement efforts undertaken by Providers, Persons, and families; and assure accountability.

R539-2-8. Request for New Support Coordinator.

(1) A Person may request a new Support Coordinator by submitting a written request to the Region Office Supervisor.

KEY: services, people with disabilities
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Notice of Continuation July 15, 2019 62A-5-103

R590. Insurance, Administration.
R590-76. Health Maintenance Organizations and Limited Health Plans.
R590-76-1. Authority.

This rule is issued pursuant to the authority set forth in Title 31A, Chapter 8, Health Maintenance Organizations (HMOs) and Limited Health Plans.

R590-76-2. Purpose.

The purpose of this rule is to implement Chapter 8 of Title 31A to assure the availability, accessibility and quality of services provided by HMOs and to provide reasonable standards for terms and provisions contained in HMO group and individual contracts and evidences of coverage.

R590-76-3. Applicability and Scope.

(1) This rule applies to all organizations defined in 31A-8-101(5). In the event of conflict between the provisions of this regulation and the provisions of any other regulation issued by the commissioner, the provisions of this regulation shall be controlling. This rule also applies to all HMO contracts covering individuals and groups issued or renewed and effective on or after January 1, 2003.

(2) Sections 4 and 5 of this rule do not apply to an HMO contract subject to R590-277, Managed Care Health Benefit Plan Policy Standards.

R590-76-4. HMO Definitions.

A group or individual contract and evidence of coverage delivered or issued for delivery to any person in this state by an HMO required to obtain a certificate of authority in this state shall contain definitions respecting the matters set forth below. The definitions shall comply with the requirements of this section. Definitions other than those set forth in this regulation may be used as appropriate providing that they do not contradict these requirements. As used in this regulation and as used in the group or individual contract and evidence of coverage:

(1) "Coinsurance" is the enrollee's cost-sharing amount expressed as a percentage of covered charges.

(2) "Copayment" means, other than coinsurance, the amount an enrollee must pay in order to receive a specific service that is not fully prepaid.

(3) "Deductible" means the amount an enrollee is responsible to pay out-of-pocket before the HMO begins to pay the costs or provide the services associated with treatment.

(4) "Directors" mean the executive director of Department of Health or his authorized representative, and the director of the Health Division of the Utah Insurance Department.

(5) "Eligible dependent" means any member of an enrollee's family who meets the eligibility requirements set forth in the contract.

(6) "Emergency care services" means services for an emergency medical condition as defined in 31A-22-627(3).

(a) Within the service area, emergency care services shall include covered health care services from non-affiliated providers only when delay in receiving care from the HMO could reasonably be expected to cause severe jeopardy to the enrollee's condition.

(b) Outside the service area, emergency care services include medically necessary health care services that are immediately required because of unforeseen illness or injury while the enrollee is outside the geographical limits of the HMO's service area.

(7) "Evidence of coverage" means a certificate or a statement of the essential features and services of the HMO coverage that is given to the subscriber by the HMO or by the group contract holder.

(8) "Facility" means an institution providing health care services or a health care setting, including but not limited to hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory and imaging centers, and rehabilitation and other therapeutic health settings which operate within their specific licensures requirements.

(9) "Grievance" means a written complaint submitted in accordance with the HMO's formal grievance procedure by or on behalf of the enrollee regarding any aspect of the HMO relative to the enrollee.

(10) "Group contract" means a contract for health care services by which its terms limit eligibility to enrollees of a specified group.

(11) "Group contract holder" means the person to which a group contract has been issued.

(12) "Incidental coverage" means a contract or endorsement offered by an HMO that provides limited health plan benefits as defined in Subsection 31A-8-101(3)(a).

(13) "Individual contract" means a contract for health care services issued to and covering an individual. The individual contract may include coverage for dependents of the subscriber.

(14) "Medical necessity" or "medically necessary" means:

(a) Health care services or products that a prudent health care professional would provide to a patient for the purpose of preventing, diagnosing or treating an illness, injury, disease or its symptoms in a manner that is:

(i) in accordance with generally accepted standards of medical practice in the United States;

(ii) clinically appropriate in terms of type, frequency, extent, site, and duration;

(iii) not primarily for the convenience of the patient, physician, or other health care provider; and

(iv) covered under the contract; and

(b) when a medical question-of-fact exists medical necessity shall include the most appropriate available supply or level of service for the individual in question, considering potential benefits and harms to the individual, and known to be effective.

(i) For interventions not yet in widespread use, the effectiveness shall be based on scientific evidence.

(ii) For established interventions, the effectiveness shall be based on:

(a) scientific evidence;

(b) professional standards; and

(c) expert opinion.

(15) "Out-of-area services" means the health care services that an HMO covers when its enrollees are outside of the service area.

(16) "Physician" means a duly licensed doctor of medicine or osteopathy practicing within the scope of the license.

(17) "Primary care physician" means a physician who supervises, coordinates, and provides initial and basic care to enrollees, and who initiates their referral for specialist care and maintains continuity of patient care.

(18) "Scientific evidence" means:

(a) scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff; or

(b) findings, studies or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes.

(c) Scientific evidence shall not include published peer-reviewed literature sponsored to a significant extent by a pharmaceutical manufacturing company or medical device manufacturer or a single study without other supportable studies.

(19) "Service area" means the geographical area within a 40-mile radius of the HMO's health care facility.

(20) "Subscriber" means an individual whose employment or other status, except family dependency, is the basis for eligibility for enrollment in the HMO, or in the case of an individual contract, the person in whose name the contract is issued.

R590-76-5. Requirements for HMO Contracts and Evidence of Coverage.

(1)(a) Individual contracts. Each subscriber shall be entitled to receive an individual contract and evidence of coverage in a form that has been filed with the commissioner.

(b) Group contracts. Each group contract holder shall be entitled to receive a group contract that has been filed with the commissioner.

(c) Group contracts, individual contracts and evidences of coverage shall be delivered or issued for delivery to subscribers or group contract holders within a reasonable time after enrollment, but not more than 90 days from the effective date of coverage.

(2) HMO information. The group or individual contract and evidence of coverage shall contain the name, address and telephone number of the HMO, and where and in what manner information is available as to how services may be obtained. A telephone number within the service area for calls, without charge to members, to the HMO's administrative office shall be made available and disseminated to enrollees to adequately provide telephone access for enrollee services, problems or questions. The group or individual contract and evidence of coverage may indicate the manner in which the number will be disseminated rather than list the number itself.

(3) Eligibility requirements. The group or individual contract and evidence of coverage shall contain eligibility requirements indicating the conditions that shall be met to enroll. The forms shall include a clear statement regarding coverage of dependents and newborn children.

(4) Benefits and services within the service area. The group or individual contract and evidence of coverage shall contain a specific description of benefits and services available within the service area.

(5) Emergency care benefits and services. The group or individual contract and evidence of coverage shall contain a specific description of benefits and services available for emergencies 24 hours a day, 7 days a week, including disclosure of any restrictions on emergency care services. No group or individual contract and evidence of coverage shall limit the coverage of emergency services within the service area to affiliated providers only.

(6) Out-of-area benefits and services. Other than emergency care, if benefits and services are covered outside the service area, a group or individual contract and evidence of coverage shall contain a specific description of that coverage.

(7) Copayments, coinsurance, and deductibles. The group or individual contract and evidence of coverage shall contain a description of any copayments, coinsurance, or deductibles that must be paid by enrollees.

(8) Limitations and exclusions. The group or individual contract and evidence of coverage shall contain a description of any limitations or exclusions on the services or benefits, including any limitations or exclusions due to preexisting conditions or waiting periods.

(9) Claims procedures. The group or individual contract and evidence of coverage shall contain procedures for filing claims that include:

(a) any required notice to the HMO;

(b) any required claim forms, including how, when and where to obtain them;

(c) any requirements for filing proper proofs of loss;

(d) any time limit of payment of claims;

(e) notice of any provisions for resolving disputed claims, including arbitration; and

(f) a statement of restrictions, if any, on assignment of sums payable to the enrollee by the HMO.

(10) Enrollee grievance procedures and arbitration. In compliance with R590-76-8(4), the group or individual contract and evidence of coverage shall contain a description of the HMO's method for resolving enrollee grievances, including procedures to be followed by the enrollee in the event any dispute arises under the contract, including any provisions for arbitration.

(11) Extension and conversion of coverage. A group contract, and evidence of coverage shall contain a conversion provision which provides each enrollee the right to a conversion policy and/or extend coverage to a contract as set forth in Chapter 22 of Title 31A, Part VII.

(12) Coordination of benefits. The group or individual contract and evidence of coverage may contain a provision for coordination of benefits that shall be consistent with that applicable to other carriers in the jurisdiction. Any provisions or rules for coordination of benefits established by an HMO shall not relieve an HMO of its duty to provide or arrange for a covered health care service to an enrollee because the enrollee is entitled to coverage under any other contract, policy or plan, including coverage provided under government programs.

(13) Description of the service area. The group or individual contract and evidence of coverage shall contain a description of the service area.

(14) Entire contract provision. The group or individual contract shall contain a statement that the contract, all applications and any amendments thereto shall constitute the entire agreement between the parties. No portion of the charter, bylaws or other document of the HMO shall be part of the contract unless set forth in full in the contract or attached to it. However, the evidence of coverage may be attached to and made a part of the group contract.

(15) Term of coverage. The group or individual contract and evidence of coverage shall contain the time and date or occurrence upon which coverage takes effect, including any applicable waiting periods, or describe how the time and date or occurrence upon which coverage takes effect is determined. The contract and evidence of coverage shall also contain the time and date or occurrence upon which coverage will terminate.

(16) Cancellation or termination. The group or individual contract and evidence of coverage shall contain the conditions upon which cancellation or termination may be effected by the HMO, the group contract holder or the subscriber.

(17) Renewal. The group or individual contract and evidence of coverage shall contain the conditions for, and any restrictions upon, the subscriber's right to renewal.

(18) Reinstatement of group or individual contract holder. If an HMO permits reinstatement of a group or individual, the contract and evidence of coverage shall include any terms and conditions concerning reinstatement. The contract and evidence of coverage may state that all reinstatements are at the option of the HMO and that the HMO is not obligated to reinstate any terminated contract.

(19) Conformity with State Law. A group or individual contract and evidence of coverage delivered or issued for delivery in this state shall include a provision that states that any provision not in conformity with Chapter 8 of Title 31A, this regulation or any other applicable law or regulation in this state shall not be rendered invalid but shall be construed and applied as if it were in full compliance with the applicable laws and regulations of this state.

(20) Definitions. All definitions used in the group or individual contract and evidence of coverage shall be in alphabetical order.

R590-76-6. Unfair Discrimination.

An HMO shall not unfairly discriminate against an enrollee or applicant for enrollment on the basis of the age, sex, race, color, creed, national origin, ancestry, religion, marital status or lawful occupation of an enrollee, or because of the frequency of utilization of services by an enrollee. An HMO shall not expel or refuse to re-enroll any enrollee nor refuse to enroll individual members of a group on the basis of an individual's or enrollee's health status or health care needs, except for a policy which contains a lifetime policy maximum and such maximum has been reached. However, nothing shall prohibit an HMO from setting rates, establishing a schedule of charges in accordance with actuarially sound and appropriate data, or appropriately applying policy provisions in compliance with the Utah Insurance Code.

R590-76-7. HMO Services.

(1) Access to Care.

(a) An HMO shall establish and maintain adequate arrangements to provide health services for its enrollees, including:

(i) reasonable proximity to the business or personal residences of the enrollees so as not to result in unreasonable barriers to accessibility;

(ii) reasonable hours of operation and after-hours services;

(iii) emergency care services available and accessible within the service area 24 hours a day, 7 days a week; and

(iv) sufficient providers, personnel, administrators and support staff to assure that all services contracted for will be accessible to enrollees on an appropriate basis without delays detrimental to the health of enrollees.

(b) If a primary care physician is required in order to obtain covered services, an HMO shall make available to each enrollee a primary care physician and provide accessibility to medically necessary specialists through staffing, contracting or referral.

(c) An HMO shall have written procedures governing the availability of services utilized by enrollees, including at least the following:

(i) well-patient examinations and immunizations;

(ii) treatment of emergencies;

(iii) treatment of minor illness; and

(iv) treatment of chronic illnesses.

(2) Basic health care services. An HMO shall provide, or arrange for the provision of, as a minimum, basic health care services, which shall include the following:

(a) emergency care services;

(b) inpatient hospital services, meaning medically necessary hospital services including:

(i) room and board;

(ii) general nursing care;

(iii) special diets when medically necessary;

(iv) use of operating room and related facilities;

(v) use of intensive care units and services;

(vi) x-ray, laboratory and other diagnostic tests;

(vii) drugs, medications, biologicals;

(viii) anesthesia and oxygen services;

(ix) special nursing when medically necessary;

(x) physical therapy, radiation therapy and inhalation therapy;

(xi) administration of whole blood and blood plasma; and

(xii) short-term rehabilitation services;

(c) inpatient physician care services, meaning medically necessary health care services performed, prescribed, or supervised by physicians or other providers including diagnostic, therapeutic, medical, surgical, preventive, referral and consultative health care services;

(d) Outpatient medical services, meaning preventive and medically necessary health care services provided in a physician's office, a non-hospital-based health care facility or at a hospital. Outpatient medical services shall include:

(i) diagnostic services;

(ii) treatment services;

(iii) laboratory services;

(iv) x-ray services;

(v) referral services;

(vi) physical therapy, radiation therapy and inhalation therapy; and

(vii) preventive health services, which shall include at least a range of services for the diagnosis of infertility, well-child care from birth, periodic health evaluations for adults, screening to determine the need for vision and hearing correction, and pediatric and adult immunizations in accordance with accepted medical practice;

(e) Coverage of inborn metabolic errors as required by 31A-22-623 and Rule R590-194, Coverage of Dietary Products for Inborn Errors of Amino Acid or Urea Cycle Metabolism, and benefits for diabetes as required by 31A-22-626 and Rule R590-200, Diabetes Treatment and Management.

(3) Out-of-area benefits and services. Other than emergency care, if the contract provides out-of-area services, they shall be subject to the same copayment, coinsurance, and deductible requirements set forth in R590-76-5(7).

(4)(a) An HMO may offer a contract or endorsement that provides incidental coverage.

(b) An incidental coverage contract or endorsement is exempt from the basic health care services and emergency care requirements set forth in this rule.

(c) An HMO offering an incidental benefit contract or endorsement may offer all of the basic health care services.

R590-76-8. Other HMO Requirements.

(1) Provider lists.

(a) An HMO shall provide its subscribers with a list of the names and locations of all of its providers no later than the time of enrollment or the time the group or individual contract and evidence of coverage are issued and upon reenrollment.

(b) Upon notification to an HMO that a provider is no longer affiliated, the HMO shall within 30 days:

(i) notify enrollees who are receiving ongoing care; and

(ii) update any applicable web site provider lists.

(c) Subject to the approval of the commissioner, an HMO may provide its subscribers with a list of providers or provider groups for a segment of the service area. However, a list of all providers shall be made available to subscribers upon request.

(d) Provider lists shall contain a notice regarding the availability of the listed primary care physicians. The notice shall be in not less than 12-point type and be placed in a prominent place on the list of providers. The notice shall contain the following or similar language:

"Enrolling in (name of HMO) does not guarantee services by a particular provider on this list. If you wish to receive care from specific providers listed, you should contact those providers to be sure that they are accepting additional patients for (name of HMO)."

(2) Description of the services area. An HMO shall provide its subscribers with a description of its service area no later than the time of enrollment or the time the group or individual contract and evidence of coverage are issued and upon request thereafter. If the description of the service area is changed, the HMO shall provide at such time a new description of the service area to its affected subscribers within 30 days.

(3) Copayments, coinsurance, and deductibles. An HMO may require copayments, coinsurance, or deductibles of enrollees as a condition for the receipt of health care services. Copayments, coinsurance, and deductibles shall be the only allowable charge, other than premiums, insurers may assess to subscribers, unless otherwise allowed by law.

(4) Grievance procedure. A grievance procedure in compliance with 31A-22-629 and Rule R590-203, Health Care Benefit Plans-Grievance and Voluntary Independent Review Procedures Rule, to resolve an adverse benefit determination, shall be established and maintained by an HMO to provide reasonable procedures for the prompt and effective resolution of written grievances.

(5) Provider contracts. All provider contracts must be on file and available for review by the commissioner and the director of the Utah Department of Health.

R590-76-9. Quality Assurance.

(1) Quality assurance plan.

(a) Each HMO shall develop a quality assurance plan. The plan shall be 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.

(b) Certification of quality assurance plan.

(i) A new HMO shall arrange and pay for a review and certification of its quality assurance plan no later than 18 months after receiving a Certificate of Authority and commencing operation.

(ii) An existing HMO shall arrange a pay for a review and certification of its quality assurance plan every three years unless required sooner by the certifying entity.

(iii) Reviews shall be conducted by the National Committee of Quality Assurance (NCQA), the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the American Accreditation HealthCare Commission (URAC), formerly known as the Utilization Review Accreditation Commission, Health Insight, or other entities as approved by the commissioner. Reviews conducted for the federal government shall satisfy these requirements if the requirements of this subsection are met.

(iv) Each HMO shall arrange for the directors to receive a copy of the review findings, recommendations, and certification, or notice of non-approval, of the quality assurance plan. This material shall be sent directly from the certifying entity to the directors. Certification status and review materials will be maintained as a protected record by the directors.

(v) Each HMO shall implement clinical and procedural requirements made by the certifying entity after the findings are received by the HMO.

(c) Each year on or before July 1, an HMO shall file to the directors a written report of the effectiveness of its internal quality control. The report must include a copy of the HMO's quality assurance plan.

(2) Quality assurance audits. The commissioner may audit an HMO's quality control system. Such audit shall be performed by qualified persons designated by the commissioner.

(a) The HMO shall comply with reasonable requests for information required for the audit and necessary to:

(i) measure health care outcomes according to established medical standards;

(ii) evaluate the process of providing or arranging for the provision of patient care;

(iii) evaluate the system the HMO uses to conduct concurrent reviews and preauthorized medical care;

(iv) evaluate the system the HMO uses to conduct retrospective reviews of medical care; and

(v) evaluate the accessibility and availability of medical care provided or arranged for by the HMO.

(b) Information furnished shall only be used in accordance with 31A-8-404.

(3) Internal peer review. The HMO shall show written evidence of continuing internal peer reviews of medical care given. The program must provide for review by physicians and other health professionals; have direct accountability to senior management; and have resources specifically budgeted for quality assessment, monitoring, and remediation.

R590-76-10. Reporting Requirements and Fee Payments.

Section 31A-3-103 and 31A-4-113 apply to organizations. Both types of entities shall submit their annual reports on the National Association of Insurance Commissioner's (NAIC) blanks that have been adopted for HMOs. In addition, all HMOs shall submit the information asked for in the annual statistical report required by the Utah Department of Health. The annual statement blank will be filed with the Insurance Department and the Utah Department of Health by March 1 each year.

R590-76-11. Financial Condition.

(1) Qualified assets. In determining the financial condition of any organization, only the following assets may be used:

(a) assets as determined to be admitted in the Accounting Practices and Procedures Manual published by the NAIC; and

(b) other assets, not inconsistent with the foregoing provisions, deemed by the commissioner available for the provision of health care, at values determined by him/her.

(2) Investments. Investments of organizations shall be consistent with Title 31A, Chapter 18.

(3) Liability insurance. Evidence of adequate general liability and professional liability insurance, or a plan for self-insurance approved by the commissioner, must be maintained by the organization. Organizations may only contract with providers of health services that have liability insurance.

R590-76-12. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: HMO insurance
December 23, 2019 31A-2-201
Notice of Continuation August 20, 2019

R590. Insurance, Administration.

R590-88. Prohibited Transactions Between Producers And Unauthorized Multiple Employer Trusts.

R590-88-1. Purpose and Authority.

It is the responsibility of the Utah State Insurance Department to assist with the maintenance of a fair and honest insurance market and to protect the residents of this state against acts by persons attempting to evade the insurance laws of the state. The insurance market is subject to regulation to prevent, among other things, unfair competition from persons and entities not authorized to conduct an insurance business.

This rule is issued pursuant to the authority vested in the commissioner under Sections 31A-2-201, and 31A-23a-402.

R590-88-2. Background.

In the State of Utah entities representing themselves as Multiple Employer Trusts (METs) under the Employee Retirement Income Security Act of 1974 (ERISA) are undertaking contractual obligations to provide life, accident and health, disability, or other related insurance-type benefits. In many cases these programs are not insured by an insurer licensed in the State of Utah. These programs and entities appear to be providing insurance benefits, although a MET may not refer to such benefits as "insurance."

METs are not licensed to provide insurance benefits under Section 31A-4-103. METs do not submit reports of financial condition to the Utah State Insurance Department or remit premium taxes on business written. Furthermore, most METs do not meet certain minimum capital and surplus requirements of the Utah insurance laws which are designed to provide protection against an insolvency. A MET may offer certain annuity or insurance-type benefits to persons because of their status as employees. These benefits include those common to the following types of insurance: medical, surgical, hospital, sickness, accident, disability, death, retirement income, income deferral.

METs are required to file annual reports with the United States Department of Labor. The annual report should state the extent to which a MET's annuity or insurance-type benefits are provided by an insurance carrier.

R590-88-3. Definitions.

(A) Multiple Employer Trust (MET) - An entity is herein referred to as a Multiple Employer Trust (MET) if that entity is providing insurance type benefits to employees of more than one employer, and that entity is not an insurance company authorized to do business in the state of Utah.

(B) Unauthorized Multiple Employer Trust - An entity purporting to be a Multiple Employer Trust (MET) is hereby defined as an Unauthorized Multiple Employer Trust if:

(1) The MET has not received an opinion letter from the United States Department of Labor recognizing the entity as a qualified trust under ERISA, or

(2) The benefits offered are not fully insured by an insurer licensed to do business in the State of Utah and no opinion letter recognizing the entity as a qualified ERISA plan has been issued from the U.S. Department of Labor.

(C) An unauthorized MET is defined to be an unauthorized insurer. Any claimed multiple employer trust which does not fulfill the requirements of a multiemployer plan as defined by ERISA, 29 U.S.C. 1001 et seq., as amended, is also defined to be an unauthorized MET and consequently an unauthorized insurer.

(D) All other definitions are the same as are provided in Chapter 1, Title 31A.

R590-88-4. Prohibited Transactions.

When the Insurance Department finds evidence that a person (as defined in Section 31A-1-301) is engaging, or has engaged, in one or more of the following practices, that person's actions will be treated as prima facie evidence that the person has shown himself to be incompetent, untrustworthy, and/or a source of injury to the public pursuant to Section 31A-23a-111. These practices are:

(A) Accepting commissions, salaries, or any other remuneration for placing business with or soliciting membership in an unauthorized MET, whether or not the arrangement involves a formal contract or is called a commission.

(B) Using the status or title as a licensed insurance producer in any way in connection with placement of business with an unauthorized MET. This shall include, but not be limited to:

(1) Using a producer's letterhead;

(2) Using a producer's office;

(3) Using customer lists or contracts developed as a producer; and

(4) Representing in any manner that the person placing this business is a licensed insurance producer.

R590-88-5. Sanctions.

Producers found to be engaging in, or to have engaged in, the prohibited transactions with unauthorized METs set forth under Section 4 of this rule are subject to one or more of the following sanctions:

(A) Revocation or suspension of the producer's license and/or the imposition of a fine pursuant to Section 31A-23a-111; and

(B) Recovery of any claims or losses pursuant to Section 31A-15-105; and

(C) Any other sanctions provided by law including those found in Section 31A-2-308.

R590-88-6. Inquiries.

In the event any person wishes to determine if a particular entity is a licensed insurer in the State of Utah, an inquiry should be made to the Insurance Department. Inquiries should be addressed as follows: Commissioner of Insurance, Utah State Insurance Department, State Office Building, 450 North State Street, Room 3110, Salt Lake City, Utah 84114, Attention: Producer Licensing Division. Inquiries may also be made by telephone to the Insurance Department at (801) 538-3800.

R590-88-7. Severability.

If any provision or clause of this rule or the application thereof to any person or situation is held invalid, such invalidity shall not affect any other provision or application of the 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 law

1989 **31A-2-101**

Notice of Continuation December 16, 2019 **31A-2-201**

31A-2-211

R590. Insurance, Administration.

R590-233. Health Benefit Plan Insurance Standards.

R590-233-1. Authority.

This rule is issued by the insurance commissioner pursuant to the following provisions of the Utah Insurance Code:

(1) Subsection 31A-2-201(3)(a) authorizes rules to implement the Insurance Code;

(2) Sections 31A-2-202 and 31A-23a-412 authorize the commissioner to request reports, conduct examinations, and inspect records of any licensee;

(3) Subsection 31A-22-605(4) requires the commissioner to adopt rules to establish standards for disclosure in the sale of, and benefits to be provided by individual and franchise accident and health polices;

(4) Section 31A-22-623 authorizes the commissioner to establish by rule minimum standards of coverage for dietary products for inborn metabolic errors;

(5) Section 31A-22-626 authorizes the commissioner to establish by rule minimum standards of coverage for diabetes for accident and health insurance;

(6) Subsection 31A-23a-402(8) authorizes the commissioner to define by rule acts and practices that are unfair and unreasonable; and

(7) Subsection 31A-26-301(1) authorizes the commissioner to set standards for timely payment of claims.

R590-233-2. Purpose and Scope.

(1) Purpose. The purpose of this rule is to provide reasonable standardization and simplification of terms and coverages of insurance policies in order to facilitate public understanding and comparison and to prohibit provisions which may be misleading or confusing in connection either with the purchase of such coverages or with the settlement of claims, and to provide for full disclosure in the sale of such insurance.

(2) Scope.

(a) Except as excluded under (b), this regulation applies to all individual and group health benefit plan policies, including policies issued to associations, trusts, discretionary groups, or other similar groupings.

(b) This rule shall not apply to employer group health benefit plans.

(c) This rule does not apply to a health benefit plan subject to R590-277, Managed Care Health Benefit Plan Policy Standards.

(3) The requirements contained in this regulation shall be in addition to any other applicable regulations previously adopted.

R590-233-3. Definitions.

In addition to the definitions of Sections 31A-1-301 and 31A-22-605(2), the following definitions shall apply for the purpose of this rule.

(1) "Accident," "accidental injury," and "accidental means" shall be defined to employ result language and shall not include words that establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.

(a) The definition shall not be more restrictive than the following: "injury" or "injuries" means accidental bodily injury sustained by the insured person that is the direct cause of the condition for which benefits are provided, independent of disease or bodily infirmity or any other cause and that occurs while the insurance is in force.

(b) Unless otherwise prohibited by law, the definition may exclude injuries for which benefits are paid under worker's compensation, any employer's liability or similar law, or a motor vehicle no-fault plan.

(2) "Certificate of Completion" shall mean a document issued by the Utah Board of Education to a person who completes an approved course of study not leading to a diploma, or to one who passes a challenge for that same course of study, or to one whose out-of-state credentials and certificate are acceptable to the Board.

(3) "Complications of Pregnancy" shall mean diseases or conditions the diagnoses of which are distinct from pregnancy but are adversely affected or caused by pregnancy and not associated with a normal pregnancy.

(a) "Complications of Pregnancy" include acute nephritis, nephrosis, cardiac decompensation, ectopic pregnancy which is terminated, a spontaneous termination of pregnancy when a viable birth is not possible, puerperal infection, eclampsia, pre-eclampsia and toxemia.

(b) This definition does not include false labor, occasional spotting, doctor prescribed rest during the period of pregnancy, morning sickness, and conditions of comparable severity associated with management of a difficult pregnancy.

(4) "Convalescent Nursing Home," "extended care facility," or "skilled nursing facility" shall mean a facility duly licensed and operating within the scope of such license.

(5) "Cosmetic Surgery" or "Reconstructive Surgery" shall mean any surgical procedure performed primarily to improve physical appearance.

(a) This definition does not include surgery, which is necessary:

(i) to correct damage caused by injury or sickness;

(ii) for reconstructive treatment following medically necessary surgery;

(iii) to provide or restore normal bodily function; or

(iv) to correct a congenital disorder that has resulted in a functional defect.

(b) This provision does not require coverage for preexisting conditions otherwise excluded.

(6) "Elimination Period" or "Waiting Period" means the length of time an insured shall wait before benefits are paid under the policy.

(7) "Enrollment Form" shall mean application as defined in Section 31A-1-301.

(8) "Experimental Treatment" is defined as medical treatment, services, supplies, medications, drugs, or other methods of therapy or medical practices, which are not accepted as a valid course of treatment by the Utah Medical Association, the U.S. Food and Drug Administration, the American Medical Association, or the Surgeon General.

(9) "Home Health Agency" shall mean a public agency or private organization, or subdivision of a health care facility, licensed and operating within the scope of such license.

(10) "Home Health Aide" shall mean a person who obtains a Certificate of Completion, as required by law, which allows performance of health care and other related services under the supervision of a registered nurse from the home health agency, or performance of simple procedures as an extension of physical, speech, or occupational therapy under the supervision of licensed therapists.

(11) "Home Health Care" shall mean services provided by a home health agency.

(12) "Homemaker/Home Health Aide" shall mean a person who has obtained a Certificate of Completion, as required by law, which allows performance of both homemaker and home health aide services, and who provides health care and other related services under the supervision of a registered nurse from the home health agency or under the supervision of licensed therapists.

(13) "Hospice" shall mean a program of care for the terminally ill and their families which occurs in a home or in a health care facility and which provides medical, palliative, psychological, spiritual, or supportive care and treatment and is licensed and operating within the scope of such license.

(14) "Hospital" means a facility that is licensed and

operating within the scope of such license. This definition may not preclude the requirement of medical necessity of hospital confinement or other treatment.

(15) "Intermediate Nursing Care" shall mean nursing services provided by, or under the supervision of, a registered nurse. Such care shall be for the purpose of treating the condition for which confinement is required.

(16) "Medical Necessity" means:

(a) health care services or products that a prudent health care professional would provide to a patient for the purpose of preventing, diagnosing or treating an illness, injury, disease or its symptoms in a manner that is:

(i) in accordance with generally accepted standards of medical practice in the United States;

(ii) clinically appropriate in terms of type, frequency, extent, site, and duration;

(iii) not primarily for the convenience of the patient, physician, or other health care provider; and

(iv) covered under the contract;

(b) when a medical question-of-fact exists medical necessity shall include the most appropriate available supply or level of service for the individual in question, considering potential benefits and harms to the individual, and known to be effective.

(i) For interventions not yet in widespread use, the effectiveness shall be based on scientific evidence.

(ii) For established interventions, the effectiveness shall be based on:

(A) scientific evidence;

(B) professional standards; and

(C) expert opinion.

(17) "Medicare" means the "Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended."

(18) "Medicare Supplement Policy" shall mean an individual, franchise, or group policy of accident and health insurance, other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act, 42 U.S.C. Section 1395 et seq., or an issued policy under a demonstration project specified in 41 U.S.C. Section 1395ss(g)(1), that is advertised, marketed, or primarily designed as a supplement to reimbursements under Medicare for hospital, medical, or surgical expenses of persons eligible for Medicare.

(19) "Mental or Nervous Disorders" may not be defined more restrictively than a definition including neurosis, psychoneurosis, psychosis, or any other mental or emotional disease or disorder which does not have a demonstrable organic cause.

(20) "Nurse" may be defined so that the description of nurse is restricted to a type of nurse, such as registered nurse, or licensed practical nurse. If the words "nurse" or "registered nurse" are used without specific instruction, then the use of such terms requires the insurer to recognize the services of any individual who qualifies under such terminology in accordance with applicable statutes or administrative rules.

(21) "Nurse, Licensed Practical" shall mean a person who is registered and licensed to practice as a practical nurse.

(22) "Nurse, Registered" shall mean any person who is registered and licensed to practice as a registered nurse.

(23) "Nursing Care" shall mean assistance provided for the health care needs of sick or disabled individuals, by or under the direction of licensed nursing personnel.

(24) "Physician" may be defined by including words such as qualified physician or licensed physician. The use of such terms requires an insurer to recognize and to accept, to the extent of its obligation under the contract, all providers of medical care and treatment when such services are within the scope of the provider's licensed authority and are provided pursuant to applicable laws.

(25) "Probationary Period" shall mean the period of time following the date of issuance or effective date of the policy before coverage begins for all or certain conditions.

(26)(a) "Scientific evidence" means:

(i) scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff; or

(ii) findings, studies or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes.

(b) Scientific evidence shall not include published peer-reviewed literature sponsored to a significant extent by a pharmaceutical manufacturing company or medical device manufacturer or a single study without other supportable studies.

(27) "Sickness" means illness, disease, or disorder of an insured person.

(28) "Skilled Nursing Care" shall mean nursing services provided by, or under the supervision of, a registered nurse. Such care shall be for the purpose of treating the condition for which the confinement is required and not for the purpose of providing intermediate or custodial care.

(29) "Therapist" may be defined as a professionally trained or duly licensed or registered person, such as a physical therapist, occupational therapist, or speech therapist, who is skilled in applying treatment techniques and procedures under the general direction of a physician.

(30)(a) "Total Disability" shall mean an individual who:

(i) is not engaged in employment or occupation for which he is or becomes qualified by reason of education, training or experience; and

(ii) is unable to perform all of the substantial and material duties of his or her regular occupation or words of similar import.

(b) An insurer may require care by a physician other than the insured or a member of the insured's immediate family.

(c) The definition may not exclude benefits based on the individual's:

(i) ability to engage in any employment or occupation for wage or profit;

(ii) inability to perform any occupation whatsoever, any occupational duty, or any and every duty of his occupation; or

(iii) inability to engage in any training or rehabilitation program.

(31)(a) "Usual and Customary" shall mean the most common charge for similar services, medicines or supplies within the area in which the charge is incurred.

(b) In determining whether a charge is usual and customary, insurers shall consider one or more of the following factors:

(i) the level of skill, extent of training, and experience required to perform the procedure or service;

(ii) the length of time required to perform the procedure or services as compared to the length of time required to perform other similar services;

(iii) the severity or nature of the illness or injury being treated;

(iv) the amount charged for the same or comparable services, medicines or supplies in the locality; the amount charged for the same or comparable services, medicines or supplies in other parts of the country;

(v) the cost to the provider of providing the service, medicine or supply; and

(vi) other factors determined by the insurer to be appropriate.

(32) "Waiting Period" shall mean "Elimination Period."

R590-233-4. Prohibited Policy Provisions.

(1) Probationary periods.

(a) A policy shall not contain provisions establishing a probationary period during which no coverage is provided under the policy except as provided in R590-233-4(1)(b), (c), and (d).

(b) A policy may specify a probationary period not to exceed twelve months for losses resulting from:

(i) amenorrhea;

(ii) cataracts;

(iii) congenital deformities, unless coverage is required pursuant to Subsection 31A-22-610(2);

(iv) cystocele;

(v) dysmenorrhea;

(vi) enterocele;

(vii) infertility;

(viii) rectocele;

(ix) seasonal allergies, limited to testing and treatment;

(x) sleep disorders, including sleep studies;

(xi) surgical treatment for;

(A) adenoidectony,

(B) bunionectomy,

(C) carpal tunnel,

(D) hysterectomy, except in cases of malignancy,

(E) joint replacement,

(F) reduction mammoplasty,

(G) Morton's neuroma,

(H) myringotomy and tympanotomy, with or without tubes inserted,

(I) nasal septal repair, except for injuries after the effective date of coverage,

(J) retained hardware removal,

(K) sterilization, and

(L) tonsillectomy;

(xii) urethrocele;

(xiii) uterine prolapse; and

(xiv) varicose veins.

(c) Coverage must be provided for conditions and procedures prohibited in Subsection (1)(b) for emergency medical conditions in compliance with Section 31A-22-627.

(d) The probationary period must be reduced by the number of days of creditable coverage the enrollee has as of the enrollment date, in accordance with Subsection 31A-22-605.1(4)(b).

(2) Preexisting conditions provisions shall comply with Sections 31A-1-301, and 31A-22-605.1.

(3) Limitations or exclusions. A policy shall not limit or exclude coverage or benefits by type of illness, accident, treatment or medical condition, except as follows:

(a) abortion;

(b) acupuncture and acupressure services;

(c) administrative charges for completing insurance forms, duplication services, interest, finance charges, or other administrative charges, unless otherwise required by law;

(d) administrative exams and services;

(e) alcoholism and drug addictions;

(f) allergy tests and treatments;

(g) aviation;

(h) axillary hyperhidrosis;

(i) benefits provided under:

(i) Medicare or other governmental program, except Medicaid;

(ii) state or federal worker's compensation; or

(iii) employer's liability or occupational disease law.

(j) cardiopulmonary fitness training, exercise equipment, and membership fees to a spa or health club;

(k) charges for appointments scheduled and not kept;

(l) chiropractic;

(m) complementary and alternative medicine;

(n) corrective lenses, and examination for the prescription or fitting thereof, but policies may not exclude required lens implants following cataract surgery;

(o) cosmetic surgery; reversal, revision, repair, complications, or treatment related to a non-covered cosmetic surgery. This exclusions does not apply to reconstructive surgery when the service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part; or reconstructive surgery because of congenital disease or anomaly of a covered dependent child that has resulted in a functional defect;

(p) custodial care;

(q) dental care or treatment;

(r) dietary products, except as required by Rule R590-194;

(s) educational and nutritional training, except as required by Rule R590-200;

(t) experimental and/or investigational services;

(u) felony, riot or insurrection, when the insured is a voluntary participant;

(v) foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain or symptomatic complaints of the feet, including orthotics. The exclusion of routine foot care does not apply to cutting or removal of corns, calluses, or nails when provided to a person who has a systemic disease, such as diabetes with peripheral neuropathy or circulatory insufficiency, of such severity that unskilled performance of the procedure would be hazardous;

(w) gastric or intestinal bypass services including lap banding, gastric stapling, and other similar procedures to facilitate weight loss; the reversal, or revision of such procedures; or services required for the treatment of complications from such procedures;

(x) gene therapy;

(y) genetic testing;

(z) hearing aids, and examination for the prescription or fitting thereof;

(aa) illegal activities, limited to losses related directly to the insured's voluntary participation;

(bb) infertility services, except as required by Rule R590-76;

(cc) interscholastic sports, with respect to short-term nonrenewable policies;

(dd) mental or emotional disorders;

(ee) motor vehicle no-fault law, except when the covered person is required by law to have no-fault coverage, the exclusion applies to charges up to the minimum coverage required by law whether or not such coverage is in effect;

(ff) nuclear release;

(gg) preexisting conditions or diseases as allowed under Section 31A-22-605.1, except for coverage of congenital anomalies as required by Section 31A-22-610;

(hh) pregnancy, except for complications of pregnancy;

(ii) refractive eye surgery;

(jj) rehabilitation therapy services, such as physical, speech, and occupational, unless required to correct an impairment caused by a covered accident or illness;

(kk) respite care;

(ll) rest cures;

(mm) routine physical examinations;

(nn) service in the armed forces or units' auxiliary to it;

(oo) services rendered by employees of hospitals, laboratories or other institutions;

(pp) services performed by a member of the covered person's immediate family;

(qq) services for which no charge is normally made in the absence of insurance;

(rr) sexual dysfunction;

(ss) shipping and handling, unless otherwise required by law;

(tt) suicide, sane or insane, attempted suicide, or

intentionally self-inflicted injury;

(uu) telephone/electronic consultations;

(vv) territorial limitations outside the United States;

(ww) terrorism, including acts of terrorism;

(xx) transplants;

(yy) transportation;

(zz) treatment provided in a government hospital, except for hospital indemnity policies;

(aaa) war or act of war, whether declared or undeclared; or

(bbb) others as may be approved by the commissioner.

(4) Waivers. All waivers issued must comply with 31A-30-107.5. Where waivers are required as a condition of issuance, renewal or reinstatement, signed acceptance by the insured is required.

(5) Commissioner authority. Policy provisions precluded in this section shall not be construed as a limitation on the authority of the commissioner to prohibit other policy provisions that in the opinion of the commissioner are unjust, unfair or unfairly discriminatory to the policyholder, beneficiary or a person insured under the policy.

R590-233-5. General Requirements.

(1) Policy definitions. No policy subject to this rule may contain definitions respecting the matters defined in Section R590-233-3 unless such definitions comply with the requirements of that section.

(2) Rights of spouse. The following provisions apply to policies that provide coverage to a spouse of the insured:

(a) A policy may not provide for termination of coverage of the spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than for nonpayment of premium.

(b) A policy shall provide that in the event of the insured's death the spouse of the insured shall become the insured.

(3) Cancellation, Renewability, and Termination. Policy cancellation, renewability and termination provisions must comply with Sections 31A-8-402.3, 31A-8-402.5, 31A-8-402.7, 31A-22-721 and 31A-30-107, 107.1 and 107.3.

(4) Termination of the policy shall be without prejudice to a continuous loss that commenced while the policy or certificate was in force. The continuous total disability of the insured may be a condition for the extension of benefits beyond the period the policy was in force, limited to the duration of the benefit period, if any, or payment of the maximum benefits.

(5) Military service. If a policy contains a status-type military service exclusion or a provision that suspends coverage during military service, the policy shall provide, upon receipt of written request, for refund of premiums as applicable to the person on a pro rata basis.

(6) Pregnancy benefit extension. In the event the insurer cancels or refuses to renew a policy providing pregnancy benefits, the policy shall provide an extension of benefits for a pregnancy commencing while the policy is in force and for which benefits would have been payable had the policy remained in force. This requirement does not apply to a policy that is canceled for the following reasons:

(a) the insured fails to pay the required premiums in accordance with the terms of the plan; or

(b) the insured person performs an act or practice that constitutes fraud in connection with the coverage or makes an intentional misrepresentation of material fact under the terms of the coverage.

(7) Transplant donor coverage. A policy providing coverage for the recipient in a transplant operation shall also provide reimbursement of any medical expenses of a live donor to the extent that benefits remain and are available under the recipient's policy or certificate, after benefits for the recipient's own expenses have been paid.

(8) Notice of premium change. A notice of change in premium shall be given no fewer than 45 days before the renewal date.

R590-233-6. Required Provisions.

(1) Applications.

(a) Questions used to elicit health condition information may not be vague and must reference a reasonable time frame in relation to the health condition.

(b) Completed applications shall be made part of the policy. A copy of the completed application shall be provided to the applicant prior to or upon delivery of the policy.

(c) Application forms shall provide a statement regarding the pre-existing waiting period and the requirements to receive any applicable credit for previous coverage.

(d) An application form shall include a question designed to elicit information as to whether the insurance to be issued is intended to replace any other accident and health insurance presently in force. A supplementary application or other form to be signed by the applicant containing the question may be used.

(2) Renewal and nonrenewal provisions. Accident and health insurance shall include a renewal, continuation or nonrenewal provision. The provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed.

(3) Endorsement acceptance.

(a) Except for endorsements by which the insurer effectuates a request made in writing by the policyholder or exercises a specifically reserved right under the policy, all endorsements added to a policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the policyholder.

(b) After the date of policy issue, any endorsement that increases benefits or coverage with a concurrent increase in premium during the policy term, must be agreed to in writing signed by the policyholder, except if the increased benefits or coverage is required by law.

(4) Additional premium. Where a separate additional premium is charged for benefits provided in connection with endorsements, the premium charge shall be set forth in the policy or certificate.

(5) Benefit payment standard. A policy or certificate that provides for the payment of benefits based on standards described as usual and customary, reasonable and customary, or words of similar import shall include a definition of the terms and an explanation of the terms in its accompanying outline of coverage.

(6) Preexisting conditions. If a policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and be labeled as "Preexisting Condition Limitations."

(7) Conversion privilege. If a policy or certificate contains a conversion privilege, it shall comply, in substance, with the following: The caption of the provision shall read "Conversion Privilege" or words of similar import. The provision shall indicate the persons eligible for conversion, the circumstances applicable to the conversion privilege, including any limitations on the conversion, and the person by whom the conversion privilege may be exercised. The provision shall specify the benefits to be provided on conversion or may state that the converted coverage will be as provided on a policy form then being used by the insurer for that purpose.

R590-233-7. Accident and Health Standards for Benefits.

The following standards for benefits are prescribed for the

categories of coverage noted in the following subsections. An accident and health insurance policy or certificate subject to this rule shall not be delivered or issued for delivery unless it meets the required standards for the specified categories. This section shall not preclude the issuance of any policy or contract combining two or more categories set forth in Subsection 31A-22-605(5).

Benefits for coverages listed in this section shall include coverage of inborn metabolic errors as required by Sections 31A-22-623 and Rule R590-194, and benefits for diabetes as required by Sections 31A-22-626 and Rule R590-200, if applicable.

(1) Major Medical Expense Coverage.

Major medical expense coverage is a policy of accident and health insurance that provides hospital, medical and surgical expense coverage.

(a) An aggregate maximum of not less than $1,000,000 may be applied and include any combination of the following:

(i) coinsurance percentage, paid by the covered person, not to exceed 50% of covered charges per covered person per year;

(ii) coinsurance out-of-pocket maximum after any deductibles not to exceed $20,000 per covered person per year; or

(iii) deductibles stated on per person, per family, per illness, per benefit period, or per year basis.

(b) A combination of the bases provided under Subsections(1)(a)(i), (ii), and (iii) may not exceed 5% of the aggregate maximum limit under the policy for each covered person.

(c) The following services must be provided:

(i) daily hospital room and board expenses subject only to limitations based on average daily cost of the semiprivate room rate in the area where the insured resides;

(ii) miscellaneous hospital services;

(iii) surgical services;

(iv) anesthesia services;

(v) in-hospital medical services;

(vi) out-of-hospital care, consisting of physician services rendered on an ambulatory basis where coverage is not provided elsewhere in the policy for diagnosis and treatment of sickness or injury, diagnostic x-ray, laboratory services, radiation therapy, and hemodialysis ordered by a physician; and

(vii) at least three of the following additional benefits must also be provided:

(A) in-hospital private duty registered nurse services;

(B) convalescent nursing home care;

(C) diagnosis and treatment by a radiologist or physiotherapist;

(D) rental of special medical equipment, as defined by the insurer in the policy;

(E) artificial limbs or eyes, casts, splints, trusses or braces;

(F) treatment for functional nervous disorders, and mental and emotional disorders; or

(G) out-of-hospital prescription drugs and medications.

(d) All required benefits may be subject to all applicable deductibles, coinsurance and general policy exceptions and limitations.

(e) A major medical expense policy may also have special or internal limitations for those services covered under Subsection (1)(c).

(f) Except as authorized by this subsection through the application of special or internal limitations, a major medical expense policy must be designed to cover, after any deductibles or coinsurance provisions are met, the usual, customary and reasonable charges, as determined consistently by the carrier and as subject to approval by the commissioner, or another rate agreed to between the insurer and provider, for covered services up to the lifetime policy maximum.

(2) Basic Medical Expense Coverage.

Basic medical expense coverage is a policy of accident and health insurance that provides hospital, medical and surgical expense coverage.

(a) An aggregate maximum of not less than $500,000 may be applied, and may include any combination of the following:

(i) coinsurance percentage, paid by the covered person, not to exceed 50% of covered charges per covered person per year;

(ii) coinsurance out-of-pocket maximum after any deductibles, not to exceed $25,000 per covered person per year; or

(iii) deductibles stated on per person, per family, per illness, per benefit period, or per year basis.

(b) A combination of the bases provided in Subsections (2)(a)(i), (ii) and (iii) may not exceed 10% of the aggregate maximum limit under the policy.

(c) The following services must be covered:

(i) daily hospital room and board expenses subject only to limitations based on average daily cost of the semiprivate room rate in the area where the insured resides or such other rate agreed to between the insurer and provider for a period of not less than 31 days during continuous hospital confinement;

(ii) miscellaneous hospital services;

(iii) surgical services;

(iv) anesthesia services;

(v) in-hospital medical services;

(vi) out-of-hospital care, consisting of physicians' services rendered on an ambulatory basis where coverage is not provided elsewhere in the policy for diagnosis and treatment of sickness or injury, diagnostic x-ray, laboratory services, radiation therapy and hemodialysis ordered by a physician; and

(vii) three of the following additional benefits must also be provided:

(A) in-hospital private duty registered nurse services;

(B) convalescent nursing home care;

(C) diagnosis and treatment by a radiologist or physiotherapist;

(D) rental of special medical equipment, as defined by the insurer in the policy;

(E) artificial limbs or eyes, casts, splints, trusses or braces;

(F) treatment for functional nervous disorders, and mental and emotional disorders; or

(G) out-of-hospital prescription drugs and medications.

(d) If the policy is written to complement underlying basic hospital expense coverage and basic medical-surgical expense coverage, the deductible may be increased by the amount of the benefits provided by the underlying basic coverage.

(e) The benefits required by Subsection (2) may be subject to all applicable deductibles, coinsurance and general policy exceptions and limitations.

(f) Basic medical expense policies may also have special or internal limitations for prescription drugs, nursing facilities, intensive care facilities, mental health treatment, alcohol or substance abuse treatment, transplants, experimental treatments, mandated benefits required by law and those services covered under Subsection (2)(c) and other such special or internal limitations as are authorized or approved by the commissioner.

(g) Except as authorized by this subsection through the application of special or internal limitations, basic medical expense policies must be designed to cover, after any deductibles or coinsurance provisions are met, the usual customary and reasonable charges, as determined consistently by the carrier and as subject to approval by the commissioner, or another rate agreed to between the insurer and provider, for covered services up to the lifetime policy maximum.

(3) Catastrophic Coverage.

Catastrophic coverage is a policy of accident and health insurance that:

(a) provides benefits for medical expenses incurred by the insured to an aggregate maximum of not less than $1,000,000;

(b) contains no separate internal dollar limits;

(c) may be subject to a policy deductible which does not exceed the greater of 2% of the policy limit or the amount of other in-force accident and health insurance coverage for the same medical expenses; and

(d) contains no percentage participation or coinsurance clause for expenses which exceed the deductible.

R590-233-8. Outline of Coverage Requirements.

(1) Major Medical Expense Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Rule R590-233-7(1). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE I

(COMPANY NAME)

MAJOR MEDICAL EXPENSE COVERAGE

OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully - This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY)(CERTIFICATE) CAREFULLY!
Major medical expense coverage is designed to provide, to persons insured, comprehensive coverage for major hospital, medical, and surgical expenses incurred as a result of a covered accident or sickness. Coverage is provided for daily hospital room and board, miscellaneous hospital services, surgical services, anesthesia services, in-hospital medical services, and out-of-hospital care, subject to any deductibles, copayment provisions, or other limitations that may be set forth in the policy.
A brief specific description of the benefits, including dollar amounts, contained in this policy, in the following order:
daily hospital room and board;
miscellaneous hospital services;
surgical services;
anesthesia services;
in-hospital medical services;
out-of-hospital care;maximum dollar amount for covered charges; and
other benefits, if any.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

(2) Basic Medical Expense Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-233-7(2). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE II

(COMPANY NAME)

BASIC MEDICAL EXPENSE COVERAGE

THIS (POLICY)(CERTIFICATE) PROVIDES LIMITED BENEFITS

OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY)(CERTIFICATE) CAREFULLY!
Basic medical expense coverage is designed to provide, to persons insured, limited coverage for major hospital, medical, and surgical expenses incurred as a result of a covered accident or sickness. Coverage is provided for daily hospital room and board, miscellaneous hospital services, surgical services, anesthesia services, in-hospital medical services, and out-of-hospital care, subject to any deductibles, copayment provisions, or other limitations that may be set forth in the policy.
A brief specific description of the benefits, including dollar amounts, contained in this policy, in the following order:
daily hospital room and board;
miscellaneous hospital services;
surgical services;
anesthesia services;
in-hospital medical services;
out-of-hospital care;
maximum dollar amount for covered charges; and
other benefits, if any.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

(3) Catastrophic Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-233-7(3). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE III

(COMPANY NAME)

CATASTROPHIC COVERAGE

OUTLINE OF COVERAGE
Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!
Catastrophic coverage is designed to provide benefits for medical expenses incurred by the insured. Coverage is provided for daily hospital room and board, miscellaneous hospital services, surgical services, anesthesia services, in-hospital medical services, and out-of-hospital care, subject to any deductibles with no separate internal dollar limits.
A brief specific description of the benefits, including dollar amounts, contained in this policy, in the following order:
daily hospital room and board;
miscellaneous hospital services;
surgical services;
anesthesia services;
in-hospital medical services;
out-of-hospital care; and
other benefits, if any.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

(4) An insurer shall deliver an outline of coverage to an applicant or enrollee prior to upon the sale of an individual accident and health insurance policy as required in this rule.

(5) If an outline of coverage was delivered at the time of application or enrollment and the policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate must accompany the policy or certificate when it is delivered and contain the following statement in no less than 12-point type, immediately above the company name:

"NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application, and the coverage originally applied for has not been issued."

(6) Where the prescribed outline of coverage is inappropriate for the coverage provided by the policy or certificate, an alternate outline of coverage shall be submitted to the commissioner for prior approval.

(7) Advertisements may fulfill the requirements for outlines of coverage if they satisfy the standards specified for outlines of coverage in this rule.

R590-233-9. Replacement of Accident and Health Insurance Requirements.

(1) Upon determining that a sale will involve replacement, an insurer, other than a direct response insurer, or its producer, shall furnish the applicant, prior to issuance or delivery of the policy, the notice described in Subsection (2). The insurer shall retain a copy of the notice. A direct response insurer shall deliver to the applicant, upon issuance of the policy, the notice described in Subsection (3).

(2) The notice required by Subsection (1) for an insurer, other than a direct response insurer, shall provide, in substantially the following form:

TABLE IV

NOTICE TO APPLICANT REGARDING REPLACEMENT
OF ACCIDENT AND HEALTH INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and health insurance and replace it with a policy to be issued by (insert company name) Insurance Company. For your own information and protection, you should be aware of and seriously consider certain factors that may affect the insurance protection available to you under the new policy.
Health conditions which you may presently have, (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.
You may wish to secure the advice of your present insurer or its producer regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.
If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical/health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force.
After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.
The above "Notice to Applicant" was delivered to me on:
....
(Date)
....

(Applicant's Signature)

(3) The notice required by Subsection (1) for a direct response insurer shall be as follows:

TABLE V
NOTICE TO APPLICANT REGARDING REPLACEMENT
OF ACCIDENT AND HEALTH INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and health insurance and replace it with the policy delivered herewith issued by (insert company name) Insurance Company. Your new policy provides 30 days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors that may affect the insurance protection available to you under the new policy.
Health conditions that you may presently have, (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.
You may wish to secure the advice of your present insurer or its producer regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.
(To be included only if the application is attached to the policy).
If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (insert company name and address) within ten days if any information is not correct and complete, or if any past medical history has been left out of the application.
COMPANY NAME

R590-233-10. Existing Contracts.

Contracts issued prior to the effective date of this rule must be amended to comply with the revised provisions on the first policy anniversary following the effective date of this rule.

R590-233-11. Enforcement Date.

The commissioner will begin enforcing this rule January 1, 2006.

R590-233-12. Severability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.

KEY: health insurance
December 23, 2019
Notice of Continuation December 4, 2015

31A-2-201
31A-2-202
31A-22-605
31A-22-623
31A-22-626
31A-23a-402
31A-23a-412
31A-26-301

R590. Insurance, Administration.
R590-267. Personal Injury Protection Relative Value Study Rule.
R590-267-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-2-201(3) and 31A-22-307(2).

R590-267-2. Purpose.

(1) The purpose of this rule is to establish a reasonable value of services and accommodations for the diagnosis, care, recovery, or rehabilitation of an injured person under automobile personal injury protection coverage as described in Subsection 31A-22-307(1)(a).

(2) As required by Subsection 31A-22-307(2), the reasonable value is based on the 75th percentile of medical, dental, and chiropractic charges, as they presently exist in the most populous county in this State.

R590-267-3. Scope.

This rule applies to services and accommodations provided:

(1) under automobile personal injury protection coverage as described in Subsection 31A-22-307(1)(a); and

(2) on or after January 1, 2014.

R590-267-4. Definitions.

(1) As used in this rule "Conversion Factor" means a multiplier used to convert the relative value unit or units of a service or a procedure to a reimbursement rate.

(2) As used in this rule "RVD 2019" means 2019 Edition of the Relative Values for Dentists published by Optum360, 2525 Lake Park Blvd., Salt Lake City, UT 84120; phone: (800) 464-3649; website: www.optum360coding.com.

(3) As used in this rule "RVD 2017" means 2017 Edition of the Relative Values for Dentists published by Optum360, 2525 Lake Park Blvd., Salt Lake City, UT 84120; phone: (800) 464-3649; website: www.optum360coding.com.

(4) As used in this rule "RVP 2019" means 2019 Edition of the Relative Values for Physicians published by Optum360, 2525 Lake Park Blvd., Salt Lake City, UT 84120; phone: (800) 464-3649; website: www.optum360coding.com.

(5) As used in this rule "RVP 2017" means 2017 Edition of the Relative Values for Physicians published by Optum 360, 2525 Lake Park Blvd., Salt Lake City, UT 84120; phone: (800) 464-3649; website: www.optum360coding.com.

(6) As used in this rule "Relative Value Unit" means a numerical value assigned to a medical or dental procedure as published in RVP and RVD respectively.

(7) The publications identified in Subsections R590-267-4(2), (3), (4), and (5) are hereby incorporated by reference within this rule.

R590-267-5. Conversion Factors.

(1)(a) The following conversion factors shall be used with RVP 2019 to determine the reasonable value of medical services or accommodations provided on or after January 1, 2020:

(i) anesthesia, 108.00;
(ii) surgery, 225.88;
(iii) radiology, 35.60;
(iv) pathology, 24.29;
(v) medicine, 12.80;
(vi) evaluation and management, 14.74.

(b) The conversion factor used with RVD 2019 to determine the reasonable value of dental services or accommodations provided on or after January 1, 2020 shall be 66.67.

(2)(a) The following conversion factors shall be used with RVP 2017 to determine the reasonable value of medical services or accommodations provided from January 1, 2018 through December 31, 2019:

(i) anesthesia, 99.27;
(ii) surgery, 225.90;
(iii) radiology, 37.50;
(iv) pathology, 25.00;
(v) medicine, 13.00;
(vi) evaluation and management, 14.65.

(b) The conversion factor used with RVD 2017 to determine the reasonable value of dental services or accommodations provided from January 1, 2018 through December 31, 2019 shall be 63.00.

R590-267-6. Fee Schedule.

The reasonable value of any service or accommodation shall be calculated by multiplying the relative value unit assigned to the service or accommodation by the applicable conversion factor prescribed in R590-267-5.

R590-267-7. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-267-8. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: relative value study
January 1, 2020 31A-2-201(3)
Notice of Continuation October 24, 2018 31A-22-307(2)

R590. Insurance, Administration.
R590-283. Defrayal of State-Required Benefits.
R590-283-1. Authority.

This rule is promulgated by the commissioner pursuant to Subsections 31A-2-201(3)(a) and 31A-30-118(4).

R590-283-2. Purpose and Scope.

(1) The purpose of this rule is to establish the method and timing of defraying the cost of a state-required benefit enacted on or after January 1, 2012 that is subject to 45 CFR 155.170 of the Patient Protection and Affordable Care Act.

(2) This rule applies to any health benefit plan that:

(a) is a qualified health plan;

(b) is offered on the exchange in the individual or small group market;

(c) has an effective date of coverage on or after January 1, 2020; and

(d) offers a state-required benefit in excess of the Utah Essential Health Benefits Package.

(3) A health benefit plan offering a state-required benefit that is offered exclusively off-exchange is not eligible for defrayal of state mandated benefits.

R590-283-3. Definitions.

For the purposes of this rule, the commissioner adopts the definitions of Sections 31A-1-301, 31A-30-103, and Rule R590-266, and the following definitions:

(1) "EHB" means essential health benefits.

(2) "Exchange" means the federal exchange, www.healthcare.gov, that makes qualified health plans available to qualified individuals or employers.

(3) "Qualified health plan" means a qualified health plan as defined in 45 CFR 155.20.

(4) "State-required benefit" means a benefit required by the state on or after January 1, 2012, other than for purposes of compliance with federal requirements, that is in excess of the Utah Essential Health Benefits Package.

R590-283-4. Unified Rate Review Template (URRT), Rate Data Template (RDT), and Plans and Benefits Template (PBT) Modifications.

A carrier who is eligible to receive defrayal for a state-required benefit shall modify the federal rate filing template as follows:

(1) a carrier shall exclude the amount the state will defray from the rates submitted on both the URRT, as well as the RDT;

(2) a carrier shall indicate in the rate filing's actuarial memorandum:

(a) whether or not the carrier anticipates a defrayal from the state for the cost of an eligible state-required benefit;

(b) that the cost of the state-required benefit is not included in the premiums; and

(c) detail regarding the amount the carrier expects to receive from the state for defrayal of the state-required benefit.

(3) a carrier shall not factor the state-required benefits into the calculation for the "EHB Percent of Total Premium" field on the PBT, a carrier should treat the state-required benefit as if it does not exist for purposes of this field, so that the state-required benefits are excluded from the total premium from which the EHB percent of premium is calculated; and

(4) a carrier shall indicate in the "Benefits Information" field on the PBT that they cover the state-required benefits, marking the state-required benefit as "Not EHB" as the "EHB Variance Reason."

R590-283-5. Defrayal of State-Required Benefits.

(1) A carrier seeking a state-required benefit defrayal shall, on or before April 30th of each year, starting on April 30, 2021, submit to the commissioner a request that includes the following information:

(a) the state-required benefit for which defrayal is sought;

(b) the count of individuals who received services for the state-required benefit during the preceding calendar year; and

(c) the amount incurred and paid by the carrier for the state-required benefit during the preceding calendar year.

(2)(a) The defrayal payments shall be based on an aggregate of the data received under Subsection (1) from all carriers.

(b) The defrayal payment to a carrier is calculated based on the sum of the total defrayable costs incurred across all carriers divided by the sum of the total count of individuals receiving defrayable services across all carriers. The result will be multiplied by the sum of the count of individuals receiving defrayable services for each carrier.

(3) Requests shall be submitted via the System for Electronic Rate and Form Filings, SERFF.

(4) State-required defrayal payments are paid in arrears for the prior calendar year.

(5) If legislative funding is less than the total amount of requested defrayals, all defrayal payments will be prorated. A carrier may include an adjustment to the next pricing year's rates to account for a legislative funding deficit. Any adjustment shall be clearly delineated in the actuarial memorandum.

R590-283-6. Reporting.

(1) This rule incorporates by reference the Utah Health Information Network's, UHIN, "Adaptive Behavior Services / Applied Behavior Analysis (ABA) Billing Standard" version 3.1. The standard is available on the Department's website at https://insurance.utah.gov or on UHIN's website at https://uhin.org.

(2) A carrier shall use the UHIN "Adaptive Behavior Services / Applied Behavior Analysis (ABA) Billing Standard" version 3.1 to identify and report claims subject to defrayal under R590-283-5(1)(c) and this section.

(3) For the commissioner to project defrayal costs, a carrier anticipating a defrayal payment shall submit to the commissioner:

(a) on or before April 15th of each year, starting on April 15, 2020:

(i) the state-required benefit for which defrayal is sought;

(ii) the count of individuals who received services for the state-required benefit during the current calendar year; and

(iii) the amount incurred and paid by the carrier for the state-required benefit during the current calendar year.

(b) on or before November 15th of each year, starting on November 15, 2020:

(i) the state-required benefit for which defrayal is sought;

(ii) the count of individuals who received services for the state-required benefit during the current calendar year; and

(iii) the amount incurred and paid by the carrier for the state-required benefit during the current calendar year.

(c) Reports shall be submitted via the System for Electronic Rate and Form Filings, SERFF.

R590-283-7. Claims Auditing.

The commissioner may audit:

(1) a carrier's claims that are subject to defrayal; and

(2) a carrier's process for determining which claims are subject to defrayal.

R590-283-8. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-283-9. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule for applicable policies issued or renewed on or after

January 1, 2020.

R590-283-10. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance
December 23, 2019 31A-30-118(4)

R592. Insurance, Title and Escrow Commission.
R592-11. Title Insurance Producer Annual Reports.
R592-11-1. Authority.

This rule is promulgated pursuant to:

(1) Section 31A-2-404(2)(a), which requires the Title and Escrow Commission to make rules related to title insurance;

(2) Section 31A-23a-413, which requires certain title insurance producers to file an annual report; and

(3) Subsection 31A-23a-406(1)(g), which requires the maintenance of a physical address in Utah.

R592-11-2. Purpose.

This rule establishes the requirements of and filing deadline for the Title Insurance Producer Annual Report required by Section 31A-23a-413.

R592-11-3. Title Insurance Producer Annual Report.

(1) The following shall file a Title Insurance Producer Annual Report not later than April 30 of each year:

(a) an agency title insurance producer; and

(b) an individual title insurance producer who is not an employee of a title insurer or who has not been designated to an agency title insurance producer.

(2) A Title Insurance Producer Annual Report shall include:

(a) the number and location of each title or escrow trust account;

(b) proof of financial protection required by Subsection 31A-23a-204(2):

(i) a copy of the declarations page of a fidelity bond;

(ii) a copy of the declarations page of a professional liability insurance policy; or

(iii) a copy of the commissioner's approval of equivalent financial protection approved by the commissioner;

(c) the name of the individual title insurance producer designated as the "qualifying licensee," as provided in 31A-23a-204;

(d) the physical address in Utah maintained by the agency title insurance producer or individual title insurance producer, pursuant to 31A-23a-406(1)(g); and

(e) the physical address of each Utah branch office maintained by the agency title insurance producer or individual title insurance producer.

(3) A title insurance producer may comply with Subsection R592-11-3 by completing and submitting the Title Insurance Producer Annual Report Form that is available on the department's website.

R592-11-4. Electronic Filing of Title Insurance Producer Annual Report.

The Title Insurance Producer Annual Report shall be submitted electronically using the Insurance Department's secure file upload site located at https://forms.uid.utah.gov/insurance/fileUploads/.

R592-11-5. Enforcement Date.

The commissioner will begin enforcing this rule on its effective date.

R592-11-6. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: title insurance
December 23, 2019 **31A-2-404(2)(a)**
Notice of Continuation June 15, 2016 **31A-23a-406(1)(g)**
31A-23a-413
31A-23a-503(8)

R612. Labor Commission, Industrial Accidents.
R612-300. Workers' Compensation Rules - Medical Care.
R612-300-1. Purpose, Scope and Definitions.

A. Purpose and scope. Pursuant to authority granted the Utah Labor Commission under Subsection 34A-2-407(9) and Subsection 34A-2-407.5(1) of the Utah Workers' Compensation Act, these rules establish:

1. Reasonable fees for medical care necessary to treat workplace injuries;

2. Standards for disclosure of medical records;

3. Reporting requirements; and

4. Treatment protocols and quality care guidelines.

B. Definitions. The following definitions apply within Rule R612-300:

1. "Health care provider" is defined by Subsection 34A-2-111(1)(a) as "a person who furnishes treatment or care to persons who have suffered bodily injury" and includes hospitals, clinics, emergency care centers, physicians, nurses and nurse practitioners, physician's assistants, paramedics and emergency medical technicians.

2. "Injured worker" is an individual claiming workers' compensation medical benefits for a work-related injury or disease.

3. "Payor" is the entity responsible for payment of an injured worker's medical expenses';

4. "Physician" is defined by Subsection 34A-2-111(1)(b) to include any licensed podiatrist, physical therapist, physician, osteopath, dentist or dental hygienist, physician's assistant, naturopath, acupuncturist, chiropractor, or advance practice registered nurse.

5. "Workplace injury" is an injury or disease compensable under either the Utah Workers' Compensation Act or the Utah Occupational Disease Act.

R612-300-2. Obtaining Medical Care for Injured Workers.

A. Right of payor to designate initial health care provider.

1. A Payor may adopt managed health care programs. Such programs may designate specific health care providers as "preferred providers" for providing initial medical care for injured workers.

2. A preferred provider program must allow an injured worker to select from two or more health care providers to obtain necessary medical care. At the time a preferred provider program is established, the payor must notify employees of the requirements of the program.

3. If the requirement of subsection A.2. are met, an injured worker subject to a preferred provider program must seek initial medical care from a preferred provider unless:

a. No preferred provider is available;

b. The injured worker believes in good faith that his or her medical condition is not a workplace injury; or

c. Travel to a preferred provider is unduly burdensome.

4. If an injured worker who is subject to a preferred provider program fails to obtain initial medical care from a preferred provider, the payor's liability for the cost of such initial medical care is limited to the amount the payor would have paid a preferred provider. The injured worker may be held personally liable for the remaining balance.

B. Liability for medical expense incurred at payor's direction. If a payor directs an injured worker to obtain an initial medical assessment of a possible work injury, the payor is liable for the cost of such assessment.

1. A medical provider performing an initial assessment must obtain the payor's preauthorization for any diagnostic studies beyond plain x-rays.

C. Injured worker's right to select provider after initial medical care. After an injured worker has received initial care from a preferred provider, the injured worker may obtain subsequent medical care from a qualified provider of his or her choice. The payor is liable for the expense of such medical care.

1. An injured worker's right to select medical providers is subject to subsection D. of this rule, "Limitations to Injured Worker's Right to Change Physicians."

D. Limitations on injured worker's right to change physicians.

1. An injured worker may change health care providers one time without obtaining permission from the payor. The following circumstances DO NOT constitute a change of health care provider:

a. A treating physician's referral of the injured worker to another health care provider for treatment or consultation;

b. Transfer of treatment from an emergency room to a private physician, unless the emergency room was designated as the payor's preferred provider;

c. Medically necessary emergency treatment;

d. A change of physician necessitated by the treating physician's failure or refusal to rate a permanent partial impairment.

2. The injured worker shall promptly report any change of provider to the payor.

3. After an injured worker has exercised his or her one-time right to change health care providers, the worker must request payor approval of any subsequent change of provider. If the payor denies or fails to respond to the request, the injured worker may request approval from the Director of the Division of Industrial Accidents. The Director will authorize a change of provider if necessary for the adequate medical treatment of the injured worker or for other reasonable cause.

4. An injured worker who changes health care providers without payor or Division approval may be held personally liable for the non-approved provider's fees.

E. Hospital or surgery pre-authorization. Except when immediate surgery or hospitalization is medically necessary on an emergency basis, surgery or hospitalization must be pre-authorized by the payor.

1. Within two working days of receipt of a request for authorization, the payor shall notify the physician and injured worker that the request is either approved or denied, or is undergoing medical review.

2. Any medical review of a pending request for authorization must be conducted promptly.

F. Notification required from injured workers leaving Utah. Section 34A-2-604 of the Workers' Compensation Act requires injured workers receiving medical care for a workplace injury to notify the Industrial Accidents Division before leaving the state or locality. Division forms 043 and Form 044 are to be used to provide such notice.

G. Injured worker's right to privacy. No agent of the payor may be present during an injured worker's medical care without the consent of the injured worker. However, if the payor's agent is excluded from a medical visit, the physician and the injured worker shall meet with the agent at the conclusion of the visit or at some other reasonable time so as to communicate regarding medical care and return-to-work issues.

H. Payor's right of medical examination. The payor may arrange for the medical examination of an injured worker at any reasonable time and place. A copy of the medical examination report shall be made available to the Commission upon request.

R612-300-3. Required Reports.

A. Form 123, Physician's Initial Report. Within one week after providing initial medical care to an injured worker, a health care provider shall complete "Form 123 - Physicians' Initial Report." The provider shall fully complete Form 123 according to its instructions. The provider shall then file Form 123 with the Division and payor.

1. Form 123 must be completed and filed for every initial visit for which a bill is generated, including first aid, when the

worker reports that his or her medical condition is work related.

2. If initial medical care is provided by any health care provider other than a physician, Form 123 must be countersigned by the supervising physician.

B. Form 221, Restorative Services Authorization. Form 221, "Restorative Services Authorization Form" required by Subsection R612-300-5. C. 7. shall be filed with both the payor and the Division.

C. Forms 043, Employee's Intent to Leave State, and Form 044, Attending Physician's Statement. These forms are to be submitted to the Division before an injured worker leaves Utah.

D. Form 110, Release to Return to Work. Form 110 shall be mailed by either the health care provider or payor to the injured worker and Division within five calendar days after the health care provider releases the injured worker to return to work.

R612-300-4. General Method For Computing Medical Fees.

A. Adoption of "CPT" and "RBRVS." The Labor Commission hereby adopts and by this reference incorporates:

Optum360 Essential RBRVS 2019 annual 1st Quarter Update," (edition includes RBRC19/U1795 and U1796) ("RBRVS" hereafter).

B. Medical fees calculated according to the RBRVS relative value unit assigned to each CPT code. Unless some other provision of these rules specifies a different method, the RBRVS is to be used in conjunction with the "conversion factors" established in subsection C. of this rule to calculate payments for medical care provided to injured workers.

C. Conversion Factors. Fees for medical care of injured workers shall be computed by determining the relative value unit ("RVU") assigned by the RBRVS to a CPT code and then multiplying that RVU by the following conversion factors for specific medical specialties:

1. Anesthesiology (1 unit per 15 minutes of anesthesia): $68.00;

2. Medicine (Evaluation and Medicine codes 99203-99204 and 99213-99214): $56.00;

3. Medicine (all other Evaluation and Medicine codes): $52

4. Pathology and Laboratory: $56.00;

5. Radiology: $58.00;

6. Restorative Services: $50.00;

7. Surgery (all 20000 codes, codes 49505 thru 49525, and all 60000 codes): $65.00;

8. Other Surgery: $53.00.

D. Fees for Medical care not addressed by CPT/RBRVS, or requiring unusual treatment.

1. The payor and medical provider may establish and agree to a reasonable fee for medical care of an injured worker if:

a. neither the CPT/RBRVS or any other provision of these rules address the medical care in question; or

b. application of CPT/RBRVS or other provisions of these rules would result in an inadequate fee due to extraordinary difficulty of treatment.

2. If the medical provider and payor cannot agree to a reasonable fee in such cases, the provider can request a hearing before the Commission's Adjudication Division to establish a reasonable fee.

R612-300-5. Fees for Specific Procedures.

A. Needle procedures: Trigger point injections are reported per muscle. Payment under CPT code 20553 for injections of up to three muscles is the maximum allowed for any one treatment session, regardless of the number of muscles treated.

B. Radiology.

1. The cost of radioisotopes, gadolinium and comparable materials may be charged at the provider's cost plus 15%.

2. When x-rays are reviewed as part of an independent evaluation of the patient, a consultation, or other office visit, the review is included as a part of the basic service to the patient and may not be billed separately.

C. Restorative Services.

1. The following criteria must be met before payment is allowed for restorative services:

a. The patient's condition must have the potential for restoration of function;

b. The treatment must be prescribed by the treating physician;

c. The treatment must be specifically targeted to the patient's condition; and

d. The provider must be in constant attendance during the providing of treatment.

2. No payment is allowed for CPT codes 97024, diathermy; 97026, infrared therapy; 97028, ultraviolet therapy/cold laser therapy; 97169, athletic training evaluations; 97172, athletic training reevaluation.

3. All restorative services provided must be itemized even if not billed.

4. Medical providers billing under CPT codes 97161 through 97610 are limited to payment for a maximum of three procedures/units per visit, or six procedures if different sites are treated. Services billed under CPT codes 97545, 97546 and 97150 require preauthorization and are limited to 4 units per injury. The payor shall pay the three highest valued procedures for each treatment site for the visit.

5. Patient education is to be billed using CPT code 97535 rather than codes 98960 through 98962, and is limited to 4 units per injury claim.

6. The entire spine is considered to be a single body part or unit. For that reason, CPT codes 98941 through 98943 and 98926 through 98929 may not be used for billing purposes.

7. When a change in treatment or a new RSA is required, physicians and physical therapists may bill for one evaluation and up to 2 modalities/procedures. Without an evaluation, they may bill for up to 3 modalities/procedures. With prior authorization from the payor, physicians and physical therapists may make additional billing when justified by special circumstances.

8. Any medical provider billing for restorative services shall file the appropriate version of Form 221, "Restorative Services Authorization (RSA) form" with the payor and the Division within ten days of the initial evaluation. Subjective/objective/ assessment/plan ("SOAP") notes are to be sent to the payor in addition to the RSA form. SOAP notes are not to be sent to the Division unless requested.

a. Upon receipt of the provider's RSA form and SOAP notes, the payor shall respond within ten days by authorizing a specified number of treatments or denying the request. No more than eight treatments may be provided during this ten-day authorization period.

b. A payor may deny the requested treatments for the following reasons:

i. The injury or disease being treated is not work related; or

ii. The payor has received written medical opinion or other medical information indicating the treatment is not necessary. A copy of such written opinion or information must be provided to the injured worker, the medical provider, and the Division.

c. In cases where approval is received for initial treatment, the provider shall submit updated RSA forms and SOAP notes to the payor for approval or denial at least every six treatments.

d. An injured worker or provider may request a hearing before the Division of Adjudication to resolve issues of compensability, necessity of treatment, and compliance with this subsection's time limits.

D. Functional Capacity Evaluations. The following

functional capacity evaluations require payor preauthorization and are billed in 15 minute increments under CPT code 97750:

1. A limited functional capacity evaluation to determine an injured worker's dynamic maximal repetitive lifting, walking, standing and sitting tolerance. Billing for this type of evaluation is limited to a maximum of 45 minutes.

2. A full functional capacity evaluation to determine an injured worker's maximum and repetitive lifting, walking, standing, sitting, range of motion, predicted maximal oxygen uptake, as well as ability to stoop, bend, crawl or perform work in an overhead or bent position. In addition, this evaluation includes reliability and validity measures concerning the individual's performance. Billing for this type of evaluation is limited to a maximum of 2.5 hours.

3. A work capacity evaluation to determine an injured worker's capabilities based on the physical aspects of a specific job description. Billing for this type of evaluation is limited to a maximum of 2 hours.

4. A job analysis to determine the physical aspects of a particular job. Billing is not subject to a maximum time limit due to the variability of factors involved in the analysis.

E. Impairment Ratings and Insurance Medical Examinations.

1. Impairment Rating by Treating Physician. Treating physicians shall bill for preparation of impairment ratings under CPT code 99455, with 2.0 RVU assigned/30 minutes.

2. Impairment Rating by Non-Treating Physician. Non-treating physicians may bill for preparation of impairment ratings under CPT code 99456, with 2.65 RVU assigned/30 minutes.

3. Medical Evaluations Commissioned by Payors. The Labor Commission does not regulate fees for medical evaluations requested by payors.

F. Transcutaneous Electrical Nerve Simulators (TENS). No fee is allowed for TENS unless it is prescribed by a physician and supported by prior diagnostic testing showing the efficacy of TENS in control of the patient's chronic pain. TENS testing and training is limited to four (4) sessions and a 30-day trial period but may be extended with written documentation of medical necessity.

G. Electophysiologic Testing. A physician who is legally authorized by his or her medical practice act to diagnose injury or disease is entitled to the full fee for electrophysiologic testing. Physical therapists and physicians who are qualified to perform such testing but who are not legally authorized to diagnose injury or disease are entitled to payment of 75% of the full fee.

H. Dental Injuries.

1. Initial Treatment.

a. If an employer maintains a medical staff or designates a company doctor, an employee requiring treatment for a workplace dental injury shall report to such medical staff or doctor and follow their directions for obtaining the necessary dental treatment.

b. If an employer does not maintain a medical staff or designate a company doctor, or if such medical staff or doctor is unavailable, the injured worker may obtain the necessary dental care from a dentist of his or her choice. The payor shall pay the dentist at 70% of UCR for services rendered.

2. Subsequent treatment.

a. If additional dental care is necessary, the dentist who provided initial treatment may submit to the payor a request for authorization to continue treatment. The transmission date of the request must be verifiable. The request itself must include a description of the injury, the additional treatment required, and the fee to be charged for the additional treatment.

i. The payor shall respond to the request for authorization within 10 working days of the request's transmission. This 10-day period can be extended with written approval of the Director of the Industrial Accidents Division.

ii. If the payor does not respond to the dentist's request for authorization within 10 working days, the dentist may proceed with treatment and the payor shall pay the cost of treatment as contained in the request for authorization.

iii. If the payor approves the proposed treatment, the payor shall send written authorization to the dentist and injured worker. This authorization shall include the amount the payor agrees to pay for the treatment. If the dentist accepts the payor's payment offer, the dentist may proceed to provide the approved services and shall be paid the agreed upon amount.

iv. If the dentist proceeds with treatment without authorization, the dentist's fee is limited to 70% of UCR.

b. If the dentist who provided initial treatment is unwilling to provide subsequent treatment under the terms outlined in subsection 2.a., above, the payor shall within 20 calendar days direct the injured worker to a dentist located within a reasonable travel distance who will accept the payor's payment offer.

i. If, after receiving notice that the payor has arranged for the services of a dentist, the injured worker chooses to obtain treatment from a different dentist, the payor shall only be liable for payment at 70% of UCR. The treating dentist may bill the injured worker for the difference between the dentist's charges and the amount paid by the insurer.

c. If the payor is unable to locate another dentist to provide the necessary services, the payor shall attempt to negotiate a satisfactory reimbursement with the dentist who provided initial treatment.

I. Drug testing. Drug screenings for addictive classes of pain medications shall be performed as recommended in the Utah clinical Guidelines on Prescribing Opiates for Treatment of Pain, Utah Department of Health 2009. The collection and billing shall be limited to one 80305, 80306, or 80307 code per date of service, except for unusual circumstances.

J. Procedures for which no fee is allowed. Due to a lack of evidence of medical efficacy, no payment is authorized for the following:

1. Muscle Testing, CPT codes 95832 through 95857;

2. Computer based Motion Analysis, CPT codes 96000 through 96004;

3. Athletic Training Evaluation, CPT codes 97169 to 97172;

4. Acupuncture, CPT codes 97810 through 97814;

5. Analysis of Data, now BR, CPT code 99090;

6. Patient Education, CPT codes 98960 through 98962;

7. Educational supplies, CPT code 99071; or

8. Percutaneous diskectomies, endoscopic diskectomies, IDEPT, platelet rich plasma injections, and heat or chemical treatments for discs.

R612-300-6. Limitations on Fees for Specific Medical Providers and Non-Physicians.

A. Physician Assistants, Nurse Practitioners, Medical Social Workers, Nurse Anesthetists, and Physical Therapy Assistants. Fees for services performed by physician assistants, nurse practitioners, medical social workers, nurse anesthetists, and physical therapy assistants are set at 75% of the amount that would otherwise be allowed by these rules and shall be billed using an 83 modifier.

B. Assistant Surgeons. Fees for assistant surgeons are limited as follows:

1. Medical doctors, osteopaths and podiatrists, designated with an -80 modifier, are to be paid 20% of the primary surgeon's fee;

2. Minimum paramedicals, designated with an -81 modifier, are to be paid 15% of the primary surgeon's value or 75% of the amount allowed under subsection B. 1., above.

3. When a qualified resident surgeon is not available, 20% of the primary surgeon's fee;

4. Other paramedical assistants, such as surgical assistants,

are not billed separately.

C. Home health care. The following fees, which include mileage and travel time, are payable for Home Health Codes 99500 through 99602:

1. RN: $100/ 2 hours
2. LPN: $75 / 2 hours
3. Home Health Aide: $25 / hour + $6 additional 30 min.
4. Speech Therapists: $80 / visit
5. Physical Therapy: $125/ hour
6. Occupational Therapy: $125/ hour
7. Home Infusion Providers are to be paid according to contract between the payor and home infusion provider. If no contract is established, the payor shall pay the amount specified in Days Guidelines and pay UCR or Cost + 15% for the drugs and supplies.

D. Acupuncturists, naturopathic providers and massage therapy. Payor preauthorization is required for any services provided by acupuncturists and naturopaths. Payment for massage therapy is only allowed when administered by a medical provider and billed according to the requirements of Rule R612-300. 5. C, "Restorative Services."

E. Ambulance. Ambulance charges are limited to the rates set by the State Emergency Medical Service Commission.

R612-300-7. Billing and Payment.

A. Billing Limitations.

1. Except as otherwise provided by a specific provision of the Workers' Compensation Act or these rules, an injured worker may not be billed for the cost of medical care necessary to treat his or her workplace injuries.

2. A health care provider may not submit a bill for medical care of an injured worker to both the employer and the insurance carrier.

B. Discounting and down-coding.

1. Discounting or reducing the fees established by these rules is permitted only pursuant to a specific contract between the medical provider and payor.

2. A payor may change the CPT code submitted by a health care provider under the following circumstances:

a. The submitted code is incorrect;

b. Another code more closely identifies the medical care;

c. The medical provider has not submitted the documentation necessary to support the code; or

d. The medical care is part of a larger procedure and included in the fee for that procedure.

3. If a payor changes a code number, the payor shall explain the reason for the change and provide the name and phone number of the payor's claims processor to the medical provider in order to allow further discussion.

C. Place of Treatment. A medical provider's billing for a medical procedure must identify the setting where a procedure was performed.

1. In an office or clinic: Fees for procedures performed in an office or clinic are to be computed using the Non-Facility Total RVU.

2. In a facility setting: Fees for physician services for procedures performed in a facility are to be computed using the "Facility Total RVU," as the facility will be billing for the direct and indirect costs related to the service.

D. Separate Bills. Separate bills must be presented by each medical provider within one year of the date of service on a HCFA 1500 billing form. All bills must contain the federal ID number of the provider submitting the bill.

E. Hospital Fees.

1. Fees covering hospital care shall be separate from those for professional services and shall not extend beyond the actual necessary hospital care.

2. All billings must be submitted on a UB92 form, properly itemized and coded, and shall include all documentation, including discharge summary, necessary to support the billing. No separate fee may be charged for billing or documentation of hospital services.

3. Fees charged by health care providers for services performed in a hospital are subject to the Commission's fee rules.

F. Charges for Supplies, Materials, or Drugs.

1. Ordinary supplies, materials or drugs used in treatment shall not be charged separately but shall be included in the amount allowed for the underlying medical care.

2. Special or unusual supplies, materials, or drugs not included as a normal and usual part of the service or procedure may be billed at cost plus 15% restocking fees and any taxes paid.

G. Miscellaneous.

1. A physician may bill the new patient E and M code when seeing an established patient for a new work injury.

2. Payment for hospital care is limited to the bed rate for semi-private room unless a private room is medically necessary.

3. Non-facility RVS total unit values apply, except that procedures provided in a facility setting shall be reimbursed at the facility total unit value and the facility may bill a separate facility charge.

4. Items that are a portion of an overall procedure are NOT to be itemized or billed separately.

5. Payors may round charges to the nearest dollar. If this is done on some charges, it must be done with all charges.

H. Prompt Payment and Interest.

1. All bills for medical care of injured workers must be paid within 45 days of submission to the payor unless the bill or some portion of the bill is in dispute. Any portion of the bill not in dispute remains payable within 45 days of billing.

2. As required by Section 34A-2-420 of the Utah Workers' Compensation Act, any award for medical care made by the Commission shall include interest at 8% per annum from the date of billing for such medical care.

I. Billing Disputes. Payors and health care providers shall use the following procedures to resolve billing disputes.

1. The provider shall submit a bill for services with supporting documentation to the payor within one year of the date of service.

2. The payor shall evaluate the bill and pay the appropriate fee as established by these rules.

3. If the provider believes the payor has improperly computed the fee, the provider may submit a written request for reevaluation to the payor. The request shall describe the specific areas of disagreement and include all appropriate documentation. Any such request for re-evaluation must be submitted to the payor within one year of the date of the original payment.

4. Within 30 days of receipt of the request for re-evaluation, the payor shall either pay the additional fee due the provider or respond with a specific written explanation of the basis for its denial of additional fees. The payor shall maintain proof of transmittal of its response.

5. A payor seeking reimbursement from a provider for overpayment of a bill shall, within one year of the overpayment, submit to the provider a written request for repayment that explains the basis for request. Within 90 days of receipt of the request, the provider shall either make appropriate repayment or respond with a specific written denial of the request.

6. If the provider and payor continue to disagree regarding the proper fee, either party may request informal review of the matter by the Division. Any party may also file a request for hearing on the dispute with the Adjudication Division.

R612-300-8. Travel Allowance for Injured Workers.

A. Payment for Travel to Obtain Medical Care. An injured worker who must travel outside his or her community to

obtain necessary medical care is entitled to payment of meals and lodging. An injured worker is entitled to other travel expenses regardless of distance. Payors shall reimburse injured workers for these expenses according to the standards set forth in State of Utah Accounting Policies and Procedures, Section FIACCT 10-02.00, "Travel Reimbursement".

1. All travel must be by the most direct route and to the nearest location where adequate treatment is reasonably available.

2. Travel may not be required between the hours of 10:00 p.m. and 6:00 a.m., unless approved by the Commission.

B. Time Limits for Requesting and Paying Travel Expenses.

1. Requests for travel reimbursement must be submitted to the payor for payment within one year after the subject travel expenses were incurred;

2. The payor must pay an injured employee's travel expenses at the earlier of:

a. Every three months;

b. Upon accrual of $100 in such expense; or

c. At closure of the injured worker's claim.

C. Prescriptions. Travel allowance shall not include picking up prescriptions with the following exceptions:

1. Travel allowance will be allowed if documentation is provided substantiating a claim that prescriptions cannot be obtained locally within the injured worker's community;

2. Travel allowance will be allowed in instances where dispensing laws do not allow a medication to be called in to a pharmacy thus requiring an injured worker to physically obtain an original prescription from the provider's office.

R612-300-9. Permanent Impairment Ratings.

A. Utah's 2006 Impairment Guides. The "Utah 2006 Impairment Guides" are incorporated by reference and are to be used to rate a permanent impairment not expressly listed in Section 34A-2-412 of the Utah Workers' Compensation Act.

B. American Medical Association's "Guides to the Evaluation of Permanent Impairment, Fifth Edition." For those permanent impairments not addressed in either Section 34A-2-412 or the "Utah 2006 Impairment Guides," impairment ratings are to be established according to the American Medical Association's "Guides to the Evaluation of Permanent Impairment, Fifth Edition."

R612-300-10. Medical Records.

A. Relationship between HIPAA and Workers' Compensation Disclosure Requirements. Workers' compensation insurers, employers and the Utah Labor Commission need access to health information of individuals who are injured on the job or who have a work-related illness in order to process or adjudicate claims, or to coordinate care under Utah's workers' compensation system. Generally, this health information is obtained from health care providers who treat these individuals and who may be covered by federal "HIPAA" privacy rules.

The HIPAA Privacy Rule specifically recognizes the legitimate need of the workers' compensation system to have access to individuals' health information to the extent authorized by State law. See 45 CFR 164.512(1). The Privacy Rule also recognizes the importance of permitting disclosures required by other laws. See 45 CFR 164.512(a). Therefore, disclosures permitted by this rule for workers' compensation purposes or otherwise required by this rule do not conflict with and are not prohibited by the HIPAA Privacy Rule.

B. Disclosures Permitted Without Authorization. A medical provider, without authorization from the injured worker, shall:

1. For purposes of substantiating a bill submitted for payment or filing required Labor Commission forms, such as the "Physician's Initial Report of Injury/Illness" or the "Restorative Services Authorization," disclose medical records necessary to substantiate the billing, including drug and alcohol testing, to:

a. An employer's workers' compensation insurance carrier or third party administrator;

b. A self-insured employer who administers its own workers' claims.

c. The Uninsured Employers' Fund;

d. The Employers' Reinsurance Fund; or

e. The Labor Commission as required by Labor Commission rules.

2. Disclose medical records pertaining to treatment of an injured worker who makes a claim for workers' compensation benefits, to another physician for specialized treatment, to a new treating physician chosen by the claimant, or for a consultation regarding the claimed work related injury or illness.

C. Disclosures Requiring Authorization.

1. Except as limited in C(3), a medical provider, whose medical records are relevant to a worker's compensation claim, shall, upon receipt of a Labor Commission medical records release form, or an authorization form that conforms to HIPAA requirements, disclose his/her medical records to:

a. An employer's insurance carrier or third party administrator;

b. A self-insured employer who administers its own workers' compensation claims;

c. An agent of an entity listed in B(1)(a through e), which includes, but is not limited to a case manager or reviewing physician;

d. The Uninsured Employers Fund;

e. The Employers' Reinsurance Fund;

f. The Labor Commission;

g. The injured worker;

h. An injured workers' personal representative;

i. An attorney representing any of the entities listed above in an industrial injury or occupational disease claim.

2. Medical records are relevant to a workers' compensation claim if:

a. The records were created after the reported date of the accident or onset of the illness for which workers' compensation benefits have been claimed; or

b. the records were created in the past ten years (15 years if permanent total disability is claimed) and:

i. There is a specific reason to suspect that the medical condition existed prior to the reported date of the claimed work related injury or illness or;

ii. The claim is being adjudicated by the Labor Commission.

3. Medical records related to care provided by a psychiatrist, psychologist, obstetrician, or care related to the reproductive organs may not be disclosed by a medical provider unless a claim has been made for a mental condition, a condition related to the reproductive organs, or the claimant has signed a separate, specific release for these records.

D. Disclosure Regarding Return to Work. A medical provider, who has treated an injured worker for a work related injury or illness, shall disclose information to an injured workers' employer as to when and what restrictions an injured worker may return to work.

E. Additional Disclosures Requiring Specific Approval. Requests for medical records beyond what subsections B, C, and D permit require a signed approval by the director, the medical director, a designated person(s) within the Industrial Accidents Division or an administrative law judge if the claim is being adjudicated.

F. Appeals. A party affected by the decision made by a person in subsection E may appeal that decision to the Adjudication Division of the Labor Commission.

G. Injured Worker's Duty to Disclose Medical Treatment

and Providers. Upon receipt and within the scope of this rule, an injured worker shall provide those entities or persons listed in C(1) the names, address, and dates of medical treatment (if known) of the medical providers who have provided medical care within the past 10 years (15 years for permanent total disability claim) except for those medical providers names in C(3). Labor Commission form number 307 "Medical Treatment Provider List" must be used for this purpose. Parties listed in C(1) of this rule must provide each medical provider identified on form 307 with a signed authorization for access to medical records. A copy of the signed authorization may be sent to the medical providers listed on form 307.

H. Injured Worker's Right to Contest Requests for Pre-Injury Medical Records. An injured worker may contest, for good reason, a request for medical records created prior to the reported date of the accident or illness for which the injured worker has made a claim for benefits by filing a complaint with the Labor Commission. Good reason is defined as the request has gone beyond the scope of this rule or sensitive medical information is contained in a particular medical record.

I. Limitations on Use and Re-disclosure of Medical Information.

1. Any party obtaining medical records under authority of this rule may not disclose those medical records, without a valid authorization, except as required by law.

2. An employer may only use medical records obtained under the authority of this rule to:

a. Pay or adjudicate workers' compensation claims if the employer is self-insured;

b. To assess and facilitate an injured workers' return to work;

c. As otherwise authorized by the injured worker.

3. An employer obtaining medical records under authority of this rule must maintain the medical records separately from the employee's personnel file.

4. Any medical records obtained under the authority of this rule to make a determination regarding the acceptance of liability or for treatment of a condition related to a workers' compensation claim shall only be used for workers' compensation purposes and shall not be released, without a signed release by the injured worker or his/her personal representative, to any other party. An employer shall make decisions related only to the workers' compensation claim based on any medical information received under this rule.

K. Permissible Fees for Providing Medical Records. When any medical provider provides copies of medical records, other than the records required when submitting a bill for payment or as required by the Labor Commission rules, the following charges are presumed reasonable:

1. A search fee of $15 payable in advance of the search;

2. Copies at $.50 per page, including copies of microfilm, payable after the records have been prepared and

3. Actual costs of postage payable after the records have been prepared and sent. Actual cost of postage is deemed to be the cost of regular mail unless the requesting party has requested the delivery of the records by special mail or method.

4. The Labor Commission will release its records per the above charges to parties/entities with a signed and notarized release from the injured worker unless the information is classified and controlled under the Government Records Access and Management Act (GRAMA).

5. No fee shall be charged when the RBRVS or the Commission's Medical Fee Guidelines require specific documentation for a procedure or when medical providers are required to report by statute or rule.

6. An injured worker or his/her personal representative may obtain one copy of each of the following records related to the industrial injury or occupational disease claim, at no cost, when the injured worker or his/her personal representative have signed a form by the Industrial Accidents Division to substantiate his/her industrial injury/illness claim;

a. History and physical;

b. Operative reports of surgery;

c. Hospital discharge summary;

d. Emergency room records;

e. Radiological reports;

f. Specialized test results; and

g. Physician SOAP notes, progress notes, or specialized reports.

h. Alternatively, a summary of the patients records may be made available to the injured worker or his/her personal representative at the discretion of the physician.

R612-300-11. Utilization Review Standards.

A. Purpose of Utilization Review and Definitions.

1. "Utilization Review" is used to manage medical costs, improve patient care and enhance decision-making. Utilization review includes, but is not limited to, the review of requests for authorization and the review of medical bills to determine whether the medical services were or are necessary to treat a workplace injury. Utilization review does not include:

a. bill review for the purpose of determining whether the medical services rendered were accurately billed, or

b. any system, program, or activity used to determine whether an individual has sustained a workplace injury.

2. Any utilization review system shall incorporate a two-level review process that meets the criteria set forth in subsections B and C of this rule.

3. Definitions. As used in this rule:

a. "Request for Authorization" means any request by a physician for assurance that appropriate payment will be made for a course of proposed medical treatment.

b. "Reasonable Attempt" requires at least two phone calls and a fax, two phone calls and an e-mail, or three phone calls, within five business days from date of the payor's receipt of the physician's request for review.

B. Level I - Initial Request and Review.

1. A health care provider may use Form 223 to request authorization and payment for proposed medical treatment. The provider shall attach all documentation necessary for the payor to make a decision regarding the proposed treatment.

a. Requests for approval of restorative services are governed by the provisions of Section R612-300.5. C. 7. which requires submission of the appropriate RSA form and documentation.

2. Upon receipt of the provider's request for authorization, the payor may use medical or non-medical personnel to apply medically-based criteria to determine whether to approve the request. The payor must:

a. Within 5 business days after receiving the request and documentation, transmit Form 223 back to the physician, in a verifiable manner, advising of the payor's approval or denial of the proposed treatment.

i. If approval is denied, the payor must include with its denial a statement of the criteria it used to make its determination. A copy of the denial must also be mailed to the injured worker.

C. Level II - Review.

1. A health care provider who has been denied authorization or has received no timely response may request a physician's review by completing and sending the applicable portion of Commission Form 223 to the payor.

a. The provider must include the times and days that he/she is available to discuss the case with the reviewing physician, and must be reasonably available during normal business hours.

b. This request for review may be used by a health care provider who has been denied authorization for restorative

services pursuant to Subsection R612-300-5.C.7.

2. The payor's physician representative must complete the review within five business days of the treating physician's request for review. Additional time may be requested from the Commission to accommodate highly unusual circumstances or particularly difficult cases.

a. The insurer's physician representative must make a reasonable effort to contact the requesting provider to discuss the request for treatment. The payor shall notify the Commission if an additional five days is needed in order to contact the treating physician or to review the case.

b. If the payor again denies approval of the recommended treatment, the payor must complete the appropriate portion of Commission Form 223, and shall include:

i. the criteria used by the payor in making the decision to deny authorization; and

ii. the name and specialty of the payor's reviewing physician;

iii. appeals information.

c. The denial to authorize payment for treatment must then be sent to the physician, the injured worker and the Commission.

3. The payor's failure to respond to the review request within five business days, by a method which provides certification of transmission, shall constitute authorization for payment of the treatment.

D. Mediation and Adjudication. Upon receipt of denial of authorization for payment for medical treatment at Level II, the Commission will facilitate, upon the request of the injured worker, the final disposition of the case.

1. If the parties agree, the medical dispute will be referred to Commission staff for mediation.

2. If the parties do not agree to mediation, the matter will be referred to the Division of Adjudication for hearing and decision.

E. Reduction of Fee for Failure to Follow Utilization Review Standards.

1. In cases in which a health care provider has received notice of this rule but proceeds with non-emergency medical treatment without obtaining payor authorization, the following shall apply:

a. If the medical treatment is ultimately determined to be necessary to treat a workplace injury, the fee otherwise due the health care provider shall be reduced by 25%.

b. If the medical treatment is ultimately determined to be unnecessary to treat a workplace injury, the payor is not liable for payment for such treatment. The injured worker may be liable for the cost of treatment.

2. The penalty provision in D. 1. shall not apply if the medical treatment in question has been preauthorized by some other non-worker's compensation insurance company or other payor.

R612-300-12. Commission Approval of Health Care Treatment Protocols.

A. Authority. Pursuant to authority granted by Subsection 34A-2-111(2)(c)(i)(B)(VII) of the Utah Workers' Compensation Act, the Utah Labor Commission establishes the following standards and procedures for Commission approval of medical treatment and quality care guidelines.

B. Standards

1. Scientifically based: Subsection 34A-2-111(2)(c)(i)(B)(VII)(Aa) of the Act requires that guidelines be scientifically based. The Commission will consider a guideline to be "scientifically based" when it is supported by medical studies and/or research.

2. Peer reviewed: Subsection 34A-2-111(2)(c)(i)(B)(VII)(Bb) of the Act requires that guidelines be peer reviewed. The Commission will consider a guideline to be "peer reviewed" when the medical study's content, methodology, and results have been reviewed and approved prior to publication by an editorial board of qualified experts.

3. Other standards: Pursuant to its rulemaking authority under Subsection 34A-2-111(2)(c)(i)(B)(VII), the Utah Labor Commission establishes the following additional standards for medical treatment and quality care guidelines.

a. The guidelines must be periodically updated and, subject to Commission discretion, may not be approved for use unless updated in whole or in part at least biannually;

b. Guideline sources must be identified;

c. The guidelines must be reasonably priced;

d. The guidelines must be easily accessible in print and electronic versions.

C. Procedure: Pursuant to Subsection 34A-2-111(2)(c)(i)(B)(VII) of the Utah Workers' Compensation Act, a party seeking Commission action to approve or disapprove a guideline shall file a petition for such action with the Labor Commission.

R612-300-13. HIV, Hepatitis B and C Testing and Reporting for Emergency Medical Service Providers.

A. Purpose and Authority. This rule, established pursuant to U.C.A. Section 78B-8-404, establishes procedures for testing and reporting following a significant exposure of an emergency medical services provider to infectious diseases.

B. Definitions. In addition to the terms defined in Section 78B-8-401, the following definitions apply for purposes of this rule.

1. Contact means designated person(s) within the emergency medical services agency or the employer of the emergency medical services provider.

2. Emergency medical services (EMS) agency means an agency, entity, or organization that employs or utilizes emergency medical services providers as defined in (4) as employees or volunteers.

3. Source Patient means any individual cared for by a pre-hospital emergency medical services provider, including but not limited to victims of accidents or injury, deceased persons, prisoners or persons in the custody of the Department of Corrections, a county correctional facility, or a public law enforcement entity.

4. Receiving facility means a hospital, health care or other facility where the patient is delivered by the emergency medical services provider for care.

C. Emergency Medical Services Provider Responsibility.

1. The EMS provider shall document and report all significant exposures to the receiving facility and contact as defined in C.2.

2. The reporting process is as follows:

a. The exposed EMS provider shall complete the Exposure Report Form (ERF) at the time the patient is delivered to the receiving facility and provide a copy to the person at the receiving facility authorized by the facility to receive the form. In the event the exposed EMS provider does not accompany the source patient to the receiving facility, he/she may report the exposure incident, with information requested on the ERF, by telephone to a person authorized by the facility to receive the form. In this event, the exposed EMS provider shall nevertheless submit a written copy of the ERF within three days to an authorized person of the receiving facility.

b. The exposed EMS provider shall, within three days of the incident, submit a copy of the ERF to the contact as defined in C.2.

D. Receiving Facility Responsibility.

1. The receiving facility shall establish a system to receive ERFs as well as telephoned reports from exposed EMS providers on a 24-hour per day basis. The facility shall also have available or on call, trained pre-test counselors for the

purpose of obtaining consent and counseling of source patients when HIV testing has been requested by EMS providers. The receiving facility shall contact the source patient prior to release from the facility to provide the individual with counseling or, if unable to provide counseling, provide the source patient with phone numbers for a trained counselor to provide the counseling within 24 hours.

2. Upon notification of exposure, the receiving facility shall request permission from the source patient to draw a blood sample for disease testing. In conjunction with this request, the source patient must be advised of his/her right to refuse testing and be advised that if he/she refuses to be tested that fact will be forwarded to the EMS agency or employer of EMS provider. The source patient shall also be advised that if he/she refuses to be tested, the EMS agency or provider may seek a court order to compel the source patient to submit to a blood draw for the disease testing.

Testing is authorized only when the source patient, his/her next of kin or legal guardian consents to testing, with the exception that consent is not required from an individual who has been convicted of a crime and is in the custody or under the jurisdiction of the Department of Corrections, a county correctional facility, a public law enforcement entity, or if the source patient is dead. If consent is denied, the receiving facility shall complete the ERF and send it to the EMS agency or employer of the EMS provider. If consent is received, the receiving facility shall draw a sample of the source patient's blood and send it, along with the ERF, to a qualified laboratory for testing.

3. The laboratory that the receiving facility has sent source patient's blood draw to shall send the disease test results, by Case ID number, to the EMS agency or employer of the EMS provider.

F. EMS Agency/Employer Responsibility:

1. The EMS agency/employer, upon receipt of the disease tests, from the receiving facility laboratory, shall immediately report the result, by case number, not name, to the exposed EMS provider.

2. The EMS agency/employer, upon the receipt of refusal of testing by the source, shall report that refusal to the EMS provider.

3. The agency/employer or its insurance carrier shall pay for the EMS provider and the source patient testing for the covered diseases per the Labor Commission fee schedule.

4. The EMS agency/employer shall maintain the records of any disease exposures contained in this rule per the OSHA Blood Borne Pathogen standards.

R612-300-14. Advance Practice Registered Nurse.

A. Authority. This rule is enacted under the authority of 34A-1-104 and 58-31b-803.

B. Requirement. An advanced practice registered nurse who treats an injured worker and prescribes Schedule II controlled substances for chronic pain is subject to the provisions of the "Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain," July 2013, adopted by the Federation of State Medical Boards, which is incorporated by reference.

KEY: workers' compensation, fees, medical practitioners, nurse practitioners
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R612. Labor Commission, Industrial Accidents.
R612-400. Workers' Compensation Insurance, Self-Insurance and Waivers.
R612-400-1. Policy Reporting by Workers' Compensation Insurance Carriers.

An insurance carrier writing workers' compensation insurance in Utah shall report to the Division the information required by Section 34A-2-205 of the Utah Workers' Compensation Act as follows:

A. The report shall be filed on behalf of the insurance carrier by an agent that has been approved by the Division as meeting the Division's filing standards.

B. The insurance carrier's agent shall submit the information electronically in accordance with the standards and format established by the International Association of Industrial Accidents Boards and Commissions (IAIABC).

C. Consequences of Failure to Comply.

1. Pursuant to Subsection 34A-2-205(1) of the Utah Workers' Compensation Act, the division may impose civil assessments up to $150 for failure to properly report insurance policy information per the requirements of this rule.

D. Assessments will be issued on a per file or reported policy basis rather than on each individual error within a file or reported policy.

E. The opportunity to correct the filing errors, the amount of the assessments, and the method of issuing shall be set by the division's policies and procedures.

F. Assessments shall be issued in the form of an order signed by the division's presiding officer and pursuant to the requirements contained in Section 63G-4-203.

G. An aggrieved party may seek agency review of any order pursuant to Section 63G-4-301.

R612-400-2. Workers' Compensation Coverage for Professional Employer Organizations and Client Companies.

A. Purpose, Authority and Scope.

1. Purpose. The Utah Professional Employer Organization Licensing Act, Title 31A, Chapter 40, Utah Code Annotated, ("the Act") allows a professional employer organization ("PEO") and a client company to establish a contractual relationship by which the PEO and client company are co-employers of some or all of the client company's workers. This rule establishes workers' compensation coverage and reporting requirements for such co-employment relationships.

2. Authority. This rule is enacted pursuant to authority granted by Section 34A-40-209 of the Act.

3. Scope. This rule applies only to those situations in which one or more workers are co-employees of a PEO and client company. The rule does not apply to workers who are solely employed by either a PEO or a client company. In such cases, the coverage and reporting requirements generally applicable to sole employers must be followed.

B. Alternatives for Providing Workers' Compensation Insurance Coverage for Co-employees.

1. Coverage provided by Client Company utilizing a PEO. A client company may provide workers' compensation coverage for co-employees of the client company and PEO by purchasing an insurance policy from a workers' compensation insurance company. The insurance policy shall list the client company as the named insured and shall provide coverage for the PEO as an additional insured by means of an individual endorsement.

2. Coverage provided through a PEO for a client company. Alternatively, a PEO may provide workers' compensation coverage for co-employees of the client company and PEO by purchasing an insurance policy, if available, from a workers' compensation insurance company. The insurance policy shall list the PEO as the named insured and shall provide coverage for the client company as an additional insured by means of an individual endorsement.

C. Insurance Carrier Reporting Obligation.

1. New Policies. An insurance company providing workers' compensation coverage to a PEO and client company shall comply with the reporting requirements set forth in Subsection R612-400-1. Such reports shall identify any PEO or client company covered by endorsement under the policy.

2. Additional insureds under an existing policy. If an insurance company extends coverage under an existing policy to a PEO or client company by means of an additional endorsement, the company shall report such additional endorsement and coverage to the Division in accordance with the requirements of Section R612-400-1.

3. Cancellations. An insurance company shall notify the Division of cancellation of coverage for any PEO or client company by complying with the requirements of Section R612-400-1. Failure by an insurance company to provide such notice will result in the continuation of coverage by the insurance company until the Division receives notification and may also result in imposition of penalties pursuant to Section 34A-2-205.

D. Reporting Injuries.

Work-related injuries of co-employees shall be reported in the name of the client company.

R612-400-3. Self Insurance of Workers' Compensation Obligations.

A. Purpose, Authority and Scope. 34A-2-201.5 of the Utah Workers' Compensation Act allows an employer or public agency insurance mutual to request authorization from the Division to self-insure workers' compensation obligations. Pursuant to the authority granted by Section 34A-2-201.5, this rule establishes procedures for applying for authorization to self-insure; it also establishes standards for Division decisions to grant, deny, or revoke such authorization and addresses the process for appealing Division decisions.

B. Definitions. In addition to the definitions found in Subsection 34A-2-201.5(1) and Section R612-100-2, the following definitions apply to this rule:

1. "Acceptable Credit Rating Agency" means Dun and Bradstreet or another similarly reputable credit rating agency acceptable to the Division.

2. "Aggregate Excess Insurance" is the amount of insurance required to cover the total accumulated workers' compensation benefits for all claims payable for a given period of time with the employer retaining an obligation for a designated amount as a deductible and insurance company paying all amounts due thereafter up to a maximum total obligation.

3. "Applicant" means an employer or public agency insurance mutual seeking initial authorization or renewal authorization to self-insure workers' compensation obligations.

4. "Reserve" is defined as the amount necessary to satisfy all debts, past, present, and future, incurred by reason of industrial accidents or occupational diseases, the origins of which commenced prior to the date of reserve determination.

5. "Self-Insured" means an employer or public agency insurance mutual that is authorized by the Division to self-insure workers' compensation obligations.

6. "Specific Excess Insurance" is defined as the amount of insurance required to satisfy workers' compensation obligations related to a workplace accident or disease with the employer retaining an obligation for a designated amount as a deductible and the insurance company assuming the obligation for all amounts due thereafter.

C. Application Process. An Applicant must complete the following process to receive Division authorization to self-insure.

1. The Applicant shall complete Division Form 109, "Application for Self Insurance" and submit the form to the Division, together with payment of the applicable fee as

established by the Commission pursuant to Section 63J-1-504.

2. The Applicant shall demonstrate that it has been in business continuously for five years immediately preceding its application.

a. If the Applicant is a wholly-owned subsidiary of another company, it may satisfy this requirement by demonstrating that the parent company has been in business continuously for five years immediately preceding the application, provided that the parent company guarantees the Applicant's workers' compensation obligations. Unless this guarantee requirement is waived by the Division, the form and substance of any such guarantee is subject to Division approval.

b. If the Applicant has changed its business name, the applicant may satisfy this requirement by demonstrating that it has been in business under a combination of its current name and previous name continuously for five years immediately preceding the application.

c. If the Applicant has been formed by merger of two or more companies, the applicant may satisfy this requirement by demonstrating that it and at least one of its predecessor companies, when considered jointly, have been in business continuously for five years immediately preceding the application.

3. The Applicant shall demonstrate sufficient financial strength and liquidity to pay its workers' compensation obligations promptly and in full. The Applicant shall submit to the Division:

a. A current, certified financial statement or other proof acceptable to the Division of the Applicant's financial ability to pay direct compensation and other related expenses;

b. Proof that the Applicant is covered by specific aggregate excess insurance issued by a company authorized to transact such business in Utah and with policy limits and retention amounts acceptable to the Division. The insurance company shall execute Division Form 303, "Utah Bankruptcy and Insolvency Endorsement" for each covered self-insured entity and shall name the Uninsured Employers' Fund as an additional insured.

c. A surety bond issued by a corporate surety authorized to transact such business in this state or other acceptable security as approved by the Division. If a surety bond is submitted, it shall be issued on Division Form 213E, "Self-Insurance Aggregate Surety Bond" in an amount established by the Division based on its review of the applicant's past incurred losses, exposure, and contingency factors. The minimum bond shall be $100,000.

i. With Division approval, a surety bond provided under this subsection may be replaced with another surety bond, provided that a 60-day notice of termination of liability is given to the Division by the original surety, the replacement bond is issued on the prescribed form, and the new surety accepts the liability of the previous surety or a guarantee is filed by all sureties acknowledging their respective liabilities and periods of time covering such liabilities.

ii. The Division may waive surety bond requirements for a public entity.

4. The Division shall confirm through Dun and Bradstreet or other acceptable credit rating agency that the Applicant is within the agency's two highest composite credit appraisal ratings and two highest ratings of estimated financial strength.

a. An Applicant that is within the agency's two highest composite credit appraisal ratings but has received only a "fair" or equivalent composite credit rating may be granted authorization to self-insure by satisfying any additional security requirements required by the Division.

b. The Division may waive credit rating requirements for a public entity, provided that the public entity files financial statements or such other supplemental information as the Division finds necessary.

5. The Applicant shall demonstrate its ability to properly administer a self-insurance program.

a. The Applicant shall either procure the services of an insurance carrier or adjusting company to administer claims and establish reserves or demonstrate that the Applicant has sufficient competent staff to perform such tasks.

b. The Applicant or its adjusting company shall maintain within Utah a knowledgeable contact concerning claims and shall maintain a toll free number or accept a reasonable number of collect calls from injured employees.

c. The Applicant shall register with the Division a designated agent in Utah who is authorized to receive on behalf of the Applicant all notices or orders provided for under the Utah Workers' Compensation Act or the Utah Occupational Disease Act.

d. At its discretion, the Division may train and test adjustors and administrators of self-insurance programs.

6. A subsidiary company may rely upon its parent company to satisfy any of the requirements of subsection C of this rule, provided that the parent company guarantees all the subsidiary company's workers' compensation liabilities. The form and substance of such guarantees must be approved by the Division.

D. Division Action to Grant or Deny Authorization to Self-Insure.

1. If the Division determines that the Applicant has satisfactorily completed the application process required by subsection C, the Division shall issue written authorization for the applicant to self-insure. Such authorization shall be effective for one year from issuance and may be renewed annually as set forth in subsection E of this rule.

2. If the Division determines that the Applicant has not satisfied the requirement of subsection C, the Division will issue a written notice denying the Applicant's request to self-insure. The notice of denial shall state the basis for denial, advise the Applicant of any actions necessary to correct deficiencies in its application, and set forth the Applicant's right to appeal the denial.

E. Renewal of Authorization to Self-Insure.

1. Annual Renewal Application. To request annual renewal of authority to self-insure, a self-insured shall complete and submit Division Form 223E, "Renewal Application for Self Insurance" together with payment of the applicable fee as established by the Commission pursuant to Section 63J-1-504.

a. The completed "Renewal Application" and applicable fee must be submitted at least 60 days before the expiration of the previous self-insurance authorization. Late filing of a renewal application may result in suspension or cancellation of self-insurance privileges.

b. Renewal applicants must satisfy all requirements set forth in subsection C of this rule, except that renewal applicants whose financial information cannot be obtained from Dun and Bradstreet will be required to file financial statements or such other supplemental information as the Division finds necessary.

2. If the Division determines that the renewal applicant qualifies for renewal of authorization to self-insure, the Division shall issue a written renewal. Such renewal shall be effective for one year from issuance.

3. If the Division determines that the renewal applicant has not satisfied the requirements of this rule, the Division will issue a written denial of the request to renew, stating the specific basis for denial, advising the applicant of any actions necessary to correct deficiencies in its renewal application, and the applicant's right to appeal the denial.

F. Revocation of Authority to Self-Insure.

1. In cases where a self-insured entity merges with another entity, the existing authorization to self-insure will be revoked and the newly formed entity must apply for authority to self-insure in its own right.

2. If the Division receives complaints regarding a self-insured's practices or ability to satisfy its obligations, has other reason to believe that a self-insured no longer meets the standards for self-insurance set forth in this rule, or has failed to meet other requirements imposed by law upon self-insureds, the Division shall provide written notice to the self-insured and provide the self-insured a reasonable opportunity to respond.

a. If, after reviewing the self-insured's response, the Division remains of the opinion that the self-insured no longer meets the standards for self-insurance, the Division shall commence informal adjudicative proceedings to revoke the self-insured's authority to self-insure.

b. At the conclusion of such proceedings, the Division shall issue either:

i. written confirmation of the self-insured's continuing authority to self-insure; or

ii. written revocation of authority to self-insure, stating the specific basis for revocation, the self-insured's appeal rights, and the self-insured's right to continue its self insured status by providing additional security pursuant to subsection F of this rule.

c. Within 60 days of notice of revocation, a self-insured whose self-insurance privileges are revoked shall obtain security for their reserve requirements under the two step process set forth in subsection G.1 and 2 of this rule.

G. Continuation of Self-Insurance Authorization by Providing Additional Security.

1. A self-insured that falls below the standards required by subsection C.4 of this rule may, at the discretion of the Division, be allowed to continue self-insurance privileges if the following steps are taken:

a. An independent actuarial study, at the self-insured's expense and satisfactory to the Division, establishes the self-insured's reserve requirements.

b. The self-insured provides acceptable security to the Division for such reserve requirements.

2. Self-insured which retain their self-insurance authorization by complying with the requirements of subsection F.1 and 2 are subject to quarterly financial reviews by the Division

H. Appeals.

An entity dissatisfied with a Division decision to deny or revoke self-insured status may contest the decision by filing an Application For Hearing with the Commission's Adjudication Division pursuant to 34A-302(1) of the Utah Labor Commission Act and complying with the rules and procedures of the Adjudication Division.

R612-400-4. Waivers.

A. Authority and Purpose.

Pursuant to Title 34A, Chapter Two, Part Ten, Workers' Compensation Coverage Waivers Act ("the Act"), this rule establishes procedures for applying for workers' compensation coverage waivers. The rule also addresses the effect of coverage waivers and procedures to be followed by the Labor Commission's Industrial Accidents Division in granting, denying, or revoking coverage waivers.

B. Procedure for Application, Issuance and Renewal of Coverage Waiver.

1. A business entity may obtain a coverage waiver by:

a. completing the application process, available either online at the Utah Labor Commission website or by written application also available at the Commission;

b. submitting the supporting documents required by 34A-2-1004 of the Act; and

c. paying a non-refundable application fee of $50, used to defray the costs of processing and evaluating the application. Payment of the fee by check may delay issuance of a coverage waiver until the check has been honored.

2. If the Division determines that a business entity has satisfied each requirement for a coverage waiver, the Division will issue the coverage waiver. If the Division determines that a business entity has not satisfied each requirement for a workers' compensation insurance waiver, the Division will issue a written denial to the business entity, stating the basis for denial and setting forth the business entity's appeal rights.

3. Subject to revocation of a coverage waiver as provided by subsection C. of this section, a coverage waiver remains in effect for the following time periods:

a. A coverage waiver issued by a licensed workers' compensation insurance company prior to July 1, 2011, the effective date of the Act, shall remain effective for the period shown on the coverage waiver.

b. A coverage waiver issued by the Division after July 1, 2011, shall be effective for one year from the date the coverage waiver is issued.

4. A business entity may renew a coverage waiver by completing the on-line renewal application available at the Utah Labor Commission website and satisfying the requirements set forth in subsection B.1.b. and c. of this rule.

C. Revocation.

1. If the Division has reason to believe that a business entity no longer qualifies for a coverage waiver, the Division shall institute proceedings to determine whether the business entity's coverage waiver should be revoked. Such proceedings shall be conducted as informal proceedings under the Utah Administrative Procedures Act.

2. If the Division concludes that the business entity does not satisfy each requirement for a coverage waiver, the Division will issue a written order revoking the waiver certificate. The order shall state the basis for revocation and the business entity's appeal rights. The Division may also initiate other proceedings authorized by the Utah Workers' Compensation Act to compel the business entity to obtain workers' compensation coverage for its employees.

D. Appeal Rights.

A business entity may challenge a Division decision to deny or revoke a coverage waiver by filing an appeal of the decision with the Adjudication Division. Such appeal proceedings shall be conducted as de novo formal adjudicatory proceedings under the Utah Administrative Procedures Act.

E. Effect, Verification and Limitation of Coverage Waiver.

1. Effect of coverage waiver. Subsection 34A-2-103 (7) (c) permits an employer contracting with a business entity to rely upon a valid coverage waiver issued by the Division as proof that the business entity is not required to have a workers' compensation insurance policy.

2. Verification of coverage waiver. Before an employer may rely upon a business entity's coverage waiver, the employer shall retain the following documents:

a. A photocopy of the coverage waiver issued to the business entity by the Division; and

b. A printout of the Division's waiver status verification web page showing that the business entity's coverage waiver had not been revoked as of the date on which the employer contracted with the business entity.

3. Limitations to effect of coverage waiver. A coverage waiver does not excuse a business entity from obtaining and maintaining workers' compensation insurance coverage for employees who are entitled to such coverage under the Utah Workers' Compensation Act. If and when a business entity has such employees, any coverage waiver previously issued to that business entity becomes void and the business entity must immediately obtain workers' compensation coverage.

R612-400-5. Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund.

A. Pursuant to Section 59-9-101(2), Section 59-9-101.3

and 34A-2-202 the workers' compensation premium rates effective January 1, 2020, as established by the Labor Commission, shall be:

1. 0.50% for the Uninsured Employers' Fund;

2. 1.5% for the Employers' Reinsurance Fund;

B. The premium rates are a percentage of the total workers' compensation insurance premium income as detailed in Section 59-9-101(2)(a).

KEY: workers' compensation, insurance, rates, waivers
December 23, 2019 59-9-101(2)
Notice of Continuation February 8, 2018

R614. Labor Commission, Occupational Safety and Health.
R614-1. General Provisions.
R614-1-1. Authority.

A. These rules and all subsequent revisions, as approved and promulgated by the Labor Commission (commission), Utah Occupational Safety and Health Division (UOSH), are authorized pursuant to the Utah Occupational Safety and Health Act, Utah Code Ann. 34A-6-101 et seq., of 1973 (Utah OSH Act).

B. The intent and purpose of this chapter is stated in section 34A-6-102 of the Utah OSH Act.

C. In accordance with legislative intent, these rules provide for the safety and health of workers and for the administration of this chapter by UOSH.

R614-1-2. Scope.

These rules consist of administrative procedures of UOSH, incorporating by reference applicable federal standards from 29 CFR 1904, 1908, 1910 and 1926, and the Utah initiated occupational safety and health standards found in Utah Administrative Code (UAC) R614-1 through R614-10.

R614-1-3. Definitions.

A. "Access" means the right and opportunity to examine and copy.

B. "Adjudication" means the Adjudication Division within the Labor Commission.

C. "Administrator" means the director of UOSH.

D. "AG's Office" means the Utah Office of the Attorney General.

E. "CFR" means the Code of Federal Regulations.

F. "Commission" means the Labor Commission.

G. "CSHO" means a compliance safety and health officer authorized by UOSH to conduct inspections and investigations.

H. "Days" means calendar days, including Saturdays, Sundays, and holidays. The day of receipt of any notice shall not be included, and the last day of any time frame shall be included. If the last day of any time period is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday or legal holiday.

I. "Disabling, serious or significant injury" means any injury resulting in:

1. Admittance to the hospital; or

2. Permanent or temporary impairment, where function of any part of the body is substantially reduced or made useless and which would require treatment by a physician or other licensed health care professional. Examples of a disabling, serious or significant injury include, but are not limited to, amputation, fracture, deep laceration, severe burn (thermal, chemical, etc.), electrical burn, sight impairment, loss of consciousness and concussion.

J. "Division" means UOSH.

K. Employee medical record.

1. "Employee medical record" means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician including:

a. Medical and employment questionnaires or histories (including job description and occupational exposures);

b. The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including X-ray examinations and all biological monitoring not defined as an "employee exposure record" in 29 CFR 1910.1020(c)(5));

c. Medical opinions, diagnoses, progress notes, and recommendations;

d. Descriptions of treatments and prescriptions; and

e. Employee medical complaints.

2. "Employee medical record" does not include the following:

a. Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice;

b. Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.);

c. Records created solely in preparation for litigation which are privileged from discovery under the applicable rules of procedure or evidence; or

d. Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

L. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and separate notices shall be posted in each establishment to the extent that such notices have been furnished by UOSH.

M. "Exposure" or "exposed" means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact, absorption, etc.) and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

N. "Hearing" means a proceeding conducted by the commission.

O. "Imminent danger" means a danger exists which reasonably could be expected to cause an occupational disease, death, or serious physical harm immediately, or before the danger could be eliminated through enforcement procedures under the Utah OSH Act.

P. "Inspection" means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed under UAC R614-1-6.K.1. and 3., any re-inspection, follow-up inspection, accident investigation or other inspection conducted under section 34A-6-301(1) of the Utah OSH Act.

Q. "OSHA" means the federal Occupational Safety and Health Administration (OSHA).

R. "Serious injury" -- refer to definition for "disabling, serious or significant injury."

S. "Standard" means an occupational health and safety standard or group of standards which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary to provide safety and healthful employment and places of employment.

T. "Toxic substance or harmful physical agent" means any chemical substance, biological agent (bacteria, virus, fungus, etc.) or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo or hyperbaric pressure, etc.) which:

1. Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) which is

incorporated by reference as specified in 29 CFR 1910.6;

2. Has yielded positive evidence of an acute or chronic health hazard in human, animal, or other biological testing conducted by, or known to the employer; or

3. Is the subject of a safety data sheet kept by or known to the employer indicating that the material may pose a hazard to human health.

U. "UAC" means Utah Administrative Code.

V. "UOSH" means the Utah Occupational Safety and Health Division within the Labor Commission.

W. "Utah OSH Act" means the Utah Occupational Safety and Health Act, Utah Code Ann. 34A-6-101 et seq., of 1973.

R614-1-4. Incorporation of Federal Standards.

A. The following federal occupational safety and health standards are hereby incorporated:

1. 29 CFR 1904, July 1, 2018, is incorporated by reference, except 29 CFR 1904.36 and the workplace fatality, injury and illness reporting requirements found in 29 CFR 1904.1, 1904.2, 1904.7 and 1904.39. Workplace fatalities, injuries and illnesses shall be reported pursuant to the more specific Utah standards in subsection 34A-6-301(3)(b)(ii) of the Utah OSH Act and UAC R614-1-5(B)(1).

2. 29 CFR 1908, July 1, 2015, is incorporated by reference.

3. 29 CFR 1910.6 and 1910.21 through the end of part 1910, of the July 1, 2018, edition are incorporated by reference.

4. 29 CFR 1926.6 and 1926.20 through the end of part 1926, of the July 1, 2018, edition are incorporated by reference.

R614-1-5. Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders.

A. Scope and Purpose.

1. The provisions of this rule adopt and extend the applicability of established Federal Safety Standards and UAC R614 with respect to every employer, employee and employment in the state of Utah, covered by the Utah OSH Act.

2. All standards and rules, including emergency and/or temporary, promulgated under the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1590 et seq., 29 U.S.C. 651 et seq.) shall be accepted as part of the standards, rules and regulations under the Utah OSH Act, unless specifically revoked or deleted.

B. Reporting Requirements.

1. Each employer shall within 8 hours of occurrence, notify UOSH of any work-related fatalities, of any disabling, serious, or significant injury and of any occupational disease incident. Call (801) 530-6901.

2. Tools, equipment, materials or other evidence that might pertain to the cause of such accident shall not be removed or destroyed until so authorized by UOSH or one of its CSHOs.

3. Each employer shall investigate or cause to be investigated all work-related injuries and occupational diseases and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees.

C. Employer and Employee Responsibility.

1. It shall be the duty and responsibility of any employee upon entering his or her place of employment, to examine carefully such working place and ascertain if the place is safe, if the tools and equipment can be used with safety, and if the work can be performed safely. After such examination, it shall be the duty of the employee to make the place, tools, or equipment safe. If this cannot be done, then it becomes his or her duty to immediately report the unsafe place, tools, equipment, or conditions to the foreman or supervisor.

2. Employees must comply with all safety rules of their employer and with all the rules and regulations promulgated by UOSH which are applicable to their type of employment.

3. Management shall inspect or designate a competent person or persons to inspect frequently for unsafe conditions and practices, defective equipment and materials, and where such conditions are found, it shall take appropriate action to correct such conditions immediately.

4. Management shall warn all employees of any dangerous condition and permit no one to work in an unsafe place, except for the purpose of making it safe.

5. Each employer shall instruct its employees in a language and vocabulary that the employees can understand. Employees shall only be assigned to duties or locations where they have the necessary skills and comprehension to work in a safe manner.

D. General Safety Requirements.

1. No person shall remove, displace, bypass, destroy, or carry away any safety devices or safeguards provided for use in any place of employment, or interfere in any way with the use thereof by other persons, or interfere in any method or process adopted for the protection of employees.

2. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

3. Loose gloves, sleeves, tails, ties, lapels, cuffs, or similar garments which can become entangled in moving machinery shall not be worn where an entanglement hazard exists. Clothing saturated or impregnated with flammable liquids, corrosive substances, irritant, oxidizing agents or other toxic materials shall be removed and shall not be worn until properly cleaned.

4. Wrist watches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

5. Emergency Posting Required.

A list of telephone numbers or addresses as may be applicable shall be posted in a conspicuous place so the necessary help can be obtained in case of emergency. This list shall include:

a. Responsible supervision (superintendent or equivalent)

b. Doctor

c. Hospital

d. Ambulance

e. Fire Department

f. Sheriff or Police

6. Lockout and Tagout.

a. UOSH has incorporated, by reference, 29 CFR 1910.147, The Control of Hazardous Energy (Lockout/Tagout). See UAC R614-1-4.1.

b. The employee performing servicing or maintenance on machines or equipment required to be locked out under 29 CFR 1910.147 shall have exclusive control of the lockout device until the job is completed or such employee is relieved from the job, such as by shift change or other assignment.

7. Safety latch-type hooks shall be used wherever possible.

8. Grizzlies Over Chutes, Bins and Tank Openings.

a. Employees shall be provided with and use approved type safety harnesses and shall be tied off securely so as to be suspended above the level of the product before entering any bin, chute or storage place containing material that might cave or run. Cleaning and barring down in such places shall be started from the top using only bars blunt on one end or having a ring type or D handhold.

b. Employees shall not work on top of material stored or piled above chutes, drawholes or conveyor systems while material is being withdrawn unless protected.

c. Chutes, bins, drawholes and similar openings shall be equipped with grizzlies or other safety devices that will prevent employees from falling into the openings.

d. Bars for grizzly grids shall be so fitted that they will not loosen and slip out of place, and the operator shall not remove a bar temporarily to let large rocks through rather than to break them.

E. Process Safety Management.

All requirements of the process safety management (PSM) standard 29 CFR 1910.119 are hereby extended to include blister agents sulfur mustard (H, HD, HT), nitrogen mustard (HN-1, HN-2, HN-3), Lewisite (L) and halogenated oximes (CX) and the nerve agents tabun (GA), sarin (GB), soman (GD) and VX.

R614-1-6. Inspections, Citations, and Proposed Penalties.

A. The purpose of UAC R614-1-6 is to prescribe rules and general policies for enforcement of the inspection, citation, and proposed penalty provisions of the Utah OSH Act. Where UAC R614-1-6 sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the administrator or its designee determines that an alternative course of action would better serve the objectives of the Utah OSH Act.

B. Posting of Notices; Availability of the Utah OSH Act, Regulations and Applicable Standards.

1. Each employer shall post and keep posted notices, to be furnished by UOSH, informing employees of the protections and obligations provided for in the Utah OSH Act, and that for assistance and information, including copies of the Utah OSH Act and of specific safety and health standards, employees should contact their employer or the UOSH office. Such notices shall be posted by the employer in each establishment in a conspicuous place where notices to employees are customarily posted. Each employer shall take steps to ensure that such notices are not altered, defaced, or covered by other material.

2. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation communications, and electric, gas and sanitary services, the notices required shall be posted at the location where employees report each day. In the case of employees who do not usually work at, or report to, a single establishment, such as traveling salesmen, technicians, engineers, etc., such notices shall be posted in accordance with the requirements of UAC R614-1-6.Q.

3. Copies of the Utah OSH Act, all regulations published under authority of section 34A-6-202 of the Utah OSH Act and all applicable standards will be available at the UOSH office. If an employer has obtained copies of these materials, it shall make them available upon request to any employee or its authorized representative.

4. Any employer failing to comply with the provisions of this rule shall be subject to citation and penalty in accordance with the provisions of sections 34A-6-302 and 34A-6-307 of the Utah OSH Act.

C. Authority for Inspection.

1. CSHOs are authorized to conduct inspections and investigations of any workplace covered under the Utah OSH Act, in accordance with subsection 34A-6-301(1) of the Utah OSH Act, and to review records required by the Utah OSH Act, regulations published in UAC R614, federal standards incorporated by UAC R614-1-4, and other records which are directly related to the purpose of the inspection.

2. Prior to inspecting areas containing information which has been classified by an agency of the United States Government in the interest of national security, CSHOs shall obtain the appropriate security clearance.

D. Objection to Inspection.

1. Upon a refusal to permit the CSHO in exercise of his or her official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with UAC R614-1-6.C.1., or to permit a representative of employees to accompany the CSHO during the physical inspection of any workplace in accordance with UAC R614-1-6.H., the CSHO shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records or interviews concerning which no objection is raised.

2. The CSHO shall endeavor to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the administrator. The administrator shall take appropriate action, including compulsory process, if necessary.

3. Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the administrator, circumstances exist which make such pre-inspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include, but are not limited to:

a. When the employer's past practice either implicitly or explicitly puts the administrator on notice that a warrantless inspection will not be allowed:

b. When an inspection is scheduled far from the UOSH office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the worksite;

c. When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

4. For purposes of this section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this section.

E. Entry not a Waiver.

Any permission to enter, inspect, review records, or question any person, shall not imply a waiver of any cause of action, citation, or penalty under the Utah OSH Act. CSHOs are not authorized to grant such waivers.

F. Advance Notice of Inspections.

1. Advance notice of inspections may not be given, except in the following situations:

a. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible;

b. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection;

c. Where necessary to assure the presence of representatives of the employer and employees or the appropriate personnel needed to aid the inspection; and

d. In other circumstances where the administrator determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

2. In the situations described in UAC R614-1-6.F.1., advance notice of inspections may be given only if authorized by the administrator, except that in cases of imminent danger, advance notice may be given by the CSHO without such authorization if the administrator is not immediately available. When advance notice is given, it shall be the employer's responsibility promptly to notify the authorized representative of employees of the inspection, if the identity of such representative is known to the employer. (See UAC R614-1-6.H.2. as to instances where there is no authorized representative of employees.) Upon the request of the employer, the CSHO will inform the authorized representative of employees of the inspection, provided that the employer furnishes the CSHO with the identity of such representative and

with such other information as is necessary to enable the CSHO promptly to inform such representative of the inspection. An employer who fails to comply with its obligation under this paragraph promptly to inform the authorized representative of employees of the inspection or to furnish such information as is necessary to enable the CSHO promptly to inform such representative of the inspection, may be subject to citation and penalty under sections 34A-6-302 and 34A-6-307 of the Utah OSH Act. Advance notice in any of the situations described in UAC R614-1-6.F.1. shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in cases of imminent danger situations and other unusual circumstances.

3. Subsection 34A-6-307(5)(b) of the Utah OSH Act provides for criminal penalties where any person gives advance notice of any inspection conducted under the Utah OSH Act without authority from the administrator or administrator's representatives.

G. Conduct of Inspections.

1. Subject to the provisions of UAC R614-1-6.C., inspections shall take place at such times and in such places of employment as the administrator or the CSHO may direct. At the beginning of an inspection, CSHOs shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records which they wish to review as specified in UAC R614-1-6.C.1. However, such designations of records shall not preclude access to additional records that may be related to the purpose of the inspection.

2. CSHOs shall have authority to take environmental samples and to take or obtain photographs or video recordings related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. (See UAC R614-1-6.I. on trade secrets.) As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their exposures.

3. In taking photographs and samples, CSHOs shall take reasonable precautions to ensure that such actions with flash, spark-producing, or other equipment will not be hazardous. CSHOs shall comply with all employer safety and health rules and practices at the establishment being inspected, and shall wear and use appropriate protective clothing and equipment.

4. The conduct of inspections shall preclude unreasonable disruption of operations of the employer's establishment.

5. At the conclusion of an inspection, the CSHO shall confer with the employer or its representative and informally advise such of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the CSHO any pertinent information regarding conditions in the workplace.

6. Inspections shall be conducted in accordance with the requirements of UAC R614-1-6.

H. Representative of Employers and Employees.

1. CSHOs shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by its employees shall be given an opportunity to accompany the CSHO during the physical inspection of any workplace for the purpose of aiding such inspection. A CSHO may permit additional employer representatives and additional representatives authorized by employees to accompany the CSHO where the CSHO determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the CSHO during each phase of an inspection if this will not interfere with the conduct of the inspection.

2. CSHOs shall have authority to resolve all disputes as to who is the representative authorized by the employer and employees for the purpose of this rule. If there is no authorized representative of employees, or if the CSHO is unable to determine with reasonable certainty who is such representative, the CSHO shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

3. The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the CSHO, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the CSHO during the inspection.

4. CSHOs are authorized to deny the right of accompaniment under this rule to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of UAC R614-1-6.I.3. With regard to information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a CSHO in areas containing such information.

I. Trade secrets.

1. Section 34A-6-306 of the Utah OSH Act provides provisions for trade secrets.

2. At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the CSHO has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential-trade secret" and shall not be disclosed except in accordance with the provisions of section 34A-6-306 of the Utah OSH Act.

3. Upon the request of an employer, any authorized representative of employees under UAC R614-1-6.H. in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is no such representative or employee, the CSHO shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

J. Consultation with Employees.

CSHOs may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee who believes a violation of the Utah OSH Act exists in the workplace shall be afforded an opportunity to bring such violation to the attention of the CSHO.

K. Complaints by Employees.

1. Any employee or representative of employees who believes a violation of the Utah OSH Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the administrator or to a CSHO. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided to the employer or its agent by the administrator or CSHO no later than at the time of inspection, except that, upon the request of the person giving such notice, the person's name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the administrator.

2. If upon receipt of such notification the administrator

determines that the complaint meets the requirements set forth in UAC R614-1-6.K.1., and that there are reasonable grounds to believe that the alleged violation exists, the administrator shall cause an inspection to be made as soon as practicable. Inspections under this rule shall not be limited to matters referred to in the complaint.

3. Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the CSHO, in writing, of any violation of the Utah OSH Act which they have reason to believe exists in such workplace. Any such notice shall comply with requirements of UAC R614-1-6.K.1.

L. Inspection not Warranted; Informal Review.

1. If the administrator determines an inspection is not warranted because there are no reasonable grounds to believe a violation or danger exists with respect to a complaint filed under UAC R614-1-6.K., the administrator shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the administrator. The administrator, at its discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral view presented, the administrator shall affirm, modify, or reverse the determination of the previous decision and again furnish the complaining party and the employer written notification of its decision and the reasons therefor.

2. If the administrator determines that an inspection is not warranted because the requirements of UAC R614-1-6.K.1. have not been met, the administrator shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of UAC R614-1-6.K.1.

M. Imminent Danger.

Section 34A-6-305 of the Utah OSH Act contains provisions for addressing imminent danger conditions and practices in any place of employment.

N. Citations.

1. The administrator shall review the inspection report of the CSHO. If, on the basis of the report the administrator believes the employer has violated a requirement of section 34A-6-201 of the Utah OSH Act, of any standard, rule, or order promulgated pursuant to section 34A-6-202 of the Utah OSH Act, or of any substantive rule published in this chapter, the administrator shall issue to the employer a citation. A citation shall be issued even though after being informed of an alleged violation by the CSHO, the employer immediately abates or initiates steps to abate such alleged violation. Any citation shall be issued with reasonable promptness after termination of the inspection. No citation may be issued after the expiration of 6 months following the occurrence of any violation.

2. Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision(s) of the Utah OSH Act, standard, rule, regulation, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violations.

3. If a citation is issued for a violation alleged in a request for inspection under UAC R614-1-6.K.1. or a notification of violation under UAC R614-1-6.K.3., a copy of the citation shall be sent to the employee or representative of employees who made such request or notification.

4. Following an inspection, if the administrator determines a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under UAC R614-1-6.K.1. or a notification of violation under UAC R614-1-6.K.3., the informal review procedures prescribed in UAC R614-1-6.L.1. shall be applicable. After considering all views presented, the administrator shall affirm the determination, order a re-inspection, or issue a citation if it believes the inspection disclosed a violation. The administrator shall furnish the complaining party and the employer with written notification of its determination and the reasons therefor.

5. Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Utah OSH Act has occurred unless there is a failure to contest as provided for in the Utah OSH Act or, if contested, unless the citation is affirmed by the commission.

O. Petitions for Modification of Abatement Date.

1. An employer may file a petition for modification of abatement date when it has made a good faith effort to comply with the abatement requirements of the citation, but such abatement has not been completed because of factors beyond its reasonable control.

2. A petition for modification of abatement date shall be in writing and shall include the following information:

a. All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period;

b. The specific additional abatement time necessary in order to achieve compliance;

c. The reasons such additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date;

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period; and

e. A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with UAC R614-1-6.O.3.a. and a certification of the date upon which such posting and service was made.

3. A petition for modification of abatement date shall be filed with the administrator no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

a. A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted for a period of ten (10) working days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

b. Affected employees or their representatives may file an objection in writing to such petition with the administrator. Failure to file such objection within ten (10) working days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

c. The administrator or its authorized representative shall have authority to approve any petition for modification of abatement date filed pursuant to paragraphs UAC R614-1-6.O.2. and 3. Such uncontested petitions shall become final orders pursuant to subsection 34A-6-303(1) of the Utah OSH Act.

d. The administrator or its authorized representative shall not exercise its approval power until the expiration of ten (10) working days from the date the petition was posted or served by the employer pursuant to UAC R614-1-6.O.3.a.

4. Where any petition is objected to by the affected employees, the petition, citation, and any objections shall be forwarded to the administrator per UAC R614-1-6.O.3.b.

P. Proposed Penalties.

1. After, or concurrent with, the issuance of a citation and within a reasonable time after the termination of the inspection,

the administrator shall notify the employer by certified mail or by personal service of the proposed penalty under section 34A-6-307 of the Utah OSH Act, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty shall be deemed to be the final order of the commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notice, the employer notifies the Adjudication Division (Adjudication) within the commission in writing that it intends to contest the citation or the notification of proposed penalty before the commission.

2. The administrator shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of section 34A-6-307 of the Utah OSH Act.

3. Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the CSHO, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for violations which have no direct or immediate relationship to safety or health.

Q. Posting of Citations.

1. Upon receipt of any citation under the Utah OSH Act, the employer shall immediately post such citation, or copy thereof, unedited, at or near each place an alleged violation referred to in the citation occurred, except as hereinafter provided. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employees are engaged in activities which are physically dispersed (see UAC R614-1-6.B.2.), the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location, the citation must be posted at the location from which the employees commence their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material.

2. Each citation, or a copy thereof, shall remain posted until the violation has been abated, or for 3 working days, whichever is later. The filing by the employer of a notice of intention to contest under UAC R614-1-6.R. shall not affect its posting responsibility unless and until the commission issues a final order vacating the citation.

3. An employer to whom a citation has been issued may post a notice in the same location where such citation is posted indicating that the citation is being contested before the commission, and such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

4. Any employer failing to comply with the provisions of UAC R614-1-6.Q.1. and 2. shall be subject to citation and penalty in accordance with the provisions of section 34A-6-307 of the Utah OSH Act.

R. Employer and Employee Contests before the Commission.

1. Any employer to whom a citation or notice of proposed penalty has been issued, may under section 34A-6-303 of the Utah OSH Act, notify Adjudication in writing that the employer intends to contest such citation or proposed penalty before the commission. Such notice of intention to contest must be received by Adjudication within 30 days of the receipt by the employer of the citation and notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both. Adjudication shall handle such notice in accordance with the rules of procedures prescribed by the commission.

2. An employee or representative of employee of an employer to whom a citation has been issued may, under section 34A-6-303(3) of the Utah OSH Act, file a written notice with Adjudication alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable. Such notice must be received by Adjudication within 30 days of the issuance of the citation by UOSH. Adjudication shall handle such notice in accordance with the rules of procedure prescribed by the commission.

S. Failure to Correct a Violation for which a Citation has been Issued.

1. If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the administrator shall notify the employer by certified mail or by personal service by the CSHO of such failure and of the additional penalty proposed under section 34A-6-307 of the Utah OSH Act by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the commission in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

2. Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may, under section 34A-6-303(3) of the Utah OSH Act, notify Adjudication in writing that it intends to contest such notification or proposed additional penalty before the commission. Such notice of intention to contest shall be received by Adjudication within 30 days of receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty. Adjudication shall handle such notice in accordance with the rules of procedures prescribed by the commission.

3. Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notification, the employer notifies Adjudication in writing that it intends to contest the notification or the proposed additional penalty before the commission.

T. Informal Conferences.

At the request of an affected employer, employee, or representative of employees, the administrator may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The administrator shall provide in writing the reasons for any settlement of issues at such conferences. If the conference is requested by the employer, an affected employee or employee representative shall be afforded an opportunity to participate, at the discretion of the administrator. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the administrator. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any 30-day period for filing a notice of intention to contest as prescribed in UAC R614-1-6.R.

U. Multi-Employer Worksites.

1. Pursuant to section 34A-6-201 of the Utah OSH Act, violation of an applicable standard adopted under section 34A-6-202 of the Utah OSH Act at a multi-employer worksite may result in a citation issued to more than one employer.

2. An employer on a multi-employer worksite may be considered a creating, exposing, correcting, or controlling employer. An employer may be cited should:

a. It meet the definition of a creating employer and be found to have failed to exercise the duty of care required by this

rule for a creating employer: or

b. It meet the definition of an exposing, correcting, or controlling employer and be found to have failed to exercise the duty of care required by this rule for that category of employer.

c. Even if an employer meets its duty of reasonable care applicable to one category of employer, it may still be cited should it meet the definition of another category of employer and be found to have failed to exercise the duty of care required by this rule for that category of employer. No employer will be cited for the same violation under multiple categories of employers.

3. Creating Employer. A creating employer is one that created a hazardous condition on the worksite. A creating employer may be cited if:

a. Its own employees are exposed or if the employees of another employer at the site are exposed to this hazard; and

b. The employer did not exercise reasonable care by taking prompt and effective steps to alert employees of other employers of the hazard and to correct or remove the hazard or, if the creating employer does not have the ability or authority to correct or remove the hazard, to notify the controlling or correcting employer of the hazard.

4. Exposing Employer. An exposing employer is one that exposed its own employees to a hazard. If the exposing employer created the hazard, it is citable as the creating employer, not the exposing employer.

a. If the exposing employer did not create the hazard, it may be cited as the exposing employer if:

i. It knew of the hazard or failed to exercise reasonable care to discover the hazard; and

ii. Upon obtaining knowledge of the hazard, it failed to take prompt and reasonable precautions, consistent with its authority on the worksite, to protect its employees.

b. An exposing employer will be deemed to have exercised reasonable care to discover a hazard if it demonstrates that it has regularly and diligently inspected the worksite.

c. If the exposing employer has the authority to correct or remove the hazard, it must correct or remove the hazard with reasonable diligence. If the exposing employer lacks such authority, it may still be cited if:

i. It failed to make a good faith effort to ask the creating and/or controlling employer to correct the hazard;

ii. It failed to inform its employees of the hazard; and

iii. It failed to take reasonable alternative measures, consistent with its authority on the worksite, to protect its employees.

5. Correcting Employer. A correcting employer is one responsible for correcting a hazardous condition, such as installing or maintaining safety and health devices or equipment, or implementing appropriate health and safety procedures. A correcting employer must exercise reasonable care in preventing and discovering hazards and ensure such hazards are corrected in a prompt manner, which shall be determined in light of the scale, nature and pace of the work, and the amount of activity of the worksite.

6. Controlling Employer. A controlling employer is one with general supervisory authority over a worksite. This authority may be established either through contract or practice and includes the authority to correct safety and health violations or require others to do so, but it is separate from the responsibilities and care to be exercised by a correcting employer.

a. A controlling employer will not be cited if it has exercised reasonable care to prevent and detect violations on the worksite. The extent of the measures used by a controlling employer to satisfy this duty, however, is less than the extent required of an employer when protecting its own employees. A controlling employer is not required to inspect for hazards or violations as frequently or to demonstrate the same knowledge of applicable standards or specific trade expertise as the employer under its control.

b. When determining the duty of reasonable care applicable to a controlling employer on a multi-employer worksite, the factors that may be considered include, but are not limited to:

i. The nature of the worksite and industry in which the work is being performed;

ii. The scale, nature and pace of the work, including the pace and frequency at which the worksite hazards change as the work progresses;

iii. The amount of activity at the worksite, including the number of employers under its control and the number of employees working on the worksite;

iv. The implementation and monitoring of safety and health precautions for the entire worksite requiring that other employers on the worksite comply with their respective obligations and standards of care for the safety of employees, a graduated system of discipline for non-compliant employees and/or employers, regular worksite safety meetings, and when appropriate for atypical hazards, the providing of adequate safety training by employers for atypical hazards present on the worksite; and

v. The frequency of worksite inspections, particularly at the commencement of a project or the commencement of work on the project by other employers that come under its control. As work progresses, the frequency and sufficiency of such inspections shall be determined in relation to other employers' compliance with their respective obligations and standards of care as required by this rule.

c. When evaluating whether a controlling employer has demonstrated reasonable care in preventing and discovering violations, the following factors, though not inclusive, shall be considered;

i. Whether the controlling employer conducted worksite inspections with sufficient frequency as contemplated by subsection 6(b);

ii. The controlling employer's implementation and monitoring of an effective system for identifying a hazardous condition and promptly notifying employers under its control of the hazard so as to ensure compliance with their respective duties of care under this Rule;

iii. Whether the controlling employer implements a graduated system of discipline for non-compliant employees and/or employers with their respective safety and health requirements;

iv. Whether the controlling employer performs follow-up inspections to ensure hazards are corrected; and

v. Other actions demonstrating the implementation and monitoring of safety and health precautions for the entire worksite.

7. In accordance with section 34A-6-110 of the Utah OSH Act, nothing in this rule shall be:

a. Deemed to limit or repeal requirements imposed by statute or otherwise recognized by law; or

b. Construed or held to supersede or in any manner affect workers' compensation or enlarge or diminish or affect the common-law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, occupational or other diseases, or death of employees arising out of, or in the course of employment.

R614-1-7. Recording and Reporting Occupational Injuries and Illnesses.

A. UOSH has incorporated, by reference, 29 CFR 1904, Recording and Reporting Occupational Injuries and Illnesses, with a few exceptions. Refer to UAC R614-1-4.A.1.

B. Regardless of size or type of operation, accidents and fatalities must be reported to UOSH in accordance with the

requirements of UAC R614-1-5.B.

C. Equivalent Form for OSHA 301 Injury and Illness Report Form (OSHA 301 form). For Employers Required to keep OSHA Injury and Illness Logs, Employer's First Report of Injury or Illness form (Utah Industrial Accidents Form 122), workers' compensation, insurance, or other reports may be used as an equivalent form for the OSHA 301 form if it contains the same information, is readable and understandable, and is completed using the same instructions as the OSHA 301 form it replaces.

D. Statistical Program.

1. Section 34A-6-108 of the Utah OSH Act directs the division to develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics. The program shall consist of periodic surveys of occupational injuries and illnesses.

2. The sample design encompasses probability procedures, detailed stratification by industry and size, and a systematic selection within stratification. Stratification and sampling will be carried out in order to provide the most efficient sample for eventual state estimates. Some industries will be sampled more heavily than others depending on the injury rate level based on previous experience. The survey should produce adequate estimates using the North American Industry Classification System (NAICS) where each industry sector and subsector is placed into the appropriate group of either goods-producing industries or service-providing industries. Full cooperation with the United States Department of Labor in statistical programs is intended.

R614-1-8. Rules of Practice for Temporary or Permanent Variance from the Utah Occupational Safety and Health Standards.

A. Scope.

This rule contains rules of practice for administrative procedures to grant variances and other relief under section 34A-6-202 of the Utah OSH Act. General information pertaining to employer-employee rights, obligations and procedures are included.

B. Application for, or Petition against Variances and Other Relief.

1. The applicable parts of section 34A-6-202 of the Utah OSH Act shall govern application and petition procedure.

2. Temporary variance.

a. Any employer or class of employers desiring a temporary variance from a standard, or portion thereof, authorized by subsection 34A-6-202(2)(c) of the Utah OSH Act must file a written application with the administrator which shall include the following information:

(1) The name and address of applicant;

(2) The address of the place or places of employment involved;

(3) A specification of the standard or portion thereof from which the applicant seeks a variance;

(4) A representation by the applicant, supported by representations from qualified persons having first-hand knowledge of the facts represented, that the applicant is unable to comply with the standard or portion thereof by its effective date and a detailed statement of the reasons therefor;

(5) A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the standard;

(6) A statement of when the applicant expects to be able to comply with the standard and of what steps it has taken and will take, with specific dates where appropriate, to come into compliance with the standard;

(7) A statement of the facts the applicant would show to establish that

i. The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

ii. The applicant is taking all available steps to safeguard its employees against the hazards covered by the standard; and

iii. The applicant has an effective program for coming into compliance with the standard as quickly as practicable;

(8) Any request for a hearing, as provided in this rule;

(9) A statement that the applicant has informed its affected employees of the application by giving a copy thereof to their authorized representative, posting a statement, which gives a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted, and by other appropriate means; and

(10) A description of how affected employees have been informed of the application and their right to petition the administrator for a hearing.

b. A temporary order may be granted only after notice to employees and an opportunity for a public hearing; provided, the administrator may issue one interim order effective until a decision is made, formally granting or denying a temporary variance, after public hearing.

(1) The purpose of an interim order is to permit an employer to proceed in a non-standard operation while administrative procedures are being completed. Use of this interim procedure is dependent upon need and employee safety.

(2) After determination and assurance that employees are to be adequately protected, the administrator may immediately grant, in writing, an interim order. To expedite the effect of the interim order, it may be issued at the worksite by the administrator.

3. Permanent variance.

a. Any employer desiring a permanent variance of a standard issued under section 34A-6-202 of the Utah OSH Act must apply to the division for a rule or order for such variance. The written application must include the following information:

(1) The name and address of applicant;

(2) The address of the place or places of employment involved;

(3) A description of the conditions, practices, means, methods, operations, or processes used or proposed to be used by the applicant;

(4) A statement showing how the conditions, practices, means, methods, operations, or processes used or proposed to be used would provide employment and places of employment to employees which are as safe and healthful as those required by the standard from which a variance is sought;

(5) The methods it will use to safeguard its employees until a variance is granted or denied;

(6) A certification that the applicant has informed its employees of the application by

i. Giving a copy thereof to their authorized representative;

ii. Posting a statement giving a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted (or in lieu of such summary, the posting of the application itself); and

iii. By other appropriate means;

(7) Any request for a hearing, as provided in this rule; and

(8) A description of how employees have been informed of the application and their right to petition the administrator for a hearing.

4. Whenever a proceeding on a citation or a related issue concerning a proposed penalty or period of abatement has been contested and is pending before an administrative law judge or any subsequent review under the Administrative Procedures Act, until the completion of such proceeding, the administrator may deny a variance application on a subject or an issue

concerning a citation which has been issued to the employer.

C. Hearings.

1. The administrator may conduct hearings upon application or petition in accordance with section 34A-6-202(4) of the Utah OSH Act if:

a. Employee(s), the public, or other interested groups petition for a hearing; or

b. The administrator deems it in the public or employee interest.

2. When a hearing is considered appropriate, the administrator shall set the date, time, and place for such hearing and shall provide timely notification to the applicant and the petitioners. In the notice of hearing to the applicant, the applicant will be directed to notify its employees of the hearing.

3. Notice of hearings for proposed rules under section 34A-6-202(4) of the Utah OSH Act shall be published in the Utah State Bulletin. This shall include a statement that the application request may be inspected at the UOSH Office.

4. A copy of the Notice of Hearing, along with other pertinent information, shall be sent to the regional administrator for the federal Occupational Safety and Health Administration (OSHA).

D. Inspection for Variance Application.

1. A variance inspection may be required by the administrator or its designee prior to final determination of either acceptance or denial of a temporary or permanent variance.

2. A variance inspection is a single purpose, pre-announced, non-compliance inspection and shall include employee or employer representative participation or interviews where necessary.

E. Defective Applications.

1. If an application for variance does not meet the requirements of UAC R614-1-8.B., the administrator may deny the application.

2. Prompt notice of the denial of an application shall be given to the applicant.

3. The notice of denial shall include, or be accompanied by, a brief statement of the grounds for denial.

4. A denial of an application pursuant to this paragraph shall be without prejudice to the filing of another application.

5. A copy of the notice of denial shall be sent to the regional administrator for OSHA.

F. Adequate Applications.

1. The administrator may grant the request for variance provided that:

a. Data supplied by the applicant, the UOSH variance inspection, as applicable, and information and testimony affords adequate protection for the affected employee(s);

b. Notification of approval shall follow the pattern described in UAC R614-1-9.C.2. and 3.;

c. Limitations, restrictions, or requirements which become part of the variance shall be documented in the letter granting the variance.

2. The administrator's decision shall be deemed final subject to section 34A-6-202(6) of the Utah OSH Act.

G. Public Notice of a Granted Variance, Limitation, Variation, Tolerance or Exemption.

1. This paragraph does not apply to orders issued under section 34A-6-202 of the Utah OSH Act.

2. Final actions granting a variance, limitation, variation, tolerance or exemption under this rule shall be published in the Utah State Bulletin pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act. Every such final action shall specify the alternative to the standard involved which the particular variance permits.

H. Acceptance of Federally Granted Variances.

1. Where a variance has been granted by OSHA, following federal promulgation procedures, the administrator shall take the following action:

a. Compare the federal OSHA standard for which the variance was granted with the equivalent UOSH standard.

b. Identify possible application in Utah.

c. If the UOSH standard under consideration for application of the variance has exactly or essentially the same intent as the federal standard and there is the probability of a multi-state employer doing business in Utah, then the administrator shall accept the variance and promulgate it for Utah under the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

d. If the variance has no apparent application to Utah industry, or to a multi-state employer in Utah, or if it conflicts with Utah legislative intent, or established policy or procedure, the federal variance shall not be accepted. In such case, the regional administrator for OSHA will be so notified.

I. Revocation of a Variance.

1. Any variance (temporary or permanent), whether approved by UOSH or accepted by UOSH based on federal approval, may be revoked by the administrator if it is determined through on-site inspection that:

a. The employer is not complying with provisions of the variance as granted;

b. Adequate employee safety is not afforded by the original provisions of the variance; or

c. A more stringent standard has been promulgated, is in force, and conflicts with prior considerations given for employee safety.

2. A federally approved national variance may be revoked by UOSH for a specific worksite or place of employment within Utah for reasons cited in UAC R614-1-8.I.1. Such revocations must be in writing and give full particulars and reasons prompting the action. Full rights provided under the law, such as hearings, etc., must be afforded the employer.

3. Permanent variances may be revoked or changed only after being in effect for at least six months.

J. Coordination.

All variances issued by the administrator will be coordinated with OSHA to ensure consistency and avoid improper unilateral action.

R614-1-9. Retaliation.

A. Section 34A-6-203 of the Utah OSH Act provides protection for employees who engage in protected activities under or related to the Utah OSH Act.

B. Engagement in Protected Activity. To establish a violation of Section 34A-6-203, the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" engagement in protected activity, Section 34A-6-203 has been violated.

C. Notification of Division's Findings.

Within 90 days of receipt of a whistleblower complaint, the division is to issue to the complainant and the respondent an order of the division's findings of whether a violation has or has not occurred, in accordance with section 34A-6-203(2)(c) of the Utah OSH Act. This 90-day provision is considered directory in nature whereas there may be instances when it is not possible to meet the directory period set forth in this rule.

D. Employee Refusal to Comply with Safety Rules.

Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Utah OSH Act are not exercising any rights afforded by the Utah OSH Act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations will not ordinarily be regarded as retaliatory action prohibited by section 34A-6-203 of the Utah OSH Act.

R614-1-10. Rules of Agency Practice and Procedure Concerning UOSH Access to Employee Medical Records.

A. Policy.

UOSH access to employee medical records will in certain circumstances be important to the agency's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees. Due to the substantial personal privacy interests involved, UOSH authority to gain access to personally identifiable employee medical information will be exercised only after the agency has made a careful determination of its need for this information and only with appropriate safeguards to protect individual privacy. Once this information is obtained, UOSH examination and use of it will be limited to only that information needed to accomplish the purpose for access. Personally identifiable employee medical information will be retained by UOSH only for so long as needed to accomplish the purpose for access, will be kept secure while being used, and will not be disclosed to other agencies or members of the public except in narrowly defined circumstances. This section establishes procedures to implement these policies.

B. Scope and Application.

1. Except as provided in paragraphs B.6. through 10. below, this rule applies to all requests by UOSH personnel to obtain access to records in order to examine or copy personally identifiable employee medical information, whether or not pursuant to the access provision of 29 CFR 1910.1020(e).

2. For the purpose of this rule, "employer" means a current employer, a former employer, or a successor employer.

3. For the purposes of this rule, "personally identifiable employee medical information" means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.).

4. For the purpose of this rule, "record" means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, electronic document, microfiche, microfilm, X-ray film, or automated data processing).

5. Specific written consent.

a. For the purpose of this rule, "specific written consent" means written authorization containing the following:

(1) The name and signature of the employee authorizing the release of medical information;

(2) The date of the written authorization;

(3) The name of the individual or organization that is authorized to release the medical information;

(4) The name of the designated representative (individual or organization) that is authorized to receive the released information;

(5) A general description of the medical information that is authorized to be released;

(6) A general description of the purpose for the release of medical information; and

(7) A date or condition upon which the written authorization will expire (if less than one year).

b. A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless this is expressly authorized, and does not operate for more than one year from the date of written authorization.

c. A written authorization may be revoked in writing at any time.

6. This rule does not apply to UOSH access to, or the use of, aggregate employee medical information or medical records on individual employees which is not in a personally identifiable form.

7. This rule does not apply to records required by 29 CFR 1904, to death certificates, or to employee exposure records, including biological monitoring records, as defined by 29 CFR 1910.1020(c)(5), or by specific occupational safety and health standards as exposure records.

8. This rule does not apply where CSHOs conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance recordkeeping requirements of an occupational safety and health standard, or with 29 CFR 1910.1020. An examination of this nature shall be conducted on-site and, if requested, shall be conducted under the observation of the record holder. CSHOs shall not record and take off-site any information from medical records other than documentation of the fact of compliance or non-compliance.

9. This rule does not apply to agency access to, or the use of, personally identifiable employee medical information obtained in the course of litigation.

10. This rule does not apply where a written directive by the administrator authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results.

11. Even if not covered by the terms of this rule, all medically related information reported in a personally identifiable form shall be handled with appropriate discretion and care befitting all information concerning specific employees. There may, for example, be personal privacy interests involved which militate against disclosure of this kind of information to the public.

C. Responsible Persons.

1. Administrator. The administrator shall be responsible for the overall administration and implementation of the procedures contained in this rule, including making final UOSH determinations concerning:

a. Access to personally identifiable employee medical information, and

b. Inter-agency transfer or public disclosure of personally identifiable employee medical information.

2. UOSH medical records officer. The administrator shall designate a UOSH official with experience or training in the evaluation, use, and privacy protection of medical records to be the UOSH medical records officer. The UOSH medical records officer shall report directly to the administrator on matters concerning this section and shall be responsible for:

a. Making recommendations to the administrator as to the approval or denial of written access orders;

b. Assuring that written access orders meet the requirements of paragraphs D.2. and 3. of this rule;

c. Responding to employee, collective bargaining agent, and employer objections concerning written access orders;

d. Regulating the use of direct personal identifiers;

e. Regulating internal agency use and security of personally identifiable employee medical information;

f. Assuring that the results of agency analyses of personally identifiable medical information are, where appropriate, communicated to employees;

g. Preparing an annual report of UOSH's experience under this rule; and

h. Assuring that advance notice is given of intended inter-agency transfers or public disclosures.

3. Principal UOSH investigator. The principal UOSH investigator shall be the UOSH employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for assuring that the examination and use of this information is performed in the manner prescribed by a written access order and the requirements of this section. When access is pursuant to a

written access order, the principal UOSH investigator shall be professionally trained in medicine, public health, or allied fields (epidemiology, toxicology, industrial hygiene, biostatistics, environmental health, etc.).

D. Written Access Orders.

1. Requirement for written access order. Except as provided in paragraph D.4. below, each request by a UOSH representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other record holder shall be made pursuant to a written access order which has been approved by the administrator upon the recommendation of the UOSH medical records officer. If deemed appropriate, a written access order may constitute, or be accompanied by an administrative subpoena.

2. Approval criteria for written access order. Before approving a written access order, the administrator and the UOSH medical records officer shall determine that:

a. The medical information to be examined or copied is relevant to a statutory purpose and there is a need to gain access to this personally identifiable information;

b. The personally identifiable medical information to be examined or copied is limited to only that information needed to accomplish the purpose for access; and

c. The personnel authorized to review and analyze the personally identifiable medical information are limited to those who have a need for access and have appropriate professional qualifications.

3. Content of written access order. Each written access order shall state with reasonable particularity:

a. The statutory purposes for which access is sought;

b. A general description of the kind of employee medical information that will be examined and why there is a need to examine personally identifiable information;

c. Whether medical information will be examined on-site, and what type of information will be copied and removed off-site;

d. The name, address, and phone number of the principal UOSH investigator and the names of any other authorized persons who are expected to review and analyze the medical information;

e. The name, address, and phone number of the UOSH medical records officer; and

f. The anticipated period of time during which UOSH expects to retain the employee medical information in a personally identifiable form.

4. Special situations. Written access orders need not be obtained to examine or copy personally identifiable employee medical information under the following circumstances:

a. Specific written consent. If specific written consent of an employee is obtained pursuant to 29 CFR 1910.1020(e)(2)(ii), and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information, then a written access order need not be obtained. Whenever personally identifiable employee medical information is obtained through specific written consent and taken off-site, a principal UOSH investigator shall be promptly named to assure protection of the information, and the UOSH medical records officer shall be notified of this person's identity. The personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of paragraphs UAC R614-1-10.H. and I.

b. Physician consultations. A written access order need not be obtained where a UOSH staff or contract physician consults with an employer's physician concerning an occupational safety or health issue. In a situation of this nature, the UOSH physician may conduct on-site evaluation of employee medical records in consultation with the employer's physician, and may make necessary personal notes of his or her findings. No employee medical records however, shall be taken off-site in the absence of a written access order or the specific written consent of an employee, and no notes of personally identifiable employee medical information made by the UOSH physician shall leave his or her control without the permission of the UOSH medical records officer.

E. Presentation of Written Access Order and Notice to Employees.

1. The principal UOSH investigator, or someone under his or her supervision, shall present at least two (2) copies each of the written access order and an accompanying cover letter to the employer prior to examining or obtaining medical information subject to a written access order. At least one copy of the written access order shall not identify specific employees by direct personal identifier. The accompanying cover letter shall summarize the requirements of this section and indicate that questions or objections concerning the written access order may be directed to the principal UOSH investigator or to the UOSH medical records officer.

2. The principal UOSH investigator shall promptly present a copy of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to each collective bargaining agent representing employees whose medical records are subject to the written access order.

3. The principal UOSH investigator shall indicate that the employer must promptly post a copy of the written access order which does not identify specific employees by direct personal identifier, as well as post its accompanying cover letter.

4. The principal UOSH investigator shall discuss with any collective bargaining agent and with the employer the appropriateness of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the principal UOSH investigator shall promptly provide to the employer an adequate number of copies of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to enable the employer either to individually notify each employee or to place a copy in each employee's medical file.

F. Objections Concerning a Written Access Order. All employees, collective bargaining agents, and employer written objections concerning access to records pursuant to a written access order shall be transmitted to the UOSH medical records officer. Unless the agency decides otherwise, access to the record shall proceed without delay notwithstanding the lodging of an objection. The UOSH medical records officer shall respond in writing to each employee's and collective bargaining agent's written objection to UOSH access. Where appropriate, the UOSH medical records officer may revoke a written access order and direct that any medical information obtained by it be returned to the original record holder or destroyed. The principal UOSH investigator shall assure that such instructions by the UOSH medical records officer are promptly implemented.

G. Removal of Direct Personal Identifiers. Whenever employees' medical information obtained pursuant to a written access order is taken off-site with direct personal identifiers included, the principal UOSH investigator shall, unless otherwise authorized by the UOSH medical records officer, promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number of each employee. The medical information with its numerical code shall thereafter be used and kept secured as though still in a directly identifiable form. The principal UOSH investigator shall also hand deliver or mail the list of direct personal identifiers with their corresponding numerical codes to the

UOSH medical records officer. The UOSH medical records officer shall thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents.

H. Internal Agency Use of Personally Identifiable Employee Medical Information.

1. The principal UOSH investigator shall in each instance of access be primarily responsible for assuring that personally identifiable employee medical information is used and kept secured in accordance with this section.

2. The principal UOSH investigator, the UOSH medical records officer, the administrator, and any other authorized person listed on a written access order may permit the examination or use of personally identifiable employee medical information by agency employees and contractors who have a need for access, and appropriate qualifications for the purpose for which they are using the information. No UOSH employee or contractor is authorized to examine or otherwise use personally identifiable employee medical information unless so permitted.

3. Where a need exists, access to personally identifiable employee medical information may be provided to attorneys in the Utah Office of the Attorney General (AG's Office), and to agency contractors who are physicians or who have contractually agreed to abide by the requirements of this section and implementing agency directives and instructions.

4. UOSH employees and contractors are only authorized to use personally identifiable employee medical information for the purposes for which it was obtained, unless the specific written consent of the employee is obtained as to a secondary purpose, or the procedures of UAC R614-1-10.D. through G. are repeated with respect to the secondary purpose.

5. Whenever practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.

I. Security Procedures.

1. Agency files containing personally identifiable employee medical information shall be segregated from other agency files. When not in active use, files containing this information shall be kept secured in a locked cabinet or vault.

2. The UOSH medical records officer and the principal UOSH investigator shall each maintain a log of uses and transfers of personally identifiable employee medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision.

3. The photocopying or other duplication of personally identifiable employee medical information shall be kept to the minimum necessary to accomplish the purposes for which the information was obtained.

4. The protective measures established by this rule apply to all worksheets, duplicate copies, or other agency documents containing personally identifiable employee medical information.

5. Intra-agency transfers of personally identifiable employee medical information shall be by hand delivery, United States mail, or equally protective means. Inter-office mailing channels shall not be used.

J. Retention and Destruction of Records.

1. Consistent with UOSH records disposition programs, personally identifiable employee medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original record holder when no longer needed for the purposes for which they were obtained.

2. Personally identifiable employee medical information which is currently not being used actively but may be needed for future use shall be transferred to the UOSH medical records officer. The UOSH medical records officer shall conduct an annual review of all centrally-held information to determine which information is no longer needed for the purposes for which it was obtained.

K. Results of an Agency Analysis Using Personally Identifiable Employee Medical Information.

The UOSH medical records officer shall, as appropriate, assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis.

L. Annual Report. The UOSH medical records officer shall on an annual basis review UOSH's experience under this section during the previous year, and prepare a report to the administrator which shall be made available to the public. This report shall discuss:

1. The number of written access orders approved and a summary of the purposes for access;

2. The nature and disposition of employee, collective bargaining agent, and employer written objections concerning UOSH access to personally identifiable employee medical information; and

3. The nature and disposition of requests for inter-agency transfer or public disclosure of personally identifiable employee medical information.

M. Inter-Agency Transfer and Public Disclosure.

1. Personally identifiable employee medical information shall not be transferred to another agency or office outside of UOSH (other than to the AG's Office) or disclosed to the public (other than to the affected employee or the original record holder) except when required by law or when approved by the administrator.

2. Except as provided in paragraph M.3. below, the administrator shall not approve a request for an inter-agency transfer of personally identifiable employee medical information, which has not been consented to by the affected employees, unless the request is by a public health agency which:

a. Needs the requested information in a personally identifiable form for a substantial public health purpose;

b. Will not use the requested information to make individual determinations concerning affected employees which could be to their detriment;

c. Has regulations or established written procedures providing protection for personally identifiable medical information substantially equivalent to that of this section; and

d. Satisfies an exemption to the Government Records Access and Management Act (GRAMA) to the extent that the GRAMA applies to the requested information (See Part 2, Access to Records, of Utah Code Ann. Title 63G, Chapter 2).

3. Upon the approval of the administrator, personally identifiable employee medical information may be transferred to:

a. The National Institute for Occupational Safety and Health (NIOSH) and

b. The AG's Office when necessary with respect to a specific action under the Utah OSH Act.

4. The administrator shall not approve a request for public disclosure of employee medical information containing direct personal identifiers unless there are compelling circumstances affecting the health or safety of an individual.

5. The administrator shall not approve a request for public disclosure of employee medical information which contains information which could reasonably be used indirectly to identify specific employees when the disclosure would constitute a clearly unwarranted invasion of personal privacy.

6. Except as to inter-agency transfers to NIOSH or the AG's Office, the UOSH medical records officer shall assure that advance notice is provided to any collective bargaining agent representing affected employees and to the employer on each occasion that UOSH intends to either transfer personally

identifiable employee medical information to another agency or disclose it to a member of the public other than to an affected employee. When feasible, the UOSH medical records officer shall take reasonable steps to assure that advance notice is provided to affected employees when the employee medical information to be released or disclosed contains direct personal identifiers.

KEY: safety
December 23, 2019 **34A-6**
Notice of Continuation October 19, 2017

R616. Labor Commission, Boiler, Elevator and Coal Mine Safety.
R616-3. Elevator Rules.
R616-3-1. Authority.

This rule is established pursuant to Section 34A-7-201 for the purpose of the Labor Commission ascertaining, fixing, and enforcing reasonable standards regarding elevators for the protection of life, health, and safety of the general public and employees.

R616-3-2. Definitions.

A. "ANSI" means the American National Standards Institute, Inc.

B. "ASME" means the American Society of Mechanical Engineers.

C. "Commission" means the Labor Commission created in Section 34A-1-103.

D. "Division" means the Division of Boiler, Elevator and Coal Mine Safety of the Labor Commission.

E. "Elevator" means a hoisting and lowering mechanism equipped with a car or platform and that moves in guides in a substantially vertical direction.

F. "Escalator" means a stairway, moving walkway, or runway that is power driven, continuous and used to transport one or more individuals.

R616-3-3. Safety Codes for Elevators.

The following safety codes are adopted and incorporated by reference within this rule:

A. ASME A17.1-2016/CSA B44-16, Safety Code for Elevators and Escalators, and amended as follows:

1. Delete 2.2.2.5;

2. Amend 8.6.5.8 as follows: Existing hydraulic cylinders installed below ground when found to be leaking shall be replaced with cylinders conforming to 3.18.3.4 or the car shall be provided with safeties conforming to 3.17.1 and guide rails, guide rail supports and fastenings conforming to 3.23.1. This code is issued every two years. New issues become mandatory only when a formal change is made to these rules. Elevators are required to comply with the A17.1 code in effect at the time of installation.

B. ASME A17.3 - 2015 Safety Code for Existing Elevators and Escalators. This code is adopted for regulatory guidance only for elevators classified as remodeled elevators by the Division of Boiler, Elevator and Coal Mine Safety.

C. ASME A90.1-2015, Safety Standard for Belt Manlifts.

D. ANSI A10.4-2016, Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Operations.

E. ICC/ANSI A117.1 (2009) Accessible and Usable Buildings and Facilities, sections 407 and 408, and 410 approved October 20, 2010.

F. ASME A18.1-2014 Safety Standard For Platform Lifts And Stairway Chairlifts.

G. ASME A17.6-2010 Standard for Elevator Suspension, Compensation, and Governor Systems.

R616-3-4. Inspector Qualification.

A. Any person who performs elevator safety inspections must be a State Elevator Inspector certified by the Division.

B. A State Elevator Inspector is a person who meets the following nationally recognized standards of qualifications for inspectors of elevators and escalators:

(1) Has four or more years of verifiable documented education and experience in the mechanical and/or electrical aspects of the elevator industry and is a person deemed to meet the ASME A17.1 definition of "elevator personnel";

(2) Has two or more years of college courses in an elevator industry-related engineering field; or

(3) Meets the definition of "elevator personnel" in ASME A17.1 and has documented training as one of the following:

(i) an Elevator Inspector performing inspections for an enforcing authority;

(ii) an Elevator Inspector trainee working under the direct supervision of an Elevator Inspector performing inspections for an enforcing authority;

(iii) an Elevator Inspector performing inspections and licensed by or under the jurisdiction of an enforcing authority; or

(vi) an Elevator Inspector trainee licensed by or working under the direct supervision of a licensed Elevator Inspector performing inspections and working under the jurisdiction of an enforcing authority.

C. Prior to a person becoming certified as a State Elevator Inspector, a person must pass a state-issued examination with at least a 70% score which will test the person's knowledge and understanding of the Utah Elevator and Escalator Safety Act, Utah Code Ann. 34A-7-201 et seq.; the Utah Administrative Code sections relating to elevators, R616-3 et seq.; and the national code sections adopted and incorporated by Utah in R616-3-3.

R616-3-5. Modifications and Variances to Codes.

A. In a case where the Division finds that the enforcement of any code would not materially increase the safety of employees or general public, and would work undue hardships on the owner/user, the Division may allow the owner/user a variance. Variances must be in writing to be effective and can be revoked after reasonable notice is given in writing.

B. Persons who apply for a variance to a safety code requirement must present the Division with the rationale as to how their elevator installation provides safety equivalent to the applicable safety code.

C. No errors or omissions in these codes shall be construed as permitting any unsafe or unsanitary condition to exist.

D. The Commission may, by rule, add or delete from the applicable safety codes for any good and sufficient safety reason.

E. In the event that adopted safety codes are in conflict with one another, the ASME A17.1, Safety Code for Elevators and Escalators will take precedence. The exception to this is for compliance with the accessibility guidelines of Pub. L. No. 101-336 "The Americans with Disability Act of 1990". In this instance, the International Building Code standards adopted in R616-3-3 for accessibility as applied to elevators take precedence over ASME A17.1.

R616-3-6. Exemptions.

A. These rules apply to all elevators in Utah with the following exemptions:

1. Private residence elevators installed inside a single family dwelling. Common elevators which serve multiple private residences are not exempt from these rules.

2. Elevators in buildings owned by the Federal government.

B. Owners of elevators exempted in R616-3-6.A. may request a safety inspection by Division of Boiler, Elevator and Coal Mine Safety inspectors. Code non-compliance items will be treated as recommendations by the inspector with the owner having the option as to which, if any, are corrected. Owners requesting these inspections will be invoiced at the special inspection rate. If the owner requests a State of Utah Certificate to Operate for the elevator, all of the recommendations must be completed to the satisfaction of the inspector and the owner will be invoiced the appropriate certificate fee.

R616-3-7. Inspection of Elevators, Permit to Operate,

Unlawful Operations.

A. It shall be the responsibility of the Division to make inspections of all elevators when deemed necessary or appropriate.

B. Elevator inspectors shall examine conditions in regards to the safety of the employees, public, machinery, drainage, methods of lighting, and into all other matters connected with the safety of persons using or in close proximity to each elevator, and when necessary give directions providing for the better health and safety of persons in or about the same. The owner/user is required to freely permit entry, inspection, examination and inquiry, and to furnish a guide when necessary.

C. If the Division finds that an elevator complies with the applicable safety codes and rules, the owner/user shall be issued a Certificate of Inspection and Permit to Operate.

1. The Certificate of Inspection and Permit to Operate is valid for 24 months.

2. The Certificate of Inspection and Permit to Operate shall be displayed in a conspicuous location for the entire validation period. If the certificate is displayed where accessible to the general public, as opposed to being in the elevator machine room, it must be protected under a transparent cover.

D. If the Division finds an elevator is not being operated in accordance with the safety codes and rules, the owner/user shall be notified in writing of all deficiencies and shall be directed to make specific improvements or changes as are necessary to bring the elevator into compliance.

E. Pursuant to Section 34A-7-204, if the improvements or changes are not made within a reasonable time, by agreement of the division and the owner, the elevator is being operated unlawfully.

F. If the owner/user refuses to allow an inspection to be made, the elevator is being operated unlawfully.

G. If the owner/user refuses to pay the required fee, the elevator is being operated unlawfully.

H. If the owner/user operates an elevator unlawfully, the Commission may order the elevator operation to cease pursuant to Section 34A-1-104.

I. If, in the judgment of an elevator inspector, the lives or safety of employees or public are, or may be, endangered should they remain in the danger area, the elevator inspector shall direct that they be immediately withdrawn from the danger area, and the elevator removed from service until repairs have been made and the elevator has been brought into compliance.

R616-3-8. Inclined Wheelchair Lift Headroom Clearance.

A. Headroom clearance for inclined wheelchair lifts throughout the range of travel shall be not less than 80 inches (2032 mm) as measured vertically from the leading edge of the platform floor.

B. For existing facilities only, in the event that it is not technically or economically feasible to provide other means of access for disabled persons, inclined wheelchair lifts may be installed if all of the following conditions are met:

1. The appropriate building inspection jurisdiction approves the use of an inclined wheelchair lift for the specific application.

2. Headroom clearance throughout the range of travel shall be not less than 60 inches as measured vertically from the leading edge of the platform floor.

3. The passenger restriction sign as required by ASME A18.1 3.1.2.3 shall be amended as follows: "PHYSICALLY DISABLED PERSONS ONLY. NO FREIGHT. HEADROOM CLEARANCE IS LIMITED. USE ONLY IN THE SITTING POSITION".

R616-3-9. Valves in Hydraulic Elevator Operating Fluid Systems.

A. Due to the potential loss of pressure retaining capability when over torqued, bronze-bodied valves shall not be installed in the hydraulic systems of a hydraulic elevator.

B. This requirement is in effect for all new installations and remodel installations involving the hydraulic system.

C. If a bronze-bodied valve installed on an existing elevator begins to leak, that valve shall be replaced by a steel-bodied valve.

R616-3-10. Hydraulic Elevator Piping.

A. This rule establishes minimum standards for hydraulic fluid piping in hydraulic elevators. The piping specifications referred to in this rule are governed by ASME or ASTM piping specifications (e.g. ASME Specification SA-53 Table X2.4).

R616-3-11. Shunt Trips in Elevator Systems.

A. The means (shunt trip) to automatically disconnect the main line power supply to the elevator discussed in 2.8.3.3.2 of A17.1 is not required for hydraulic elevators with a rise of 50 feet or less.

R616-3-12. Hoistway Vents.

Hoistway ventilation as outlined in the International Building Code is under the jurisdiction of the local building official.

R616-3-13. Hand Line Control Elevators.

A. Operation of a hand line control elevator is not permitted.

B. Owners of hand line control elevators are required to render the elevator electrically and mechanically incapable of operation.

R616-3-14. Remodeled Elevators.

A. When an elevator is classified as a remodeled (modernized) elevator by the Division, the components of the elevator involved in the modernization must comply with the standards of the latest version of ASME A17.1 and ASME A17.3 in effect at the time the remodeling of the elevator commences.

R616-3-15. Fees.

A. Fees to be charged as provided by Section 34A-1-106 and 63J-1-303 shall be adopted by the Labor Commission and approved by the Legislature pursuant to Section 63J-1-301(2).

B. The fee for the initial certification permit shall be invoiced to and paid by the company or firm installing the elevator.

C. The renewal certification permit shall be invoiced to and paid by the owner/user.

D. Any request for a special inspection shall be invoiced to and paid by the person/company requesting the inspection, at the hourly rate plus mileage and expenses.

R616-3-16. Notification of Installation, Revision or Remodeling.

A. Before any elevator covered by this rule is installed or a major revision or remodeling begins on the elevator, the Division must be advised at least one week in advance of such installation, revision, or remodeling unless emergency dictates otherwise.

R616-3-17. Initial Agency Action.

Issuance or denial of a Certificate of Inspection and Permit to Operate by the Division, and orders or directives to make changes or improvements by the elevator inspector are informal adjudicative actions commenced by the agency per Section 63G-4-201.

R616-3-18. Presiding Officer.

The elevator inspector is the presiding officer referred to in Section 63G-4-201. If an informal hearing is requested pursuant to R616-3-18, the Commission shall appoint the presiding officer for that hearing.

R616-3-19. Request for Informal Hearing.

Within 30 days of issuance, any aggrieved person may request an informal hearing regarding the reasonableness of a permit issuance or denial or an order to make changes or improvements. The request for hearing shall contain all information required by Sections 63G-4-201(3)(a) and 63G-4-201(3)(b).

R616-3-20. Classification of Proceeding for Purpose of Utah Administrative Procedures Act.

Any hearing held pursuant to R616-3-18 shall be informal and pursuant to the procedural requirements of Section 63G-4-203 and any agency review of the order issued after the hearing shall be per Section 63G-4-302. An informal hearing may be converted to a formal hearing pursuant to Subsection 63G-4-202(3).

KEY: elevators, certification, safety
December 11, 2019 34A-1-101 et seq.
Notice of Continuation August 23, 2016

R623. Lieutenant Governor, Elections.
R623-1. Lieutenant Governor's Procedure for Regulation of Lobbyist Activities.
R623-1-1. Purpose.

Pursuant to Sections 36-11-404 and 36-11a-302, this rule provides procedures for the lieutenant governor to:

(a) Appoint administrative law judges to adjudicate alleged violations and impose penalties outlined in Title 36, Chapter 11, Lobbyist Disclosure and Regulation Act;

(b) Appoint administrative law judges to adjudicate alleged violations and impose penalties outlined in Title 36, Chapter 11a, Local Government and Board of Education Lobbyist Disclosure and Regulation Act; and

(c) Provide procedures for license applications, disapprovals, suspensions, revocations, and reinstatements that comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

R623-1-2. Authority.

This rule is authorized by Sections 36-11-404 and 36-11a-302.

R623-1-3. Definitions.

(1) In addition to the terms defined in Sections 63G-4-103, 36-11-102, and 36-11a-102, the following definitions apply:

(a) "Director" means the director of elections within the Office of the Lieutenant Governor.

(b) "Licensure Period" means the period beginning January 1 and ending December 31 of each calendar year.

(c) "Lobbyist" means the term lobbyist as defined by Sections 36-11-102 and 36-11a-102.

(d) "Office" means the Office of the Lieutenant Governor.

R623-1-4. Disapproval of Lobbyist License Application.

(1) The office may disapprove a lobbyist license application described in Section 36-11-103 if:

(a) The applicant or license application meets any of the disapproval criteria outlined in Section 36-11-103(4);

(b) The license application is not accurate, complete, or compliant with law;

(c) If the applicant has not paid a fine imposed under Section 36-11-401 or 36-11a-301; or

(d) If, at the time of the pending application, the applicant's current lobbyist license is suspended.

R623-1-5. Suspension of Lobbyist License.

(1) In addition to the penalties outlined in Sections 36-11-401 and 36-11a-301, the office may suspend the lobbyist license of an individual for a period of up to one year if the individual:

(a) Fails to pay a fine imposed under Section 36-11-401 within 30 calendar days after the day on which the office imposes the fine;

(b) Fails to file a required report described in Section 36-11-201 and fails to submit the required report within 30 calendar days after the deadline described in Section 36-11-201; or

(c) Files a license application, report, or other document to the office that contains materially false information or omits material information; including, but not limited to, the failure to list all principals for which the lobbyist works or is hired as an independent contractor.

(2) If the office suspends a lobbyist license, it shall immediately notify:

(a) The speaker of the House of Representatives;

(b) The president of the Senate; and

(c) The governor.

(3) If the office suspends an individual's lobbyist license:

(a) The individual may not lobby during the period of the suspension; and

(b) Except as provided in Subsection R623-1-5(3)(b)(i), the individual may apply for a lobbyist license after the suspension period expires by following the procedures of Section 36-11-103.

(i) The individual's lobbyist license is automatically reinstated when the period of suspension ends if the beginning and end of the suspension period is within the same licensure period.

R623-1-6. Reinstatement.

(1) An individual with a suspended license may apply for reinstatement by filing a written request for reconsideration in accordance with Section 63G-4-302.

R623-1-7. Designation of Formal and Informal Adjudicative Proceedings.

(1) Pursuant to 63G-4-202, the office designates all adjudicative proceedings commenced under the authority of Title 36, Chapters 11 and -11a, as proceedings to be conducted as informal proceedings. Except as provided in Subsection R623-1-7(2), all adjudicative proceedings shall be conducted as informal adjudicative proceedings.

(2) An adjudicative proceeding will be conducted as a formal adjudicative proceeding if:

(a) A party submits a written request for a formal adjudicative proceeding to the director within seven calendar days after the day the office provides notice of office action in accordance with Section 63G-4-201; or

(b) The director determines that a formal adjudicative proceeding is in the public interest and does not unfairly prejudice the rights of any party.

R623-1-8. Commencement of Adjudicative Proceedings.

(1) Adjudicative proceedings shall be commenced in accordance with Section 63G-4-201.

(2) The office shall commence an adjudicative proceeding to:

(a) Impose a civil penalty described in Section 36-11-401;

(b) Impose a civil penalty described in Section 36-11a-301;

(c) Disapprove a lobbyist license application; or

(d) Suspend or revoke a lobbyist's license.

(3) The office may not commence an adjudicative proceeding to determine alleged criminal violations and will refer complaints and allegations of criminal violations to the appropriate prosecutorial entity.

R623-1-9. Informal Adjudicative Proceedings.

(1) The office shall hold a hearing for an informal adjudicative proceeding if:

(a) A hearing is required by statute;

(b) A hearing is permitted by statute and is requested by a party in writing within 30 calendar days after the day the office provides notice of office action; or

(c) The director determines a hearing is necessary to issue a decision and order.

(2) Hearing Procedure.

(a) The director shall serve as the presiding officer of an informal adjudicative proceeding.

(b) Notice of the hearing shall be mailed to all parties by regular mail at least 10 business days prior to the hearing date.

(c) Parties named in the notice shall be permitted to testify, present evidence, and comment on the issues.

(i) The presiding officer shall accept oral or written testimony from any party.

(ii) The presiding officer may question and examine any witness called to present testimony.

(iii) The presiding officer may establish rules to conduct an orderly hearing, provided the rules do not unfairly prejudice the rights of any party.

(iv) The presiding officer shall weigh the merits of the evidence provided and exclude evidence that is irrelevant, immaterial, unduly, or repetitious.

(d) Discovery is prohibited, but the office may issue subpoenas or other orders to compel production of necessary evidence.

(e) All parties shall have access to information contained in the office's files and to all materials and information gathered in any investigation, to the extent permitted by law.

(f) Intervention is prohibited, except when a federal statute or rule requires that a state permits intervention.

(g) All hearings shall be open to all parties.

(h) The office may record the hearing, and any party, at the party's own expense, may have a reporter approved by the office to prepare a transcript from the office's record of hearing.

(i) The director may schedule a conference to encourage settlement before the hearing.

(3) If no hearing is held for an informal adjudicative proceeding, the presiding officer shall issue a decision and order pursuant to 63G-4-203 within a reasonable time.

R623-1-10. Formal Adjudicative Proceedings.

(1) A formal adjudicative proceeding shall be held if the requirements of R623-1-7(2) are met.

(2) Except as provided in Subsection R623-1-10(2)(a), the director shall serve as the presiding officer of a formal adjudicative proceeding.

(a) The director shall appoint an administrative law judge to serve as the presiding officer of a formal adjudicative proceeding if the respondent requests the appointment of an administrative law judge in writing when the respondent makes the request described in Subsection R623-1-7(2)(a).

(3) Formal adjudicative proceedings shall be conducted in accordance with Sections 63G-4-204 through 63G-4-209.

R623-1-11. Continuance.

(1) The presiding officer of any adjudicative proceeding may grant a continuance for a hearing if a party or respondent submits a written request for a continuance to the presiding officer no later than one business day before the hearing is scheduled.

KEY: lobbyists, lobbyist registration
December 9, 2019 36-11-404
Notice of Continuation January 28, 2019 36-11a-302

R651. Natural Resources, Parks and Recreation.
R651-101. Adjudicative Proceedings.
R651-101-1. Authority and Effective Date.

This rule does not apply to an Agency action that is not governed by the Administrative Procedures Act and the laws of the State of Utah, including:

(a) Subsection 63G-4-102, Administrative Procedures Act; and

(b) Title 63G, Chapter 6, Utah Procurement Code.

R651-101-2. Definitions.

These definitions are in addition to definitions in Section 63-46b-2.

(a) "Adjudicative proceeding" means a Division action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all Division actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend the authority, right, permit or license; and judicial review of all such actions. Any matters not governed by Chapter 63-46b shall not be included within this definition.

(b) "Board" means the Board of Parks and Recreation.

(c) "Director" means the Director of the Division.

(d) "Division" means the Division of Parks and Recreation and (as the context requires) its officers, employees, or agents.

(e) "Party" means the Division, Director or other person commencing an adjudicative proceeding, all respondents, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.

(f) "Presiding officer" means the Director or an individual or body of individuals designated by the Director, rules or statute to conduct a particular adjudicative proceeding.

(g) "Respondent" means any person against whom an adjudicative proceeding is initiated, whether by the Division, Director or any other person.

The meaning of any other words used shall be as defined in Chapters 41-22, 63-11, 73-18, 73-18a or 73-18b; or any rules subsequently promulgated.

R651-101-3. Designation of Informal Proceedings.

All adjudicative proceedings of the Division or Director are hereby designated as informal proceedings.

R651-101-4. Construction.

(a) These rules shall be construed in accordance with the Utah Administrative Procedures Act, Chapter 63-46b, and supersede any conflicting provision of procedural rules promulgated by the Board or Division.

(b) These rules shall be liberally construed to secure a just, speedy and economical determination of all issues presented to the Division or Director.

(c) Deviation from Rules

For good cause, and where no party will be prejudiced, the Division or Director may permit a deviation from these rules except where precluded by statute.

(d) Computation of Time

The time within which any act shall be done, as herein provided, shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or State holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday, or State holiday.

R651-101-5. Commencement of Proceedings.

(a) Proceedings Commenced by the Division or Director.

All informal adjudicative proceedings commenced by the Division or Director, shall be initiated as provided by applicable statute, Division rules, and Section 63-46b-3(2)(a).

(b) Proceedings Commenced by Persons Other than the Division or Director.

(1) All informal adjudicative proceedings commenced by persons other than the Division or Director shall be commenced by either completing prepared forms requesting agency action on file at the Division or, if no such forms are required to initiate a particular proceeding, by submitting in writing a request for agency action in accordance with Subsection 63-46b-3(2)(c).

R651-101-6. Pleadings.

(a) Pleadings before the Presiding Officer for administrative hearings shall consist of a notice of agency action, a request for agency action, responses and motions together with affidavits, briefs, memoranda of law and fact in support thereof.

(b) Motions may be submitted for the Presiding Officer's consideration on either written or oral argument and the filing of affidavits in support or contravention thereof may be permitted. Any written motion shall be accompanied by a short supporting memorandum of fact and law.

(c) Amendments to Pleadings

The Presiding Officer may allow pleadings to be amended or corrected, and defects which do not affect substantial rights of the parties may be disregarded; provided, however, that applications and other similar documents which are governed by specific statutory provisions shall be amended only as provided by statute.

R651-101-7. Hearings.

(a) The Division, Director or a Presiding Officer shall hold a hearing if a hearing is required by statute, or if a hearing is permitted by statute and is requested by a party within 30 days of the commencement of the adjudicative proceeding. The Division, Director or a Presiding Officer may at their discretion initiate a hearing to determine matters within their authority.

(b) Notice of the hearing will be served on all parties by regular mail at least ten (10) days prior to the hearing.

(c) If no hearing is held in a particular adjudicative proceeding, the Presiding Officer shall within a reasonable time issue a decision pursuant to Subsection 63-46b-5(1)(i).

R651-101-8. Intervention.

Intervention is prohibited except where a federal statute or rule requires that a state permit intervention.

R651-101-9. Pre-hearing Procedure.

The Presiding Officer may, upon written notice to all parties of record, hold a pre-hearing conference for the purposes of formulating or simplifying the issues, obtaining admissions of fact and of documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits, and agreeing to such other matters as may expedite the orderly conduct of the proceedings or the settlement thereof.

R651-101-10. Continuance.

If application is made to the Presiding Officer within a reasonable time prior to the date of hearing, upon proper notice to the other parties the Presiding Officer may grant a continuance of the hearing.

R651-101-11. Parties to a Hearing.

(a) All persons defined as a "party" are entitled to participate in hearings before the Division or Director.

(b) All parties shall be entitled to introduce evidence, examine and cross-examine witnesses, make arguments, and fully participate in the proceeding.

R651-101-12. Appearances and Representation.

(a) Taking Appearances

Parties shall enter their appearances at the beginning of a hearing or at such time as may be designated by the Presiding Officer by giving their names and addresses and stating their positions or interests in the proceeding.

(b) Representation of Parties

(1) An individual who is a party to a proceeding, or an officer designated by a partnership, corporation, association or governmental subdivision or agency which is a party to a proceeding, may represent his or its interest in the proceeding.

(2) Any party may be represented by an attorney licensed to practice in the State of Utah.

R651-101-13. Failure to Appeal--Default.

When a party or his authorized representative to a proceeding fails to appear at a hearing after due notice has been given, the Presiding Officer may continue the matter or may enter an order of default as provided by Section 63-46b-11 or may proceed to hear the matter in the absence of the defaulting party.

R651-101-14. Discovery, Testimony, Evidence and Argument.

(a) Discovery is prohibited and the Division or Director may not issue subpoenas or other discovery orders.

(b) All parties shall have access to information contained in the Division's files of public record and to all materials and information gathered in any investigation, to the extent permitted by law.

(c) Testimony

At the hearing, the Presiding Officer shall accept oral or written testimony from any party. Further, the Presiding Officer shall have the right to question and examine any witnesses called to present testimony at a hearing. The testimony and statements which are received at hearings may, but need not, be under oath.

(d) Order of Presentation of Evidence

Unless otherwise directed by the Presiding Officer at a hearing, the presentation of evidence shall be as follows:

(1) When agency action is initiated by a person other than the Division or Director:

(i) person initiating the action,

(ii) respondent (if any), then

(iii) Division staff.

(2) When the Division or Director initiates agency action:

(i) Division staff,

(ii) respondent, then

(ii) other interested parties (if any).

During any hearing a party may offer rebuttal evidence.

(e) Rules of Evidence

A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Irrelevant, immaterial and unduly repetitious evidence shall be excluded. The weight to be given to evidence shall be determined by the Presiding Officer. Any relevant evidence may be admitted if it is the type of evidence commonly relied upon by prudent man in the conduct of their affairs. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible in a judicial proceeding.

(f) Documentary Evidence

Documentary evidence may be received in the form of copies or excerpts. However, upon request, parties shall be given an opportunity to compare the copy with the original.

(g) Official Notice

The Presiding Officer may take official notice of the following matters:

(1) Rules, regulations, official reports, written decisions, orders or policies of the Board, Division or any other regulatory agency, state or federal;

(2) Official documents introduced into the record by proper reference; provided, however such documents shall be made available so that the parties to the hearing may examine the documents and present rebuttal testimony if they so desire;

(3) Matters of common knowledge and generally recognized technical or scientific facts within the Division's or Director's specialized knowledge and of any factual information which the Presiding Officer may have gathered from a field inspection.

(h) Oral Argument and Memoranda

Upon the conclusion of the taking of evidence, the Presiding Officer may, in his discretion, permit the parties to make oral arguments setting forth their positions and also to submit written memoranda within the time specified by the Presiding Officer.

R651-101-15. Record of Hearing.

(a) A record of any hearing shall be recorded at the Division's expense. When a record is made by the Division, it shall be done by means of an automatic recording device. Any party, at his own expense, may have a reporter approved by the Division prepare a transcript from the record of the hearing.

(b) If a party desires that the testimony be recorded by means of a court reporter, that party may employ a court reporter at his own expense and shall furnish a transcript of the testimony to the Division free of charge. This transcript shall be available at the Division office to any party to the hearing.

R651-101-16. Decisions and Orders.

(a) Report and Order

After the Presiding Officer has reached a final decision upon any adjudicative proceeding, he shall make and enter a signed order in writing that states the decision, the reasons for the decision, a notice of the rights of the parties to request Division or Director review reconsideration or judicial review, as appropriate, and notice of the time limits for filing a request for review, reconsideration or a court appeal. The order shall be based on the facts appearing in any of the Division's files and on the facts presented in evidence at any hearings.

(b) Service of Decisions

A copy of the Presiding Officer's order shall be promptly mailed by regular mail to each of the parties.

R651-101-17. Agency Review.

Who may file

(a) Where the agency action is taken by a Presiding Officer other than the Director, any aggrieved party may seek review of an order or decision, to the Director as the case may be, by following the procedures of Section 63-46b-12 and the following additional rules. Such review shall be considered a prerequisite for judicial review. The requests for review shall be to the Director, as provided by law.

(b) Filing of Request for Review.

(1) Requests for review of agency action within the statutory or regulatory purview of the Division shall be filed with the Director within ten days after the issuance of the order.

(c) Action on the Request for Review

(1) Where the request for review is to the Director, the request shall be reviewed by the Director.

(2) Unless otherwise provided by law, all reviews shall be based on the record before the Presiding Officer. In order to assist in review, parties, upon request, may be allowed to file briefs or other documents explaining their position.

(3) Parties shall not be entitled to a hearing on review, except as allowed by law; provided, however, that the Director may, in his discretion, grant a hearing for their benefit to assist them in the review. Notice of any hearing shall be mailed to all parties at least 10 days prior to the hearing.

(d) Action on Review

Within a reasonable time after the filing of any response, other filings, or after any hearing, the Director shall issue a written order on review which shall be signed by the Director and shall be mailed to each party. The order shall contain the items, findings, conclusions and notices more fully set forth in Subsection 63-46b-12(6)(c).

R651-101-18. Request for Reconsideration.

(a) Who may file

Within ten days after the date that an order on review is issued, any aggrieved party may file a request for reconsideration by following the procedures of Section 63-46b-13 and the following additional rules. Such a request is not a prerequisite for judicial review.

(b) Action on the Request

The Director shall issue a written order granting or denying the request for reconsideration. If such an order is not issued within 20 days after the filing of the request, the request for rehearing shall be considered denied. Any order granting rehearing shall be strictly limited to the matter specified in the order.

R651-101-18. Judicial Review.

Any party aggrieved by final agency action may obtain judicial review of such action pursuant to sections 63-46b-14 and 15, except where judicial review is expressly prohibited by statute. A petition for judicial review shall be filed within 30 days after the date that the order constituting final agency action is issued.

R651-101-20. Declaratory Orders.

An interested person may file a request for agency action requesting that the Division or Director issue a declaratory order determining the applicability of any statute, rule, or order within the primary jurisdiction of the Board, Division or Director pursuant to Section 63-46b-21. A request for a declaratory order shall set forth in detail the specific statute, rule, or order which is in question, the specific facts for which the order is requested, the manner in which the person making the request claims the statute, rule, or order may affect him, and the specific questions for which a declaratory order is requested.

The Division or Director may in their discretion decline to issue declaratory orders where they deem the facts presented to be conjectural, or where the public interest would best be served by not issuing such order.

R651-101-21. Emergency Orders.

The Division or Director may issue an order on an emergency basis without complying with these rules under the circumstances and procedures set forth in Section 63-46b-20.

KEY: administrative procedures
April 21, 2010 63G-4-102
Notice of Continuation December 11, 2019

R651. Natural Resources, Parks and Recreation.
R651-223. Vessel Accident Reporting.
R651-223-1. Notification Required.

An operator shall immediately and by the quickest means of communication available notify the nearest state park ranger or other law enforcement officer of an accident that involves a vessel or its equipment when one of the following occurs: a person dies or disappears from a vessel under circumstances that indicate death; a person is injured and receives medical treatment beyond first aid; or property is damaged in excess of $2,000.

This notification shall include:

(a) the date, time, and location of the occurrence;
(b) the name of each person who died or disappeared;
(c) the assigned number of the vessel; and
(d) the name and address of the owner and operator.

R651-223-2. Other Notification.

If the operator cannot provide this notification, then another person on board shall make the notification required in rule R651-223-1.

R651-223-3. Report Required.

The operator, owner, or other person on board shall submit a completed and signed Owner/Operator Boating Accident Report (PR-53A) to the division within 10 days of the accident.

KEY: accidents, boating
August 15, 2002 73-18-13
Notice of Continuation December 11, 2019

R651. Natural Resources, Parks and Recreation.
R651-409. Minimum Amounts of Liability Insurance Coverage for an Organized Practice or Sanctioned Race.
R651-409-1. Insurance Policy Requirements Maintained.

The insurance specifications for Subsections 41-22-29(1)(a) and (b) for an organization conducting "organized practices" or "sanctioned races" shall be a continuously maintained policy fully covering insurable responsibilities. This insurance policy shall be obtained from a reliable insurance company that is authorized to do business in Utah and is at all times A.M. Best Company rated "A" or better with a financial size category of XII or larger. The policy shall include Comprehensive General Liability Insurance, including coverage for premises and operations, products, combined single limit per occurrence, meeting the minimum insurance requirements set by the Utah Division of Risk Management, which shall be designated as applying only to the organization conducted under Subsections 41-22-29(1)(a) and (b) U.C.A. 1953. If this coverage is written on a claims-made basis, the certificate of insurance shall so indicate. The policy shall also contain an extended-reporting-period provision or similar "tail" provision that keeps full insurance in force for claims reported up to three (3) years after the organization ceases activities covered by the policy. The insurance policy shall be endorsed to add all persons providing services or who own lands affected by the activities conducted.

KEY: parks, liability, insurance
June 9, 2014 **79-4-501**
Notice of Continuation December 11, 2019 **41-22-29(1)(a)**
41-22-29(1)(b)

R651. Natural Resources, Parks and Recreation.
R651-412. Curriculum Standards for OHV Education Programs Offered by Non-Division Entities.
R651-412-1. Rulemaking Authority.

Section 41-22-31 UCA states that the Board shall develop curriculum standards for a comprehensive OHV education program designed to instill the necessary knowledge, attitudes, skills necessary for safe OHV operation, and that the Division shall cooperate with the appropriate public and private organizations in the implementation of this program.

R651-412-2. Course Approval Process.

Outside providers wishing to have OHV education courses approved by the Division as adequate for meeting Utah's OHV education standard shall submit a copy of their proposed curricula to the for evaluation. The Division shall evaluate the proposed curricula against the standard specified in this rule and shall issue a letter of approval to providers who present curriculum packages that meet the standard.

R651-412-3. Course Completion.

Individuals who complete a training course approved under this rule shall be issued an OHV Education Certificate in accordance with 41-22-31 UCA.

R651-412-4. Curriculum Standards.

At a minimum, all courses approved by the Division shall provide the following course content and shall be presented at a level appropriate for the average fourth grade student. The method of course content delivery is not specified.

(a) Description of OHV riding in Utah.

(b) Utah State Parks regulatory responsibilities.

(c) OHV terminology including, but not imited, to: throttle, fuel shut-off valve, brakes, shift leer, engine stop switch, choke, spark arrestor/muffler, headlights, engine, footrest, ignition switch.

(d) Utah State Laws.

(e) Riding positions, turning and stopping.

(f) Hypothermia, wind chill and cold weather survival.

(g) Riding on different types of terrain.

(h) Pre-ride inspections.

(i) Towing a trailer.

(ii) Crossing roads and highways.

(iii) Dangers of drugs and alcohol.

(i) Ethics, responsible riding and trail etiquette.

(j) Tread Lightly

(k) Proper safety equipment.

(l) Snowmobile courses will also include avalanche safety information.

(m) Any hands-on training provided by an authorized provider shall be conducted in accordance with and all applicable state and federal law.

KEY: OHV education standards, parks
September 21, 2017 41-22-30
Notice of Continuation December 11, 2019

R651. Natural Resources, Parks and Recreation.
R651-634. Nonresident OHV User Permits and Fees.
R651-634-1. User Permits and Fees.

Except as provided below, any nonresident owning an off-highway vehicle, who operates or gives another person permission to operate the off-highway vehicle on any public land, trail, street or highway in this state, shall pay an annual off-highway vehicle user fee.

1. A decal will be issued which proves payment has been made. The decal will then be displayed on the off-highway vehicle as follows: On snowmobiles, the decal shall be mounted on the left side of the hood, pan or tunnel. On motorcycles, the decal shall be mounted on the left fork, or on the left side body plastic. On all-terrain vehicles, the decal shall be mounted on the rear of the vehicle. Vehicle types are defined in 41-22-2 UCA. In all instances, the decal shall be mounted in a visible location. The decal shall be non-transferable.

2. A receipt will be issued with the decal indicating the fee paid, the Vehicle Identification Number (VIN) of the off-highway vehicle, and the off-highway vehicle owner's name and address. This receipt shall remain with the off-highway vehicle at all times.

3. Fees charged will be in accordance with S.B. 14 (1999 Utah Laws 1, effective July 1, 1999), and H.B. 51 (2004 Utah Laws, Chapter 314, effective July 1, 2004) which state that the off-highway vehicle user annual fee will be $30 per year.

4. Nonresident OHV user permits shall continue in effect for a period of 12 months beginning with the first day of the calendar month of purchase, and shall not expire until the last day of the same month in the following year.

Applicants for a nonresident OHV user permit shall provide evidence that the applicant is the owner of the off-highway vehicle, and is not a resident of Utah. Such evidence shall include:

a. A government issued identification card showing the state of residency of the off-highway vehicle owner, and one of the following:

(1) A title or certificate of registration from a state other than Utah.

(2) An original bill of sale; or

b. A sworn affidavit stating that the off-highway vehicle is owned by a nonresident of the State of Utah. The affidavit must state the name and address of the vehicle owner, and a description of the off-highway vehicle, including the Vehicle Identification Number (VIN).

Off-highway vehicles currently registered in a state offering reciprocal operating privileges to Utah residents shall be exempt from the nonresident user fee requirements of this rule. The Division shall maintain a list of states offering reciprocal operating privileges to Utah residents. This list shall be updated at least annually.

Provisions of this rule shall not apply to off-highway vehicles exempt under 41-22-35(1)(b)(i), or to off-highway vehicles participating in scheduled competitive events sponsored by a public or private entity, or in noncompetitive events sponsored in whole or in part by any governmental entity; or to Street Legal All-terrain Vehicles as defined in 41-6a-102(61), and registered for highway use in a state that offers reciprocal highway operating privileges to Utah residents operating Street Legal All-Terrain vehicles.

Provisions of this rule shall not apply to off-highway vehicles owned by an off-highway vehicle manufacturer and being operated exclusively for the purpose of an off-highway vehicle manufacturer sponsored event; provided that the operator of the vehicle has in his or her possession a letter or certificate issued by the manufacturer which contains the following information:

(1) The name, address and contact information of the off-highway vehicle manufacturer; and

(2) A physical description of the vehicle, including the vehicle identification number or another number assigned by the manufacturer for identification purposes; and

(3) A brief description of the manufacturer sponsored event, including the dates thereof; and

(4) The name of the authorized operator(s) and

(5) An authorized signature of a manufacturer's representative.

KEY: parks
December 26, 2013 41-22-35
Notice of Continuation December 11, 2019 79-4-304

R651. Natural Resources, Parks and Recreation.
R651-635. Commercial Use of Division Managed Park Areas.
R651-635-1. No Commercial Activity in Park Areas without Specific Written Authorization.

No commercial activity may be conducted on any park area managed or owned by the division unless the division has provided specific written authorization for that activity.

R651-635-2. Written Forms of Authorization.

Written authorization may be in the form of a concession contract, special use permit, lease, right of way, or other negotiated agreement.

R651-635-3. Signature Requirements - Division Documents.

Regardless of any preceding activities, no contract, agreement, lease, or other similar document is binding on the division until signed by the division director or deputy director, the division contract officer and any other individual as required by state law or regulation.

R651-635-4. Signature Requirements - Special Use Permits.

No special use permit is binding on the division until signed by the park manager of the park where the activity to be carried out under the permit will occur and the region manager supervising the park.

R651-635-5. Forms Provided by Division.

The division shall provide forms and documents that provide authorization for commercial activity, special uses, and other privileged uses of park areas managed or owned by the division.

KEY: parks
June 11, 2001 79-2-402(4) and (5)
Notice of Continuation December 11, 2019 79-4-304
79-2-402(6), (7), and (8)

R652. Natural Resources; Forestry, Fire and State Lands.
R652-160. Department of Natural Resources Wilderness Rules.
R652-160-100. Authority and Purpose.

These rules implement Subsection 63L-7-101, the "Utah Wilderness Act," which authorizes the Department of Natural Resources to make rules to govern the protection of wilderness. These regulations adopted by the Division of Forestry, Fire, and State Lands are enacted under the direction of the Department of Natural Resources.

R652-160-200. Definitions.

1. "Access" means the physical ability of property owners and their successors in interest to have ingress to and egress from State or private inholdings, valid mining claims, or other valid occupancies.
2. "Acquisition date" means the day on which the state received title to land.
3. "Conservation area" means an area that potentially has wilderness characteristics.
4. "DNR" means the Department of Natural Resources.
5. "Executive Director" means the Executive Director of the Department of Natural Resources or his or her designee.
6. "Inholding" means state-owned or privately-owned land that is completely surrounded by a protected wilderness area.
7. "PLPCO" means the Public Lands Policy Coordination Office.
8. "Protected wilderness area" means an area of wilderness that has been designated under this chapter as part of the Utah wilderness preservation system.
9. "Road" means a road classified as either a class B road, as described in Section 72-3-103, or a class D road, as described in Section 72-3-105.
10. "Roadless area" means an area without a road, as defined in Subsection (6).
11. "Wilderness" means a roadless area of undeveloped state-owned land, other than land owned by the School and Institutional Trust Lands Administration, that:

(a) is acquired by the state from the federal government through purchase, exchange, grant, or any other means of conveyance of title after May 13, 2014;

(b) retains its primeval character and influence, without permanent improvements or human habitation;

(c) generally appears to have been affected primarily by the forces of nature, with minimal human impact;

(d) has at least 5,000 contiguous acres of land, or is of sufficient size as to make practicable its preservation and use in an unimpaired condition;

(e) has outstanding opportunities for solitude, or a primitive and unconfined type of recreation; and

(f) may contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

12. "Valid occupancy" means an occupancy under a current permit, lease or other written authorization from the State of Utah to occupy land.

R652-160-300. Objectives.

1. Except as otherwise provided in the regulations in this part, wilderness shall be so administered as to meet the public purposes of recreation, including hunting, trapping, and fishing; conservation; and scenic, scientific, educational, and historical uses; and it shall also be administered for such other purposes for which it may have been established in such a manner as to preserve and protect its wilderness character. In carrying out such purposes, wilderness shall be managed to promote, perpetuate, and, where necessary, restore the wilderness character of the land and its specific values of solitude, physical and mental challenge, scientific study, inspiration, and primitive recreation. To that end:

(a) Natural ecological succession will be allowed to operate freely to the extent feasible,

(b) Wilderness will be made available for human use to the optimum extent consistent with the maintenance of primitive conditions,

(c) In resolving conflicts in resource use, wilderness values will be dominant to the extent not limited by the Wilderness Act, subsequent establishing legislation, or the regulations in this part.

R652-160-400. Gifts, Bequests, and Contributions.

1. The Executive Director may accept gifts or bequests of land:

(a) within protected wilderness areas designated pursuant to this chapter for preservation as wilderness; and

(b) adjacent to designated protected wilderness areas, if the executive director of DNR gives 60 days advance notice to the governor.

2. Land accepted by the executive director of DNR under this section:

(a) shall become part of the protected wilderness area involved; and

(b) is subject to:

(i) the same regulations prescribed herein; and

(ii) any conditions that were made at the time the gift or bequest was made that are consistent with the regulations.

R652-160-500. Wilderness Surveys.

1. The Executive Director shall develop and conduct surveys of wilderness areas:

(a) on a planned, recurring basis;

(b) in a manner consistent with wildlife management and preservation principles;

(c) in order to determine the mineral values, if any, that may be present in wilderness areas; and (d) make a completed survey available to the public, the governor, and the Legislature.

R652-160-600. Control of Uses.

All wilderness areas will be open to uses consistent with the Utah Wilderness Act and consistent with the preservation of their wilderness character and their future use and enjoyment as wilderness. To the extent not limited by the Utah Wilderness Act, subsequent legislation establishing a particular unit, or the regulations in this part, the Executive Director may prescribe measures necessary to control fire, insects, and disease and measures which may be used in emergencies involving the health and safety of persons or damage to property and may require permits for, or otherwise limit or regulate, any use of wilderness, including, but not limited to camping, campfires, recreation, and grazing of livestock.

R652-160-700. Commercial Enterprises, Roads, Motor Vehicles, Motorized Equipment, Motorboats, Aircraft, Aircraft Landing Facilities, Airdrops, Structures, and Cutting of Trees.

1. Except as otherwise provided in the Wilderness Act or in these rules, and to support uses consistent with the rules, there shall be no commercial enterprises; no temporary or permanent roads; no aircraft landing strips; no heliports or helispots; no use of motor vehicles, motorized equipment, motorboats, or other forms of mechanical transport; no landing of aircraft; no structures or installations; and no cutting of trees for nonwilderness purposes.

(a) Mechanical transport, as herein used, shall include any contrivance which travels over ground, snow, or water on wheels, tracks, skids, or by floatation and is propelled by a non-living power source contained or carried on or within the vehicle.

(b) Motorized equipment, as herein used, shall include any

machine activated by a nonliving power source, except that small battery-powered, hand-carried devices such as flashlights, shavers, and Geiger counters are not classed as motorized equipment.

(c) The Executive Director may authorize occupancy and use of State land by officers, employees, agencies, or agents of the Federal, State, and county governments to carry out the purposes of the Wilderness Act and will prescribe conditions under which motorized equipment, mechanical transport, aircraft, aircraft landing strips, heliports, helispots, installations, or structures may be used, transported, or installed by the State and its agents and by other Federal, State, or county agencies or their agents, to meet the minimum requirements for authorized activities to protect and administer the Wilderness and its resources. The Executive Director may also prescribe the conditions under which such equipment, transport, aircraft, installations, or structures may be used in emergencies involving the health and safety of persons, damage to property, or other purposes.

(d) The Executive Director may permit, subject to such restrictions as he deems desirable, the landing of aircraft and the use of motorboats at places within any Wilderness where these uses were established prior to the date the Wilderness was designated. The Executive Director may also permit the maintenance of aircraft landing strips, heliports, or helispots which existed when the Wilderness was designated.

R652-160-800. Authorized Motor Vehicle, Aircraft, and Motorboat Use.

1. The use of a motor vehicle, aircraft, or motorboat is authorized under the following circumstances.

(a) Where the use of a motor vehicle, aircraft, or motorboat is already established.

(b) Where the motor vehicle, aircraft, or motorboat is used by the Division of Wildlife Resources in furtherance of its wildlife management responsibilities as described in Title 23.

(c) Where the use of a motor vehicle, aircraft, or motorboat is necessary for emergency services or law enforcement purposes.

R652-160-900. Grazing.

1. The grazing of livestock, where such use was established before the designation of wilderness shall be permitted to continue under the general regulations covering grazing of livestock in the State of Utah and in accordance with any special provisions covering grazing use in units of wilderness which the Executive Director may prescribe for general application in such units or may arrange to have prescribed for individual units.

2. The Executive Director may permit, subject to such conditions as he deems necessary, the maintenance, reconstruction, or relocation of those livestock management improvements and structures which existed within a wilderness area. Additional improvements or structures may be built when necessary to protect wilderness value.

3. The Commissioner of the Department of Agriculture and Food may make regulations as necessary to govern the grazing of livestock on a wilderness area.

R652-160-1000. Structures.

Motels, summer homes, stores, resorts, organization camps, hunting and fishing lodges, electronic installations, and similar structures and uses are prohibited in wilderness. The Executive Director may permit temporary structures and commercial services within wilderness to the extent necessary for realizing the recreational or other wilderness purposes, which may include, but are not limited to, the public services generally offered by packers, outfitters, and guides.

R652-160-1100. Jurisdiction Over Wildlife.

The Division of Wildlife Resources shall have jurisdiction and responsibility with respect to wildlife and fish.

R652-160-1200. Access to Surrounded State and Private Land.

1. In any case where privately owned land is completely surrounded by lands within areas designated by this chapter as protected wilderness:

(a) the private landowner shall be given rights as may be necessary to ensure adequate access to the privately owned land by the private owner and any successors in interest; or

(b) the privately owned land shall be exchanged for state-owned land of approximately equal value.

2. If the School Institutional Trust Lands Administration owns land that is completely surrounded by lands within areas designated by this chapter as protected wilderness:

(a) the School Institutional Trust Lands Administration shall be given rights as may be necessary to ensure adequate access to the land owned by the School Institutional Trust Lands Administration and any successors in interest; or

(b) the land owned by the School Institutional Trust Lands Administration may be exchanged for state-owned land of approximately equal value.

3. If a valid mining claim or other valid occupancy is located wholly within a protected wilderness area, the Executive Director shall, by reasonable regulations consistent with the preservation of the area as wilderness, permit ingress and egress to such surrounded areas by means which have been, or are being, customarily enjoyed with respect to other similarly situated areas.

R652-160-1300. Mineral Leases and Mining.

1. Notwithstanding any other provision of this chapter, until midnight December 31, 2034:

(a) state laws pertaining to mining and mineral leasing shall, to the extent applicable before May 13, 2014, extend to wilderness areas designated under this chapter, subject to reasonable regulation governing ingress and egress as may be prescribed by the executive director of DNR, consistent with the use of the land for:

(i) mineral location and development;

(ii) exploration, drilling, and production; and

(iii) use of land for transmission lines, waterlines, telephone lines, or facilities necessary in exploring, drilling, producing, mining, and processing operations, including the use of mechanized ground or air equipment when necessary, if restoration of the disturbed land is practicable and performed as soon as the land has served its purpose; and

(b) mining locations lying within the boundaries of a protected wilderness area that existed as of the date of acquisition shall be held and used solely for mining or processing operations, and uses that are reasonably related to an underlying mining or processing operation.

(c) Any newly issued mineral lease, permit, or license for land within a wilderness area shall contain stipulations, as may be determined by the executive director of DNR in consultation with the director of the Division of Oil, Gas, and Mining, for the protection of the wilderness character of the land, consistent with the use of the land for the purpose for which it is leased, permitted, or licensed.

(d) Subject to valid rights then existing, effective January 1, 2015, the minerals in all lands designated by this chapter as wilderness areas are withdrawn from disposition under all laws pertaining to mineral leasing.

(e) Mineral leases shall not be permitted within protected wilderness areas.

(f) Permits shall not be issued for the removal of mineral materials commonly known as common varieties.

R652-160-1400. Gathering Information and Water Resources Prospecting.

1. The Executive Director shall allow any activity, for the purposes of gathering information about resources, other than minerals, in wilderness, except that any such activity for gathering information shall be carried on in a manner compatible with the preservation of the wilderness environment. Prospecting for minerals or any activity for the purpose of gathering information about minerals in wilderness is subject to applicable rules.

2. Any person desiring to use motorized equipment, to land aircraft, or to make substantial excavations for the purpose of gathering information about resources, other than minerals, shall apply in writing to the Executive Director. Excavations shall be considered substantial which singularly or collectively exceed 200 cubic feet within any area which can be bounded by a rectangle containing 20 surface acres. Such use or excavation may be authorized by a permit issued Executive Director. Such permits may provide for the protection of resources, including wilderness values, protection of the public, and restoration of disturbed areas, including the posting of performance bonds.

3. Within wilderness, prospecting for water resources and the establishment and maintenance of new reservoirs, water-conservation works, power projects, transmission lines, and other facilities needed in developing water resources or in the public interest, including road construction may be authorized by the Governor of the State of Utah.

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R657. Natural Resources, Wildlife Resources.
R657-53. Amphibian and Reptile Collection, Importation, Transportation and Possession.
R657-53-1. Purpose and Authority.

(1) Under Title 23, Wildlife Resources Code of Utah, this rule governs the collection, importation, possession, and propagation of amphibians and reptiles in Utah.

(2)(a) Nothing in this rule shall be construed as superseding the provisions set forth in Title 23, Wildlife Resources Code of Utah.

(b) Any provision of this rule setting forth a criminal violation that overlaps a section of that title is provided in this rule only as a clarification or to provide greater specificity needed for the administration of the provisions of this rule.

(3) Specific dates, species, collection permit boundaries, number of collection permits, daily collection and total possession limits, and other administrative details which may change annually are published in the proclamation or guidebook of the Wildlife Board for amphibians and reptiles.

(4)(a) In addition to this rule, the Utah Department of Agriculture and Food regulates animal importation and disease testing requirements through Title 4 of Utah Code and Utah Admin. Rule R58-1.

(b) In addition to this rule, local government entities may impose additional prohibitions or restrictions through zoning restrictions and similar ordinances.

(c) Nothing in this rule is intended to authorize an activity that is otherwise prohibited by federal law, rules of the Utah Department of Agriculture and Food, or properly enacted restrictions imposed by local government entities.

R657-53-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and Subsection (2) through Subsection (29).

(2) "Amphibian" means animals from the Class of Amphibia, including hybrid species or subspecies of amphibians and viable embryos or gametes of species or subspecies of amphibians.

(3) "Captive-bred" or "born in captivity" means any legally-obtained amphibian or reptile that:

(a) was born in captivity;

(b) spends its entire life in captivity; and

(c) is the offspring of legally obtained progenitors.

(4) "Certificate of registration" means, for the purposes of this rule, a wildlife document issued by the division authorizing an individual or entity to undertake activities that are otherwise prohibited.

(5) "Collect" means to take, catch, capture, salvage, or kill any free-roaming amphibian or reptile or their parts within Utah, except as described in (22) below and in R657-53-7(2).

(6) "Collection permit" means a wildlife document authorizing collection from the wild and subsequent personal possession of amphibians and reptiles in Utah.

(7)(a) "Commercial use" means any activity through which a person is:

(i) in lawful possession of a wild-caught amphibian or reptile categorized as controlled or prohibited;

(ii) doing business in Utah wherein that business activity utilizes and relies upon a wild-caught amphibian or reptile for financial gain;

(iii) engaged in business activity that is continuous, such that it involves some permanent presence beyond casual or isolated financial transactions; and

(iv) receiving consideration exceeding the costs directly related to care, breeding, rearing of the wild-caught amphibian or reptile and its offspring.

(b) Consideration derived from the sale of offspring from captive-bred amphibians or reptiles does not constitute commercial use.

(8) "Controlled species" means species or subspecies of amphibian or reptile for which a person must acquire certificate of registration or collection permit prior to possessing the animal.

(9) "Daily collection limit" means the maximum limit, in number of individuals, that one person may legally remove from the field during one 24-hour period.

(10) "Den" means any place where reptiles congregate for winter hibernation or brumation.

(11) "Educational use" means the possession and use of an amphibian or reptile by a public educational institution, non-profit organization established for the purposes of wildlife conservation or education, or a government agency, for the purposes of conducting instructional activities for the public concerning wildlife and wildlife-related activities, where the individual or entity does not receive compensation or remuneration beyond the costs incurred to conduct the instruction.

(12) "Entry permit number" means a number issued by the state veterinarian's office to a veterinarian signing a certificate of veterinary inspection authorizing the importation of an amphibian or reptile into Utah.

(13) "Export" means to move or cause to move any amphibian or reptile or their parts from Utah by any means.

(14) "Import" means to bring or cause an amphibian or reptile or their parts to be brought into Utah by any means.

(15) "Legally obtained" means to acquire through collection, trade, barter, propagation or purchase with supporting written documentation if required, such as applicable certificate of registration, collection permit, license, or sales receipt in accordance with applicable laws. Documentation must include the date of the transaction; the name, address and phone number of the person or organization relinquishing the animal; the name, address and phone number of the person or organization obtaining the animal; the scientific name of the animal acquired; and a description of the animal. A state-issued wildlife document and completion of all mandatory reporting satisfies any documentation requirement for specimens covered by the wildlife document and reporting.

(16) "Native species" means any species or subspecies of amphibian or reptile that historically occurred in Utah and has not been introduced by humans or migrated into Utah as a result of human activity.

(17) "Naturalized species" means any species or subspecies of amphibian or reptile that is not native to Utah but has established a wild, self-sustaining population in Utah.

(18) "Noncontrolled species" means a species or subspecies of amphibian or reptile that does not require a certificate of registration or a collection permit to possess.

(19) "Nonnative species" means a species or subspecies of amphibian or reptile that is not native to Utah and has not established a wild, self-sustaining population in Utah.

(20) "Possession" means to physically retain or to exercise dominion or control over an amphibian or reptile.

(21) "Prohibited species" means a species or subspecies of amphibian or reptile that requires variance approval from the Wildlife Board prior to issuing a certificate of registration or collection permit and prior to possessing the animal.

(22) "Propagation" means the reproduction of amphibians or reptiles in captivity that results in the production of offspring.

(23) "Reptile" means animals from the Class of Reptilia, including hybrid species or subspecies of reptiles and viable embryos or gametes of species or subspecies of reptiles.

(24) "Salvage" means the collection of a reptile or amphibian when that specimen is dead upon discovery and that death was not due to any action attributable to the individual collecting or ultimately receiving the specimen.

(25) "Scientific use" means the possession and use of an amphibian or reptile by a public educational institution, non-

profit organization established for the purposes of wildlife conservation or education, or a government agency, for conducting bona fide scientific research that is directly or indirectly beneficial to wildlife or the general public.

(26) "Temporary possession" or "temporarily possess" for the purposes of this rule means handling an amphibian or reptile for the minimum amount of time necessary for a person to complete measurements and documentation required as part of their mandatory reporting.

(27) "Total possession limit" means the maximum limit, in number of individuals, that one person or entity may possess.

(28) "Transport" means to be moved or cause to be moved, any amphibian or reptile within Utah by any means.

(29) "Turtle" means all animals commonly known as turtles, tortoises and terrapins, and all other animals of the Order Testudines, Class Reptilia.

(30) "Wild population" means native or naturalized amphibians or reptiles living in nature.

(31) "Wildlife document" means a document issued by the division allowing an activity that would otherwise be prohibited and includes a collection permit and certificate of registration.

R657-53-3. Liability.

(1) Any person who engages in an activity described in this rule assumes all liability and responsibility and agrees to fully indemnify the State of Utah for any activity undertaken pursuant to this rule and for any injury, damage, or claim arising out of or related to their activity.

(2) Nothing in this rule shall be construed as a waiver or limitation of any protection, immunity, defense, or damage cap limitation available to the division under state or federal law.

(3) To the extent allowable under Utah law, the division shall not be liable in any civil action for:

(a) any injury, disease, or damage caused by or to any animal, person, or property as a result of any activity authorized under this rule, a certificate of registration, or collection permit; or

(b) the issuance, denial, suspension, or revocation of or by the failure or refusal to issue, deny, suspend, or revoke any certificate of registration, collection permit, or similar authorization.

R657-53-4. Prohibited Activities.

(1) A person may not take, posses, import, export, transfer, or release to the wild a reptile or amphibian or their parts in Utah, or attempt to undertake such activity, except as provided in this rule or in a proclamation or guidebook issued by the Wildlife Board.

(2)(a) Pursuant to Section 23-13-14, a person may not release from captivity any amphibian or reptile without first obtaining written authorization from the division.

(b) Any peace officer, division representative, or authorized animal control officer may seize, euthanize, or dispose of any live amphibian or reptile that escapes from captivity.

(c) The division may retain custody of any recaptured amphibian or reptile until the costs of recapture or care have been paid by its owner or keeper.

(3) A person may not:

(a) knowingly disturb the den of any reptile or kill, capture, or harass any reptile within 100 yards of a reptile den without first obtaining a wildlife document authorizing that activity;

(b) trespass while engaged in an activity regulated by this rule;

(c) sell a wild caught reptile or amphibian;

(d) transfer a wild caught native amphibian or reptile without completing mandatory reporting;

(e) transfer any wild caught native amphibian or reptile to another individual between April 1 and December 31 without prior approval from the division;

(f) collect or attempt to collect a reptile or amphibian under another individual's collection permit;

(g) collect or attempt to collect a reptile or amphibian in an area that is closed to collection activities; or

(h) transport or propagate an amphibian without complying with Title 4 Chapter 37 Utah Code and implementing regulations of the Utah Department of Agriculture and Food.

(4)(a) A person may not conduct educational use or scientific use activities with a species categorized as controlled or prohibited without first obtaining a certificate of registration from the division.

(b)(i) A person may not conduct commercial use activities with controlled species without first obtaining a certificate of registration from the division.

(ii) A person may not conduct commercial use activities with a prohibited species without first obtaining a variance from the Wildlife Board and a certificate of registration from the division.

R657-53-5. Activities Allowed Without a Wildlife Document.

(1) A person may conduct the following activities without acquiring a wildlife document from the division:

(a) collect a noncontrolled reptile or amphibian from the wild;

(b) possess, import, export, or transfer to another person a reptile or amphibian that was previously removed from the wild and is classified as noncontrolled or controlled, provided:

(i) the person receiving the animal maintains documentation verifying that the specimen was legally acquired;

(ii) the person transferring the animal certifies that they were in lawful possession of the animal;

(iii) if the animal is wild caught, no financial compensation or consideration is exchanged as part of the transfer of possession;

(iv) the person receiving the animal has otherwise completed all mandatory education courses necessary to obtain or possess the animal;

(v) the person receiving the animal will not exceed the total possession limit for that species, if applicable; and

(vi) the animal does not belong to a species subject to certificate or registration requirements under R657-53-12;

(c) possess, import, export, transfer, or salvage a dead reptile or amphibian or their parts, provided:

(i) such actions are allowed under applicable state and federal law;

(ii) the specimen was lawfully acquired;

(iii) proof of legal possession accompanies the specimens; and

(iv) the individual completes any required mandatory reporting as described in R657-53-19 and possesses any necessary federal permit necessary to possess the animal or it's part;

(d) pursue and temporarily possess a reptile or amphibian, if that action complies with the requirements in R657-53-8(2);

(e) propagate lawfully acquired amphibians and reptiles, unless:

(i) the species to be propagated requires a certificate of registration under R657-53-12;

(ii) the propagator is breeding a wild caught species native to Utah and is selling the progeny in a manner qualifying as a commercial use under R657-53-2(7); or

(iii) otherwise prohibited by local, state, or federal law; or

(f) transport any reptile or amphibian, regardless of total possession limit restrictions, through Utah without a wildlife document, provided:

(i) the transporter is otherwise in lawful possession of the

specimens;

(ii) proof of legal possession or origin accompanies the specimens;

(iii) the transporter complies with importation requirements established by the Utah Department of Agriculture and Food;

(iv) the specimens remain in Utah no more than 72 hours; and

(v) the specimens are not sold, transferred, exhibited, displayed, or used for a commercial use while in Utah.

R657-53-6. Activities Requiring a Wildlife Document.

(1) A person must acquire a collection permit or certificate of registration before capturing a controlled species from the wild in Utah.

(2) Only one collection permit or certificate of registration is required per individual, regardless of the number of animals collected under that permit, provided:

(a) the individual remains in compliance with daily collection limits and total possession limits; and

(b) the individual completes mandatory reporting under R657-53-19 as required.

(3)(a) Collection permits are valid for the capture season authorized by the Wildlife Board.

(b) Certificates of registration for personal collection under R657-53-12 are valid for the term indicated on the document.

(4)(a) If a person lawfully collects an amphibian or reptile from the wild using a collection permit or certificate of registration, the collection permit or certificate of registration serves as the authorization for continued possession of those collected specimens consistent with the provisions of this rule.

(b) A copy of the collection permit or certificate of registration may serve as documentation of lawful acquisition necessary to transfer possession of a wild caught specimen under R657-53-6.

(c) A person may not collect individual specimens in excess of the identified daily collection or total possession limits during the term of their collection permit, regardless of whether they transfer ownership of a specimen to another individual during the collection permit's term.

(5) A person must obtain a variance from the Wildlife Board to collect or possess a prohibited species.

(6)(a) An individual or entity must acquire a certificate of registration before engaging in an educational, scientific, or commercial use activity involving the collection or possession of a controlled or prohibited species.

(b) A scientific use certificate of registration is valid for the time-period identified in the research proposal and approved by the division.

(c) Educational use certificates of registration are valid for 3 years and authorize wildlife-related instructional activities identified on the certificate of registration.

(d) Commercial use certificates of registration are valid for 3 years and authorize activities commercial use activities identified on the certificate of registration.

(7) A wildlife document may be suspended or revoked as provided in Section 23-19-9 and Rule R657-26.

R657-53-7. Total Possession Limits and Daily Collection Limits.

(1)(a) The division shall establish daily collection limits and total possession limits for amphibians and reptiles found in Utah based upon their classification as a noncontrolled species, controlled species, or prohibited species.

(b) Daily limits, total possession limits, collection permit numbers, collection season dates, and collection permit boundaries will be approved by the Wildlife Board and published in a guidebook by the division.

(2) Noncontrolled species may be given the following daily collection limits and total possession limits:

(a) "Unlimited," allowing an unlimited number of individuals that may be collected from the wild or otherwise possessed; or

(b) "Expanded," allowing for a daily collection limit of 25 individuals and total possession limit of 100.

(3) Controlled species may be given the following daily collection limits and total possession limits:

(a) "Standard," allowing for a daily collection limit of 3 individuals and total possession limit of 9 individuals; or

(b) "Limited," allowing for a daily and yearly collection limit of 2 individuals and total possession limit of 4 individuals.

(4) Prohibited species shall be given the daily collection limit and total possession limit of "Zero," prohibiting all collection and possession of prohibited species.

(5) A person may not exceed daily collection limits or total possession limits unless an authorization is provided in this rule, on a certificate of registration, or a variance granted by the Wildlife Board pursuant to R657-53-18.

(6) An individual's daily collection limit and total possession limit is established at the time they possess an individual specimen and are cumulative throughout the term of a collection permit.

(7) In establishing a daily collection limit or total possession limit, any specimen that belongs to a species that is native to Utah is presumed to be a wild caught specimen unless the individual in possession provides verifiable documentation required by R657-53-5.

(8) If a species classification and associated daily collection limit and total possession limit is not defined in this rule or otherwise included in the guidebook published by the Wildlife Board, it shall be classified as a Controlled species and have a Standard daily collection limit and total possession limit.

R657-53-8. Exceptions to Total Possession Limits and Daily Collection Limits.

(1) Total possession limits apply to all amphibians and reptiles acquired in-state, imported into the state, or lawfully acquired by intrastate transfer, except the following do not count towards an individual's applicable limit:

(a) animals and their parts that are captive bred, not classified as Prohibited or subject to certificate of registration requirements in R657-53-12, and accompanied by documentation described in R657-53-5 verifying lawful acquisition and possession;

(b) animals and their parts that are captive bred, not classified as Prohibited or subject to certificate of registration requirements in R657-53-12, and are in possession of an individual conducting reptile propagation, so long as:

(i) the individual performing the propagation registers with the division as a propagator; and

(ii) completes associated mandatory reporting under R657-53-19;

(c) animals and their parts that are legally obtained outside of Utah and not classified as Prohibited or subject to certificate of registration requirements in R657-53-12; and

(d) individuals or entities authorized to collect or possess species under commercial use, educational use, or scientific use certificates of registration may be subject to alternative total possession limits or daily collection limits established by the division.

(2) Daily collection limits apply to any reptile or amphibian captured in the wild in Utah, except that a person may temporarily possess an individual animal in excess of daily collection limits, provided:

(a) the animal is released immediately after the temporary possession time period has expired;

(b) the animal is not transported away from the capture site unless necessary to accurately complete mandatory reporting;

(c) the animal is released in reasonable proximity to the capture location;

(d) required reporting is accurately submitted to the division;

(e) temporary possession is not prohibited by federal law;

(f) the individual has completed all mandatory training courses necessary to possess the animal; and

(g) the animal does not belong to a species subject to certificate of registration requirements under R657-53-12.

(3) Specimens salvaged in accordance with this rule do not count towards an individual's daily collection limit or total possession limit for that species.

R657-53-9. Determination of Prohibited Species; Establishing Daily Limits and Total Possession Limits for Controlled Species.

(1)(a) A species of the Order Squamata (snakes and lizards) is classified as a prohibited species if:

(i) it is venomous;

(ii) not native to Utah; and

(iii) a bite from which may cause substantial physical injury to humans ordinarily requiring medical treatment.

(b) Species of the Order Crocodilia (crocodiles, gharials, caimans, and alligators) are classified as prohibited.

(c) The division may classify any species of reptile or amphibian as prohibited if take from the wild or introduction into the wild poses a significant detrimental impact to wildlife populations or their habitat and publish them in the guidebook of the Wildlife Board for amphibians and reptiles.

(d) Any amphibian or reptile listed by the U.S. Fish and Wildlife Service as endangered or threatened pursuant to the federal Endangered Species Act shall have a zero daily and total possession limit, except:

(i) the division may issue a wildlife document authorizing the collection, importation, possession, or propagation of a threatened or endangered species under the criteria set forth in this rule where the U.S Fish and Wildlife Service has issued a permit or otherwise authorized the particular activity; and

(ii) A person may import, possess, transfer, or propagate captive-bred eastern indigo snakes (Drymarchon couperi) without a certificate of registration where the U.S. Fish and Wildlife Service has issued a permit or otherwise authorized the particular activity.

(2) The division may consider the following factors in establishing recommended daily limits, total possession limits, collection permit numbers, and collection permit boundaries for controlled species to the Wildlife Board for approval:

(a) prevalence and distribution of the species;

(b) anticipated number of persons participating in the program;

(c) harvest success rates;

(d) population trends and related conservation data for the species;

(e) human safety concerns posed by collection and possession of the species; and

(f) other relevant social, biological, and political concerns.

(3)(a) The division may establish a harvest objective for each species, which is the total number of specimens per species may be collected from the wild each year and close an area or region.

(b) If an established harvest objective for a particular species is reached, collection in that area or region is closed for the remainder of the collection season and removing additional specimens of that species from the wild is prohibited.

(c) The division will identify harvest objective species and numbers in the guidebook of the Wildlife Board for amphibians and reptiles and publish harvest objective criteria on their website.

(d) Individuals collecting amphibians or reptiles having an established harvest objective are responsible for verifying that collection remains open.

R657-53-10. Collection Permits and Certificates of Registration; Prohibited Collection Methods.

(1)(a) Collection permits authorize continued possession of an individual animal after it has been reduced to possession and removed from the wild, subject to the limitations identified in this rule.

(b) In lieu of a collection permit, a person must obtain a certificate of registration to collect, possess, import, or propagate certain venomous reptiles that are native to Utah, pursuant to R657-53-12.

(2) A person may collect amphibians and reptiles having an Unlimited daily collection limit without acquiring a wildlife document from the division.

(3)(a) A person may collect amphibians and reptiles having an Expanded daily collection limit after successfully completing the Reptile and Amphibian education course, so long as that person satisfies all the mandatory reporting requirements established in R657-53-19.

(b) A collection permit is needed to collect amphibians or reptiles having an Expanded daily collection limit.

(4)(a) A person may collect amphibians and reptiles having a Standard or Limited daily collection limit after:

(i) successfully completing the Reptile and Amphibian education course; and

(ii) acquiring a collection permit or certificate of registration from the division.

(b) A person may not collect amphibians or reptiles having a Standard or Limited daily collection limit if they have failed to complete mandatory reporting required in R657-53-19 under their current collection permit.

(5) A person may only collect amphibians and reptiles having a Zero daily collection limit after receiving a variance from the Wildlife Board.

(6) Collection methods.

(a) Amphibians and reptiles may not be collected using any method prohibited in this rule and the proclamations of the Wildlife Board except as provided by a variance or the Wildlife Board.

(b) The following tools or methods may be utilized in collecting amphibians or reptiles pursuant to this rule:

(i) dip nets less than 24 inches in diameter;

(ii) snake sticks, including hooks, tongs, or grabbers;

(iii) lizard nooses;

(iv) use of a firearm considered a legal weapon under R657-5, so long as the individual has satisfied Hunter Safety requirements in the State of Utah; or

(v) capture-by-hand.

(c) Amphibians and reptiles may only be collected within boundaries established in the guidebook for amphibians and reptiles.

(d) The destruction of habitats such as breaking apart of rocks, logs or other shelters in or under which amphibians or reptiles may be found is prohibited.

(e) Any logs, rocks, or other objects turned over or moved must be replaced in their original position.

R657-53-11. Acquiring a Wildlife Document.

(1) A person may acquire a certificate of registration by:

(a) possessing a valid certificate of completion for the Amphibian and Reptile education course;

(b) submitting an application on the division's website;

(c) paying the associated application fee;

(d) providing required information for the type of certificate of registration applied for;

(e) being approved by the division; and

(f) paying the certificate of registration fee.

(2)(a) A person may acquire a collection permit by:

(i) possessing a valid certificate of completion for the Amphibian and Reptile education course;

(ii) paying the associated application fee; and

(iii) if applying for a collection permit distributed through a random drawing, submitting an application on the division's website during the designated application period and, if selected, paying the associated permit fee.

(b) If the division receives more valid applications than the number of available collection permits, the division will conduct a random drawing to identify successful applicants.

(3) Procedures regarding application errors, surrenders, refunds, reallocation of wildlife documents, and variance requests are processed pursuant to Utah Admin. Rules R657-42, R657-50, R657-57, and relevant sections of Utah Code.

(4) Wildlife documents are not transferable.

(5) If the holder of a wildlife document is a representative of an institution, organization, business, or agency, the wildlife document shall be considered void upon the representative's discontinuation of association with that entity.

(6) Wildlife documents do not provide the holder with any rights of succession and any wildlife document issued to a business or organization shall be void upon the termination of the business or organization or upon bankruptcy or transfer.

(7) The issuance of a wildlife document automatically incorporates within its terms the conditions and requirements of this rule specifically governing the activity for which the document is issued.

(8) In order to acquire a wildlife document, a person must be eligible to possess the wildlife document and submit a complete application or purchase request.

(9) An individual must register with the division as an amphibian or reptile propagator if they wish to breed reptiles or amphibians and maintain possession of those individuals beyond total possession limits that would otherwise apply.

R657-53-12. Regulations Specific to Venomous Reptiles Native to Utah.

(1) An individual must obtain a certificate of registration prior to collecting, possessing, importing, or propagating any reptile, whether wild caught or captive-bred, that is:

(a) native to Utah;

(b) venomous; and

(c) a bite from which may cause substantial physical injury to humans ordinarily requiring medical treatment.

(2) An individual must be at least 18 years of age to receive a certificate of registration pursuant to this section.

(3) To apply for a certificate of registration, a person must submit the following materials to the division:

(a) the species and number of individual animals requested;

(b) the source from which they are to be acquired;

(c) a description of the knowledge, skills, and experience the applicant has in handling venomous reptiles, and if any mentor will be utilized during the term of the certificate of registration;

(d) the address where the animals will be housed and written verification from the local governmental entity that the activity requested is consistent with their ordinances;

(e) a description of the facilities and equipment to be utilized in housing the animals;

(f) all documentation required by the Utah Department of Agriculture and Food for lawful import, if necessary;

(g) verification that appropriate medical treatment from a medical provider is available in proximity to the location where the animals will be housed; and

(h) registration with the division for propagation activities, if requested.

(4) The division may deny a certificate of registration application if:

(a) the applicant fails to submit any of the required application materials in this section;

(b) approval of which would violate local, state, or federal law;

(c) there is a basis for denial described in R657-53-17; or

(d) approval of which may continue to pose a substantial public safety concern.

(5) All activities conducted under a certificate of registration authorization issued pursuant to this section are subject to the mandatory reporting requirements identified in R657-53-19.

R657-53-13. Commercial Use Certificate of Registration.

(1) An individual or entity wishing to utilize an amphibian or reptile in manner qualifying as commercial use must first acquire a commercial use certificate of registration from the division.

(2) The division shall consider the following factors in reviewing an application for a commercial use certificate of registration:

(a) the health, welfare, and safety of the public;

(b) demonstrated knowledge and expertise in conducting the proposed wildlife-related activities;

(c) the health, welfare, safety, and genetic integrity of wildlife and other animals;

(d) ecological and environmental impacts of the proposed activity; and

(e) the acquisition of other necessary permits or approvals.

(3)(a) The division may review facility and operational guidelines to use in evaluating applications.

(b) The division may condition approval of an application on compliance with additional requirements determined to be necessary components to protect human health and safety and the wildlife resource, such as minimum facility requirements, acquisition of liability insurance, modified total possession limits or daily limits, allowed methods of take, authorization of live release of amphibians and reptiles, mandatory reporting requirements, and other similar expectations.

(c) Notwithstanding Subsection 3(b), a commercial use certificate of registration may not authorize possession of a species having a total possession limit of Zero without variance approval from the Wildlife Board, unless they are an entity meeting the requirements described in Subsection (4).

(d) If the applicant requests the authorization to capture amphibians or reptiles from the wild, the division shall determine what species, locations, capture season dates, and total numbers that may be captured.

(e) Unless otherwise stated on the certificate of registration, the holder of the certificate of registration may only utilize lawful methods of take identified in R657-53-10.

(4) The division may issue a commercial use certificate of registration to a zoo, circus, amusement park, aviary, or film company to import and possess a live amphibian or reptile having a total possession limit of Expanded, Standard, Limited, or Zero, provided:

(a) the applicant satisfies the application requirements in Subsection (2); and

(b) the benefits to the wildlife resource or the general public outweigh any negative impacts to the wildlife resource or the general public.

(5) It is unlawful to sell or trade any turtle, including tortoises, less than 4" in carapace length (See Federal Register 21 CFR 1240.62).

(6)(a) Applications for a commercial use certificate of registration are available on the division's website.

(b) The division will make a determination approving or denying an application within 30 days of receiving a complete application.

(7) A commercial use certificate of registration is non-transferable and automatically terminates upon any of the following:

(a) sale of the licensed commercial enterprise;

(b) a change in the majority of interest holder in the commercial enterprise; or

(c) closure of the commercial enterprise or discontinuation of the activities authorized under a certificate of registration.

R657-53-14. Scientific Use Certificate of Registration.

(1) An individual or enterprise wishing to utilize a reptile or amphibian in a manner qualifying as a scientific use must first acquire a scientific use certificate of registration from the division.

(2) The division shall consider the following factors in analyzing an application for a scientific use certificate of registration:

(a) the health, welfare, and safety of the public;

(b) the health, welfare, safety, and genetic integrity of wildlife and other animals;

(c) ecological and environmental impacts of the proposed activity;

(d) the acquisition of other necessary permits or approvals;

(e) the validity of the research objectives and design;

(f) the likelihood the research will fulfill the stated objectives;

(g) the applicant's qualifications to conduct the research, including the requisite education or experience;

(h) the adequacy of the applicant's resources to conduct the study and, if applicable, catalogue or otherwise store specimens in a long-term repository; and

(i) whether the scientific use is in the best interest of the amphibian or reptile, wildlife management, education, or the advancement of science without unnecessarily duplicating previously documented scientific research.

(3)(a) The division may condition approval of an application on compliance with additional requirements determined to be necessary components to protect human health and safety and the wildlife resource, such as minimum facility requirements, acquisition of liability insurance, modified total possession limits or daily limits, allowed methods of take, authorization of live release of amphibians and reptiles, mandatory reporting requirements, and other similar expectations.

(b) A scientific use certificate of registration may authorize possession of a species having a total possession limit of Zero without variance approval from the Wildlife Board.

(c) If the applicant requests the authorization to capture amphibians or reptiles from the wild, the division shall determine what species, locations, capture season dates, and total numbers that may be captured.

(d) Unless otherwise stated on the certificate of registration, the holder of the certificate of registration may only utilize lawful methods of take identified in R657-53-12.

(4)(a) Applications for a scientific use certificate of registration are available on the division's website.

(b) The division will make a determination approving or denying the application within 30 days of receiving a complete application.

(5) The division may condition approval of a certificate of registration for scientific use on the applicant's agreement to provide an annual report to the division during the permit period, detailing the species and locality of specimens or tissues that were removed from the wild and the destination of any specimens submitted to a long-term collection or depository.

(6) A scientific use certificate of registration is non-transferable and automatically terminates upon:

(a) conclusion of the relevant research project for which the certificate of registration was issued; or

(b) a change in the researcher named as the principal investigator.

R657-53-15. Educational Use Certificate of Registration.

(1) An individual or entity wishing to utilize an amphibian or reptile in a method qualifying as an educational use must first acquire an educational use certificate of registration from the division.

(2) The division shall consider the following factors in analyzing an application for a educational use certificate of registration:

(a) the health, welfare, and safety of the public;

(b) demonstrated knowledge and expertise in conducting the proposed wildlife-related activities;

(c) the health, welfare, safety, and genetic integrity of wildlife and other animals;

(d) ecological and environmental impacts of the proposed activity; and

(e) the acquisition of other necessary permits or approvals.

(f) the objectives and structure of the educational program; and

(g) whether the applicant has written approval from the appropriate official if the activity is conducted in a school or other educational facility.

(3)(a) The division may establish facility and operational guidelines to use in reviewing Applications.

(b) The division may condition approval of an application on compliance with additional requirements determined to be necessary components to protect human health and safety and the wildlife resource, such as minimum facility requirements, acquisition of liability insurance, modified total possession limits or daily limits, allowed methods of take, authorization of live release of amphibians and reptiles, mandatory reporting requirements, and other similar expectations.

(c) Notwithstanding Subsection 2(b), an educational use certificate of registration may not authorize possession of a species having a total possession limit of Zero without variance approval from the Wildlife Board.

(d) If the applicant requests the authorization to capture amphibians or reptiles from the wild, the division shall determine what species, locations, capture season dates, and total numbers that may be captured.

(e) Unless otherwise stated on the certificate of registration, the holder of the certificate of registration may only utilize lawful methods of take identified in R657-53-10.

(4)(a) Applications for educational use certificates of registration are available on the division's website.

(b) The division will make a determination approving or denying the application within 30 days of receiving a complete application.

(5) An educational use certificate of registration is non-transferable and automatically expires if the principal educator named on the certificate of registration is no longer providing the educational activity described on the certificate of registration.

R657-53-16. Reptile and Amphibian Education Course.

(1) A person must complete an amphibian and reptile education course before:

(a) importing, collecting, or possessing a species having a total possession limit of Expanded;

(b) applying for or acquiring a collection permit; or

(c) applying for a certificate of registration; or

(d) engaging in any activity requiring a wildlife document.

(2) The Reptile and Amphibian Education Course may be comprised of educational materials on biology and conservation of reptiles and amphibians, laws and rules pertaining to reptiles and amphibians, field work etiquette and safety, and a written exam.

(3) A person must complete the entire course and obtain at least a 75% passing score on the exam in order to receive a certification of completion.

(4) A certification of completion is valid for three calendar years.

R657-53-17. Denials and Appeals.

(1) The division may deny issuing or reissuing a wildlife document to any applicant, if:

(a) the applicant has violated any provision of:

(i) Title 23, Utah Wildlife Resources Code;

(ii) Administrative Code R657;

(iii) any term in a wildlife document pertaining to activities described in this rule;

(iv) an order of the Wildlife Board; or

(v) any other law that, when considered with the functions and responsibilities of collecting, importing, possessing or propagating an amphibian or reptile, bears a reasonable relationship to the applicant's ability to safely and responsibly carry out such activities;

(b) the applicant has failed to submit mandatory reporting information required by this rule, the division, or the Wildlife Board; or

(c) the applicant misrepresented or failed to disclose material information required in connection with the application; or

(d) where the conduct authorized by the wildlife document violates federal, state or local laws.

(2) If the division denies an application, they shall provide the applicant with written notice of the reasons for denial.

(3) If the division denies an application, the applicant may request that the Director reconsider the division's decision by providing written notice to the Director within 30 days of denial.

(4) If the Director denies a request for reconsideration, the applicant may submit an appeal to the Wildlife Board consistent with R657-2.

R657-53-18. Request for Variance.

(1) A person may make a request for a variance to this rule for the collection, importation, propagation, or possession of an amphibian or reptile by submitting the request to the Chairman of the Wildlife Board.

(2)(a) A request for variance shall include the following:

(i) the name, address, and phone number of the person making the request;

(ii) the species or subspecies of the amphibian or reptile and associated activities for which the request is made; and

(iii) a statement of the facts and reasons forming the basis for the variance.

(b) In addition to the information required under Subsection (a), the person making the request must provide any information requested by the committee necessary to formulate a recommendation to the Wildlife Board.

(3) At the next available Wildlife Board meeting the Wildlife Board shall:

(a) consider the division's recommendation; and

(b) any information provided by the person making the request.

(4) The Wildlife Board evaluate the application materials and based upon the criteria established in this rule for that particular type of certificate of registration.

(5)(a) If the request is approved, the Wildlife Board may impose any restrictions on the person making the request considered necessary for that person to maintain the standards upon which the variance is made.

(b) Any restrictions imposed on the person making the request shall be included in writing on the wildlife document which shall be signed by the person making the request.

(6) A request for variance shall be considered a request for agency action as provided in Subsection 63G-4-201(3) and Rule R657-2.

R657-53-19. Data Collection and Mandatory Reporting.

(1) A person must complete mandatory reporting within 72 hours of obtaining possession of the specimen if:

(a) the individual is collected from the wild and belongs to a species having a daily collection limit of Standard or Limited;

(b) the individual is salvaging a species having a daily collection limit of Standard, Limited, or Zero;

(c) the individual is transferring a wild caught species native to the State of Utah to another individual; or

(d) the individual is a registered propagator and a breeding event results in amphibian or reptile possession beyond the total possession limit for the relevant species.

(2) Mandatory reporting must be completed using a division-approved reporting platform, and shall include:

(a) UTM or latitude/longitude coordinates of the location of the collection point;

(b) number of individuals or specimens obtained;

(c) morphological measurements and descriptions; and

(d) photographic documentation.

(3) A person who fails to complete mandatory reporting as required in this rule may be:

(a) considered in unlawful possession of animals that went unreported; and

(b) deemed ineligible to obtain wildlife documents until such reporting is completed.

(4) Mandatory reporting for commercial use, scientific use, and educational use certificates of registration will be established as part of the certificate of registration approval process.

(5) The division will offer an online method for completing mandatory reporting.

R657-53-20. Animal Welfare.

(1) Any amphibian or reptile possessed under the authority of a certificate of completion or wildlife document shall be maintained under humane and healthy conditions, including humane handling, care, confinement, transportation, and feeding of the amphibian or reptile.

(2) Adequate measures must be taken for the protection of the public when handling, confining, or transporting any amphibian or reptile.

(3) The division may impose specific requirements on the holder of a wildlife document, consistent with industry standards or generally accepted animal husbandry practices, deemed necessary for the safe and humane handling and care of the animal involved, including requirements for veterinary care, cage or holding pen sizes and standards, feeding requirements, social grouping requirements, and other requirements considered necessary by the division for the health and welfare of the animal or the public.

R657-53-21. Record Retention; Inspection of Documentation.

(1) An individual is required to maintain all records verifying compliance with this rule while in possession of an amphibian or reptile or otherwise engaging in an activity regulated under this rule.

(2) A conservation officer or any other peace officer may require any person engaged in activities covered by this rule to exhibit any documentation related to activities covered by this rule, including certificates of registration, permits, certificates of veterinary inspection, bills of sale, or proof of ownership or legal possession.

R657-53-22. Retroactive Effect on Possession.

(1) A person lawfully possessing an amphibian or reptile prior to the effective date of any reduction in total possession limit may continue to lawfully possess those individual specimens, even if it exceeds the newly established total possession limit.

(2) An individual utilizing the authorization described in Subsection (1) may not acquire specimens after the change total possession limits in that would exceed the newly established possession limit.

R657-53-23. Violations; Suspension and Revocation.

(1) Any violation of this rule is a class C misdemeanor, as provided in Section 23-13-11.

(2) Nothing in this rule shall be construed to supersede any provision of Title 23, Wildlife Resources Code of Utah which establishes a penalty greater than a class C misdemeanor. Any provision of this rule which overlaps a provision of that title is intended only as a clarification or to provide greater specificity needed for the administration of the provisions of this rule.

(3) A wildlife document issued pursuant to this rule may be suspended or revoked consistent with Section 23-19-19.

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R657. Natural Resources, Wildlife Resources.

R657-59. Private Fish Ponds, Short Term Fishing Events, Private Fish Stocking, and Institutional Aquaculture.

R657-59-1. Purpose and Authority.

(1) Under the authority of Sections 23-15-9 and 23-15-10 of the Utah Code, this rule provides the standards and procedures for:

(a) private fish ponds;

(b) short term fishing events;

(c) aquaponics facilities;

(d) private fish stocking; and

(e) institutional aquaculture.

(2)(a) This rule does not regulate fee fishing or private aquaculture as provided in Title 4, Chapter 37 of the Utah Code, and Department of Agriculture Rule R58-17.

(b) The display of aquatic wildlife in aquaria for personal, commercial, or educational purposes is regulated by R657-3.

(3) A person engaging in any activity provided in Subsection (1) must also comply with all requirements established by Title 4 of Utah Code and all rules promulgated by the Utah Department of Agriculture, including, but not limited to:

(a) requirements for the importation of aquaculture products into Utah; and

(b) requirements for fish health approval for aquaculture products.

(4) Any violation of, or failure to comply with, any provision of Title 23 of the Utah Code, this rule, or any specific requirement contained in a certificate of registration issued pursuant to this rule may be grounds for suspension of the certificate or denial of future certificates, as determined by the division.

R657-59-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Aquaculture" means the husbandry, production, harvest, and use of aquatic organisms under controlled, artificial conditions.

(b) "Aquaculture facility" means any facility used for the husbandry, production, harvest, and use of aquatic organisms under controlled, artificial conditions that holds a valid Certificate of Registration from the Utah Department of Agriculture.

(c)(i) "Aquaculture product" means privately purchased, domestically produced aquatic organisms, or their gametes.

(ii) "Aquaculture product" does not include aquatic wildlife obtained from the wild.

(d) "Aquaponics facility" means a facility that combines fish and plant culture for a non-commercial purpose where:

(i) all water flowing into or through the facility is completely isolated from any other water source via a self-contained water transport system;

(ii) all water flowing from the facility is discarded into a permitted sewer or septic system;

(iii) the aquatic animals held within the facility are used for hobby purposes only;

(iv) no aquatic animals are transported from the facility alive; and

(v) the primary use of the facility is for food production and not for the general display of fish in aquaria.

(e) "Aquatic wildlife" for the purposes of this chapter are aquatic organisms that are conceived and born in public waters.

(f) "Certified sterile salmonid" means any salmonid fish or gamete that originates from a health certified source and is incapable of reproduction due to triploidy or hybridization, and is confirmed as sterile using the protocol described in R657-59-13.

(g) "FEMA" means Federal Emergency Management Administration.

(h)(i) "HUC"or "Hyrologic Unit Code" means a cataloging system developed by the US Geological Survey and the Natural Resource Conservation Service to identify watersheds in the United States.

(ii) HUCs are typically reported at the large river basin (6-digit HUC) or smaller watershed (11-digit and 14-digit HUC) scale.

(iii) HUC maps and other associated information are available at http://water.usgs.gov/wsc/sub/1602.html.

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

(j) "Ornamental aquatic animal species" means any species of fish, mollusk, or crustacean that is commonly cultured and sold in the United States' aquarium industry for display as defined in R657-3-4.

(k) "Private fish pond" means a body of water or any fish culture system which:

(A) is not located on a natural lake, natural flowing stream, or reservoir constructed on a natural stream channel;

(B) is contained entirely on privately owned land; and

(C) is used for holding or rearing fish for a private, noncommercial purpose.

(l) "Purchase" means to buy, or otherwise acquire or obtain through barter, exchange, or trade for pecuniary consideration or advantage.

(m) "Salmonid" means any fish belonging to the trout/salmon family.

(n) "Short-term fishing event" means any event where:

(i) privately acquired fish are held or confined for a period not to exceed ten days in a temporary structure or container;

(ii) for the purposes of providing fishing ar recreational opportunity; and

(iii) no fee is charged as a requirement to fish.

(o) "Sterile" means the inability to reproduce.

R657-59-3. Certificate of Registration Not Required -- Private Fish Ponds, Short Term Fishing Events, and Aquaponics Facilities.

(1) A certificate of registration is not required to stock an aquatic animal in an aquaponics facility, provided:

(a) the aquatic animals stocked are accompanied by a valid health approval number issued by the Utah Department of Agriculture and Food pursuant to Chapter 4 Title 37 of Utah Code; and

(b) the aquatic animals to be stocked belong to one of the following species:

(i) bluegill;

(ii) hybrid bluegill (bluegill x green sunfish);

(iii) redear sunfish;

(iv) green sunfish;

(v) striped bass;

(vi) white bass;

(vii) hybrid striped bass or wiper (white bass x striped bass);

(viii) largemouth bass;

(ix) smallmouth bass;

(x) channel catfish

(xi) yellow perch;

(xii) fathead minnow;

(xiii) black crappie;

(xiv) white crappie;

(xv) rainbow trout;

(xvi) cutthroat trout;

(xvii) brown trout;

(xviii) brook trout;

(xix) tiger trout;

(xx) walleye;

(xxi) golden shiner; and

(xxii) any aquatic animal species classified as non-controlled for possession and importation under R657-3-22 or 23.

(2) A certificate of registration is not required to receive and stock an aquaculture product in a private fish pond, provided:

(a) the private fish pond satisfies the screening requirements established in R657-59-10;

(b) if a screen is required, the aquaculture product received must be of sufficient size to be incapable of escaping the pond through or around the screen;

(c) the species, sub-species, and sterility of the aquaculture product received is authorized for stocking in the area where the private fish pond is located consistent with the requirements in R657-59-11;

(d) the aquaculture product is:

(i) delivered to the pond by a licensed aquaculture facility as defined in Title 4 Chapter 37 of Utah Code; or

(ii) the owner, lessee, or operator of the private pond:

(A) possesses documentation from the aquaculture facility verifying the information itemized in R657-59-6 and R58-17-14 during transport; and

(B) assumes legal responsibility for directly transporting the fish from the aquaculture facility to the private fish pond;

(e) the owner, lessee, or operator of the pond obtains from the aquaculture facility providing the aquaculture product a valid health approval number issued by the Utah Department of Agriculture and Food pursuant to Chapter 4 Title 37 of Utah Code; and

(f) the owner or operator of the private fish pond provides the aquaculture facility a signed written statement that the pond and aquaculture product received are in compliance with this section.

(3) A certificate of registration is not required to receive and stock an aquaculture product in a short-term fishing event, provided:

(a) the temporary container or structure to be stocked is entirely separated from any public waterway or waterbody;

(b) the species, sub-species, and sterility of the aquaculture product received is authorized for stocking in the area where the short-term fishing event is located consistent with the requirements in R657-59-11;

(c) the aquaculture product is:

(i) delivered to the pond by a licensed aquaculture facility as defined in Chapter 4 Title 37 of Utah Code; or

(ii) the owner, lessee, or operator of the short-term fishing event:

(A) possesses documentation from the aquaculture facility verifying the information itemized in R657-59-6 and R58-17-14 during transport; and

(B) assumes legal responsibility for directly transporting the fish from the aquaculture facility to the short-term fishing event;

(d) the owner, lessee, or operator of the pond obtains from the aquaculture facility providing the aquaculture product a valid health approval number issued by the Utah Department of Agriculture and Food pursuant to Chapter 4 Title 37 of Utah Code; and

(e) the operator of the short-term fishing event provides the aquaculture facility a signed written statement that the short-term fishing event and aquaculture product received are in compliance with this section.

R657-59-4. Certificate of Registration Required -- Other Fish Stocking Activities.

(1)(a) A certificate of registration must be obtained from the division to receive, possess, stock, or release an aquaculture product or aquatic wildlife in a manner that does not satisfy the certificate of registration waiver requirements identified in R657-59-3.

(b) If a certificate of registration is required, a separate application for each fish stocking request must be submitted, except:

(i) stocking locations are separated by less than 1/2 mile may be placed on a single application; and

(ii) water bodies that drain to, or are modified to drain to, the same drainage may be listed on a single application.

(2) Fish stocked or released in a water body not eligible as a private fish pond or short-term fishing event under R657-59-3 are considered wild aquatic wildlife and may be taken only as provided in Rule R657-13 and the fishing proclamation.

(3) A permanent water body stocked pursuant to a certificate of registration for private stocking may not be screened to contain fish, except:

(a) a water stocked with grass carp to control aquatic weeds must be adequately screened to prevent the grass carp from escaping; and

(b) the division may require screening of the water body to protect wildlife resources found in the water body and any connected waterways.

(4)(a) An application for a certificate of registration for private stocking to stock fish other than grass carp may be approved only if:

(i) the stocking will only occur on privately owned land;

(ii) the body of water to be stocked is a reservoir that is wholly contained on the land owned by the applicant;

(iii) the body of water is not stocked or otherwise actively managed by the division;

(iv) the fish to be stocked are for a non-commercial purpose; and

(v) in the opinion of the division, stocking will not interefere with division management objectives or cause detrimental interactions with other species of fish or wildlife.

(5) An application for a certificate of registration for private stocking of triploid grass carp for control of aquatic weeds will be evaluated based upon:

(a) the severity of the weed problem;

(b) availability of other suitable means of weed control;

(c) adequacy of screening to contain the grass carp; and

(d) potential for conflict with division management objectives or detrimental interactions with other species of fish or wildlife.

R657-59-5. Application for a Fish Stocking Certificate of Registration; Application Criteria; Amendment of Certificate of Registration.

(1)(a) A person may apply to receive a certificate of registration for a fish stocking activity by submitting an application with the required handling and inspection fee to the Wildlife Registration Office, Utah Division of Wildlife Resources, 1594 West North Temple, Salt Lake City, Utah 84114.

(b) Application forms are available at all division offices and at the division's internet address.

(c) The application may require up to 30 days for processing.

(d) The division may require a site inspection of the stocking location be performed to confirm compliance with the provisions found in this rule.

(e) The division may deny an application where:

(i) the application is incomplete, filled out incorrectly, or submitted without the appropriate fee;

(ii) receiving or stocking the aquaculture product or aquatic wildlife may:

(A) violate any federal, state or local law or any agreement between the state and another party;

(B) negatively impact native wildlife species listed by the

division as sensitive or by the federal government as threatened or endangered;

(C) pose an identifiable adverse threat to other wildlife species or their habitat;

(D) pose an identifiable adverse impact to the division's game fish stocking regimes or wildlife management objectives; or

(E) non-salmonid aquaculture product will be stocked in a pond within the 100 year flood plain (below 6500 feet in elevation) in the Green River and Colorado River drainages and the pond does not meet FEMA standards on construction and screening; or

(iii) the applicant has violated any provision of Title 23, Utah Wildlife Resources Code, Administrative Code R657, a guidebook of the Wildlife Board, a certificate of registration, an order of the Wildlife Board, or any other law that bears a reasonable relationship to the applicant's ability to responsibly carry out the stocking activity.

(2) An application for a certificate of registration may not be denied without the review and consent of the division director or a designee.

(3) A certificate of registration for a fish stocking activity may remain effective for up to 5 years from the date of issuance as identified on the certificate of registration, unless:

(a) amended by the division at the request of the certificate of registration holder;

(b) terminated or modified by the division pursuant to R657-59-13; or

(c) suspended by the division or a court pursuant to Section 23-19-9.

(4) An amendment to the certificate of registration is required each time fish are stocked, except a person may request to stock fish more than once if the request is made on the application and the request is approved by the division on the certificate of registration.

R657-59-6. Acquiring, Importing, and Transferring Aquaculture Products.

(1)(a) Species of aquaculture products that may be imported into the state are provided in Rule R657-3-23.

(b) Applications to import aquaculture products are available from all division offices and must be submitted to the division's Wildlife Registration Office in Salt Lake City.

(c) Complete applications may require up to 30 days for processing.

(2) Live aquaculture products, other than ornamental fish, may only be:

(a) purchased or acquired from sources approved by the Utah Department of Agriculture and Food to sell such products; and

(b) acquired, purchased or transferred from sources which have been health approved by the Utah Department of Agriculture and Food and assigned a number as provided in Title 4 Chapter 37 of Utah Code.

(3)(a) Any person who has been issued a valid aquaculture certificate of registration may transport live aquaculture products as specified on the certificate of registration to a stocking location.

(b) All transfers or shipments of live aquaculture products must be accompanied by documentation of the source and destination of the product, including:

(i) name, address, certificate of registration number, and fish health approval number of the source;

(ii) number and weight being shipped, by species;

(iii) name, address, and certificate of registration number, if applicable, of the destination; and

(iv) a copy of the importation permit provided by the Utah Department of Agriculture.

(c)(i) Once stocked in a water body, aquaculture products may not be transferred or relocated live.

(4)(a) To import, transport, or stock live grass carp (Ctenopharyngodon idella), each fish must be verified as being sterile triploid by the U.S. Fish and Wildlife Service.

(b) The form verifying triploidy must be obtained from the supplier and be on file with the Wildlife Registration Office of the division in Salt Lake City prior to importation.

(c) A copy of the triploidy verification form must also accompany the fish during transport.

(5)(a) Live aquaculture products may be shipped through Utah without a certificate of registration provided that:

(i) the aquatic wildlife or aquaculture products are not sold or transferred;

(ii) the aquatic wildlife or aquaculture products remain in the original container;

(iii) the water is not exchanged or discharged; and

(iv) the shipment is in Utah no longer than 72 hours.

(b) Proof of legal ownership and destination must accompany the shipment.

R657-59-7. Inspection of Records and Fish Stocking Locations.

(1) Records of purchase, distribution, and acquisition of aquaculture products and copies of certificates of registration must be kept for the duration of the certificate of registration and must be available for inspection by a division representative during reasonable hours.

(2) The division and its authorized representatives may inspect a private fish pond or other stocking location during reasonable hours to verify compliance with the requirements of Title 23 of the Utah Code and this rule.

(3) Consistent with the provisions of Utah Administrative Code R58-17, the division and its authorized representatives may inspect aquaculture products stocked pursuant to this rule to conduct sterility, pathological, fish culture, or physical investigations during reasonable hours to verify compliance with the requirements of Title 23 of the Utah Code and this rule.

R657-59-8. Prohibited Activities.

(1) Live aquatic wildlife may not be collected from the wild and used in stocking activities unless authorized by the Wildlife Board consistent with the requirements in R657-3.

(2) A person may not release or transport any live aquaculture product received or held under the provisions of this rule without prior written authorization of the division and the Fish Health Policy Board.

R657-59-9. Fishing License and Transportation of Dead Aquaculture Product.

(1) A fishing license is not required to:

(a) take fish from a legally recognized private fish pond or short-term fishing event; or

(b) to transport dead aquaculture product from a private fish pond or short-term fishing event.

R657-59-10. Screen Requirements.

(1)(a) Except as provided in Subsection (b), all permanent and intermittant inlets and outlets of a private fish pond shall be screened to prevent the movement of aquatic wildlife into the pond or the escapement of any aquaculture product from the private fish pond into public waters.

(b) Upon request of the private pond owner or lessee, the division may conduct a site analysis and waive screen requirements if it is determined that the waiver of screen requirements will not be detrimental to the wildlife resource.

(c) Any aquaculture product that escapes a private fish pond are considered aquatic wildlife for the purposes of licensing requirements, bag limits, and allowable methods of take.

(2) If a screen is required, the screen must meet the following provisions:

(a) the screen should be constructed of durable materials that are capable of maintaining integrity in a water and air environment for an extended period of time;

(b) the screen shall have no openings, seams or mesh width greater than the width of the fish being stocked;

(c) all water entering or leaving the pond, including run off and other high water events, shall flow through a screen consistent with the requirements of this subsection; and

(d) the screen shall be maintained and in place at all times while any aquaculture product remains in the pond.

R657-59-11. Species and Reproductive Capabilities of Aquaculture Product Authorized by Area for Stocking in Private Fish Ponds and Short-Term Fishing Events.

(1) A certificate of registration must be obtained from the division pursuant to R657-59-4 and R657-59-5 prior to stocking in any private fish pond of:

(a) a non-salmonid aquaculture product; or

(b) any other species or sterility of aquaculture product not specifically authorized in this Section.

(2)(a) Except as provided in Subsection 4, a certified sterile salmonid aquaculture product may be stocked in any private fish pond or short-term fishing event within the state without a certificate of registration.

(b) Triploid salmonids accepted as sterile pursuant to this rule shall originate from a source that is certified as incapable of reproduction using the following protocols:

(i) fish samples shall be collected, prepared, and submitted to a certified laboratory by an independent veterinarian, certified fish health professional, or other professional approved by the division or Utah Department of Agriculture;

(ii) certified laboratories shall be limited to independent, professional laboratories capable of reliably testing fish sterility and approved by the division;

(iv) sterility shall be determined by sampling and testing 60 fish from each egg lot using either flow cytometry, particle analysis, or karyotyping; and

(v) At least 95% of the fish test triploid.

(c) An aquaculture facility that receives certified sterile salmonid aquaculture product is not required to conduct additional sterility testing prior to stocking the aquaculture product, provided the sterile salmonids are kept segregated from other fertile salmonids.

(d) Hybrid salmonid fish species accepted as sterile under this subsection are limited to splake trout (lake trout/brook trout cross) and tiger trout (brown trout/brook trout cross).

(3) Fertile rainbow trout may be stocked without a certificate of registration in any private fish pond or short-term fishing event within the state consistent with R657-59-3, except for waters located within the following drainages designated by County and hydrologic unit code (HUC) or township and range:

Beaver County:

(i) North Creek drainage - HUCs 160300070203, 160300070208; and

(ii) Pine Creek drainage (near Sulphurdale) - HUC 160300070501.

(b) Box Elder County - stocking is prohibited in the following:

(i) Morison Creek drainage - HUC 16020308;

(ii) Bettridge Creek drainage - HUC 16020308;

(iii) Death Creek drainage - HUC 16020308;

(iv) Camp Creek drainage - HUC 16020308;

(v) Goose Creek drainage - HUC 17040211;

(vi) Raft River drainage - HUC 17040210;

(vii) Fat Whorled Pond Snail Springs - Township 10 North, Ranges 4 and 5 West; and

(c) Cache County:

(i) Logan River drainage - HUC 16010203;

(ii) Blacksmith Fork River drainage - HUC 16010203;

(iii) East Fork Little Bear River drainage- HUC 16010203; and

(iv) Little Bear River drainage - HUC 16010203.

(d) Carbon County:

(i) waters above 7000 feet in elevation.

(e) Daggett County:

(i) waters above 7000 feet in elevation.

(f) Duchesne County:

(i) waters above 7000 feet in elevation.

(g) Emery County:

(i) waters above 7000 feet in elevation.

(i) Garfield County:

(i) Birch Creek/Main Canyon drainage - HUC 140700050102;

(ii) Center Creek drainage (tributary to East Fork Sevier R) HUC 160300020412;

(iii) Cottonwood Creek drainage - HUC 160300020406;

(iv) East Fork of Boulder Creek/ West Fork Boulder Creek drainage - HUC 140700050206; and

(v) Ranch Creek drainage (East Fork Sevier River drainage) - HUC 160300020405.

(h) Grand County:

(i) waters above 7000 feet in elevation.

(i) Juab County:

(i) Sulphur Wash drainage - HUC 160203011303;

(ii) Middle Pleasant Valley Draw drainage - HUC 160203011402;

(iii) Lower Pleasant Valley Draw drainage - HUC 160203011403;

(iv) Cookscomb Ridge drainage - HUC 160203011501;

(v) Outlet Salt Marsh Lake drainage - HUC 160203011502;

(vi) Deep Creek Range drainage - HUC 160203011503;

(vii) Snake Valley drainage - HUC 160203011504;

(viii) Little Red Cedar Wash drainage - HUC 160203011505;

(ix) Trout Creek drainage - HUC 160203060101;

(x) Smelter Knolls drainage - HUC 160203060104;

(xi) Toms Creek drainage - HUC 160203060201;

(xii) Goshute Canyon drainage - HUC 160203060202;

(xiii) Indian Farm Creek drainage - HUC 160203060204;

(xiv) Spring Creek drainage - HUC 160203060803;

(xv) Fifteenmile Creek drainage - HUC 160203060804;

(xvi) East Creek/East Deep Creek drainage - HUC 160203060805;

(xvii) East Creek/East Deep Creek drainage - HUC 160203060806;

(xviii) West Deep Creek drainage - HUC 160203060808;

(xix) Horse Valley drainage - HUC 160203060304;

(xx) Starvation Canyon drainage - HUC 160203060305;

(xxi) Cane Springs drainage - HUC 160203060307;

(xxii) Fish Springs Range drainage - HUC 160203060308;

(xxiii) Middle Fish Springs Wash drainage - HUC 160203060309;

(xxiv) Lower Fish Springs Wash drainage - HUC 160203060403;

(xxv) Fish Springs drainage - HUC 160203060405;

(xxvi) Wilson Health Springs drainage - HUC 160203060407;

(xxvii) Vernon Creek drainage - HUC 160203040102;

(xxviii) Outlet Chicken Creek drainage - HUC 160300050206;

(xxix) Little Valley/Sevier River drainage - HUC 160300050403;

(xxx) Pole Creek/Salt Creek drainage - HUC 160202010104; and

(xxxi) West Creek/Current Creek drainage -

HUC160202010107.

(j) Millard County

(i) Outlet Salt Marsh Lake drainage - HUC 160203011502;

(ii) Sulphur Wash drainage - HUC160203011303;

(iii) Cockscomb Ridge drainage - HUC 160203011501;

(iv) Tungstonia Wash drainage - HUC 160203011302;

(v) Salt Marsh Lake - HUC 160203011304;

(vi) Indian George Wash drainage - HUC 160203011301

(vii) Outlet Bishop Springs drainage - HUC 160203011203;

(viii) Warm Creek drainage - HUC 160203011204;

(ix) Headwaters Bishop Springs drainage - HUC 160203011202;

(x) Indian Pass - HUC 160203011107;

(xi) Chevron Ridge drainage - HUC 160203011110;

(xii) Petes Knoll drainage - HUC 160203011109;

(xiii) Red Gulch drainage - HUC 160203011102;

(xiv) Horse Canyon drainage - HUC 160203011106;

(xv) Hampton Creek drainage - HUC 160203011105;

(xvi) Knoll Springs drainage - HUC 160203011103;

(xvii) Browns Wash drainage - HUC 160203011101;

(xviii) Outlet Baker Creek drainage - HUC 160203011004;

(xix) Outlet Old Mans Canyon drainage - HUC 160203011003;

(xx) Hendrys Creek drainage - HUC 160203011104;

(xxi) Headwaters Old Mans Canyon drainage - HUC 160203011002;

(xxii) Rock Canyon drainage - HUC 160203011001

(xxiii) Silver Creek drainage - Baker Creek drainage - HUC 160203010806;

(xxiv) Outlet Weaver Creek drainage - HUC 160203010804;

(xxv) Conger Spring drainage - HUC 160203010702; and

(xxvi) Sheepmens Little Valley drainage - HUC 160203010607.

(k) Morgan County:

(i) Weber River drainage - HUC 16020102;

(ii) East Canyon Creek drainage - HUC 16020102; and

(iii) Lost Creek drainage - HUC 16020101.

(l) Piute County:

(i) Birch Creek drainage HUC 160300010603;

(ii) Clear Creek drainage HUC 1603000301;

(iii) Manning Creek drainage - HUC 160300030203;

(iv) Tenmile Creek drainage HUC 160300030204.

(m) Rich County:

(i) Bear Lake drainage - HUC 16010201;

(ii) Big Creek drainage - HUC 16010101;

(iii) Birch Creek drainage from Birch Creek Reservoir, upstream HUC 16010101;

(iv) Little Creek drainage from Little Creek Reservoir, upstream HUC 16010101;

(v) Otter Creek drainage - HUC 16010101;

(vi) Woodruff Creek drainage - HUC 16010101; and

(vii) Home Canyon and Meachum Canyon (Deseret Ranch) drainage - HUC 16010101.

(n) Salt Lake County:

(i) Big Cottonwood Canyon Creek drainage - HUC 160202040201;

(ii) Little Cottonwood Canyon Creek drainage - HUC 160202040202;

(iii) Mill Creek drainage - HUC 160202040301;

(iv) Parleys Creek drainage - HUC 160202040302;

(v) Emigration Creek drainage - HUC 160202040303;

(vi) City Creek drainage - HUC 160202040304; and

(vii) Red Butte Creek/Emigration Creek drainage - HUC 160202040306.

(o) San Juan County:

(i) waters above 7000 feet in elevation.

(p) Sanpete County:

(i) Areas west of the Manti Mountain Range divide:

(A) Dry Creek/San Pitch River drainage - HUC 160300040201;

(B) Oak Creek/San Pitch River drainage - HUC 160300040202;

(C) Cottonwood Canyon/San Pitch River drainage - HUC 160300040203;

(D) Birch Creek/San Pitch River drainage - HUC 160300040204;

(E) Pleasant Creek drainage - HUC 160300040205;

(F) Dublin Wash/San Pitch River drainage - HUC 160300040206;

(G) Cedar Creek drainage - HUC 160300040207;

(H) Spring Hollow/San Pitch River drainage - HUC 160300040208;

(I) Upper Oak Creek drainage - HUC 160300040302;

(J) Petes Canyon/San Pitch River drainage - HUC 160300040306;

(K) Uinta Gulch drainage - HUC 160202020201;

(L) Upper Thistle Creek drainage - HUC 160202020202;

(M) Nebo Creek drainage - HUC 160202020203;

(N) Middle Thistle Creek drainage - HUC 160202020204;

(O) Dry Canyon/San Pitch River drainage - HUC 160300040308;

(P) Maple Canyon/San Pitch River drainage - HUC 160300040309;

(Q) Gunnison Reservoir/San Pitch River drainage - HUC 160300040503;

(R) Outlet San Pitch River drainage - HUC 160300040505;

(S) Beaver Creek drainage - HUC 140700020201;

(T) Box Canyon/Muddy Creek drainage - HUC 140700020203;

(U) Skumpah Creek-Salina Creek drainage - HUC 160300030402; and

(V) Headwaters Twelvemile Creek drainage - HUC 160300040402.

(ii) Waters above 7000 feet in elevation east of the Manti Mountain Range divided.

(q) Sevier County:

(i) Clear Creek drainage HUC 1603000301;

(ii) Salina Creek drainage - HUC 160300030402; and

(iii) U M Creek drainage - HUC 140700030101.

(r) Summit County:

(i) Bear River drainage drainage - HUC 16010101;

(ii) Mill Creek drainage - HUC 16010101;

(iii) Muddy Creek and Van Tassel Creek drainage - HUC 14040108;

(iv) Little West Fork/Blacks Fork drainage - HUC 14040107;

(v) Blacks Fork drainage - HUC 14040107;

(vi) Archie Creek drainage - HUC 14040107;

(vii) West Fork Smiths Fork drainage - HUC 14040107;

(viii) Gilbert Creek drainage - HUC 14040107;

(ix) East Fork Smiths Fork drainage - HUC 14040107;

(x) Dahlgreen Creek drainage - HUC 14040106;

(xi) Henrys Fork drainage - HUC 14040106;

(xii) Spring Creek and Poison Creek drainage - HUC 14040106;

(xiii) West Fork Beaver Creek drainage - HUC 14040106;

(xiv) Middle Fork Beaver Creek drainage - HUC 14040106;

(xv) Echo Creek drainage - HUC 16020101;

(xvi) Chalk Creek drainage - HUC 16020101;

(xvii) Silver Creek drainage - HUC 16020101;

(xviii) Weber River drainage - HUC 16020101;

(xix) Beaver Creek drainage - HUC 16020101;

(xx) Provo River drainage - HUC 16020101;
(xxi) Kimball Creek drainage - HUC 160201020101;
(xxii) Big Dutch Hollow/East Canyon Creek drainage - HUC 160201020103; and
(xxiii) Toll Canyon/East Canyon Creek drainage - HUC 160201020102.
(w) Tooele County:
(i) Toms Creek drainage - HUC 160203060201;
(ii) Goshute Canyon drainage - HUC 160203060202;
(iii) Eightmile Wash drainage - HUC 160203060203;
(iv) Indian Farm Creek drainage - HUC 160203060204;
(v) Willow Spring Wash drainage HUC 160203060205;
(vi) Willow Canyon drainage - HUC 160203080104;
(vii) Bettridge Creek drainage - HUC 160203080106;
(viii) East Creek/East Deep Creek drainage - HUC 160203060806;
(ix) East Deep Creek drainage - HUC 160203060807;
(x) West Deep Creek drainage - HUC 160203060808;
(xi) Gullmette Gulch/Deep Creek drainage - HUC 160203060902;
(xii) Pony Express Canyon/Deep Creek drainage - HUC 160203060904;
(xiii) Badlands drainage - HUC 160203060905;
(xiv) White Sage Flat/Deep Creek drainage - HUC 160203060907;
(xv) Lower Fish Springs Wash drainage - HUC 160203060403;
(xvi) Fish Springs drainage - HUC 160203060405;
(xvii) Wilson Health Springs drainage - HUC 160203060407;
(xviii) East Government Creek drainage - HUC 160203040101;
(xix) Vernon Creek drainage - HUC 160203040102; and
(xx) Faust Creek drainage - HUC 160203040105.
(s) Uintah County:
(i) waters above 7000 feet in elevation.
(t) Utah County:
(i) Starvation Creek drainage - HUC 160202020101;
(ii) Upper Soldier Creek drainage - HUC 160202020102;
(iii) Tie Fork drainage - HUC 160202020103;
(iv) Middle Soldier Creek drainage - HUC 160202020105;
(v) Lake Fork drainage - HUC 160202020106;
(vi) Lower Soldier Creek drainage - HUC 160202020107;
(vii) Upper Thistle Creek drainage - HUC 160202020202;
(viii) Nebo Creek drainage - HUC 160202020203;
(ix) Middle Thistle Creek drainage - HUC 160202020204;
(x) Lower Thistle Creek drainage - HUC 160202020205;
(xi) Sixth Water Creek drainage - HUC 160202020301;
(xii) Cottonwood Canyon drainage - HUC 160202020302;
(xiii) Fifth Water Creek drainage - HUC160202020303;
(xiv) Upper Diamond drainage Fork - HUC 160202020304;
(xv) Wanrhodes Canyon drainage - HUC 160202020305;
(xvi) Middle Diamond Fork drainage - HUC 160202020306;
(xvii) Lower Diamond Fork drainage - HUC 160202020307;
(xviii) Headwaters Left Fork Hobble Creek drainage - HUC 160202020401;
(xix) Headwaters Right Fork Hobble Creek drainage - HUC 160202020402;
(xx) Outlet Left Fork Hobble Creek drainage - HUC 160202020403;
(xxi) Outlet Right Fork Hobble Creek drainage - HUC 160202020404;
(xxii) Upper Spanish Fork Creek drainage - HUC 160202020501;
(xxiii) Middle Spanish Fork Creek drainage - HUC 160202020502;
(xxiv) Peteetneet Creek drainage - HUC 160202020601;
(xxv) Spring Creek drainage - HUC 160202020602;
(xxvi) Beer Creek drainage - HUC 160202020603;
(xxvii) Big Spring Hollow/South Fork Provo River drainage - HUC 160202030502;
(xxviii) Pole Creek/Salt Creek drainage - HUC 160202010104;
(xxix) Middle American Fork Canyon drainage - HUC 160202010802;
(xxx) Mill Fork drainage - HUC 160202020104; and
(xxxi) Upper American Fork Canyon drainage - HUC 160202010801.
(u) Wasatch County:
(i) Willow Creek/Strawberry River drainage - HUC 140600040101;
(ii) Clyde Creek/Strawberry River drainage - HUC 140600040102;
(iii) Indian Creek drainage - HUC140600040104;
(iv) Trout Creek/Strawberry River drainage - HUC 140600040105;
(v) Soldier Creek/Strawberry River drainage - HUC 140600040106;
(vi) Willow Creek drainage - HUC 140600040301;
(vii) Current Creek Reservoir drainage - HUC 140600040401;
(viii) Little Red Creek drainage - HUC 140600040402;
(ix) Outlet Current Creek drainage - HUC 140600040403;
(x) Water Hollow/Current Creek drainage - HUC 140600040404;
(xi) Headwaters West Fork Duchesne River drainage - HUC 140600030101;
(xii) Little South Fork Provo River drainage - HUC 160202030201;
(xiii) Bench Creek/Provo River drainage - HUC160202030202;
(xiv) Lady Long Hollow/Provo River drainage - HUC 160202030203;
(xv) Charcoal Canyon/Provo River drainage - HUC 160202030204;
(xvi) Drain Tunnel Creek drainage - HUC 160202030301;
(xvii) Lake Creek drainage - HUC 160202030302;
(xviii) Center Creek drainage - HUC 160202030303;
(xix) Cottonwood Canyon/Provo River drainage - HUC 160202030304;
(xx) Snake Creek drainage - HUC 160202030305;
(xxi) Spring Creek/Provo River drainage - HUC 160202030306;
(xxii) Daniels Creek drainage - HUC 160202030401;
(xxiii) Upper Main Creek drainage - HUC 160202030403;
(xxiv) Lower Main Creek drainage - HUC 160202030404;
(xxv) Deer Creek Reservoir-Provo River drainage - HUC160202030405;
(xxvi) Provo Deer Creek drainage - HUC 160202030501;
(xxvii) Little Hobble Creek drainage - HUC 160202030402;
(xxviii) Mill Hollow/South Fork Provo River drainage - HUC 160202030104; and
(xxix) Mud Creek drainage - HUC 140600040103.
(v) Washington County:
(i) Ash Creek drainage - HUC 150100080405;
(ii) Beaver Dam Wash drainage - HUC 15010010;
(iii) Laverkin Creek drainage - HUC 150100080302;
(iv) Leeds Creek drainage - HUC 150100080906;
(v) Baker Dam Reservoir/Santa Clara River drainage - HUC 150100080704;
(vi) Tobin Wash drainage - HUC 150100080802;
(vii) Sand Cove Wash drainage - HUC 150100080801;
(viii) Manganese Wash/Santa Clara River drainage - HUC 150100080804;

(ix) Wittwer Canyon/Santa Clara River drainage - HUC 150100080808;
(x) Cove Wash/Santa Clara River drainage - HUC 150100080809;
(xi) Moody Wash drainage - HUC 150100080603;
(xii) Upper Moody Wash drainage - HUC 150100080602;
(xiii) Magotsu Creek drainage - HUC 150100080704;
(xiv) South Ash Creek drainage - HUC 150100080405);
(xv) Water Canyon drainage - HUC 150100080701);
(xvi) Chinatown Wash/Virgin River drainage - HUC 150100080508;
(xvii) Lower Gould Wash drainage - HUC 150100080508;
(xviii) Grapevine Wash/Virgin River drainage - HUC 150100080903;
(xix) Cottonwood Wash/Virgin River drainage - HUC 150100080909;
(xx) Middleton Wash/Virgin River drainage - HUC 150100080910;
(xxi) Lower Fort Pierce Wash drainage - HUC 150100080605;
(xxii) Atkinville Wash drainage - HUC 150100080303;
(xxiii) Lizard Wash drainage - HUC 150100080302;
(xxiv) Val Wash/Virgin River drainage - HUC 150100080307;
(xxv) Bulldog Canyon drainage - HUC 150100080310; and
(xxvi) Fort Pierce Wash drainage - HUC 15010009.
(w) Weber County
(i) North Fork Ogden River drainage - HUC 16020102;
(ii) Middle Fork Ogden River drainage - HUC 16020102; and
(iii) South Fork Ogden River drainage- HUC 16020102.
(4) Brown trout and brown trout hybrids may not be stocked within Washington County.

R657-59-12. Institutional Aquaculture.
(1)(a) A certificate of registration is required for any public agency, institution of higher learning, school, or educational program to engage in aquaculture.
(b) A certificate of registration is not required for any public agency, institution of higher learning, school, or educational program to engage in the hobby of aquaponics, so long as the aquaponics facility complies with the regulations in R657-59-3(1).
(2) Aquatic wildlife or aquaculture products produced by institutional aquaculture may not be:
(a) sold;
(b) stocked; or
(c) transferred into waters of the state unless specifically authorized by the certificate of registration.
(3) The fish health approval requirements of Title 4 Chapter 37 apply.
(4)(a) A certificate of registration for institutional aquaculture may be obtained by submitting an application to the division.
(b) A certificate of registration may be renewed by submitting an application prior to the expiration date of the current certificate of registration.
(c) The application may require up to 30 days for processing.
(d) The division may require a site inspection of the institutional aquaculture facility be performed to confirm compliance with the provisions found in this rule.
(e) The division may deny an application where:
(i) the application is incomplete, filled out incorrectly, or submitted without the appropriate fee;
(ii) operating the institutional aquaculture facility may violate any federal, state or local law or any agreement between the state and another party;
(iii) the application fails to demonstrate an ability to operate the aquaculture facility in a manner that protects Utah's wildlife, their habitats, and other aquaculture facilities from contamination; or
(iv) the applicant has violated any provision of Title 23, Utah Wildlife Resources Code, Administrative Code R657, a guidebook of the Wildlife Board, a certificate of registration, an order of the Wildlife Board, or any other law that bears a reasonable relationship to the applicant's ability to responsibly operate an institutional aquaculture facility.
(5) An application for a certificate of registration may not be denied without the review and consent of the division director or a designee.
(6) A certificate of registration for a institutional aquaculture may remain effective for up to 5 years from the date of issuance as identified on the certificate of registration, unless:
(a) amended by the division at the request of the certificate of registration holder;
(b) terminated or modified by the division pursuant to R657-59-13; or
(c) suspended by the division or a court pursuant to Section 23-19-9.

R657-59-13. Expiration and Termination of Certificates of Registration.
(1) If a certificate of registration expires or the division suspends or terminates the certificate of registration, all live aquaculture products permitted under the certificate of registration shall be disposed of as follows:
(a) Unless the Wildlife Board orders otherwise, all aquaculture products or aquatic wildlife must be removed within 30 days of suspension or the expiration date of the certificate of registration, or within 30 days after ice-free conditions on the water; or
(b) At the discretion of the division, aquaculture products and aquatic wildlife may remain in the waters at the facility, but shall only be taken as prescribed within Rule R657-13 for Taking Fish and Crayfish.

KEY: wildlife, aquaculture, fish
December 23, 2019 23-15-9
Notice of Continuation July 19, 2018 23-15-10

R907. Transportation, Administration.
R907-1. Administrative Procedures.
R907-1-1. General Provisions.

All applications, Requests for Agency Action, Notices of Agency Action, and requests for review shall be processed as informal adjudicative proceedings pursuant to Title 63G, Chapter 4, Utah Administrative Procedures Act (UAPA), unless another rule specifically designates a proceeding as formal or either party requests conversion to a formal proceeding and the presiding officer decides that conversion is in the public interest and does not prejudice the rights of any party. An evidentiary hearing will be held only for formal adjudicative proceedings. However, nothing in this rule is intended to prohibit the presiding officer from holding a meeting of all parties for purposes of settlement, fleshing out of the issues, oral argument, or presentation of evidence. Adjudicative proceedings are subject to agency review pursuant to Section 63G-4-301, only when statute or a rule specifically provides for review. This rule does not apply to employee grievances, personnel actions, or requests for records under the Governmental Records Access and Management Act (GRAMA). When used in these rules, "director" means Presiding Officer except when used as Executive Director.

R907-1-2. Commencement by Department -- Notice of Agency Action -- Procedures.

(1) An adjudicative proceeding commenced by the department is initiated by a Notice of Agency Action, which the department shall mail or personally deliver to the person or persons against whom the action is proposed to be taken (respondents). UDOT shall publish the Notice of Agency Action if required by statute, any other rule, or the Utah Transportation Commission.

(2) A Notice of Agency Action shall include the following information:

(a) the names and mailing addresses of all respondents and any other persons to whom notice is being given;

(b) the department's file number or other reference number;

(c) a name or caption of the adjudicative proceeding, i.e., Utah Department of Transportation, Motor Carrier Safety Division v. XXXX Trucking Company;

(d) the date on which the Notice was placed in U.S. Mail, or personally served upon the respondents;

(e) a statement that, if the person requests an appeal of the agency action, the adjudicative proceeding will be conducted informally pursuant to these rules unless either the department or the respondent requests conversion to a formal adjudicative proceeding and the appropriate presiding officer identified in R907-1-3(2) grants the request;

(f) a statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;

(g) the name, title, mailing address, and telephone number of the office initiating the Notice of Agency Action and the appropriate hearing officer;

(h) a general statement of the purpose of the adjudicative proceeding and, to the extent known, the questions to be decided;

(i) if the department is proposing to assess a fine or penalty, the amount of the fine or penalty and a summary of the evidence supporting the proposed amount; and

(j) a statement that the respondent is entitled to agency review if he or she files a Request for Agency Review with the initiating division or office within 30 days from the date the Notice is deposited in U.S. Mail or personally served.

(3) Absent filing of a timely request, the department will issue an order that the respondent is in default. If the defaulting party is the sole respondent, the Notice of Agency Action will then become the department's final order. The initiating division, office, or appropriate hearing officer shall revise the Notice of Agency Action to effect this change, captioning the Notice as the Final Order, affixing the appropriate signature the new date. The department may not change the contents in any substantive manner. However, the final order shall include a provision that notifies the respondent of his right to judicial review. The department shall then either mail or personally serve the respondent with a copy of the default order and the final order.

(4) If the defaulting party is not the sole respondent, the initiating division, office, or the appropriate hearing officer shall mail the Order of Default to all parties. The adjudicative proceeding may continue and the department may determine all issues in the proceeding, including those affecting the defaulting party.

(5) A defaulting party may seek agency review of an Order of Default by sending a written request for review to the appropriate hearing officer identified in R907-1-3(2). If the Order of Default was issued by that hearing officer, then the defaulting party must seek reconsideration of the Order of Default pursuant to R907-1-5. The sole issue is whether entering default was appropriate.

R907-1-3. Commencement By a Member of the Public -- Complete or Partial Denials of Applications or Requests for Agency Action -- Default.

(1) If the department denies, either completely or in part, an application or Request for Agency Action and that action is subject to agency review, the division or office issuing the denial shall send to the applicant a written reply as promptly as possible. The reply should include a brief summary of the reasons for the decision along with a listing of any statutes or rules that were interpreted or relied upon for it, along with UDOT's file or reference number. It shall advise the applicant of his or her right to request agency review by filing a written request with the initiating division or office within 30 days after issuance of the notice. In addition, the reply shall inform the applicant that his written request for review must include any supporting documentation, including legal memoranda, that he or she wishes to be considered. The reply shall constitute the proposed order of the division or office making the decision and shall so indicate on the reply. If there is no appeal within 30 days, it shall become the final order of the department.

(2) Upon receiving a Request for Agency Review, the division or office shall first evaluate it to determine whether it meets the requirements of Section 63G-4-301(1), i.e., whether it is signed, states the grounds upon which review is requested, the relief sought, and stating the date upon which it was mailed. If the request does not meet the statutory requirements, or was received at the division or office after the 30-day appeals period, it shall be returned to the sender with explanation as to the reason for the return. If the request meets the statutory requirements, the division or office shall promptly forward the material and a copy of any relevant material in its files to:

(a) the Operations Engineer, if the action involves Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act;

(b) the Deputy Director, if the action involves Title 72, Chapter 9, Motor Carrier Safety Act;

(c) the Project Development Director or designee, if the matter relates to:

(i) construction contract disputes; or

(ii) construction bids or the Disadvantaged Business Enterprise (DBE) program, in which case, the agency review also constitutes "administrative reconsideration" under federal regulation;

(d) the Region Director, if the action involves something other than the items listed in Subsections (a), (b), or (c), and a specific appellate procedure is not otherwise specified in these rules or in statute;

(e) the Executive Director or designee, if the action involves something other than the items listed in subsections (a), (b), (c), or (d) and was initiated by department personnel located at department headquarters at the Calvin Rampton Complex.

(3) The positions listed above shall be the respective presiding officers. However, either the Executive Director or Deputy Director may designate another to act as a substitute. Additionally, when called to preside over adjudicative proceeding that involves access management or has potential "takings" or inverse condemnation implications, the Region Director may designate a group of individuals either to advise on the issue or to take over presiding officer duties. If the Region Director designates a group to take over presiding officer duties, he or she shall appoint:

(a) an odd-numbered group so that any decision will not result in a tie; and

(b) a chairperson.

(4) The person who issued the agency order to be reviewed may not be included in either of the groups established in paragraph (3). However, the person who issued the decision may be consulted, asked for the reasons underlying his decision, and called as a witness if the proceeding is converted to a formal one.

(5) Absent filing of a timely Request for Agency Review, the department will issue an order that the respondent is in default. If the defaulting party is the sole respondent, the Request for Agency Action will be dismissed. The department shall either mail a copy of the default order and the dismissal order to the person who requested the action.

(6) If the defaulting party is not the sole requester, the initiating division, office, or the appropriate hearing officer shall mail the Order of Default to all parties. The adjudicative proceeding may continue and the department may determine all issues in the proceeding, including those affecting the defaulting party.

(7) A defaulting party may seek agency review of an Order of Default by sending a request for agency review to the presiding officer. If the Order of Default was issued by that officer, then the defaulting party must seek reconsideration of the Order of Default pursuant to R907-1-5. The sole issue is whether entering default was appropriate.

R907-1-4. Agency Review -- Procedures.

(1) Discovery is prohibited, but subpoenas may be issued for the production of necessary evidence. Upon request, the applicant shall have access to information contained in the agency's files and to all materials and information gathered in any investigation, except as otherwise provided by law.

(2)Within 20 days after receipt of a request for agency review, any party, including the division or office that issued the original decision, may submit additional documentation, which may include legal briefs, to the person required to decide on review. The person deciding on review may grant either party an extension of time. The decision should be made on the record appearing after the responses have been submitted, but the person required to decide on review may meet with the parties, if he or she considers it necessary. This meeting is not a hearing as contemplated under Title 63G, Chapter 4 Utah Administrative Procedures Act.

(3)The person deciding the review shall issue a final agency order as promptly as possible. The order shall contain:

(a) a designation of the statute or rule permitting or requiring review;

(b) a statement of the issues reviewed;

(c) findings as fact as to each of the issues;

(d) conclusions of law as to each of the issues;

(e) the reasons for the disposition;

(f) whether the decision of the division or office initiating the decision is affirmed, reversed, modified, or remanded; and

(g) notice of the right to judicial review pursuant to Section 63G-4-402 by filing a petition in district court within 30 days.

R907-1-5. Reconsideration.

(1) Within 20 days after issuance of the final order, any party may request reconsideration, stating the specific grounds upon which relief is requested.

(2) The person filing the request shall mail a copy to each party.

(3) The Executive Director, or his designee, shall issue a written order either denying or granting the request. If no order is issued within 20 days, the request shall be considered denied. If the request is granted in any part and a new final order is issued, it shall include the same information listed in R907-1-4, or R907-1-6 if the matter concerned motor carriers.

R907-1-6. Administrative Procedures for Motor Carrier Actions.

(1) When a motor carrier appeals the imposition of a penalty under Title 72, Chapter 9, Motor Carrier Safety Act, he or she shall follow the procedures established in R907-1. This proceeding is an informal adjudicative proceeding under Section 63G-4-402, Utah Administrative Procedures Act; therefore, discovery is prohibited, but the administrative hearing officer may issue subpoenas or other orders to compel production of necessary evidence. The department shall provide the applicant, upon request, information in the agency's files, including records that are part of any investigation unless those records are otherwise made confidential or protected from disclosure.

(2) If the proceeding is converted to a formal adjudicative proceeding and an evidentiary hearing held, the department's Executive Director may act as the administrative hearing officer. At the hearing, the motor carrier shall go first and is burdened to show why the department's civil penalties should not be assessed. The division shall respond, with the motor carrier being given an opportunity to rebut the division's evidence. If the administrative hearing officer decides doing so will be beneficial to his understanding of the issues, he may allow closing statements or arguments and he may tape the proceedings. The rules of evidence do not apply.

(3) The person deciding the review shall issue a final agency order as promptly as possible. The order shall contain:

(a) a designation of the statute or rule permitting or requiring review;

(b) a statement of the issues reviewed;

(c) findings as fact as to each of the issues;

(d) conclusions of law as to each of the issues;

(e) the reasons for the disposition;

(f) whether the decision of the division or office initiating the decision is affirmed, reversed, modified, or remanded; and

(g) notice of the right to judicial review pursuant to Section 63G-4-402 by filing a petition in district court within 30 days.

R907-1-7. Formal Process and Hearing: Initiation.

(1) If, notwithstanding R907-1-1, the department wishes to initiate an adjudicative proceeding as a formal proceeding, the formal hearing process shall be conducted as follows:

(2) A Notice of Agency Action shall include the following information:

(a) the names and mailing addresses of all respondents and any other persons to whom notice is being given;

(b) the department's file number or other reference number;

(c) a name or caption of the adjudicative proceeding, i.e., Utah Department of Transportation, Motor Carrier Safety Division v. XXXX Trucking Company;

(d) the date on which the Notice was placed in U.S. Mail,

or personally served upon the respondents;

(e) a statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;

(f) the name, title, mailing address, and telephone number of the office initiating the Notice of Agency Action and the appropriate hearing officer;

(g) a general statement of the purpose of the adjudicative proceeding and, to the extent known, the questions to be decided;

(h) if the department is proposing to assess a fine or penalty, the amount of the fine or penalty and a summary of the evidence supporting the proposed amount;

(i) a statement that the adjudicative proceeding is to be conducted formally according to the provisions of these Rules and Sections 63G-4-204 to 63G-4-209;

(j) a statement that a written response must be filed within 30 days of the mailing date of the Notice of Agency Action; and

(k) a statement of the time and place of the hearing, a statement of the purpose for which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default.

(3) Absent filing of a timely request, the department will issue an order that the respondent is in default. If the defaulting party is the sole respondent, the Notice of Agency Action will then become the department's final order. The initiating division, office, or appropriate hearing officer shall revise the Notice of Agency Action to effect this change, captioning the Notice as the Final Order, affixing the appropriate signature and the new date. The department may not change the contents in any substantive manner. However, the final order shall include a provision that notifies the respondent of his right to judicial review. The department shall then either mail or personally serve the respondent with a copy of the default order and the final order.

(4) If the defaulting party is not the sole respondent, the initiating division, office, or the appropriate hearing officer shall mail the Order of Default to all parties. The adjudicative proceeding may continue and the department may determine all issues in the proceeding, including those affecting the defaulting party.

(5) A defaulting party may seek agency review of an Order of Default by sending a written request to the appropriate hearing officer identified in R907-1-3(2). If the Order of Default was issued by that hearing officer, then the defaulting party must seek reconsideration of the Order of Default pursuant to R907-3-1. The sole issue is whether entering default was appropriate.

R907-1-8. Formal Process and Hearing: Responses.

(1) In all formal adjudicative proceedings, the respondent shall file and serve a written response signed by the respondent or a representative within 30 days of the mailing date of the Notice of Agency Action that shall include:

(a) UDOT's file number or other reference number;

(b) the name of the adjudicative proceeding;

(c) a statement of the relief that the respondent seeks;

(d) a statement of the facts; and

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

(2) The response shall be filed with UDOT and one copy shall be sent by mail to each party.

(3) All papers permitted or required to be filed under these rules shall be filed with UDOT and one copy shall be sent by mail to each party.

(4) In the discretion of the Presiding Officer Director, any respondent may be heard without written pleadings or an order of default may be entered pursuant to the Rules below.

R907-1-9. Formal Process and Hearing: Intervention.

(1) Order Granting Leave to Intervene Required. Any person, not a party, desiring to intervene in a formal proceeding shall obtain an order from the presiding officer granting leave to intervene before being allowed to participate. Such order shall be requested by means of a signed, written petition to intervene which shall be filed with UDOT by the time a response is due as prescribed in R907-1-8 and a copy promptly mailed to each party. Any petition to intervene or materials filed after the date a response is due, may be considered by the presiding officer only upon separate motion of the intervenor made at or before the hearing for good cause shown.

(2) Content of Petition. Petitions for leave to intervene must identify the proceedings. The petition must contain a statement of facts demonstrating that the petitioner's legal rights or interest are substantially affected by the formal adjudicative proceeding, or that the petitioner qualifies as an intervenor under any provision of law. Additionally, the petition shall include a statement of the relief, including the basis thereof, that the petitioner seeks from the presiding officer.

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

(4) Granting of Petition. The presiding officer shall grant a petition for intervention if he or she determines that:

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

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

(5) Order Requirements.

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

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

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

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

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

R907-1-10. Formal Process and Hearing: Conduct of Hearings.

All hearings before the Presiding Officer Director shall be governed by the following procedures:

(1) Public Hearings. All hearings shall be open to the public, unless otherwise ordered by the Presiding Officer Director for good cause shown. All hearings shall be open to all parties

(2) Full Disclosure. The Presiding Officer Director shall regulate the course of the hearing to obtain full disclosure of relevant facts and to afford all the parties a reasonable opportunity to present their positions.

(3) Rules of Evidence. The Director shall use as

appropriate guides, the Utah Rules of Evidence insofar as the same may be applicable and not inconsistent with these rules. Notwithstanding this, on its own motion or upon objection of a party, the Director:

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

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

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

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

(4) Hearsay. Notwithstanding subsection C. above, the Director may not exclude evidence solely because it is hearsay.

(5) Parties Rights. The Director shall afford to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence.

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

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

(8) Failure to Appear. When a party to a proceeding fails to appear at a hearing after due notice has been given, the Director may enter an order of default in accordance with this rule.

(9) Time Limits. The Director may set reasonable time limits for the participants of the hearing.

(10) Continuances of the Hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a party indicating good cause why such a continuance is necessary and not due to the fault of the party requesting the continuance. The continuance of the hearing may also be made by the request of the Director when in the public interest.

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

(12) Record of Hearing. The Director shall cause an official record of the hearing to be made, at the agency's expense.

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

(b) The record of the proceedings may also be made by means of a tape recorder or other recording device if the Director determines that it is unnecessary or impracticable to employ a certified shorthand reporter and the parties do not desire to employ a certified shorthand reporter. Any party, at its own expense, may have a person approved by the Director prepare a transcript of the hearing, subject to any restrictions that the Director is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or tape recording of a hearing is made, it will be made available at the appropriate UDOT office for use, but may not be taken out of the office. If the party agrees to pay the costs, the department will make a copy to give to them.

(13) Preserving Integrity. This section does not preclude the Director from taking appropriate measures necessary to preserve the integrity of the hearing.

(14) Summons, Witness Fees and Discovery. The Director may allow appropriate witness fees as provided by statute or rule.

(a) Summons. The Director may issue a summons or subpoena on its own motion, or upon request of a party, shall issue summons or subpoenas for the attendance of witnesses and the production of any pertinent paper, book, record, document, or other appropriate discovery of evidence.

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

(c) Construction. Nothing in this section restricts or precludes any investigative right or power given to the Transportation Commission or Director by law.

R907-1-11. Formal Process and Hearing: Decisions and Orders.

(1) Decision. The Director shall sign and issue an order that includes:

(a) a statement of the Director's findings of fact, conclusions of law and decision, based exclusively on the evidence of the record in the adjudicative proceedings or on facts officially noted;

(b) a statement of the reasons for the Director's decision;

(c) a statement of any relief ordered;

(d) a notice of the right to apply for reconsideration;

(e) a notice of any right to administrative or judicial review of the order available to aggrieved parties; and

(f) The time limits applicable to any reconsideration or review.

(2) Preparation of Order. The Director may direct the prevailing party to prepare proposed findings of fact, conclusions of law and an order consistent with the requirements of this rule, which shall be completed within ten days of the direction, unless otherwise instructed by the Director. Copies of the proposed findings of fact, conclusions of law and order shall be served by the prevailing party upon all parties of record prior to being presented by the Director for signature. Notice of objection thereto shall be submitted to the Director and all parties of record within ten days of service.

(3) Entry of Order. The Director shall sign the order and cause the same to be entered and indexed in books kept for that purpose. The order shall be effective on the date of issuance, unless otherwise provided in the order. Upon the petition of a person subject to the order and for good cause shown, the Director may extend the time for compliance fixed in its order.

(4) Evaluation of Evidence. The Director may use his expertise, technical competence, and specialized knowledge to evaluate the evidence.

(5) Hearsay. No finding of fact that was contested may be based solely on hearsay evidence.

(6) Interim Orders. This section does not preclude the Director from issuing interim orders to:

(a) notify the parties of further hearings;

(b) notify the parties of provisional rulings on a portion of the issues presented; or

(c) otherwise provide for the fair and efficient conduct of the adjudicative proceeding.

(7) Notice. The Director shall notify all parties to the proceeding of its decision. A copy of the order with accompanying findings of fact and conclusions of law shall be delivered or mailed to each party.

R907-1-12. Formal Process and Hearing: Reconsideration

and Modification of Existing Orders.

(1) Time for Filing. Within 20 days after the date that a final order is issued in the formal adjudicative process, any party may file a written request for reconsideration or rehearing, stating the specific grounds upon which relief is requested.

(2) Not Prerequisite for Judicial Review. Unless otherwise provided by law, the filing of the request for reconsideration is not a prerequisite for seeking judicial review of the order.

(3) Mailing Requirement. The request for reconsideration shall be filed with the Director. One copy shall be sent by mail to each party by the person making the request.

(4) Contents of Petition. A petition for reconsideration shall set forth specifically the particulars in which it is claimed the Director's order or decision is unlawful, unreasonable, or unfair. If the petition is based upon a claim that the Director failed to consider certain evidence, it shall include an abstract of that evidence. If the petition is based upon newly discovered evidence, then the petition shall be accompanied by an affidavit setting forth the nature and extent of such evidence, its relevancy to the issues involved, and a statement that the party could not, with reasonable diligence, have discovered the evidence prior to the hearing.

(5) Response to Petition. All other parties to the proceeding upon which a reconsideration is sought may file a response to the petition no later than ten days from the filing of the petition. A copy of such responses shall be mailed to the petitioner by the person so responding on the date the response is filed.

(6) Action on the Petition. The Director is authorized to act upon the petition for reconsideration. If the Director does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered denied. The Director may, by written order, set a time for hearing on said petition or deny the petition.

(7) Modification of Existing Orders. A request for modification or amendment of an existing order of the Director shall be treated as a new Request for Agency Action for the purposes of this rule. Such request for modification or amendment shall include as directly affected persons all parties to the previous adjudicative proceeding and their successors in interest.

R907-1-13. Declaratory Rulings.

(1) Petition for Declaratory Orders. Any person may petition the Director for a declaratory order on the applicability of any administrative rule, regulation or order as well as any provision of the Utah Code within the jurisdiction of UDOT, which relate to the operations or activities of that person. The petition shall include the questions and answers sought and reasons in support of or in opposition to the applicability of the statute, rule, regulation or order involved.

(2) Not Subject to Declaratory Rulings. The Director shall not issue a declaratory ruling if:

(a) the person requesting the declaratory ruling participated in an adjudicative proceeding concerning the same issue within 12 months of the date of the present request; or

(b) there would be substantial prejudice to the rights of a person who would be a necessary party, unless that person consents in writing to the determination of the matter by a declaratory proceeding.

(3) Intervention. Persons may intervene in declaratory proceedings if they meet the requirements of R907-1-9.

(4) Forms of Rulings. After receipt of a petition for a declaratory order, the Director may issue a written order:

(a) declaring the applicability of the statute, rule, regulation or order in question to the specified circumstances; or

(b) decline to issue a declaratory order and state the reasons for its action.

(5) Contents of Order. A declaratory order shall contain:

(a) the names of all parties to the proceeding on which it is based;

(b) the particular facts on which it is based; and

(c) the reasons for its conclusion.

(6) Mailing of Order. A copy of all orders issued in response to a request for a declaratory proceeding shall be mailed promptly to the petitioner and any other parties.

(7) Binding Effect. A declaratory order has the same status and binding effect as any other order issued in an adjudicative proceeding.

(8) Time Limit. Unless the petitioner and the Director agree in writing to an extension, if the Director has not issued a declaratory order within 60 days after receipt of the request for a declaratory order, the petition is denied.

R907-1-14. Emergency Orders.

Emergency orders will be issued in accordance with the following guidelines: notwithstanding the other provisions of these Rules, the Director or any member of the Transportation Commission is authorized to issue an emergency order without notice and hearing in accordance with applicable law. The emergency order shall remain in effect no longer than until the next regular meeting of the Transportation Commission, or such shorter period of time as shall be prescribed by statute.

(1) Prerequisites for Emergency Order. The following must exist to allow an emergency order:

(a) the facts known to the Director or Commission member or presented to the Director or Commission member show that an immediate and significant danger to the public health, safety, or welfare exists; and

(b) the threat requires immediate action by the Director of Commission member.

(2) Limitations. In issuing its Emergency Order, the Director or Commission member shall:

(a) limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;

(b) issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the Director or Commission member's utilization of emergency adjudicative proceedings;

(c) give immediate notice to the persons who are required to comply with the order; and

(d) if the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the Director shall commence a formal adjudicative proceeding before the Director in accordance with R907-1.

R907-1-15. Exhaustion of Administrative Remedies.

(1) Persons must exhaust their administrative remedies in accordance with Section 63G-4-401, prior to seeking judicial review.

(2) In any adjudicative proceeding before the Director, there is an opportunity for affected parties to respond and participate. Only those aggrieved parties that so exhausted these available and adequate remedies before the Director may be allowed to seek judicial review of the final Director action.

R907-1-16. Deadline for Judicial Review.

A party shall file a petition for judicial review of final agency action within 30 days after the date that the order constituting the final agency action is issued. The petition shall name the agency and all other appropriate parties as respondents and shall meet the form requirements specified in Title 63G, Chapter 4.

R907-1-17. Judicial Review of Formal Adjudicative

Proceedings.

Judicial review of formal adjudicative proceedings shall be conducted in conformance with Sections 63G-4-403.

R907-1-18. Civil Enforcement.

(1) Agency Action. In addition to other remedies provided by law and other Rules of the Transportation Commission or UDOT, the Commission or UDOT may seek enforcement of an order by seeking civil enforcement in the district courts.

(a) The action seeking civil enforcement must name, as defendants, each alleged violator against whom civil enforcement is sought.

(b) Venue for an action seeking civil enforcement shall be determined by the Utah Rules of Civil Procedure.

(c) The action may request, and the court may grant, any of the following:

(i) declaratory relief;

(ii) temporary or permanent injunctive relief;

(iii) any other civil remedy provided by law; or

(iv) any combination of the foregoing.

(2) Individual Action. Any person whose interests are directly impaired or threatened by the failure of an agency to enforce its order may timely file a complaint seeking civil enforcement of that order. The complaint must name as defendants, the agency whose order is sought to be enforced, the agency that is vested with the power to enforce the order, and each alleged violator against whom the plaintiff seeks civil enforcement. The action may not be commenced:

(a) until at least 30 days after the plaintiff has given notice of its intent to seek civil enforcement of the alleged violation to the Commission or UDOT, the attorney general, and to each alleged violator against whom the petitioner seeks civil enforcement;

(b) if the Commission or UDOT has filed and is diligently prosecuting a complaint seeking civil enforcement of the same order against the same or similarly situated defendant; or

(c) if a petition for judicial review of the same order has been filed and is pending in court.

R907-1-19. Waivers.

Notwithstanding any other provision of this rule, any procedural matter, including any right to notice or hearing, may be waived by the affected person by a signed, written waiver in a form acceptable to UDOT. This waiver provision may not be construed to prohibit a finding of default as defined in this rule.

R907-1-20. Construction.

The Utah Administrative Procedures Act described in Title 63G, Chapter 4 or any other federal, state statute, or federal regulation shall supersede any conflicting provision of this rule. It is the department's intent that, where possible, the provisions of this rule be construed to be in compliance with those superseding provisions.

KEY: administrative procedures, enforcement (administrative)
December 9, 2013 63G-4-101 through 502
Notice of Continuation December 19, 2019 72-1-102

R907. Transportation, Administration.

R907-62. Americans with Disabilities Act.

R907-62-1. Authority and Purpose.

(1) This rule is made under authority of Subsection 72-1-201(1)(h) and Subsection 63G-3-201(3). As required by 28 CFR 35.107, the Utah Department of Transportation, as a public entity that employs more than 50 persons, adopts and publishes the grievance procedures within this rule for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act, as amended.

(2) The purpose of this rule is to implement the provisions of 28 CFR 35 which in turn implements Title II of the Americans with Disabilities Act, which provides in part that no individual shall be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by the department because of a disability.

R907-62-2. Definitions.

(1) "ADA Coordinator" means the employee assigned by the executive director to investigate and facilitate the prompt and equitable resolution of complaints filed by qualified persons with disabilities. The ADA Coordinator may be a representative of the Department of Human Resource Management assigned to the Department.

(2) "Department" means the Department of Transportation created by Section 72-1-201.

(3) "Designee" means an individual appointed by the executive director or a director to investigate allegations of ADA non-compliance in the event the ADA Coordinator is unable or unwilling to conduct an investigation for any reason, including a conflict of interest. A designee does not have to be an employee of the department; however, the designee must have a working knowledge of the responsibilities and obligations required of employers and employees by the ADA.

(4) "Director" means the most senior leader of the region or working group affected by a complaint filed under this rule.

(5) "Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

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

(7) "Major life activities" include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, and working. A major life activity also includes the operation of a major bodily function, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(8) "Qualified Individual" means an individual who meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the Department. A "qualified individual" is also an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that individual holds or desires.

R907-62-3. Filing of Complaints.

(1) Any qualified individual may file a complaint alleging noncompliance with Title II of the Americans with Disabilities Act, as amended, or the federal regulations promulgated thereunder.

(2) Qualified individuals shall file their complaints with the Department's ADA Coordinator, unless the complaint alleges that the ADA Coordinator was non-compliant, in which case qualified individuals shall file their complaints with the Department's designee.

(3) Qualified individuals shall file their complaints within 180 days after the date of the alleged noncompliance to facilitate the prompt and effective consideration of pertinent facts and appropriate remedies.

(4) Each complaint shall:

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

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

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

(d) describe the action and accommodation desired; and

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

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

(6) If the complaint is not in writing, the ADA coordinator or designee shall transcribe or otherwise reduce the complaint to writing upon receipt of the complaint.

(7) By the filing of a complaint or a subsequent appeal, the complainant authorizes necessary parties to conduct a confidential review all relevant information, including records classified as private or controlled under the Government Records Access and Management Act, Utah Code, Subsection 63G-2-302(1)(b) and Section 63G-2-304,consistent with 42 U.S.C. 12112(d)(4)(A), (B), and (C) and 42 U.S.C. Section 12112(d)(3)(B) and (C), and relevant information otherwise protected by statute, rule, regulation, or other law.

R907-62-4. Investigation of Complaint.

(1) The ADA coordinator or designee shall investigate complaints to the extent necessary to assure all relevant facts are collected and documented. This may include gathering all information listed in Subsection R907-3-3(4) and (7) of this rule if it is not made available by the complainant.

(2) The ADA coordinator or designee may seek assistance from the Attorney General's staff, and the department's human resource and budget staff in determining what action, if any, should be taken on the complaint. The ADA coordinator or designee may also consult with the director of the affected division in making a recommendation.

(3) The ADA coordinator or designee shall consult with representatives from other state agencies that may be affected by the decision, including the Office of Management and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any recommendation that would:

(a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;

(b) require facility modifications; or

(c) require reassignment to a different position.

R907-62-5. Recommendation and Decision.

(1) Within 15 working days after receiving the complaint, the ADA coordinator or designee shall recommend to the director what action, if any, should be taken on the complaint. The recommendation shall be in writing or in another accessible format suitable to the complainant.

(2) If the ADA coordinator or designee is unable to make a recommendation within the 15 working day period, the complainant shall be notified in writing, or in another accessible format suitable to the complainant, stating why the recommendation is delayed and what additional time is needed.

(3) The director may confer with the ADA coordinator or designee and the complainant and may accept or modify the

recommendation to resolve the complaint. The director shall render a decision within 15 working days after the director's receipt of the recommendation from the ADA coordinator or designee. The director shall take all reasonable steps to implement the decision. The director's decision shall be in writing, or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.

R907-62-6. Appeals.

(1) The complainant may appeal the director's decision to the executive director within ten working days after the complainant is served with the director's decision.

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

(3) The executive director may name a designee to assist on the appeal. The ADA coordinator and the director's designee may not also be the executive director's designee for the appeal.

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

(5) The executive director or designee shall review the ADA coordinator's recommendation, the director's decision, and the points raised on appeal prior to reaching a decision. The executive director may direct additional investigation as necessary. The executive director shall consult with representatives from other state agencies that would be affected by the decision, including the Office of Management and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any decision that would:

(a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;

(b) require facility modifications; or

(c) require reassignment to a different position.

(6) The executive director shall issue a final decision within 15 working days after receiving the complainant's appeal. The decision shall be in writing, or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.

(7) If the executive director or designee is unable to reach a final decision within the 15 working day period, the complainant shall be notified in writing, or by another accessible format suitable to the complainant, why the final decision is being delayed and the additional time needed to reach a final decision.

R907-62-7. Classification of Records.

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

(2) After issuing a decision under Section R13-3-5 or a final decision upon appeal under Section R907-3-6, portions of the record pertaining to the complainant's medical condition shall be classified as "private" under Subsection 63G-2-302(1)(b) or "controlled" under Section 63G-2-304, consistent with 42 U.S.C. 12112(d)(4)(A), (B), and (C) and 42 U.S.C. 12112(d)(3)(B) and (C), at the option of the ADA coordinator.

(3) The written decision of the director or executive director shall be classified as "public," and all other records, except controlled records under Subsection R907-3-7(2), classified as "private."

R907-62-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under:

(a) the state Anti-Discrimination Complaint Procedures, Section 34A-5-107, and Section 67-19-32;

(b) the Federal ADA Complaint Procedures, 28 CFR 35.170 through 28 CFR 35.178; or

(c) any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: developmentally disabled, discrimination, ADA
December 6, 2016 63G-3-201
Notice of Continuation December 20, 2019 67-19-32

R907. Transportation, Administration.
R907-63. Structure Repair and Loss Recovery Procedure.
R907-63-1. Authority and Purpose.

This rule establishes a procedure for loss recovery for damages to structures, appurtenances, thereto and the roadway as provided in Section 72-7-301.

R907-63-2. Procedure to Collect for Damage to Structures and Highways.

(1) Upon notification of damage to the Department's property, the Department shall repair or replace damaged structures and highway elements.

(2) All costs associated with the repair or replacement of the damaged property shall then be invoiced to the owner of the vehicle causing the damage, or to the person directly responsible for the damage.

(3) If the damage is caused by a vehicle, the person responsible shall reimburse the Department for the full cost of repairing the damage.

(4) If payment is not received by the Department within 60 days of the date of the invoice, the Department may pursue payment by one of the following means:

(a) UDOT may pursue collection of a delinquent account in accordance with Sections 63A-3-301 through 63A-3-310, Accounts Receivable Collection.

(b) The account may be tendered to a collection agency for immediate collection.

(5) In cases where undue financial pressure would be caused by full payment of an invoice, the owner of the vehicle or person responsible for the damage may arrange to make installment payments on the debt.

R907-63-3. Eligible Region Recovery Costs.

The appropriate Region may seek recovery of all costs associated with an incident, including traffic control, maintenance and repair when such work is performed by Region work forces to maintain the integrity of the highway system, structure, or to restore the damaged system and facilities to their preexisting condition.

R907-63-4. Eligible Division Recovery Costs.

When damage occurs to a bridge structure:

(1) The Structures Division shall accumulate all costs for preparing design calculations, design plans, specifications and engineering estimates, including professional engineering services and construction engineering with associated overhead costs, along with all costs related to publication, preparation, and advertising the bid package.

(2) The Structures Division shall award the project to the lowest responsive and responsible bidder. The Structures Division shall submit the final accumulated project costs, including all eligible Region charges to UDOT Risk Management for the cost recovery process.

R907-63-5. Department Settlement Policy.

(1) The Department's intent is to secure full recovery from the responsible party(s) based on the full actual cost of such repairs to the structure or highway system damaged including all indirect costs associated with or resulting from an occurrence.

(2) The Department may at its discretion elect to accept settlement based on detailed engineering estimates and any direct or indirect costs associated with or resulting from an occurrence when the Department determines that it is in the best interest of the motoring public and tax payers to delay or forgo repairs to the damaged structures or highway system.

(3) Settlements shall conform to the requirements of the State Settlement Agreements Act, Sections 63G-10-101 through 503.

(4) The Department may submit to the Attorney General any claim for recovery, which is in dispute, requesting legal action be taken to recover the State's losses and settle such claims based on the laws of liability or as directed by the courts.

KEY: bridges, damages, loss recovery, structures
August 23, 2016 72-7-301
Notice of Continuation December 20, 2019 63A-3-301 through 63A-3-310

R907. Transportation, Administration.
R907-69. Records Access.
R907-69-1. Purpose and Authority.

This rule provides information about where and to whom to direct requests for access to records of the Utah Department of Transportation (UDOT) under the Government Records Access and Management Act. This rule is authorized by Section 63G-2-204(2)(d).

R907-69-2. Requests for Access.

All requests for records shall be directed to:

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                              TABLE

(If by hand delivery)

GRAMA Coordinator
Utah Department of Transportation
Calvin Rampton Complex, 2nd Floor
4501 South 2700 West
Salt Lake City, Utah 84119

(If by mail)

GRAMA Coordinator
Utah Department of Transportation
P.O. Box 148430
Salt Lake City, Utah 84114-8430

(If by email)

GRAMA Coordinator
grama@utah.gov

(If by fax)

GRAMA Coordinator
801-965-4838
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R907-69-3. Request Form.

A request for public information form is available on the UDOT website at: www.udot.gov/main/uconowner.gf?n=7060323128709256.

R907-69-4. Appeals.

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

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                              TABLE

(If by hand delivery)

GRAMA Appeal
UDOT Executive Director
Calvin Rampton Complex, 1st Floor
4501 South 2700 West
Salt Lake City, Utah 84119

(If by mail)

GRAMA Appeal
UDOT Executive Director
P.O. Box 141265
Salt Lake City, Utah 84114-1265

(If by email)

GRAMA Appeal
UDOT Executive Director
UDOTExecDir@utah.gov

(If by Fax)

GRAMA Appeal
UDOT Executive Director
801-965-4338
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KEY: public records, government documents, records access, GRAMA
March 12, 2012 63G-2-204
Notice of Continuation December 19, 2019

R909. Transportation, Motor Carrier.
R909-2. Utah Size and Weight Rule.
R909-2-1. Purpose and Applicability.

The purpose of this rule is to protect and preserve Utah's highway infrastructure, enhance safety, and facilitate commerce. All commercial motor vehicle operators, and motor carriers engaged in the movement of over dimensional and overweight vehicles and loads must comply with permit conditions as specified in the Utah Size and Weight rule. These conditions apply to all over dimensional vehicles and loads.

R909-2-2. Authority.

This rule is enacted under the authority of Sections 41-1a-231, 41-1a-1206, 72-1-201, 72-7-402, 72-7-404, 72-7-406, 72-7-407, 72-9-301, and 72-9-502.

R909-2-3. Definitions.

(1) "Appurtenance" as defined in CFR 23-658 and Section 72-7-402.

(2) "Articulated vehicle" consists of two or more vehicles that are connected by a joint that can pivot.

(3) "Automobile transporter" is any vehicle combination designed and used for the transport of assembled highway vehicles, including truck camper units. An automobile transporter shall not be prohibited from the transport of cargo or general freight on a backhaul, so long as it complies with weight limitations for a truck tractor and semitrailer combination.

(4) "Bridge formula" is a bridge protection formula used by federal and state governments to regulate the amount of weight that can be put on each of a vehicle's axles, or the number of axles, and the distance between the axles or group of axles must be to legally carry a given weight.

(5) "Cargo or cargo carrying length" means the total length of a combination of trailers or load measured from the foremost of the first trailer or load to the rearmost of the last trailer or load including all coupling devices.

(6) "CSA" means the Compliance, Safety, Accountability program administered by the Federal Motor Carrier safety Administration, where they work together with state partners and industry to further reduce commercial motor vehicle crashes, fatalities, and injuries on our nation's highways.

(7) "Commercial vehicle" is as defined in Utah Code Section 72-9-102.

(8) "Daylight" means one-half hour before sunrise and one-half hour after sunset.

(9) "Department" means the Utah Department of Transportation.

(10) "Divisible load" a load that can reasonably be dismantled or disassembled and does not meet the definition of non-divisible as defined in this section.

(11) "Division" means the Motor Carrier Division.

(12) "Drawbar" means the connection between two vehicles, measured from box to box or frame to frame or actual drawbar, one of which is towing or drawing the other on a highway.

(13) "Dromedary unit" is a truck-tractor capable of carrying a load independent of a trailer. Units manufactured prior to December 1, 1982 are exempt as a truck-trailer.

(14) "Emergency vehicle" means a vehicle designed to be used under emergency conditions: to transport personnel and equipment; and to support the suppression of fires and mitigation of other hazardous situations.

(15) "Fixed axle" means an axle that is not steerable, self-steering or retractable.

(16) "Flagger" is a person that is trained to direct traffic using signs or flags to aid the over-dimensional load or vehicles in the safe movement along the highway as designated on the over-dimensional load permit.

(17) "Full trailer" a vehicle without motive power designed for carrying property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

(18) "High-risk motor carrier" is a carrier that is:

(a) above the threshold in the Crash or Fatigue or Unsafe BASIC that is greater than or equal to 85%, plus one other BASIC at or above the "all other" motor carrier threshold; or

(b) a motor carrier with any four or more BASIC's at or above the "all other" motor carrier threshold.

(19) "Highway" any public road, street, alley, lane, court, place, viaduct, tunnel, culvert, bridge, or structure laid out or erected for public use, or dedicated or abandoned to the public, or made public in an action for the partition of real property, including the entire area within the right-of-way.

(20) "Implement of husbandry" means every vehicle designed or adapted or used exclusively for an agricultural operation and only incidentally operated or moved upon the highways.

(21) "Incidental" means transportation that occurs occasionally or by chance but does not exceed a distance of 20 miles.

(22) "Interstate system" means any highway designated as an interstate or freeway. For the purpose of this rule: I-15, I-215, I-80, I-70, US 89 between I-84 and I-15 and SR 201 between I-15 and I-80 will be considered interstate.

(23) "Laden" means carrying a load.

(24) "Longer combination vehicle" or an LCV is a combination of truck, truck tractor, semi-trailer and trailers, which exceeds legal dimensions and operates on highways by permit for transporting divisible loads.

(25) "Longer combination vehicle authority" means an authorization given to a specific company to exceed standard permitted length allowances for vehicle configuration on pre-approved routes.

(26) "Manufactured home" a transportable factory-built housing unit constructed on or after June 15, 1976, in one or more sections, and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems.

(27) "Manufactured mobile home" means a transportable factory-built housing unit built prior to June 15, 1976, in accordance with a state mobile home code, which existed prior to the Federal Manufactured Housing and Safety Standards Act.

(28) "Motor carrier" as defined in Utah Code Section 72-9-102.

(29) "MVR" means motor vehicle record.

(30) "MUTCD" means Manual on Uniform Traffic Control Devices.

(31) "Multi-trip" means two or more daily or a minimum of 10 weekly trips in the proximity of a port-of-entry.

(32) "Natural gas vehicle" means the vehicle's engine is fueled primarily by natural gas.

(33) "Non-divisible" any load or vehicle exceeding applicable length, width, or height or weight limits which, if separated into smaller loads or vehicles would:

(a) compromise the intended use of the load or vehicle;

(b) destroy the value of the load or vehicle; or

(c) require more than eight work hours to dismantle using appropriate equipment.

(34) "Out-of-service" is a condition where a motor vehicle, because of mechanical condition or loading, is considered imminently hazardous and likely to cause an accident or breakdown; or where a driver violation renders a commercial vehicle operator unqualified to drive.

(35) "Pole trailer" every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle, and is

ordinarily used for transporting long or irregular shaped loads such as poles, pipes, or structural members generally capable of sustaining themselves as beams between the supporting connections.

(36) "Port-of-entry by-pass permit" allows a motor carrier a temporary permit that would allow by-pass of a designated port of entry.

(37) "Quad axle group" means a group of four consecutive fixed axles.

(38) "Recreational vehicle" is a vehicle or vehicles that are driven solely as family or personal conveyances for non-commercial purposes.

(39) "Retractable axle" is an axle which can be mechanically raised and lowered by the driver of the vehicle, but which may not have its weight-bearing capacity mechanically regulated.

(40) "Rocky mountain doubles" a tractor and two trailers, consisting of a long and a short trailer.

(41) "Saddle mount" means a truck or tractor towing other vehicles with the front axle of each towed vehicle mounted on top of the frame of the proceeding vehicle or vehicles.

(42) "Secondary highway" is all other routes not designated as interstate or freeway. Two-lane, two-way highways are synonymous with secondary highways.

(43) "Semi trailer" means every vehicle without motive power designed for carrying property and for being drawn by a motor vehicle and constructed so that some part of its weight and its load rests on or is carried by another vehicle.

(44) "Special event" means the movement of an over-dimensional load or vehicle.

(45) "Special mobile equipment" or an SME means a vehicle or vehicles exempt from registration that is not designed or used primarily for the transportation of persons or property; is not designed to operate in traffic; and is only incidentally operated or moved over the highways.

(46) "Special truck equipment" or STE means a vehicle by nature of design that cannot meet the non-divisible weight allowances such as cement pump trucks, well boring trucks, or cranes with a lift capacity of five or more tons.

(47) "Spread axle" is two single axles that exceed 96 inches apart.

(48) "Tandem axle" means two axles spaced not less than 40 inches nor more than 96 inches apart and having at least one common point of weight suspension.

(49) "Tillerman/Steerman" is an individual who steers any axle of an articulated trailer.

(50) "Towaway trailer transporter combination" means a combination of vehicles consisting of a trailer transporter towing unit and 2 trailers or semitrailers.

(51) "Trailer transporter towing unit" means a power unit that is not used to carry property when operating in a towaway trailer transporter combination.

(52) "Tridem axle" means any three consecutive axles whose extreme centers are not more than 144 inches apart, and are individually attached to or articulated from, or both, a common attachment to the vehicle including a connecting mechanism designed to equalize the load between axles.

(53) "Triple trailer" means a tractor and three trailers of approximately equal length.

(54) "Truck" means any self-propelled motor vehicle, except a truck tractor, designed or used for the transportation of property, laden or un-laden.

(55) "Truck tractor" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed to carry a load other than a part of the weight of the vehicle and load that is drawn.

(56) "Trunnion axle" an axle configuration with two individual axles mounted in the same transverse plane, with four tires on each axle.

(57) "Trunnion axle group" two or more consecutive trunnion axles that are attached to the vehicle by a weight equalizing suspension system and whose consecutive centers are more than 40 inches, but not more than 96 inches apart.

(58) "Turnpike doubles" means a tractor and two trailers of equal length.

(59) "UCR" means Unified Carrier registration.

(60) "Un-laden" means a vehicle is not carrying a load.

(61) "Variable load suspension axle" or VLS is an axle that can be adjusted mechanically to various weight bearing capacities and can also be mechanically raised and lowered.

(62) "Vehicle" every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon rails or tracks.

R909-2-4. Legal Size Vehicle Dimensions.

(1) Maximum legal vehicle dimensions, laden and un-laden, that may be operated without special permits on Utah Highways:

(a) height: 14 feet

(b) width: 8 feet 6 inches; and

(c) length: See Table 1 Legal Size Vehicle Dimensions

TABLE 1

Legal Size Vehicle Dimensions

Vehicle	Maximum Length	Comments
Single motor vehicle	45 feet	Measured from bumper to bumper.
Semi-Trailer	53 feet	A trailer may not exceed 53 feet.
Double trailer combinations	61 feet	Measured from the front of the first trailer to the rear of the second trailer, excluding appurtenances. There is no overall length limitation on a truck tractor and double trailer combination when the trailers coupled together measure 61 feet or less.
Stinger-steered Automobile Transporter	80 feet or less	Stinger-steered Automobile transports are measured from bumper to bumper and may have a front overhang of 4 feet or less and a rear overhang of 6 feet or less, with a maximum vehicle length of 80 feet or less (excluding overhangs).
Saddle Mount	97 feet	This will allow a maximum of three saddle mount vehicles, one power unit and one full mount.
Truck trailer combination	65 feet	Measured from bumper to bumper.
Dromedary unit	65 feet	Truck tractor, unloaded box deck and trailer. A dromedary unit is considered a truck trailer configuration whether laden or un-laden.
	75 feet	Dromedary units transporting Class 1 Explosives or munitions related Security materials, as specified by the Department of Defense, are allowed up to 75 feet of overall length on the interstates. US highways and reasonable access routes without requiring a permit. Reasonable access means to the Interstate or US highway system.
All other combinations including recreational vehicles	65 feet	Measured from bumper to bumper.
Overhang	3 feet	Overhang may not carry any load

	front 6 feet rear	extending more than 3 feet beyond the front of the power unit or more than 6 feet beyond the rear of the bed or body of the vehicle.
Drawbar	15 feet	The drawbar or other connection between any two vehicles, one of which is towing or drawing the other on a highway, may not exceed 15 feet in length from one vehicle to the other, measured from box to box or frame to frame, except in the case of a connection between any two vehicles transporting poles, pipe, machinery, or structural material that cannot be dismembered when transported upon a pole trailer.
Commercial delivery of light and medium duty trailers	82 feet or less	Consisting of a trailer transporter towing unit and 2 trailers or semitrailers with a total weight not to exceed 26,000 lbs; and in which the trailers or semitrailers carry no property and constitute inventory property of a manufacturer, distributer, or dealer of such trailers or semitrailers, may have an overall length limitation of 82 feet or less on a towaway trailer transporter combination.

R909-2-5. Legal Weight Limitations.

(1) The maximum gross and axle weight limitations are noted in Table 2 and may not be operated at more than:

TABLE 2

Maximum Gross and Axle Weight Limitations

Single Wheel	10,500 pounds
Single Axle	20,000 pounds
Tandem Axle	34,000 pounds
Tridem Axle	must comply with bridge formula
Gross Vehicle Weight	80,000 pounds

(2) An overweight permit must be obtained to authorize any exception to the maximum weight limitations listed in Table 2.

(3) The weight limitation in Table 2 does not apply to a covered heavy-duty tow and recovery vehicle.

(4) Emergency vehicles may exceed the weight limits (up to a maximum gross vehicle weight of 86,000 pounds) of less than - 24,000 pounds on a single steering axle; 33,500 pounds on a single drive axle; 62,000 pounds on a tandem axle; or 52,000 pounds on a tandem rear drive steer axle.

(5) A natural gas vehicle may exceed any vehicle weight limit (up to a maximum gross vehicle weight of 82,000 pounds) by any amount that is equal to the difference between: the weight of the vehicle attributable to the natural gas tank and fueling system carried by that vehicle; and the weight of a comparable diesel tank and fueling system.

R909-2-6. Tire Load Provisions.

(1) Except for steering axles, self-steering VLS and retractable axles, or wide based tires, that are 14 inches wide or greater as indicated by the manufacturer's sidewall rating, all axles weighing more than 11,000 pounds shall have at least four tires per axle.

(a) For example: A tridem axle group that is designed for equalized weight distribution, equipped with single tires less than 14 inches in width, will be allowed 33,000 pounds. A tandem axle group that is designed for equalized weight distribution, equipped with single tires less than 14 inches in width will be allowed 22,000 pounds. All axles in the group must be duals or super singles to be allowed maximum weight.

(2) In circumstances where weight limitations are based on tire width, the manufacturer's size, as indicated on the sidewall will be used to determine maximum tire width:

(a) for non-permitted or legal vehicles, no tire shall exceed 600 pounds per inch of tire width as indicated on the sidewall;

(b) tire loading on vehicles requiring a Divisible overweight permit shall not exceed 500 pounds per inch of tire width for tires 11 inches wide or greater;

(c) tires that are greater than 11 inches but less than 14 inches shall have a weight limit not to exceed 5500 pounds;

(d) tires less than 11 inches wide shall not exceed 450 pounds per inch of tire width; and

(e) except as provided in R909-2-6, single axle loading shall not exceed 20,000 pounds, and tandem axle loading shall not exceed 34,000 pounds.

R909-2-7. Axle Provisions.

(1) no more than three fixed axles shall be allowed in any group;

(2) Vehicles with variable load axles are limited as follows:

(a) retractable or variable load suspension axles installed after January 1990 shall be self-steering, provided however, variable load suspension axles that are within sixty (60) inches of a drive axle or are within (60) inches of a trailer axle, need not be self-steering.;

(i) Non-divisible loads may be exempt from these restrictions upon written approval from the division.

(b) no axle in a group with a retractable or VLS axle shall exceed legal or bridge formula weight requirements, or the manufacturer's tire rating; and

(c) Controls for raising or lowering retractable or VLS axles may be located in the cab of the power unit. The pressure regulator valve shall be positioned outside of the cab and be inaccessible from the driver's compartment.

R909-2-8. General Oversize or Overweight Provisions.

(1) Except when entering on Northbound I-15 at the St. George Port of Entry, Westbound I-80 at the Echo Port of Entry, and Eastbound I-80 at the Wendover Port of Entry, the appropriate permit must be obtained prior to operating within the State of Utah.

(2) Each oversize or overweight permit shall be carried in the vehicle or combination vehicles.

(a) The permit may be in paper or electronic format.

(3) The conditions that must be met to obtain an oversize or overweight permit are:

(a) the motor carrier complies with the financial responsibility obligations;

(b) the vehicle or vehicles must be properly registered;

(c) the driver or drivers are properly licensed with appropriate endorsements;

(d) the motor carrier complies with the Federal Motor Carrier Safety Regulations;

(e) the motor carrier complies with the Hazardous Material Regulations; and

(f) the motor carrier complies with the Unified Carrier Registration or UCR as required.

(4) Exception. Length limitations do not apply to combinations of vehicles operated at night by a public utility when required for emergency repair of public service facilities or properties, or when operated with an oversize or overweight permit.

(5) Liability of permittee. The applicant or permittee, as a condition for obtaining an oversize permit, shall assume all responsibility for crashes, including injury to any persons or damage to public or private property caused by their operations.

(6) Indemnity clause. The applicant or permittee must agree to indemnify and hold harmless the department from any and all claims resulting directly or indirectly from the operation and transportation of vehicles or combination of vehicles operating under an oversize or overweight permit.

R909-2-9. Transfer or Replacement of Permits.

(1) Division personnel may transfer permits from one vehicle to another up to two times per permit for a fee under the following conditions:

(a) annual and semi-annual permits may be transferred to another unit within the same company;

(b) the customer has sold or purchased a vehicle;

(c) lease changes from one company to another by providing evidence of permit ownership; or

(d) the vehicle has become disabled.

(2) A transfer permit will be issued with the same expiration date as the original permit.

R909-2-10. Permit Revocation, Suspension and Confiscation.

(1) Violations of any permit that may result in the revocation, suspension or confiscation of the permit include, but are not limited to:

(a) speeding or driving faster than the posted speed limit or the speed indicated on the permit;

(b) lane travel;

(c) weather;

(d) load securement;

(e) violations of the Federal Motor Carrier Safety Regulations; and

(f) violations of the Hazardous Material Regulations.

(2) Before a vehicle can be moved, it must be made legal, properly permitted and all the out-of-service violations corrected.

(3) Patterns of non-compliance at a carrier level may result in the following actions:

(a) civil penalties;

(b) suspension or revocation of permit privileges; or

(c) an order to cease and desist operations.

R909-2-11. Weather Travel Restrictions.

(1) No carrier shall operate a longer combination vehicle (LCV), a tractor trailer combination more than 81 feet cargo carrying length, or a truck and two-trailer combination more than 92 feet measured bumper to bumper, when the following conditions exist:

(a) wind more than 45 m.p.h.;

(b) any accumulation of snow and ice on the roadway; or

(c) visibility less than 1,000 feet.

(2) No carrier shall operate an oversize vehicle or load more than 10 feet wide, 105 feet long, 10 feet front or rear overhang when the following conditions exist:

(a) any accumulation of snow and ice on the roadway; or

(b) visibility less than 1,000 feet.

R909-2-12. Curfew Congestion Restrictions.

(1) Unless otherwise authorized, travel is prohibited for loads or vehicles more than 10 feet wide, 105 feet overall length, and 14 feet 6 inches in height, Monday thru Friday between 6 a.m. and 9 a.m. and between 3:30 p.m. and 6 p.m. mountain time on the following highways:

(a) all highways south of Perry Willard Interchange, I-15, Exit #357;

(b) all highways in Weber, Davis, and Salt Lake Counties;

(c) all highways in Utah County north of I-15, Exit #261;

(d) SR 68, North of mile post 16 in Utah County;

(e) I-80 East side of Salt Lake County mile post 139 to mile post 101 on the West side of Salt Lake County; and

(f) I-84 west of mile post 91.

(2) The division may authorize exceptions to the curfew congestion restrictions based on mitigating circumstances.

R909-2-13. Holiday Travel Restrictions.

(1) Travel is prohibited for loads more than 10 feet wide, 105 feet overall length, and 14 feet 6 inches in height during the following holidays:

(a) Christmas Day;

(b) New Year's Day;

(c) Memorial Day;

(d) Independence Day;

(e) Labor Day; and

(f) Thanksgiving Day.

(2) Holiday restrictions begin at 2:00 p.m. the day before the holiday and extend to sunrise the day after the holiday.

(3) Monday holidays and Monday observed holiday restrictions begin at 2:00 p.m. through midnight on the Friday prior to the holiday. Normal travel may resume from sunrise on Saturday through Sunday at midnight. Monday holiday restriction continues at 12:01 a.m. on Monday and ends Tuesday at sunrise.

(4) The division may authorize exceptions to the holiday travel restriction based on mitigating circumstances.

(5) The division may prohibit movement of oversize loads during days of anticipated high traffic volume such as those that occur during other holidays, weather conditions, or special events.

R909-2-14. Night Time Restrictions.

(1) Loads exceeding the following dimensions are restricted to daylight hours except as provided in R909-2-15:

(a) 14 feet 6 inches high;

(b) 10 feet wide;

(c) 105 feet in length; or

(d) overhang of more than 10 feet.

R909-2-15. Night Time Travel Provisions.

(1) The movement of oversize loads at night will be allowed under the following conditions:

(a) loads may not exceed 12 feet wide on secondary highways, 14 feet wide on interstates, or 14 feet 6 inches high on all roadways;

(b) loads exceeding 10 feet wide, 105 feet overall length, or 10 feet front or rear overhang are required to have one certified pilot escort on interstate highways and two on all secondary highways;

(i) Exception. A tow truck towing vehicles with a total length of 120 feet or 10 feet wide may travel during hours of darkness and does not require a pilot escort.

(c) loads exceeding 92 feet overall length are required to have proper lighting every 25 feet, with amber lights to the front and sides of the load marking extreme width, and red to the rear; and

(d) night time travel authorization does not supersede adverse weather conditions.

(2) The division may authorize exceptions to the night time travel provisions based on mitigating circumstances.

R909-2-16. Oversize Divisible Load Provisions.

(1) An oversize permit may be issued for moving a combination of vehicles and loads exceeding the legal limits under the following conditions:

(a) the height of the combination or load does not exceed 14 feet 6 inches;

(b) the width of the combination or load does not exceed 8 feet 6 inches;

(c) in multiple trailer combinations, a lighter trailer may not be placed in front of a heavier trailer when the weight difference is greater than 4000 pounds; and

(d) drawbars exceeding 15 feet in length shall be marked with retro-reflective tape on half of the entire length of the drawbar on both the left and right side of the drawbar.

(i) The drawbar shall display an amber light visible from both the right and left side of the drawbar located near the

center of the drawbar.

R909-2-17. Oversize Non-Divisible Load Provisions.

(1) Permitted vehicles must comply with the following conditions:

(a) all vehicles and loads shall be reduced to the minimum practical dimensions;

(b) semi-annual and annual permits may be issued for dimensions up to, but not exceeding:

(i) 14 feet 6 inches in height,

(ii) 14 feet 6 inches in width, and

(iii) 105 feet in length.

(2) Exceptions may be granted by the division for annual permitted loads that exceed the weights identified in this section, R909-2-17.

(3) Bulldozer blades, loader buckets or similar equipment exceeding 16 feet in width shall be removed for transport and may be hauled on the same load with the machinery after removal.

(4) Loads exceeding 17 feet in width on two-lane routes, 20 feet in width on interstates, or 17 feet 6 inches in height on all public highways may be allowed under the following terms and conditions:

(a) the permittee shall notify the division by submitting a permit application online, of the dimensions of the oversize vehicle or load and the proposed route to be used;

(b) the division will notify the department region or district permit official affected by the proposed route, and will obtain authorization for the move;

(c) permittee must request authorization through the online system at least 48 hours in advance of the movement;

(d) permit is not valid until the permittee has assumed the cost and responsibility to obtain utility company authorizations and clearances; and

(e) the permittee will assume all costs when a certified police escort or escorts are required.

(5) Tow trucks may purchase a semi-annual or annual non-divisible oversize permit up to 10 feet wide and 165 feet in length.

(a) Loads exceeding 10 feet wide and 165 feet long shall purchase a single trip permit.

R909-2-18. Oversize Non-Divisible Load Provisions Requiring Pilot Escort Vehicles.

(1) One pilot vehicle is required for vehicles or loads that exceed the following dimensional conditions:

(a) 12 feet in width on secondary highways for non-interstate, and 14 feet in width on divided highways for interstates;

(b) 105 feet in length on secondary highways and 120 feet in length on divided highways;

(c) tow trucks that measure in excess of 165 feet or more in length; and

(d) overhangs of more than 20 feet shall have a pilot escort vehicle positioned to the front for front overhangs and to the rear for rear overhangs.

(2) Two pilot escort vehicles are required for vehicles or loads which exceed the following dimensional conditions:

(a) 14 feet in width on secondary highways;

(b) 16 feet in width on divided highways;

(i) mobile and manufactured homes with eaves greater than 12 inches shall be measured for overall width including eaves and pilot escort vehicles assigned as specified; or

(c) 120 feet in length on secondary highways;

(d) 16 feet in height on all highways; or

(e) when otherwise required by the division.

R909-2-19. Oversize Non-Divisible Load Provisions Requiring Police Escorts.

(1) Police escorts are required for vehicles with loads which exceed:

(a) 17 feet wide or 17 feet 6 inches high on secondary highways; or

(b) 20 feet wide or 17 feet 6 inches high on all highways; or

(c) All loads more than 175 feet in length must have a minimum of two police escorts;

(d) All loads more than 200 feet in length will require a minimum of two police escorts.

(2) The division may require police escorts based on extenuating circumstances.

R909-2-20. Oversize Non-Divisible Load Lighting, Signing and Flag Requirements.

(1) Oversize non-divisible load lighting:

(a) warning lights required when headlights are necessary;

(b) front overhang of more than three feet shall be marked with a steady, amber marker light and red flag;

(c) rear overhang exceeding four feet shall be marked with red clearance lights for night travel;

(d) vehicles with front or rear overhang exceeding 20 feet from the front or rear bumper of a vehicle, or from the center of the closest axle in the absence of a bumper, a rotating or flashing beacon visible from a minimum of 500 feet, and shall be displayed at a minimum height of four feet above ground;

(e) tow vehicle headlights shall be operated on low beam, day or night, as an additional warning to traffic; and

(f) night time travel, when authorized by the division may be permitted with marker lights indicating extreme width using amber lights front and center, and red lights to the rear.

(2) Oversize non-divisible load sign requirements. Non-divisible oversize loads exceeding 10 feet in width, 14 feet 6 inches in height and 105 feet in length shall display an "OVERSIZE LOAD" sign, to warn the motoring public that extra-large vehicles are in operation. Signs must:

(a) be 7 feet by 18 inches;

(b) have a yellow background with 10-inch-high black letters that are painted with 1 5/8 inches wide stroke to read: "OVERSIZE LOAD";

(c) be impervious to moisture;

(d) have front signs mounted on front bumper or on top of vehicle cab with letters presented toward the front of the vehicle;

(e) have rear signs positioned at the rear most part of the Vehicle or load as feasible, ensuring in all cases that the load does not obstruct the view of the sign;

(f) if possible, have the bottom edge of the sign be positioned not more than 5 feet above the road surface;

(g) be mounted with adequate supporting anchorage, constructed, maintained, and displayed so that they are always clearly legible;

(h) be covered, removed or placed face down when the vehicle is not engaged in an oversize movement; and

(i) oversize loads signs are not required on LCVs.

(3) Oversize non-divisible load flag requirements. Red or orange flags must be affixed on all extremities when:

(a) vehicle or load exceeds 10 feet in width;

(b) loads on a vehicle exceeding three feet to the front or four feet to the rear of the bed or body while in operation;

(c) flags shall be completely clean and not torn, faded, or worn out and shall be fastened to wave freely; and

(d) over dimensional flagging is not required on LCVs.

(4) Tow trucks that exceed 120 feet in length are required to:

(a) display one sign on rear most of towed vehicle.

(i) the sign must have a yellow background with 10 inch high black letters that are painted with 1 5/8 inches wide stroke to read: "IN-TOW LONG LOAD"; and

(ii) be 4 feet by 2 feet minimum.

R909-2-21. Convoys.

(1) The movement of more than one permitted vehicle is allowed provided prior authorization is obtained from the division with the following conditions:

(a) the number of permitted vehicles in the convoy shall not exceed two;

(b) loads may not exceed 12 feet wide or 150 feet overall length;

(c) distance between vehicles shall not be less than 500 feet or more than 700 feet;

(d) distance between convoys shall be a minimum of one mile;

(e) all convoys shall have a certified pilot escort in the front and rear with proper signs;

(f) police escorts or department personnel may be required;

(g) convoys must meet all lighting requirements;

(h) convoys are restricted to freeway and interstate systems; and

(i) approval for convoys or night time travel may be obtained by contacting the division, and exceptions may be granted by the division on a case by case basis.

R909-2-22. Trailers More Than 53 to 57 Feet in Length.

Trailers exceeding 53 feet but not to exceed 57 feet may acquire a single trip, semiannual or annual permit. Trailers more than 53 feet must have LCV authority to purchase semi-annual and annual permits.

R909-2-23. Longer Combination Vehicles.

(1) Motor Carriers operating longer combination vehicles or LCV's must apply and be approved to operate on designated routes on Utah's interstate system.

(2) Authorized motor carriers may operate interstate LCV's with a cargo or cargo carrying length as follows:

(a) a tractor trailer or tractor trailer combination more than 81 feet not to exceed 95 feet cargo or cargo carrying length; or

(b) a truck and two-trailer combination more than 92 feet not to exceed 95 feet in length, 14 feet 6 inches in height, or 8 feet 6 inches in width.

(3) LCV conditions for operation:

(a) non-divisible dimensions with a width greater than 8 feet 6 inches or height greater than 14 feet 6 inches, may not be transported on LCV's; and

(b) acceptable travel conditions exist in accordance with hazardous conditions for loads more than 81 feet cargo or cargo carrying length.

(4) A truck and single trailer exceeding legal length may be permitted up to 88 feet, but requires LCV authority when exceeding 88 feet up to 92 feet.

(5) A dromedary unit when exceeding legal length may be permitted up to 88 feet.

(6) LCV's and double trailers exceeding 81 feet cargo carrying length may not operate on secondary highways other than those pre-approved by the division.

R909-2-24. Overweight Divisible Load Provisions.

(1) An overweight divisible load permit may be issued for moving a combination of vehicles and loads exceeding the legal limits under the following conditions:

(a) The vehicle or combination of vehicles is properly registered for 78,001 to 80,000 pounds;

(b) The width of the vehicle does not exceed 8 feet 6 inches wide or 14 feet 6 inches high;

(c) All axles weighing more than 11,000 pounds are required to have at least four tires per axle except for steering axles, self-steering variable load suspension or retractable axles, or wide base single tires, that are 14 inches or greater as indicated by the manufacturer's sidewall rating.

(2) Overweight divisible load options are:

(a) dual tires on all axles;

(b) super wide single tires that are 14 inches wide or greater;

(c) not to exceed 11,000 pounds per axle;

(d) the axle, groups of axles, and GVW do not exceed the bridge formula W = 500(LN/(N-1) + 12N+36); and

(e) all axles in the group must be duals or super singles to be allowed maximum authorized weight.

(3) The combination unit will conform to the bridge formula and the legal axle and gross vehicle weight limits.

(4) A divisible load permit may not be used to transport a non-divisible load.

(a) Exception. An overweight non-divisible load may operate with a divisible overweight permit provided the axle, gross and bridge limitations do not exceed those specified on the permit.

R909-2-25. Overweight Non-Divisible Load Provisions.

(1) Permitted vehicles must comply with the following conditions:

(a) all vehicles and loads shall be reduced to the minimum practical dimensions; and

(b) the vehicle or combination of vehicles is properly registered for 78,001 to 80,000 pounds or the total gross weight of the vehicle.

(2) Actual weight must comply with the bridge table formula ~1.47 x 500 (LN/N-1 + 12N + 36).

(3) A permit for a non-divisible load may not be used to transport a divisible load.

(4) Vehicles with a gross vehicle weight of less than 125,000 may be permitted on a single trip, semiannual trip, or annual trip basis as described in Table 3:

TABLE 3

Single Trip, Semi-Annual Permits allowed up to:

Single Axle	29,000 pounds
Tandem Axle	50,000 pounds
Tridem Axle	61,750 pounds
Trunnion Axle	60,000 pounds
Gross Weight	125,000 pounds

(5) Tow trucks must be properly registered to purchase annual, semi-annual or single trip permits if they exceed legal weight limitations.

(a) The properly registered and/or permitted weight of the towed vehicle is not calculated in the tow trucks towed vehicles gross combined weight.

(b) Tow trucks must be properly registered and permitted for weight of tow truck and any additional weight placed upon it.

(c) If the towed weight is not properly registered and/or permitted, the towing vehicle will be responsible for the permitting and registration requirements of the towed vehicle.

(6) Vehicles transporting milk products may exceed the gross weight limit of 80,000 pounds or the maximum weight allowed by the Federal Bridge Formula. This requires an appropriate non-divisible permit issued by the Department.

(a) Milk products being carried using multiple trailers will be required to abide by divisible requirements and do not get the non-divisible exception.

R909-2-26. Overweight Non-Divisible Loads Exceeding 125,000 Pounds Gross or Axle Weights.

(1) Loads exceeding 125,000 pounds gross, or axle weights in R909-2-24, may only purchase single trip permits.

(2) Axle, bridge, and gross weight allowances will be determined based on the non-divisible bridge table formula

~1.47 x 500 (LN/N-1 + 12N + 36) or in accordance with the bridge table.

(3) 9 feet wide axles are allowed 7.5% more weight than 9 feet wide axles.

(4) 10 feet wide axles are allowed 15% more weight than 8 feet wide axles.

(5) When using an axle equipped with eight tires, rather than four, add 10% to the weight authorized for an 8-foot-wide axle group.

(6) All tires shall comply with the manufacturer's tire load rating as indicated on the tire side wall.

(7) All STE operations must have a STE profile sheet when the axle limitations specified in Table 3 or bridge table are exceeded.

R909-2-27. Mobile and Manufactured Homes.

(1) Mobile and manufactured homes exceeding 14 feet 6 inches to 16 feet in wall-to-wall width, transported on their own running gear, may be issued a single trip permit under the following conditions:

(a) all trailer axles shall be equipped with operational brakes; and

(b) axle and suspensions shall not exceed manufacturer's capacity rating.

(2) Paneling requirements of the open sides of a mobile manufactured home:

(a) a rigid material of 0.5-millimeter plastic sheathing backed by a rigid grillwork not exceeding squares of four feet to prevent billowing must fully enclose the open sides of the units in transit.

(3) Rear mounted stop and turn signal lights shall be a minimum 6 inches in diameter with a type 35 red reflector lens.

(a) The lens shall be mounted not more than 18 inches from the outer edge of the unit and not less than 15 inches or more than 8 feet above the road surface.

(b) Houses, buildings, and structures not manufactured or built to be transported, will not require tail, brake, or signal lights mounted on the structures as certified pilot and police escort vehicles provide sufficient warning of the intent to brake, turn or stop.

(4) Two safety chains shall be used, one each on the right and left sides but separate from the coupling mechanism connecting the tow vehicle and the mobile and manufactured home while in transit.

(5) Tow Vehicles. Tow vehicles shall comply with the following minimum requirements:

(a) conventional or cab-forward configuration shall have a minimum wheelbase of 120 inches;

(b) cab-over engine tow vehicles shall have a minimum wheelbase of 89 inches;

(c) have a minimum of four rear tires; and

(d) mirrors on each side of the tow vehicle shall be arranged so that the driver can see the entire length of both sides of the towed unit.

(6) Trailer brake requirements:

(a) mobile manufactured homes more than 8 feet 6 inches wide, up to 12 feet wide and equipped with one axle, must have operational brakes; and

(b) a minimum of two axles equipped with operative brake assemblies is required on each mobile manufactured home unit more than 12 feet wide.

R909-2-28. Pilot Escort Requirements and Certification Program.

(1) Pilot escort driver requirements. Individuals who operate a pilot escort vehicle must meet the following requirements:

(a) must be a minimum of 18 years of age;

(b) must possess a valid driver's license for the state jurisdiction in which the driver resides;

(c) must obtain a certification card by an authorized qualified certification program as outlined in this section, and shall have it in their possession at all times while in pilot escort operations;

(d) within 30 days pilot escort drivers must provide a current Motor Vehicle Record (MVR) certification to the qualified certification program at the time of the course;

(e) no passengers under 16 years of age are allowed in pilot escort vehicles during movement of oversize loads;

(f) a pilot escort driver may not perform as a tillerman/steerman while performing pilot escort operations; and

(g) a pilot escort driver must meet the requirements of 49 CFR 391.11 if using a vehicle for escort operations that weighs more than 10,000 lbs.

(2) Driver certification process.

(a) Drivers domiciled in Utah must complete a Utah pilot escort certification course authorized by the division. A list of authorized instructors may be obtained by contacting (801) 965-4892.

(b) Pilot escort drivers domiciled outside of Utah may operate as a certified pilot escort driver with another state's certification credential, provided the course meets the minimum requirements outlined in the Pilot Escort Training Manual - Best Practices Guidelines as endorsed by the Specialized Carriers and Rigging Association, Federal Highway Administration, and the Commercial Vehicle Safety Alliance.

(c) The department may enter into a reciprocal agreement with other states provided they can demonstrate that course materials are comprehensive and meet minimum requirements outlined by the department.

(i) A current listing of reciprocity states may be obtained by contacting the division at 801-965-4892.

(d) The pilot escort driver's initial certification expires four years from the date issued, and it is the responsibility of the driver to maintain certification.

(i) One additional four-year certification may be obtained through a mail-in or on-line re-certification process provided by a qualified pilot escort training entity.

(3) Suspensions and revocations.

(a) Pilot escort drivers may have their certification denied, suspended, or revoked by the division if it is determined that a disqualifying offense has occurred within the previous four years.

(b) Drivers convicted of serious traffic violations such as excessive speed, reckless driving and driving maneuvers reserved for emergency vehicles, driving under the influence of alcohol or controlled substances may have their certification denied, suspended, or revoked by the division.

(c) The division may suspend for first offenses up to one year. Subsequent offenses may result in permanent revocation of driver certification.

(d) When a driver is denied pilot escort driving privileges for reasons other than the conditions set forth in this rule, the individual may file an appeal.

(i) The appeals shall be handled by a steering committee created by the division.

(e) The steering committee shall have the powers granted to the deputy director in R907-1-3 for appeals from other division administrative actions. This committee's decision, if adopted by the director of the division, will be considered a final agency order under Administrative Procedures in R907-1.

(4) Pilot escort vehicle standards.

(a) Certification inspections are valid for up to one year.

(b) Pilot escort vehicles may be either a passenger vehicle or a two-axle truck with a 95 inch minimum wheelbase and a maximum gross vehicle weight of 12,000 lbs. and properly registered and licensed as required under Utah Code Sections 41-1a-201 and 41-1a-401.

(c) Equipment shall not reduce visibility or mobility of pilot escort vehicle while in operation.

(d) Trailers may not be towed at any time while in pilot escort operations.

(e) Pilot escort vehicles shall be equipped with a two-way radio capable of transmitting and receiving voice messages over a minimum distance of one-half mile.

(i) Radio communications must be compatible with accompanying pilot escort vehicles, utility company vehicles, permitted vehicle operator and police escort, when necessary.

(ii) When operating with police escorts a CB radio is required.

(f) Pilot escort vehicles may not carry a load.

(5) Pilot escort vehicle signing requirements. Sign requirements on pilot escort vehicles are as follows:

(a) pilot escort vehicles must display an " OVERSIZE LOAD" sign, which must be mounted on the top of the pilot escort vehicle;

(b) signs must be a minimum of 5 feet wide by 10 inches high visible surface space, with a solid yellow background and 8-inch-high by 1-inch wide black letters. Solid is defined as when being viewed from the front or rear at a 90-degree angle, no light can transmit through;

(c) the sign for the front pilot escort vehicle shall be displayed so it is always clearly legible and readable by oncoming traffic; and

(d) the rear pilot escort vehicle shall display its sign so it is readable by traffic overtaking from the rear and clearly legible at all times.

(6) Pilot escort vehicle lighting requirements. Two methods of lighting are authorized by the division. Requirements are as follows:

(a) two AAMVA approved amber flashing lights mounted with one on each side of the required sign. These shall be a minimum of six inches in diameter with a capacity of 60 flashes per minute with warning lights illuminated at all times during operation;

(b) an AAMVA approved amber rotating, oscillating, or flashing beacon or light bar mounted on top of the pilot escort vehicle. This beacon light bar must be unobstructed and visible for 360 degrees with warning lights illuminated at all times during operation; and

(c) incandescent, strobe or diode lights may be used provided they meet the above criteria.

(7) Pilot escort vehicle equipment requirements. Pilot escort vehicles shall be equipped with the following safety items:

(a) standard 18-inch or 24-inch red and white "STOP" and black and orange "SLOW" paddle signs. For nighttime travel moves, signs must be reflective in accordance with MUTCD standards;

(b) nine reflective triangles or 18-inch reflective orange traffic cones, not to replace or be replaced by items (c) or (d);

(c) eight red-burning flares, glow sticks or equivalent illumination device approved by the division;

(d) three orange 18-inch-high cones;

(e) a flashlight with a minimum 1 1/2-inch lens diameter, with extra batteries or charger. An emergency type shake or crank flashlight will not be allowed;

(f) 6-inch minimum length red or orange cone or traffic wand for use when directing traffic;

(g) an orange hardhat and class 2 safety vest for personnel involved in pilot escort operations. Class 3 safety vests are required for nighttime travel moves;

(h) a height-measuring pole made of a non-conductive, non-destructive, flexible or frangible material, only required when escorting a load exceeding 16 feet in height;

(i) a fire extinguisher;

(j) a first aid kit that is clearly marked;

(k) one spare "OVERSIZE LOAD" sign, 7 feet by 18 inches;

(l) one serviceable spare tire, tire jack and lug wrench;

(m) a handheld two-way simplex radio or other compatible form of communication for operations outside pilot escort vehicles; and

(n) vehicles shall not have unauthorized equipment on the vehicle such as those generally reserved for law enforcement personnel.

(8) Police escort vehicle equipment and safety requirements. Police escort vehicles shall be equipped with the following safety items:

(a) all officers must have a CB radio to communicate with the pilot and transport vehicles;

(b) officers shall complete a Utah Law Enforcement Check List and Reporting Criteria Form;

(c) officers shall verify that all pilot escorts are in possession of current pilot escort inspections, or they shall complete an inspection prior to load movement;

(d) police vehicles must be clearly marked with emergency lighting visible 360 degrees; and

(e) officers shall be in uniform while conducting police escort moves.

(9) Insurance for pilot escort vehicles.

(a) Driver shall possess a current certificate of insurance or endorsement which indicates that the operator, or the operator's employer, has in full force and effect not less than $750,000 combined single limit coverage for bodily injury and property damage as a result of the operation of the escort vehicle, the escort vehicle operator, or both causing the bodily injury and property damage arising out of an act or omission by the pilot escort vehicle operator of the escort duties required by the regulations. Such insurance or endorsement, as applicable, must always be maintained during the term of the pilot escort certification.

(b) Pilot escort vehicles shall have a minimum amount of $750,000 liability. This is not a cumulative amount.

(10) Pre-trip planning and coordination requirements. A co-ordination and planning meeting shall be held prior to load movement. The drivers carrying or pulling the oversize loads, the pilot escort vehicle drivers, law enforcement officers, department personnel, and public utility company representatives shall attend as required. When police escorts are present, a Utah Law Enforcement Check List and Reporting Criteria Form must be completed. This meeting shall include discussion and coordination on the conduct of the move, including at least the following topics:

(a) the person designated as being in charge such as a department representative or a law enforcement officer;

(b) all documentation for authorized routing and permit conditions is distributed to all appropriate individuals involved in the move;

(c) communication and signals coordination;

(d) permitted dimensions will be verified with measurement of load dimensions; and

(e) copies of permit and routing documents shall be provided to all parties involved with the permitted load movement.

(11) Permitted vehicle restrictions on certain highways. Certified pilot escort operators must refer to highway restrictions specified in the secondary highway restrictions prior to all load movements.

(12) Flagging requirements. During the movement of an over-dimensional load or vehicle, the pilot escort driver, in the performance of the flagging duties required by R909-2-28, may control and direct traffic to stop, slow or proceed in any situations where it is deemed necessary to protect the motoring public from the hazards associated with the movement of the over-dimensional load or vehicle. The pilot escort driver, acting

as a flagger, may aid the over-dimensional load or vehicle in the safe movement along the highway designated on the over-dimensional load permit and shall:

(a) assume the proper flagger position outside the pilot escort vehicle, and as a minimum standard, have in use the necessary safety equipment as defined in 6E.1 of the MUTCD;

(b) use "STOP" and "SLOW" paddles or a 24-inch red or florescent orange or red square flag to indicate emergency situations, and other equipment as described in 6E.1 of the MUTCD; and

(c) comply with the flagging procedures and requirements as set forth in the MUTCD and the Utah Department of Transportation Flagger Training Handbook.

R909-2-29. Requirements for Pilot Escort Qualified Training and Certification Programs.

(1) Application process. Application to become a third-party pilot escort trainer or instructor shall be made on a form furnished by the division, and shall include the following:

(a) name and address of entity;

(b) list of instructors;

(c) resumes of each instructor outlining related experience in the pilot escort, heavy haul, academia, or commercial vehicle enforcement fields;

(d) a copy of entity's business license;

(e) sample of digital image certification card that will be issued to students upon completion of the course;

(f) sample of "Flagger" certification card that will be issued to students upon completion of the course;

(g) procedural guidelines that outline security measures implemented to safeguard student's personal information; and

(h) copies of all course curriculum and testing materials. Course materials will be reviewed and approved by the division to ensure that all requirements are met.

(2) Course curriculum requirements. An extensive course curriculum description and information can be obtained by contacting the UDOT Motor Carrier Division Customer Service/Superload team at (801) 965-4892. Course curriculum to certify pilot escort drivers to operate in Utah must cover the following topics:

(a) division rules governing over-size load movements;

(b) pilot escort operations;

(c) flagging maneuvers for over dimensional loads;

(d) oversize or overweight load movement, coordination, planning and communication requirements and best practices;

(e) pilot escort vehicle positioning and situational training;

(f) rail grade crossing safety;

(g) routing techniques, including pre-trip surveys; and

(h) insurance coverage requirements and liability issues.

(3) Testing procedures.

Testing materials shall be submitted to the division for approval. Tests should be structured with a minimum of 40 questions per exam. A minimum of two different examinations shall be submitted and used randomly during the instruction of the course and structured as follows:

(a) 12 Fill in the blank;

(b) 12 Multiple choice;

(c) 12 true and false questions;

(d) one to six questions dealing with safety equipment;

(e) one to four questions dealing with the duties of pilot escort drivers;

(f) one to six questions dealing with maintenance of equipment; and

(g) one to six questions dealing with items that must be collected in a route survey.

(4) Grading of examinations. Entity must provide an explanation of how the test will be administered.

(5) Students must pass with an 80% score to be certified.

(6) Students receiving less than 80% score will be allowed to attend one additional class without additional cost except for reimbursement of any additional materials and postage costs.

(7) When a contract is terminated with the third-party pilot and escort trainer, it will be the responsibility of the entity to provide an electronic database to the division, of all students that have completed the course.

(8) Applicant Recertification Procedures.

(a) Entity shall provide means in which an individual may be re-certified either by mail or the internet.

(b) Entity shall submit written procedures documenting the process for the examination that will allow the applicant re-certification. The examination shall not be a duplicate of the examination used during the initial certification process and should be constructed as to educate the student on updates pertaining to pilot escort certification and legal requirements.

(c) Re-certification tests shall be structured as outlined in R-909-2-29.

(d) Applicant's receiving less than 80% score will be allowed to retake the certification exam one additional time at no additional class without additional cost except for reimbursement of any additional materials and postage costs.

(e) Students receiving less than 80% score will be allowed to attend one additional class or certify by mail or online without additional cost except for reimbursement of any additional materials and postage costs.

(9) Training costs. Costs associated with providing classroom instruction, materials, testing and credentialing will be the responsibility of the authorized training entity.

(a) These costs may be passed on to the students for certification in the form of tuition determined by the training entity based on business model and expenses.

(b) Cost proposal and course fees must be submitted to the division for approval as part of the application process.

(10) Suspensions and revocations of pilot escort training entities.

(a) The division may suspend or revoke the entity's ability to provide services if the entity fails to meet conditions and requirements set forth in R909-2-29.

(b) If an entity has its authority to provide services revoked or suspended, the entity may appeal the decision.

(i) The appeals shall be handled by a steering committee created by the division.

(ii) The steering committee shall have the powers granted to the department's deputy director for appeals from other division administrative actions.

(iii) This committee's decision, if adopted by the director of the division, will be considered a final agency order under the Utah Administrative Procedures Act.

(11) The division has the right to review:

(a) rates;

(b) fees;

(c) procedures; and

(d) the certification process established by the entity whenever the division deems it necessary to ensure compliance with this rule.

(12) Record retention and data management requirements. Authorized pilot escort qualified training and certification entities or institutions shall maintain the following certification and recertification records for a period of eight years:

(a) student's name, address, and contact information;

(b) driver's license number, original MVR and original proof of insurance information from insurance provider;

(c) copy of each student's written exam;

(d) digital copy of certification flagger card, including photo;

(e) training and expiration dates on all students;

(f) re-certification and expiration dates; and

(g) list of instructors, proctors, administrators, and a copy of their resumes and date of classroom instruction and

recertification dates providing services.

(13) Records may be scanned and kept electronically provided entity has necessary data backup and retrieval procedures.

(a) The division has the right to review any records retained and may observe the instruction given both in the classroom and through the re-certification process whenever the division deems it necessary to ensure compliance with this rule.

(b) The loss, mutilation or destruction of any records which an entity is required to maintain, must be immediately reported by the entity by affidavit stating the date such records were lost, mutilated, or destroyed, and the circumstances involving such loss, mutilation, or destruction.

(c) All records must be retained by the entity for eight years, except for the computerized file, which is to be kept permanently, during which time the entity shall be subject to inspection by the division during reasonable business hours. If the entity goes out-of-business, the permanent record shall be submitted by the entity to the division.

(d) It is the responsibility of the entity to provide a list of applicants that have successfully re-certified along with the corresponding grade to the division at the end of each quarter of each calendar year.

(e) All records, including computerized records, must be provided to the division when requested for an audit or review of the entities records. Failure to provide all records as requested by the division is a violation of this rule.

(f) Entities shall maintain accurate, up to date records.

R909-2-30. Farmers, Implements of Husbandry and Agricultural Operations.

(1) Vehicle combinations for hay truck operations may transport two rolls or bales of hay side by side when:

(a) the two rolls or bales are 10 feet or less in combined width;

(b) the load is being operated with a valid non-divisible oversize permit;

(c) oversize loads exceeding 8 feet 6 inches may not be transported on double trailers exceeding 61 feet cargo or cargo carrying length;

(d) the load must meet all other divisible load requirements in R909-2-24; and

(e) loads are properly secured.

(2) Implements of husbandry moved by a farmer, rancher, or his employees in connection with an agricultural operation must comply with:

(a) every farm tractor and towed farm equipment, towed or self-propelled implements of husbandry, designed for operation at speeds not more than 25 miles per hours, must always be equipped with a slow-moving vehicle emblem mounted on the rear; and

(b) every farm tractor and every self-propelled implement of husbandry manufactured or assembled after January 1970 shall be equipped with vehicular hazard warning lights visible from a distance not less than 1,000 feet to the front and rear in normal sunlight, which shall be displayed whenever any such vehicle is operated upon a highway.

R909-2-31. Snow Plow Operations.

(1) Blades more than 8 feet 6 inches must be equipped with a yellow, rotating beacon warning light.

(2) Snow plows with up to 12 feet wide blades may operate without oversize permits, when they comply with:

(a) lights which provide adequate illumination when the blade is in either the up, or down position;

(b) signaling lights shall not be obscured; and

(c) blades must be angled so that the minimum width is exposed to oncoming traffic during periods of travel between jobs.

R909-2-32. Parade Floats.

(1) Parade floats are not required to obtain an overweight or oversize permit, but they must meet the following requirements:

(a) all floats must have sufficient proof of insurance;

(b) all floats must carry the necessary safety equipment for the safe operation of the vehicle during movement;

(c) the float driver must have a clear 360-degree visibility;

(d) movement to and from parades should be made only during daylight hours unless the vehicle is adequately lighted and there is minimal congestion; and

(e) floats more than 14 feet 6 inches in height, must be routed by the division.

R909-2-33. Transportation of Utility Poles.

(1) Utility poles may be transported up to 120 feet in overall length, including overhangs, with single trip, semi-annual or annual permit in accordance with:

(a) oversize load restrictions;

(b) pilot escort requirements;

(c) travel restrictions; and

(d) signing and lighting requirements.

(2) Permits are issued to the trailer transporting the poles using the trailer registration information.

(a) Upon company request, the permit may be issued to the truck or truck tractor.

(b) Utility poles exceeding 120 feet shall purchase a single trip, non-divisible oversize permit.

R909-2-34. Special Mobile Equipment.

(1) Special mobile equipment or SME refers to vehicles:

(a) not designed or used primarily for the transportation of persons or property;

(b) not designed to operate in traffic; and

(c) only incidentally operated or moved over the highways.

(2) Special mobile equipment exempt from registration includes:

(a) farm tractors; and

(b) off road motorized construction or maintenance equipment including backhoes, bulldozers, compactors, graders, loaders, road rollers, tractors, trenchers, and ditch digging apparatus.

(3) Heavy equipment designed for off-highway uses such as scrapers, loaders, off highway cranes, and rock trucks, but not tracked vehicles may be issued single trip permits to operate under their own power, on approved routes other than interstate highways, as follows:

(a) the distance traveled shall not generally exceed 20 miles;

(b) only daylight operations are authorized, and all oversize restrictions apply;

(c) weights must comply with the bridge formula for non-divisible loads;

(d) single axles equipped with single tires shall not be authorized to exceed 40,000 pounds;

(e) a minimum of one pilot escort vehicle is required; and

(f) special mobile equipment shall be routed by the division.

(4) Special mobile equipment or SME affidavit. All persons who operate or cause to operate an SME exempt from registration shall submit a completed special mobile equipment affidavit to the division.

(a) To be deemed complete, an affidavit must be on the form provided by the division and all required fields filled in. Affidavits will be available at all ports of entry. Affidavits shall be turned into a port of entry.

(b) Special mobile equipment exempt from registration shall carry a copy of the approved affidavit in the vehicle at all times;

(c) Vehicles that are not special mobile equipment shall register with the Utah State Tax Commission prior to operating the vehicle on a public highway.

(d) Upon receipt of a denial of special mobile equipment, if the owner or operator wishes to appeal the decision of the division, a petition may be filed with the department, within 30 days.

(i) A response to an appeal from the department will be made in writing within 30 days.

R909-2-35. Special Truck Equipment.

(1) The following vehicle configurations are considered special truck equipment:

(a) concrete pumper trucks;

(b) cranes or trucks performing crane service with a crane lift capacity of five tons or more; and

(c) well boring trucks.

(2) Vehicles classified as special truck equipment may be issued an oversize or overweight permit when exceeding legal dimensions.

(a) An approved profile sheet for special truck equipment shall be carried in the vehicle with the permit, when the axle limitations specified in R909-2-5 Table 2 or actual bridge or gross are exceeded.

(b) Must meet the requirements of a non-divisible load as defined in Utah Rule 909-2-3(33).

(3) Vehicles classified as special truck equipment are eligible for a 50 % registration fee reduction.

R909-2-36. Port-of-Entry By-Pass Permit Provisions.

(1) A temporary by-pass permit may be issued to accommodate the multi-trip highway transportation needs to motor carriers who meet the following criteria:

(a) Motor carriers shall meet the "Multi-trip" definition to receive and maintain by-pass privileges.

(i) A motor carrier may receive an exception from this requirement on a case-by-case basis, if the motor carrier is able to demonstrate that denial of a by-pass permit will cause a hardship if the vehicle must be diverted to a port-of-entry.

(b) The basis for qualification to participate in the by-pass program is based in part on the carrier's safety history as shown in the Federal Motor Carrier Safety Administration's Safety Measurement System.

(i) A carrier with a CSA basic scores equal to or greater than the intervention thresholds noted in Table 4 for General, HM and Passenger, plus one other BASIC at or above the motor carrier threshold is not eligible to participate in the by-pass program.

(ii) A carrier is not eligible for a by-pass permit when the carrier meets the definition of a High-Risk Motor Carrier in Table 4.

TABLE 4

High Risk Motor Carrier Criteria

BASIC	General	HM	Passenger
Unsafe Driving	65%	60%	50%
Fatigue Driving (HOS)	65%	60%	50%
Driver Fitness	80%	75%	65%
Controlled Substances and Alcohol	80%	75%	65%
Vehicle Maintenance	80%	75%	65%
Cargo-Related	80%	75%	65%
Crash Indicator	65%	60%	50%

(c) A carrier may become eligible for a by-pass permit after a focused or comprehensive review indicates that the carrier is in compliance.

(d) As a condition of receiving a by-pass permit, a motor carrier is subject to audits, safety assessments, and inspections as the division considers necessary to carry out state and federal law.

(e) Vehicles that obtain by-pass privileges must have a weight ticket, from a scale certified by the Department of Agriculture, available for inspection by law enforcement. Scale tickets must be electronically printed and shall specify the time, date, unit-specific information, and destination.

(2) By-pass applications shall be submitted to the division.

(a) By-pass privilege carriers must re-apply yearly.

(b) Subcontractors operating under their own authority must apply for by-pass privileges independently.

(c) Carriers who lease vehicles from a subcontractor must ensure that the established by-pass criterion is met to maintain privileges.

(d) By-pass permit privileges are valid from the approval date and expire at the end of the application year on December 31.

(e) Applications must show routing information including point of origin, destination, and routine routes traveled.

(3) Approved vehicles within a motor carrier's fleet will be issued a by-pass decal, specific to each individual vehicle, and will receive a by-pass certificate that shall be carried in the vehicle.

(4) By-pass privileges may be granted to carriers traversing multiple ports of entry within the same route.

(5) Authorized by-pass routes are allowed for the following Port of Entries:

(a) Daniels Port of Entry on SR 40 with empty vehicles, traveling eastbound only;

(b) Kanab Port of Entry on Highway 89 from Kanab's Main Street to the Kanab Port of Entry, while traveling on Hwy 389 between Las Vegas, Nevada and Page, Arizona, and all vehicles must clear the St. George Port of Entry;

(c) Perry Port of Entry may be by-passed and travel on Highway 89 between Brigham City and Ogden; and

(d) Monticello Port of Entry may be by-passed on US-191 with empty vehicles only.

(6) By-pass privileges may be revoked or suspended should a carrier fail to meet the safety standards as set forth in the:

(a) Compliance, Safety, Accountability (CSA) program of the Federal Motor Carrier Safety Administration;

(b) Federal Motor Carrier Safety Regulations;

(c) size and weight limitations;

(d) by-pass zone routes; and

(e) out-of-service criteria.

(7) When an application for a by-pass permit is denied the motor carrier may file an appeal.

(a) The appeal shall be handled by the division hearing officer.

(8) The division will notify local law enforcement agencies of those carriers meeting the criteria for by-pass privileges.

R909-2-37. Annual Review of Permit Regulations and Conditions.

(1) During the regularly scheduled Motor Carrier Advisory Board meeting in April of each year, the board will review permit conditions and regulations as needed. The board is not required to review each of these items every year.

(2) This meeting will provide a forum for interested parties to provide evidence in support of regulation or permit condition modification.

(3) All interested parties must notify the division of these issues by March 1st of each year to ensure placement on the agenda.

(4) Any approved changes to permit conditions or regulations will be incorporated into this rule.

KEY: permits, safety regulations, size and weight, trucks
December 31, 2019 72-1-201
Notice of Continuation May 22, 2019 72-7-406

72-9-303
41-1a-102
41-1a-231
41-1a-1206
72-7-402
72-7-404
72-7-407
72-9-301
72-9-502

R909. Transportation, Motor Carrier.
R909-19. Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation, and Certification.
R909-19-1. Authority.

This rule is enacted under the authority of Sections 72-9-601, 72-9-602, 72-9-603, 72-9-604, 53-1-106, 41-6a-1405, Utah Code.

R909-19-2. Applicability.

All tow truck motor carriers and employees must comply and observe all rules, including R909-1, regulations, traffic laws and guidelines as prescribed by State Law, including Sections 41-6a-401.9, 41-6a-1404, 41-6a-1405, 41-6a-1406, 72-9-301, 72-9-303, 72-9-601, 72-9-602, 72-9-603, 72-9-604, 72-9-701, 72-9-702, and 72-9-703.

R909-19-3. Definitions.

(1) "Consent tow" means any tow truck service that is done at the vehicle, vessel, or outboard motor owner's, or its legal operator, knowledge and/or approval.

(2) "Department" means the Utah Department of Transportation.

(3) "Division" means the Motor Carrier Division.

(4) "Emergency moves" means a tow operation initiated by law enforcement to move a wrecked or disabled motor vehicle.

(5) "Gross combination weight rating (GCWR)" means the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, GVCR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

(6) "Gross vehicle weight rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single motor vehicle.

(7) "Life-essential personal property" includes those items essential to sustain life or health including: prescription medication, medical equipment, essential clothing (e.g. shoes, coat), food and water, child safety seats, and government issued photo-identification.

(8) "Non-consent police generated tow" means tow truck service that was ordered by a peace officer, or a person acting on behalf of a law enforcement agency, or a highway authority, as defined in Section 72-1-102.

(9) "Non-consent non-police generated tow" means towing services performed without the prior consent or knowledge of the owner of the vehicle or the person authorized by the owner to operate the vehicle from private property. The tow truck service must be from private property, at the request of the property landowner or agent for the landowner.

(10) "Normal office hours" means hours of operation where the office or yard shall be staffed and open for public business during normal business hours Monday thru Friday, except for designated state and federal holidays.

(11) "Recovery operation" means a towing service that may require charges in addition to the normal one-truck/one-operator towing service requirements. The additional charges may include charges for manpower, extra equipment, and supplies necessary for the recovery operation.

(12) "State impound yard" means a yard for the storage of a vehicle, vessel, or outboard motor that meets the requirements of rules made by the commission pursuant to Subsection 41-1a-1101(5).

(13) "Tow truck" means a commercial vehicle constructed, designed, altered, or equipped primarily for the purpose of towing or removing damaged, disabled, abandoned, seized, repossessed or impounded vehicles from highway or other place by means of a crane, hoist, tow bar, tow line, dolly tilt bed, or other similar means of vehicle transfer without its own power or control.

(14) "Tow truck certification program" means a program to authorize and approve tow truck motor carrier owners, operators, and vehicles is the process by which the Department, acting under Section 72-9-602, shall verify compliance with the State and Federal Motor Carriers Safety Regulations.

(15) "Tow truck motor carrier" means a motor carrier that is engaged in or transacting business for tow truck services. It includes the company's agents, officers, and representatives as well as employees responsible for hiring, training, supervising, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of equipment and/or accessories.

(16) "Tow truck operator" means an individual that performs operations related to a tow truck service as an employee or as an independent contractor on behalf of a tow truck motor carrier.

(17) "Tow truck service" means the functions and any ancillary operations associated with recovering, removing, and towing a vehicle and its load from a highway or other place by means of a tow truck.

(a) Tow truck service, with regards to authorized towing fees, is determined by the type and size of the towed vehicle, not the type and size of the tow truck performing the service.

(b) Towed vehicle-classifications will be used when determining authorized fees. Information regarding the GVWR to determine classification category of towed vehicle can be found on the identification plate on the vehicle driver side doorframe. Towed vehicle classifications are as follows:

(i) "Light duty" means any towed vehicle with a GVWR 10,000 pounds or less;

(ii) "Medium duty" means any towed vehicle with a GVWR between 10,001 to 26,000 pounds;

(iii) "Heavy duty" means any towed vehicle with a GVWR or GCWR 26,001 pounds and greater.

(18) "Tow truck motor carrier steering committee" means a committee established by the Motor Carrier Division and will include enforcement personnel, industry representatives and other persons as deemed necessary.

R909-19-4. Duties - Enforcement - Compliance Audits, Inspections and Right of Entry.

The Department shall administer and in cooperation with the Department of Public Safety, Utah Highway Patrol Division as specified under Section 53-8-105, shall administer and enforce state and federal laws related to the operation of tow truck motor carriers within the state. In addition, a tow truck motor carrier shall submit its lands, property, buildings, equipment for inspection and examination and shall submit its accounts, books, records, or other documents for inspection and copying to verify compliance as authorized by Section 72-9-301.

R909-19-5. Insurance.

(1) Tow truck motor carriers performing emergency moves shall maintain liability insurance coverage of at least $750,000 per occurrence. Tow truck motor carriers performing non-emergency moves shall maintain liability insurance coverage of at least $1,000,000 per occurrence.

(2) All tow truck motor carriers performing consent or non-consent tows are required to obtain a MCS-90 endorsement for environmental restoration as required in 49 CFR Part 387 - Minimum Levels of Financial Responsibility for Motor Carriers.

(3) Evidence of required insurance shall be maintained at the principal place of business and made available to the Department and/or Investigator upon request and prior to issuance of the tow truck motor carrier certification.

R909-19-6. Penalties and Fines.

(1) Any tow truck motor carrier that fails or neglects to comply with State or Federal Motor Carrier Safety Regulations, other statutes, any part of this rule, any term or condition of the permit or any materials that it incorporates either by reference or attachment, or a Departmental order, is subject to:

(a) a civil penalty as authorized by Section 72-9-701, and 72-9-703;

(b) suspension or revocation of a carrier or tow truck certification (suspension or revocation will be based upon the severity of violations to this rule, Sections 41-6a-1406 and 72-9-603);

(c) issuance of a cease-and-desist order as authorized by Section 72-9-303; and

(d) the revocation or suspension of registration by the Utah State Tax Commission pursuant to Section 72-9-303.

R909-19-7. Towing Notice Requirements.

(1) All non-consent police generated, and non-consent non-police generated tows conducted by tow truck motor carriers must input required information in electronic form on the Division of Motor Vehicles Utah State Tax Commission's website, at "https://secure.utah.gov/ivs/ivs" as required by Utah Code Subsection 41-6a-1406(11).

(2) Tow truck motor carriers must notify the local enforcement agency having jurisdiction over the area from where the vehicle, vessel, or outboard motor was removed on all non-consent non-police generated tows immediately upon arrival at the impound or storage yard.

(a) For tows conducted on vehicles, vessels, and outboard motors and the owner information does not appear in the IVS or TLR (Title License Registration) systems, a tow truck motor carrier has met this requirement if they can provide proof that a letter has been sent to the Utah State Tax Commission Division of Motor Vehicle or the appropriate state where the vehicle, vessel, and outboard motor is registered, within two business days requesting the needed information to send the letter.

(3) The tow truck motor carrier or the tow truck operator must provide a copy of the Utah Consumer Bill of Rights Regarding Towing at first contact with the owner of a vehicle, vessel, or out board motor that was towed.

(a) The tow truck motor carrier must be able to verify that the consumer received their copy of the Utah Consumer Bill of Rights Regarding Towing.

(4) The Utah Consumer Bill of Rights Regarding Towing shall contain the language and information as published at, www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396.

(a) The consumer has a right to receive documentation from the tow truck motor carrier showing the date and time the storage began.

(b) A consumer has the right to file a complaint alleging:

(i) Overcharges;

(ii) inadequate certification for the operator, truck or company, and;

(iii) violations of the Federal Motor Carrier Safety Regulations, Utah Code Annotated, or Utah Administrative Code.

(c) Complaints may be filed online with the Utah Department of Transportation at https://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:4610,66405 or by contacting the Motor Carrier Division at (801) 965-4892.

R909-19-8. Certification.

There are three (3) certifications required by the Department.

(1) Tow Truck Operator Certification.

(a) Effective July 1, 2004 all tow truck operators will be tested and certified in accordance with Towing and Recovery Association of America Inc (TRAA) standards and carry evidence of certification for the appropriate level of vehicle they are operating. These standards of conduct and proficiency may be tested and certified through an accepted program approved by the Department.

(i) Towing and Recovery Association of America (TRAA) Testing Program;

(ii) Wreckmaster Certification Program;

(iii) Utah Safety Council; or

(iv) Other driver testing certification programs approved by the Department to meet certification requirements, however, the tow truck motor carrier must obtain prior approval in writing from the Motor Carrier Division Administrator or Division representative by calling (801) 965-4892.

(b) Information on qualified certification programs may be obtained by contacting the Motor Carrier Division at (801) 965-4892.

(c) Tow truck motor carriers shall ensure that all tow truck operators:

(i) are properly trained and certified to operate tow truck equipment;

(ii) are licensed, as required under Utah Code Sections 53-3-101, through 53-3-909 Uniform Driver License Act;

(iii) are complying with the requirements under Utah Code Sections 41-6a-1406 and 72-9-603;

(iv) have cleared the criminal background check required in Subsections 72-9-602(2) and (3). In addition, a tow truck motor carrier must notify the department of a tow truck operator whom is not in compliance with 72-9-602(3) within two business days of obtaining knowledge from the Bureau of Criminal Identification.

(v) obtain and maintain a valid medical examiner's certificate under 49 C.F.R Sec 391.45.

(2) Tow Truck Vehicle Certification.

(a) All tow trucks shall receive and pass a tow truck certification inspection biannually.

(b) All tow trucks must be equipped with required safety equipment. Safety Equipment List can be found at https://www.udot.utah.gov/main/f?p=100:pg::::1:T,V:396 or by calling 801-965-4892.

(c) Upon vehicle certification, a UDOT certification sticker will be issued and shall be affixed on the driver's side rear window.

(d) Documentation of UDOT tow truck vehicle certification shall be retained and available upon request by Department personnel.

(3) Tow truck motor carrier Certification.

(a) Tow truck motor carriers shall be certified biannually to ensure compliance as required by the Federal Motor Carrier Safety Regulations, Utah Code Annotated, and local laws where applicable.

R909-19-9. Certification Fees.

The Department may charge tow truck motor carriers a fee biannually as authorized by Section 72-9-603 to cover costs associated with driver, vehicle, and carrier certifications.

R909-19-10. Information Required on Towing Receipt.

(1) Charges for services provided must be clearly reflected on a company receipt and a copy shall be provided to the customer. The receipt must include the following information:

(a) company name;

(b) address;

(c) phone number;

(d) transportation, administration, fuel surcharge, and storage fees charged;

(e) name of company driver;

(f) unit number;

(g) license plate of the towed vehicle;

(h) make, model, Vehicle Identification Number, and year

of the towed vehicle;

(i) start and end time with total hours for services provided; and

(j) the date vehicle was retrieved from tow yard or other storage area.

R909-19-11. Non-Consent Towing Fee.

(1) A tow truck motor carrier may charge up to but not exceed the approved tow rate, based upon the type of non-consent tow, as indicated in the Towing Fee Schedule published online at http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396.

(a) An additional 15% of the fee for tow truck service may be charged if the towed vehicle is used in the transportation of materials found to be hazardous for the purposes of and in accordance with the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F.

(b) If a tow truck apparatus is mechanically connected to a vehicle, the tow truck motor carrier shall be considered in possession of the vehicle.

(c) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle is attempting to retrieve said vehicle before the tow truck motor carrier is in possession of the vehicle, no fee(s) shall be charged to the vehicle owner.

(d) If the owner, authorized operator, or authorized agent of the owner of the vehicle is attempting to retrieve the vehicle after the tow truck motor carrier is in possession of the vehicle but before the vehicle is removed from the property or scene, the maximum fee shall not exceed 50% of the posted rate schedule.

(e) Charges for recovery operations, as defined by R909-19-3, shall be coordinated with the towed vehicle owner, or directed by law enforcement prior to initiating the additional charges relating to the recovery operation. Coordination with the towed vehicle owner should result in an agreement between the towed vehicle owner and tow truck motor carrier.

(i) If attempts to coordinate the recovery operation charges with the towed vehicle owner fail, law enforcement personnel may authorize the recovery operation.

(ii) At least two attempts must be made to contact the towed vehicle owner.

(iii) Record of owner coordination or law enforcement authorization shall be maintained by a tow truck motor carrier for each recovery operation. The record shall include contact name, entity, contact time and date, and agreement made.

(iv) Uncoordinated or unauthorized recovery operation fees may be subject to penalty and reimbursement of recovery operation fees.

R909-19-12. Police Generated Towing Fee Calculation.

(1) Tows dispatched during business hours: Tow time shall be calculated from dispatch time to completion of tow service.

(2) Tows dispatched after business hours: Tow time shall be calculated from dispatch time to completion of tow service and return to dispatch location. Time to return to dispatch location shall not exceed allowed rotation response time.

(3) Time charged shall be to the nearest fifteen-minute increment.

(4) Charges may not extend to include the towing notice requirement period pursuant to Utah Code Subsections 72-9-603(1)(a)(i) or 41-6a-1406(4)(a)(ii).

R909-19-13. Non-consent Towing Storage Fee.

(1) Daily storage fees for Non-consent Police generated tow service may not exceed:

(a) Outside storage: light duty $40, medium duty $60, heavy duty $60

(b) Inside Storage: light duty $45, medium duty $85, heavy duty $85

(c) Outside hazardous materials: medium duty $115, heavy duty $115

(d) Inside hazardous materials: medium duty $165, heavy duty $165

(2) Daily storage fees for Non-consent non-police generated tow service may not exceed:

(a) Outside storage: light duty $40, medium duty $60, heavy duty $60

(b) Inside Storage: light duty $45, medium duty $85, heavy duty $85

(c) Outside hazardous materials: medium duty $115, heavy duty $115

(d) Inside hazardous materials: medium duty $165, heavy duty $165.

(3) A tow truck motor carrier may charge up to but not exceeding the amount for storage per day for the type of non-consent tow.

(a) A tow truck motor carrier may charge a higher fee for inside storage per day per unit only if requested by the owner(s), or a law enforcement agency or highway authority.

(b) Vehicles used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F may be charged a higher storage fee rate.

(c) For the purpose of calculating storage rates, if the first six hours of storage for a vehicle includes more than one day, the authorized storage fee is only the charge for one day.

R909-19-14. Non-consent Fuel Surcharge Fee.

(1) A tow truck motor carrier may charge a fuel surcharge when the daily Rocky Mountain Average, as determined by the Department of Energy, for the price of fuel reaches $3.25 per gallon, a tow truck motor carrier may charge a surcharge equal to 5% of the base tow rate. An additional 5% shall be allowed for each $0.25 per gallon increase. Conversely, as the price of fuel drops, the fuel surcharge shall decrease by the same rate.

(a) To determine the Rocky Mountain daily average per gallon diesel cost, refer to the U.S. Energy Information Administration's website at https://www.eia.gov/.

(b) The fuel surcharge may be charged on non-consent police generated tow when the vehicle is being used in the function of a tow vehicle i.e. travel to and from the scene and during the operation of equipment for recovery operation. Non-consent non-police tows may charge a onetime fee.

(c) Surcharge fee shall be listed as a separate fee on the tow bill.

R909-19-15. Non-consent Administrative Fee.

A tow truck motor carrier may charge an administrative fee for reporting the removal of up to but not exceeding the amount indicated in the Towing Fee Schedule as published online at, http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396 per vehicle notification for reporting non-consent tows to the Department of Motor Vehicles and for sending notifications to the owner and lien-holder (if applicable).

R909-19-16. Tow Truck Service and Administrative Fee Adjustment.

(1) The Motor Carrier Division is required to establish the allowable maximum fee for a tow truck service and administrative fee for reporting the removal, as per Utah State Code 72-9-603.

The Towing Fees Schedule is published on the Division's website at http://www.udot.utah.gov/main/f?p=100:pg:0:::1:T,V:396.

(2) The allowable maximum fee for tow truck service and the maximum allowable administrative fee for reporting the removal shall be tied to the Consumer Price Index for all Urban

Wage Earners and Clerical Workers (CPI-W) in the West Urban Region of the U.S. The CPI-W is calculated by the U.S. Department of Labor, Bureau of Labor and Statistics (BLS), which publishes CPI Detailed Report Tables every month on its web site at https://www.bls.gov/cpi/tables/home.htm.

(3) The Motor Carrier Division shall adjust the allowable maximum fees once annually as follows:

(a) The base fee schedule for each calendar year after a year in which the motor Carrier Division determines the allowable maximum fees pursuant to R909-19-11(1) shall be adjusted effective January 1 of each such calendar year (the "Adjustment Date").

(b) The adjustment amount of the allowable maximum fees shall be equal to the change in the CPI-W for the twelve-month period prior to the October CPI-W figure reported by the BLS immediately preceding the Adjustment Date in question.

(c) If the twelve-month change in the CPI-W from October to October is negative, the allowable maximum fees shall remain unchanged until the next Adjustment Date.

(d) The Division of Motor Carriers shall round the allowable maximum fees to the nearest whole number.

R909-19-17. Public Consent Towing and Storage Rates.

Towing rates for public consent tows are the responsibility of the consumer and the tow truck motor carrier as contracted for services rendered and are not regulated by the Department.

R909-19-18. Rates and Storage Posting Requirements.

Pursuant to Section 72-9-603, a tow truck motor carrier or impound yard shall clearly and conspicuously post and disclose all its current non-consent fees and rates for towing and storage of a vehicle at all locations at which vehicles are retrieved, or payment is accepted.

R909-19-19. Federal Motor Carrier Safety Requirements.

All tow truck motor carriers that meet the definition of a commercial motor carrier shall comply with all State and Federal Motor Carrier Safety Regulations, in addition to any other legal requirements established in statute, rule, or permit.

R909-19-20. Consumer Protection Information.

Pursuant to Section 72-9-602, the Department shall make consumer protection information available to the public that may use a tow truck motor carrier. To obtain such information, including a list of tow truck motor carriers that are currently certified by the Department, the public can access this information online at http://www.udot.utah.gov/main/f?p=100:pg::::1:T,V:396, or by calling the Motor Carrier Division at (801) 965-4892.

R909-19-21. Establishment of Tow Truck Steering Committee and Work Group.

(1) The Administrator for the Motor Carrier Division will establish a Steering Committee to provide advisory information and input.

(2) The Motor Carrier Advisory Board, established by the Governor, will serve as the steering body for regulatory guidance and the Department's certification process.

R909-19-22. Review of Rates, Fees and Certification Process.

(1) During a regularly scheduled Motor Carrier Advisory Board meeting, the board may review rates, fees, tow truck motor carrier procedures, and the certification process. The board is not required to review each of these items every year.

(2)(a) Interested parties must notify the department of their desire to appear and be heard at a regularly scheduled Motor Carrier Advisory Board meeting. To ensure placement on the agenda, notify the Motor Carrier Division at 801-965-4892, by the first day of the month of the scheduled meeting.

(b) Interested parties must be present at the Motor Carrier Advisory Board meeting to submit evidence supporting or challenging proposed rate or fee adjustments, or issues related to procedures regarding the certification process.

R909-19-23. Ability to Petition for Review.

Any tow truck motor carrier who believes the Division has acted wrongfully in denying or suspending certification or in imposing a cease-and-desist order may petition the Department for review of that action pursuant to Utah Admin. Code R907-1, Administrative Procedures.

R909-19-24. Record Retention.

Tow truck motor carriers shall retain records relating to rates charged for services for a period of six months after the service has been provided. However, if the Division or the vehicle owner have notified the carrier that it disputes its ability to charge a particular fee, the carrier shall retain the record until six months after the dispute has concluded or a court rule or order requires a longer retention period.

R909-19-25. Life Essential Property.

Property which is deemed as life essential shall be given to the vehicle owner regardless of payment for rendered services.

KEY: safety regulations, tow trucks, towing, certifications
December 31, 2019 **41-6a-1404**
Notice of Continuation June 2, 2016 **41-6a-1405**
41-6a-1406
53-1-106
53-8-105
72-9-601
72-9-602
72-9-603
72-9-604
72-9-301
72-9-303
72-9-701
72-9-702
72-9-703

R940. Transportation Commission, Administration.
R940-1. Establishment of Toll Rates.
R940-1-1. Purpose and Authority.

The purpose of this rule is to establish procedures for the setting of toll rates. This rule is authorized by Utah Code Section 72-6-118.

R940-1-2. Definitions.

(1) "Commission" means the Transportation Commission, which is created in Utah Code Section 72-1-301;

(2) "Department" means the Utah Department of Transportation, which is created in Section 72-1-101;

(3) "Toll" means the toll or user fees that the operator of a motor vehicle must pay for the privilege of driving on a tollway, including the toll or user fees that the operator of a single-occupant motor vehicle must pay for the privilege of driving on a high occupancy toll lane.

(4) "Tollway" has the meaning described in Section 72-6-118.

(5) "Tollway development agreement" has the meaning described in Utah Code Section 72-6-202.

R940-1-3. Setting Toll Rates.

(1) The Commission shall be responsible for setting toll rates on state highways as specified in this rule.

(2) Toll rates for facilities included in a tollway development agreement shall be set in accordance with the terms and conditions of the tollway development agreement. Terms and conditions relating to toll rates are required to be presented to the Commission in connection with award of the tollway development agreement, and any modifications to such terms and conditions will be considered a substantial modification or amendment requiring Commission approval under Section R940-1-3.

(3) The Commission may, in its sole discretion, increase the toll rates for a facility subject to a tollway development agreement above the amount allowed under the tollway development agreement.

R940-1-4. Toll Rates.

(1) The Commission will set tolls at a rate designed to keep traffic freely flowing in each payment zone. The Department will calculate the optimal toll rate for each payment zone and create a schedule of optimal toll rates. The Department will submit the schedule of optimal toll rates to the Commission for prior approval. The Department will review the schedule of optimal toll rates as often as necessary to maintain the optimal traffic flow in each payment zone, but at least every 6 months. The Department will post the schedule of optimal toll rates on its Internet web site, which will be accessible by the public at: https://www.udot.utah.gov/PaymentZoneTollSchedule. The toll rate in effect shall be posted on variable message signs at each payment zone.

(2) The maximum toll rate is $4.00 per payment zone.

(3) Toll rates for roads that are subject to a tollway development agreement shall be set in the tollway development agreement.

R940-1-5. Tollway Restricted Special Revenue Fund.

(1) Pursuant to state law, tolls collected by the department and certain funds received by the department through a tollway development agreement are deposited in the Tollway Special Revenue Fund established in Section 72-2-120.

(2) Monies from the fund may be used pursuant to Section 72-2-120.

KEY: transportation, tolls, high occupancy toll lanes, tollways

August 26, 2019 72-2-120
Notice of Continuation December 19, 2020 72-6-118

R940. Transportation Commission, Administration.

R940-5. Approval of Highway Facilities on Sovereign Lands.

R940-5-1. Authority.

This rule is required by Section 72-6-303 and is enacted under the authority of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

R940-5-2. Purpose.

(1) This rule establishes minimum guidelines for the Commission to consider when reviewing a proposed plan to construct a highway facility over sovereign lakebed lands as part of an application to lease sovereign land through the Division of Forestry, Fire and State Lands of the Department of Natural Resources, as provided in Section 65A-7-5.

(2) When considering a proposed plan to construct a highway facility over sovereign lakebed lands, it is the obligation of the Utah Transportation Commission to safeguard the public interest by thoroughly evaluating the financial viability of the project to ensure the project can be constructed and completed as proposed, that the project can be completed within the proposed time frame, to ensure the long-term viability and operability of the project by the proposer; and to ensure that the facility is safe and meets current engineering standards for design, construction, operation, and maintenance.

(3) Commission approval of a plan to construct a highway facility over sovereign lakebed lands does not constitute approval of an application to lease state lands by the Division of Forestry, Fire and State Lands as provided under Section 65A-7-5. Issuance of surface leases of state lands is determined separately under a process determined by the Division of Forestry, Fire and State Lands as provided under state law and administrative rule.

R940-5-3. Definitions.

Except as otherwise stated in this rule, terms used in this rule are defined in Section 72-6-302. The following additional terms are defined for this rule.

(1) "Commission" means the Utah Transportation Commission, created in Section 72-1-301.

(2) "Department" means the Utah Department of Transportation, created in Section 72-1-101.

(3) "Proposed plan" means a plan submitted by a private entity to the Commission for approval to construct a highway facility over sovereign lakebed lands.

(4) "Proposer" means the private entity that submits an application to the Commission.

R940-5-4. Submission of Proposed Plan and Application.

(1) The Commission may accept delivery of a proposed plan to construct a highway facility over sovereign lakebed lands as part of an application to lease sovereign land through the Division of Forestry, Fire and State Lands.

(2) The proposer must submit a minimum of 20 copies of the proposed plan to the Commission.

(3) The proposed plan must be submitted to the Commission in a format that corresponds to the required information contained within this rule and must contain the specific information requested under this rule. Any supporting documentation not required under this rule may be submitted in an appendix.

R940-5-5. Preliminary Review of the Qualifications and Financial Resources of the Proposer.

(1) The Commission will conduct a preliminary review of the proposed plan to determine the qualifications and financial resources of the proposer.

(2) The proposer must submit the following information:

(a) a description of the legal structure of the proposer, including equity ownership structure of the entity;

(b) information on third-party consultants (five page limit per entity), including investment bankers, lawyers, engineers, traffic consultants and other entities that will provide information necessary for the submission of the proposed plan. Consultant information must include the contact information, experience and a brief biography of each individual consultant, and must describe the prior experience of similar projects for each consulting firm (the submission must contain a letter, printed on company letterhead and signed by an officer of the respective firm, stating that the firm has been retained by the proposer to do the scope of work required and detail the elements of the said scope);

(c) a maximum two-page description of the physical elements of the proposed project;

(d) a maximum two-page description of the permitting and environmental elements of the proposed project;

(e) a maximum five-page description of the funding and finance plan for the proposed project;

(f) an explanation of whether the proposer plans to own the asset for at least the first 10 years of the operation. If not, provide a description of the proposer's plan to transfer or otherwise sell part or all of the asset to other entities;

(g) information describing the financial strength of the proposer, including:

(i) a comprehensive budget for the preliminary developmental elements of the proposed project, including but not limited to:

(A) preliminary design and engineering (30 percent);

(B) traffic and revenue study;

(C) financial plan and pro-formas for the life of the project;

(D) independent engineer's report;

(E) permitting and other preliminary environmental work;

(F) proposer staff budget, including a list of the staff members and proposed budget;

(G) an estimate of the cost to review the proposed plan by the Utah Department of Transportation; and

(H) a timeline of the aggregated development budget payments, including all elements required through financial close;

(ii) proof of financial sufficiency showing that the proposer's corporate entity has sufficient funds to pay for the items listed in the comprehensive development budget and at the required times shown in the budget timeline. If development funds are to come from third parties, present proof of financial sufficiency for those entities;

(h) a statement whether the proposer will indemnify the state and what resources are at the proposers disposal to backstop the indemnification;

(i) terms the proposer seek from the state for the sovereign state lands impacted by the proposed plan;

(j) the type and amount of insurance that will be carried by the proposer.

R940-5-6. Final Review of Final Statement of Qualifications and Financial Resources, and Final Review of Technical Proposal.

(1) As specified under section 72-6-303, the proposer must submit the following information:

(a) a map indicating the location and legal description of the highway facility and all proposed interconnections with other highway facilities;

(b) a description of the highway facility, including the conceptual design of the highway facility and a statement whether the facility will be operated and maintained as a tollway facility;

(c) a list of the major permits and approvals required for developing or operating improvements to the highway facility

from local, state or federal agencies and a projected schedule for obtaining the permits and approvals;

(d) a description of the types of public utility facilities, if any, that will be crossed by the highway facility and a statement of the plans to accommodate the crossing;

(e) a description of the types of public utilities used, carried, or accommodated by the highway facility and a statement of the plans to use, carry or accommodate the public utilities;

(f) an estimate of the design and construction costs of the highway facility;

(g) a statement setting forth the private entity's general plans for constructing, operation, and maintaining the highway facility, including:

(i) the proposed date for development, operation, or both of the highway facility ;

(ii) the proposed term of the lease over sovereign lakebed lands; and

(iii) a demonstration by the private entity that the proposed plan is financially viable;

(h) the names and addresses of the persons who may be contacted for further information concerning the highway facility application.

(i) demonstration that the proposed highway facility is contained within the long-range highway plan prepared by the Department or by a metropolitan planning organization, including the visionary long-range highway plan.

(j) a statement whether or how the highway facility can safely accommodate recreational fishing or other recreational activities on the highway facility.

(2) The commission also requires the following information:

(a) a copy of the agreement entered into by the Department and the proposer, pursuant to Section 72-6-303, demonstrating that the proposed construction plan meets engineering and design standards specified by the Department, including authorization for the Department to assure the safety of the design, construction, operation, and maintenance of the facility;

(b) proof of a performance bond issued for the project pursuant to the provisions of Section 63G-6-505 and 507;

(c) verification of executed steps identified in the funding and finance plan required and submitted as part of the Preliminary Review required under R940-5-5 necessary to complete proof of financial strength of the proposed plan (for example, if the funding and finance plan submitted under the Preliminary Review states that the proposer would have a letter of credit available for a portion of the funding and financing plan, and the proposer had demonstrated during the Preliminary Review that such proof is available, the Commission will likely require the letter of credit executed and delivered as part of Final Review required under this part);

(d) final submission of information requested by the Commission under the Preliminary Review; and

(e) any additional information required by the Commission and posted by the Commission on the Department's website necessary to determine the feasibility and financial viability of the proposal.

R940-5-7. Review of Proposal.

(1) As part of the Commission review of a proposed plan to construct a highway facility over sovereign lakebed lands, the Commission will consider the public interest to ensure the proposed plan is feasible, financially viable, and that the facility is safe by meeting current engineering standards. At the same time, the Commission will provide timely review of the proposed plan to help meet business time lines and provide greater certainty for the proposer.

(2) The Commission reserves the right to require or permit the proposer to submit revisions, clarifications, or supplementals of the proposal during the review process.

(3) The Commission may appoint a committee of its members to evaluate a proposal for recommendation to the full Commission.

(4) The Commission shall consider recommendations made by the Department, including whether the highway construction plan contained within the proposal meets engineering and design standards outlined in an agreement entered into by the Department and the proposer.

(5) The Commission may, at any time in its sole discretion, refuse to review an application if the proposal fails to meet the guidelines established in Section 72-6-303 and this rule.

R940-5-8. Approval of Proposed Plan.

(1) The Commission shall not approve any proposal until the proposer has entered into an agreement with the Department as required in Section 72-6-303.

(2) If the Commission approves a proposal:

(a) a notice will be given to the proposer;

(b) the notice will be posted on the Department's website; and

(c) a copy of the notice will be given to the Division of Forestry, Fire and State Lands.

KEY: highway, construction, lakebed, sovereign lands
September 15, 2011 72-6-303
Notice of Continuation December 19, 2019

R986. Workforce Services, Employment Development.
R986-700. Child Care Assistance.
R986-700-701. Authority for Child Care Assistance (CC) and Other Applicable Rules.

(1) The Department administers Child Care Assistance (CC) pursuant to the authority granted in Section 35A-3-310.

(2) Rule R986-100 applies to CC except as noted in this rule.

(3) Applicable provisions of R986-200 apply to CC, except as noted in this rule or where in conflict with this rule.

R986-700-702. General Provisions.

(1) CC is provided to support employment for U.S. citizens and qualified aliens authorized to work in the U.S. Child care for approved education and training activities, job search, or for an approved temporary change as defined in R986-700-703 may be authorized in accordance with rule.

(2) CC is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:

(a) parents;

(b) specified relatives; or

(c) clients who have been awarded custody or appointed guardian of the child by court order and both parents are absent from the home. If there is no court order, an exception can be made on a case by case basis in unusual circumstances by the Department program specialist.

(3) Child care is provided only for children living in the home and only during hours when neither parent is available to provide care for the children. To be eligible, the child must have a need for at least eight hours of child care per month as determined by the Department.

(4) If a client is eligible to receive CC, the following children, living in the household unit, are eligible:

(a) children under the age of 13; and

(b) children up to the age of 18 years if the child;

(i) meets the requirements of rule R986-700-717, and/or

(ii) is under court supervision.

(5) Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children, homeless children and FEP or FEPTP eligible children will be prioritized at the top of the list and will be served first. "Special needs child" is defined in rule R986-700-717.

(6) Payments are issued monthly based on a client's eligibility for services in that month. The amount of CC might not cover the entire cost of care.

(7) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.

(8) CC can only be provided by an eligible provider approved by the Department and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.

(9) CC will not be paid to a client for the care of his or her own child(ren) when the client is working in a residential setting. CC may be approved where the client is working for an approved child care center, does not regularly watch his or her own children at the center, and does not have an ownership interest in the child care center. CC will not be paid to a client for the care of his or her own child(ren) if the client is also the licensee or is a stockholder, officer, director, partner, manager or member of a corporation, partnership, limited liability partnership or company or similar legal entity providing the CC.

(10) Neither the Department nor the state of Utah is liable for injuries that may occur when a child is placed in child care even if the parent receives a subsidy from the Department.

(11) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC for the foster children.

(12) Once eligibility for CC has been established, eligibility must be reviewed once every twelve months. The review is not complete until the client has completed, signed and returned all necessary review forms to the local office. All requested verifications must be provided at the time of the review. If the Department determines the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in R986-700-710(3), the Department may terminate CC even if the certification period has not expired.

R986-700-703. Client Rights and Responsibilities.

In addition to the client rights and responsibilities found in R986-100, the following client rights and responsibilities apply:

(1) A client has the right to select the type of child care which best meets the family's needs.

(2) If a client requests help in selecting a provider, the Department will refer the client to the local Care About Child Care agency.

(3) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.

(4) A client is responsible to pay all costs of care charged by the provider. If the child care assistance payment provided by the Department is less than the amount charged by the provider, the client is responsible for paying the provider the difference.

(5) The only changes a client must report to the Department within ten days of the change occurring are:

(a) that the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in R986-700-710(3);

(b) if the client no longer needs child care;

(c) a change of address;

(d) a child receiving child care moves out of the home;

(e) a change in the child care provider, including when care is provided at no cost; and,

(f) when the child has stopped attending child care or has not attended child care for at least eight hours during the month for which CC was authorized.

(6)(a) The following are allowable temporary changes:

(i) Time-limited absences from work due to medical or other emergency, such as maternity leave, bed rest, or temporary medical issues of the client or an immediate family member living in the client's home if the client is responsible for the immediate family member's care;

(ii) Temporary fluctuations in earnings or hours, such as summer break for teachers or seasonal hours changes for IRS employees, that would otherwise have the effect of causing the client to fail to meet the minimum work requirements for eligibility;

(iii) Scheduled holidays or breaks in a client's educational training schedule;

(iv) An eligible child turning 13 years old during an eligibility review period, unless the child no longer has a need for child care; and,

(v) A client who has been approved for ongoing employment support child care at application or recertification and has a permanent loss of employment may remain eligible through the remainder of that certification period.

(b) A client who experiences an allowable temporary change after having been approved for ongoing employment support child care (ES CC) may continue to receive child care

payments at the same level for the remainder of the certification period.

(7) Once an eligibility determination is made and a full month's payment and copayment is assessed, benefits will be paid at the same level during the remainder of the certification period so long as the client remains eligible, except that:

(a) The Department may act on reported changes that result in a participation increase or copayment decrease, and

(b) Benefits may be reduced if a child care provider reports a lower monthly charge or the client changes to a different child care provider.

(8) If an overpayment is established and it is determined that the client was at fault in the creation of the overpayment, the client must repay the overpayment to the Department. In some situations, the client and provider may be jointly liable. In the case of joint liability, both parties can be held liable for the entire overpayment.

(9) The Department is authorized to release the following information to the designated provider:

(a) limited information regarding the status of a CC payment including that no payment was issued or services were denied;

(b) the date the child care subsidy was issued;

(c) the subsidy amount for that provider;

(d) the copayment amount;

(e) information available in the Department Provider Portal. The Provider Portal provides a provider with computer access to limited, secure information;

(f) the month the client is scheduled for review;

(g) the date the client's application was received; and

(h) general information about what additional information and/or verification is needed to approve CC such as the client's work schedule and income.

(10) If a client uses a child care provider at least eight hours in the calendar month, and that provider has been paid for that month, the Department will not pay another provider for child care for the rest of that month, even if the client changed providers, unless the maximum subsidy payment amount for the month will not be exceeded by paying the second provider and one of the following exceptions also applies:

(a) The initial provider is no longer providing child care, is no longer an approved provider, or has been disqualified by the Department;

(b) The client relocates his or her residence and it is no longer reasonably feasible to continue using the initial provider due to travel time or distance;

(c) There is a substantial change in the days or times of day when child care is needed, such as a change in the timing of the shifts the client is working, that cannot be accommodated by the initial provider; or

(d) The Department determines a change in child care providers is necessary due to an endangerment finding for the child. The Department may, in its discretion, approve payment to a second provider due to an endangerment finding even if the maximum subsidy payment amount would be exceeded.

R986-700-704. Establishment of Paternity.

The provisions of rules R986-100 and R986-200 pertaining to cooperation with ORS in the establishment of paternity and collection of child support do not apply to ES CC.

R986-700-705. Eligible Providers and Provider Settings.

(1) The Department will only pay CC to clients who select eligible providers. All eligible providers, including providers who receive CC grants from the Department, must meet all Child Care Development Fund (CCDF) requirements. The only eligible providers are:

(a) providers regulated through Department of Health Child Care Licensing (CCL):

(i) licensed homes;

(ii) licensed child care centers, except hourly centers; and

(iii) homes with a residential certificate.

(b) license exempt providers who are not required by law to be licensed and are either;

(i) license exempt centers as defined in R430-8-3. Programs or centers must have a current letter of exempt status with Department approval from CCL; or

(ii) DWS Family, Friend and Neighbor providers (FFN) as approved by CCL. The requirements for FFN approval are provided in subsection (3) of this section and in Department policy.

(2) The following providers are not eligible for receipt of a CC payment:

(a) a provider living in the same home as the parent client and providing child care in the home where they live, unless the provider is caring for a child who has special needs who cannot be otherwise accommodated;

(b) a sibling of the child living in the home can never be approved, even for a special needs child;

(c) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;

(d) undocumented aliens;

(e) persons under age 18;

(f) a provider providing care for the child in another state;

(g) a sponsor of a qualified alien client applying for child care assistance;

(h) a provider who has committed an IPV as a provider, or as a recipient of any funds from the Office of Child Care including subsidy and grant payments, as determined by the Department or by a court. The disqualification for an IPV will remain in effect until the IPV disqualification period has run, any resulting overpayment has been satisfied, and the provider is otherwise eligible;

(i) any provider disqualified under R986-700-718;

(j) a provider who does not provide necessary information or cooperate with a Department investigation or audit or is not an approved provider;

(k) a provider whose child care subsidies are being taken pursuant to an IRS levy or garnishment; or

(l) a provider living in the same home as a non-custodial parent and providing child care for a child of that parent.

(3) FFN providers must comply with all CCDF and Department requirements and will not be approved for a CC subsidy payment unless all of the following requirements have been successfully completed and verification has been provided to CCL:

(a) complete, sign and submit an application to CCL;

(b) provide a copy of a certificate of completion of New Provider orientation and agree to comply with Department requirements and policy, including ongoing training, as explained in the orientation;

(c) pass a home inspection as provided in Department policy;

(d) complete an infant/child CPR training;

(e) complete first aid training; and,

(f) the provider and all individuals 12 years old or older living in the home where care is provided must submit to and pass a background check as provided in R986-700-751 et seq.

(4) A FFN provider must also comply with all Department policy including abiding by the ratio requirements.

(5) FFN approval must be renewed annually. Renewal information is found in Department or CCL policy. The FFN CC Provider must complete an announced inspection and show compliance with all regulations at least 30 calendar days before the expiration date of the current approval.

(6) FFN CCL provider approval is for the provider and the location(s) and is not assignable or transferable.

(7) If a program or provider is not subject to licensing

requirements, and the program or provider receives or wishes to receive CCDF funds but has had adverse action taken against it by CCL regarding DWS approval status or health and safety compliance, the program or provider's appeal shall be made to CCL according to CCL's procedures. An appeal based on adverse action by the Department shall be made to the Department in accordance with R986-100-123 et seq.

R986-700-706. Provider Rights and Responsibilities.

(1) Providers assume the responsibility to collect copayments and any other fees for child care services rendered. Neither the Department nor the state of Utah assumes responsibility for payment to providers.

(2) A provider may not charge clients receiving a CC subsidy a higher rate than their customers who do not receive a CC subsidy.

(3) Providers may retain the full monthly subsidy payment so long as at least eight hours of care were provided during the month and the provider is otherwise in compliance with Department rules and policies. The subsidy payment is to support an eligible client's monthly employment and training activities and allows for temporary absences and unforeseen circumstances. Having a child only attend one day per month or sporadically to receive a child care payment is a misuse of funds and will result in an overpayment and possible child care disqualification. Additionally, the subsidy payment is intended to be used to cover the provider's business expenses during the month for reserving the slot(s) and shall not be used to cover the client's out of pocket expenses, copayments, registration fees, late fees, field trips, or carried forward for future months of service. Providers who choose not to apply the funds as required will be subject to an overpayment and possible child care disqualification.

(4) Providers must keep accurate records of subsidized child care payments, and time and attendance. The Department has the right to investigate child care providers and audit their records. Audits and investigations may be performed by a person or entity under contract with the Department. Time and attendance records for all subsidized clients must be kept for at least three years.

(5) Providers must provide initial verification information to determine eligibility. Providers must also cooperate with an investigation or audit to determine ongoing eligibility or if eligibility was correctly determined. Cooperation includes providing information and verification and returning telephone calls or responding to emails from Department employees or other persons authorized by the Department to obtain information such as an employee of ORS in a timely manner. "A timely manner" is usually considered to be ten business days for written documentation and two business days to return a phone call or email request. Providing incomplete or incorrect information will be treated the same as a failure to provide information if the incorrect or insufficient information results in an improper decision with regard to the eligibility. Failure to disclose a material fact that might affect the eligibility determination can also lead to criminal prosecution. If a provider fails to cooperate with an investigation or audit, provide any and all information or verification requested, or fails to keep records for three years without good cause, the provider will no longer be an approved provider. Good cause is limited to circumstances where the provider can show that the reasons for the delay in filing were due to circumstances beyond the provider's control or were compelling and reasonable. The period the provider will not be an approved provider will be from the date the information or verification was due until when it is received by the Department.

(6) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider is responsible for repayment of the resulting overpayment and there may be a disqualification period and/or criminal prosecution.

(7) CCL will keep a list of all providers that have been disqualified as a provider or against whom a referral or complaint is received.

(8) All providers, except FFN providers as defined in R986-700-705(1)(b)(ii), are required to report their monthly, full-time child care rates to the local Care About Child Care agency. All providers must also report the rate for each individual child to the Department if the amount is less than the rate reported to Care About Child Care. Failure to report reduced rates may result in an overpayment.

(9) Providers are required to access the Provider Portal at jobs.utah.gov/childcare and:

(a) submit and manage bank account information;

(b) read and agree to the terms and conditions contained in the Portal;

(c) view child care payment information;

(d) manage Provider Portal user access to ensure only those users with authority to make changes can do so. The provider is liable for all changes made and information provided through the Provider Portal;

(e) report the following changes within 10 days, or by the 25th of the month, whichever is sooner:

(i) a reduced or part-time rate for an individual child in care, as applicable. This includes reporting any rate changes or updates that occur for each child once a rate has been submitted in the portal;

(ii) a child is no longer in child care;

(iii) a child is not expected to be in child care the following month;

(iv) that the provider received a greater subsidy payment amount than what was charged to the client for the month of service. Excess subsidy funds cannot be used to cover outstanding balances, copayments, registration fees, late fees, field trips, or future services. The provider should notify the Department and the difference will either be deducted from the next month's subsidy payment or the funds must be returned to the Department;

(v) that a child has not attended for at least eight hours by the 25th of the month, regardless of whether the child attends or is expected to attend for at least eight hours following the 25th of the month; and

(vi) a change in financial institution account information for direct deposit.

(f) Effective February 1, 2018, between the 25th of each month and the end of the month, a licensed provider shall certify, in a manner specified by the Department, that the licensed provider has reviewed each child's attendance and reported any reportable changes in each child's attendance, including future changes known or expected by the provider.

(10) Providers are required to read and agree to the terms and conditions contained in the Provider Guide annually.

(11) Providers must submit a W-9 Form, Federal Employer Identification Number (EIN) or Social Security Number via the DWS Provider Portal, if required by the Department, and a 1099 will be issued annually. The Federal EIN or Social Security Number must be provided within 30 days of receipt of the first subsidy payment from the Department. Failure to submit this information shall result in the provider being removed from approved provider status.

(12) A provider who provides services for any part of a month and then terminates services with the client/child during the month, must reimburse the Department for the days when care was not provided. However, if it was necessary to remove the child from care because the child or others were endangered, and the incident was reported to CCL or local authorities, the Department may waive repayment.

R986-700-707. Copayment.

(1) "Copayment" means a dollar amount which is deducted by the Department from the standard CC subsidy for Employment Support CC. The copayment is determined on a sliding scale and the amount of the copayment is based on the parent(s) countable earned and unearned income and household size.

(2) The parent is responsible for paying the amount of the copayment directly to the child care provider.

(3) If the copayment exceeds the actual cost of child care, the family is not eligible for child care assistance.

(4) The Department will deduct the full monthly copayment from the subsidy even if the client receives CC for only part of the month.

(5) The following clients are not subject to the copayment requirement:

(a) clients at or below 100% of the poverty level;

(b) clients receiving transitional child care and FEP CC as provided in rule R986-700-708.

R986-700-708. FEP CC Transitional Child Care.

(1) FEP CC may be provided to clients receiving financial assistance from FEP or FEPTP. FEP CC will only be provided to cover the hours a client needs child care to support the activities required by the employment plan.

(2) Transitional child care is available during the six months immediately following a FEP or FEPTP termination if the termination was due to increased earned income and the household meets the work requirement and income rules for ESCC. Clients receiving transitional child care are not subject to the copayment requirement. The copayment will resume in the seventh month after the termination of FEP or FEPTP. The six month time limit is the same regardless of whether the client receives TCA or not. A client does not need to fill out a new application for child care during the six month transitional period even if there is a gap in services during those six months.

R986-700-709. Employment Support (ES) CC.

(1) Parents who are not eligible for FEP CC may be eligible for Employment Support (ES) CC. To be eligible, a parent must be employed or be employed while participating in educational or training activities. Work Study is not considered employment. A parent who attends school but is not employed at least 15 hours per week, is not eligible for ES CC. ES CC will only be provided to cover the hours a client needs child care for work or work and approved educational or training activities.

(2) If the household has only one parent, the parent must be employed at least an average of 15 hours per week. An exception may be made to the minimum work requirements with Department approval when a parent with a disability is employed at his or her full capacity and provides requested documentation and/or verification.

(3) If the family has two parents, CC can be provided if:

(a) one parent is employed at least an average of 30 hours per week and the other parent is employed at least an average of 15 hours per week and their work schedules cannot be changed to provide care for the child(ren). An exception may be made to the minimum work requirements with Department approval when both parents are employed at their full capacity and provide requested documentation and/or verification. CC will only be provided during the time both parents are in approved activities and neither is available to care for the children; or

(b) one parent is employed and the other parent cannot work, or is not capable of earning $500 per month and cannot provide care for their own children because of a physical, emotional or mental incapacity. Any employment or educational or training activities invalidate a claim of incapacity except if approved by the Department. The incapacity must be expected to last 30 days or longer. The individual claiming incapacity must verify the incapacity and why the incapacity prohibits them from providing care for their children in the following ways:

(i) receipt of disability benefits from SSA if it proves the incapacity prohibits the client from providing care for their children;

(ii) 100% disabled by VA if it proves the incapacity prohibits the client from providing care for their children; or

(iii) by submitting a written statement from:

(A) a licensed medical doctor;

(B) a doctor of osteopathy;

(C) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(D) a licensed Advanced Practice Registered Nurse; or

(E) a licensed Physician's Assistant.

(4) Employed or self-employed parent client(s) must make, either through wages or profit from self-employment, a rate of pay equal to or greater than minimum wage multiplied by the number of hours the parent is working. To be eligible for ES CC, a self employed parent must provide business records for the most recent three month time period to establish that the parent is likely to make at least minimum wage. If a parent has a barrier to other types of employment, exceptions can be made in extraordinary cases with the approval of the state program specialist.

(5) Americorps*Vista is not supported. Job Corps activities are considered to be training and a client in the Job Corps would also have to meet the work requirements to be eligible for ES CC.

(6) Applicants must verify identity but are not required to provide a Social Security Number (SSN) for household members. Benefits will not be denied or withheld if a customer chooses not to provide a SSN if all factors of eligibility are met. SSN's that are supplied will be verified. If an SSN is provided but is not valid, further verification will be requested to confirm identity.

R986-700-710. Income and Asset Limits for ES CC.

(1) Rule R986-200 is used to determine:

(a) who must be included in the household assistance unit for determining whose income must be counted to establish eligibility. In some circumstances, determining household composition for a ES CC household is different from determining household composition for a FEP or FEPTP household. ES CC follows the parent and the child, not just the child so, for example, if a parent in the household is ineligible, the entire ES CC household is ineligible. A specified relative may not opt out of the household assistance unit when determining eligibility for CC. The income of the specified relatives needing ES CC in the household must be counted. For ES CC, only the income of the parent/client is counted in determining eligibility regardless of who else lives in the household. If both parents are living in the household, the income of both parents is counted. Recipients of SSI benefits are included in the household assistance unit.

(b) what is counted as income except:

(i) the earned income of a minor child who is not a parent is not counted;

(ii) child support, including in kind child support payments, is counted as unearned income, even if it exceeds the court or ORS ordered amount of child support, if the payments are made directly to the client. If the child support payments are paid to a third party, only the amount up to the court or ORS ordered child support amount is counted; and

(iii) earned and unearned income of SSI recipients is counted with the exception of the SSI benefit.

(c) how to estimate income.

(2) The following income deductions are the only deductions allowed on a monthly basis:

(a) the first $50 of child support received by the family;
(b) court ordered and verified child support and alimony paid out by the household;
(c) $100 for each person with countable earned income; and
(d) a $100 medical deduction. The medical deduction is automatic and does not require proof of expenditure.
(3) The household's countable income, less applicable deductions in paragraph (2) above, must be at, or below, a percentage of the state median income as determined by the Department. The Department will make adjustments to the percentage of the state median income as funding permits. The percentage currently in use is available at the Department's administrative office.
(4) Charts establishing income limits and the copayment amounts are available at all local Department offices.
(5) An independent living grant paid by DHS to a minor parent is not counted as income.
(6) If a non-applicant parent pays a portion of the child care costs directly to the applicant parent, that amount is counted as income. If the non-applicant parent pays the child care provider directly, that amount will be deducted from the amount the provider reports to the Department as the charge for the child. For example: The provider's monthly charge is $800 per month. The non-applicant parent pays $300 directly to the provider. The provider should report the charge of $500, as that is the portion the applicant parent is responsible to pay. The provider charge of $500 will be used in the benefit calculation when determining the amount of subsidy. If the court orders the non-applicant to pay one-half of the child care costs, the non-applicant parent must pay one-half of the total cost of child care.
(7) Clients must meet the CCDF asset limit.

R986-700-711. ES CC to Support Education and Training Activities.
(1) CC may be provided when the client(s) is engaged in education or training and employment, provided the client(s) meet the work requirements under Section R986-700-709(1).
(2) The education or training is limited to courses that directly relate to improving the parent(s)' employment skills.
(3) ES CC will only be paid to support education or training activities for a total of 24 calendar months. The months need not be consecutive.
(a) On a case by case basis, and for a reasonable length of time, months do not count toward the 24-month time limit when a client is enrolled in a formal course of study for any of the following:
(i) obtaining a high school diploma or equivalent,
(ii) adult basic education, and/or
(iii) learning English as a second language.
(b) Months during which the client received FEP child care while receiving education and training do not count toward the 24-month time limit.
(c) CC can not ordinarily be used to support short term workshops unless they are required or encouraged by the employer. If a short term workshop is required or encouraged by the employer, and approved by the Department, months during which the client receives child care to attend such a workshop do not count toward the 24- month time limit.
(4) Education or training can only be approved if the parent can realistically complete the course of study within 24 months.
(5) Any child care assistance payment to cover training participation hours made for a calendar month, or a partial calendar month, counts as one month toward the 24-month limit.
(6) There are no exceptions to the 24-month time limit, and no extensions can be granted.
(7) CC is not allowed to support education or training if the parent already has a bachelor's degree.
(8) CC cannot be approved for graduate study or obtaining a teaching certificate if the client already has a bachelor's degree.

R986-700-712. CC for Certain Homeless Families.
(1) CC can be provided for homeless families with one or two parents when the family meets the following criteria:
(a) The family must present a referral for CC from an agency known by the local office to be an agency that works with homeless families, including shelters for abused women and children. This referral will serve as proof of their homeless state. Local offices will provide a list of recognized homeless agencies in local office area.
(b) The family must show a need for child care to resolve an emergency crisis.
(c) The family must meet all other relationship and income eligibility criteria.
(2) CC for homeless families is only available for up to three months in any 12-month period. When a payment is made for any part of a calendar month, that month counts as one of the three months. The months need not be consecutive.
(3) Qualifying families may use child care assistance for any activity including, but not limited to, employment, job search, training, shelter search or working through a crisis situation.
(4) If the family is eligible for a different type of CC, the family will be paid under the other type of CC.

R986-700-713. Amount of CC Payment.
CC will be paid at the lower of the following levels:
(1) the maximum monthly local market rate as calculated using the Local Market Survey. The Local Market Survey is conducted by the Department and based on the provider category and age of the child. The Survey results are available for review at any Department office through the Department web site on the Internet; or
(2) the rate established by the provider for services and, if required, reported to the local Care About Child Care agency; or
(3) the unit cost multiplied by the number of hours approved by the Department. The unit cost is determined by dividing the maximum monthly local market rate by 137.6 hours.

R986-700-714. CC Payment Method.
(1) The provider must provide a valid financial account and routing number to allow for payment by direct deposit. For open, ongoing cases, payment will be issued on the first day of the month for services to be provided during that month. The provider is not an employee of the Department, the Office of Child Care, or the state of Utah even if the provider is only providing care for one client.
(2) Under unusual or extraordinary circumstances, the Department can issue payment by check. If a provider cannot obtain a financial account for direct deposit, the provider must contact the Department and explain why direct deposit is not possible.
(3) In the event that a check is reported as lost or stolen, the provider is required to sign a statement that they have not received funds from the original check before a replacement check can be issued. The check must be reported as lost or stolen within 60 days of the date the check was mailed. The statement must be signed on an approved Department form. If the original check has been redeemed, the Department will conduct an investigation and the provider may be required to provide a sworn, notarized statement that the signature on the endorsed check is a forgery. If the Department determines the redeemed check was a forgery, the Department may require a waiting period prior to issuing a replacement check.

(4) The Department is authorized to stop payment on a CC check without prior notice if:

(a) the Department has determined that the client or the provider was not eligible for the CC payment, the Department has confirmed with the child care provider that no services were provided for the month in question or the provider cannot be located, and the Department has made an attempt to contact the provider: or

(b) when the check has been outstanding for at least 90 days; or

(c) the check is lost or stolen.

(5) No stop payment will be issued by the Department without prior notice to the provider unless the provider is not providing services or cannot be contacted.

R986-700-715. Overpayments.

(1) An overpayment occurs when a client or provider received CC for which they were not eligible including when a provider accepts payment but does not provide care. If the Department fails to establish one or more of the eligibility criteria and through no fault of the client, payments are made, it will not be considered to have been an overpayment if the client would have been eligible and the amount of the subsidy would not have been affected.

(2)(i) Even if CC funds are authorized by the Department, a CC provider cannot receive and retain funds for any month during which no CC services were provided. If authorized or unauthorized subsidy funds received and retained by a provider but no CC services were provided during the month, the provider will be required to reimburse the Department for the excess funds and may be disqualified from receipt of further CC subsidy funds as provided in R986-700-718.

(ii) A provider is considered to have retained subsidy funds if the provider knew or should have known the child would not receive services that month and fails to notify the Department within ten days, or if the provider does not notify the Department by the 25th of the month when the child was not in care at least eight hours that month.

(iii) If the client does not use at least eight hours of child care by the 25th of the month but the child returns after the 25th of the month and attends for at least eight hours total in the month, it may result in a partial overpayment for that month. The partial overpayment may not be assessed if the provider reports by the 25th of the month that a child was not in care during that month or stopped attending care during that month and the child returns after the 25th of the month and attends for at least eight hours total in the month.

(3) In the event that excess funds were issued for the month of service, the payment cannot be used to cover the client's out of pocket expenses, copayments, or carried forward for future months of service with a provider. The payment must be returned to the Department or, if possible, the payment for the following month may be reduced to offset the over-issuance. An overpayment may also occur when a provider receives a greater subsidy payment amount than the client was charged for the month of service.

(4) All CC overpayments must be repaid to the Department.

(a) Client overpayments may be deducted from ongoing CC payments for clients who are receiving CC. If the Department is at fault in the creation of an overpayment, the Department will deduct $10 from each month's CC payment unless the client requests a larger amount.

(b) Provider overpayments. If a provider does not repay any outstanding overpayment within 30 days of notice of the overpayment, the Department will commence collection procedures which may include recouping the overpayment by deducting a portion of the overpayment from ongoing child care subsidies from the Department. This is true even if the child or client no longer receives child care from the provider. The decision whether to recoup the overpayment from ongoing child care payments or to commence collection procedures lies with the Department and not the provider or client/s.

(i) If the Department elects to recoup the overpayment from ongoing child care payments, and the overpayment is less than $1,000, the Department will recoup the full amount within 90 days. If the overpayment is more than $1,000 the Department will recoup the amount within six months. If the recoupment presents a hardship because it is more than 50% of the provider's ongoing monthly subsidy amount, the provider can contact the Department to discuss alternative arrangements for repayment.

(ii) If a provider stops providing care and has a balance due on an overpayment, and seeks approval to become a provider at a later date, approval cannot be granted until the overpayment is paid in full even if any disqualification period has expired.

(5) CC will be terminated if a client fails to cooperate with the Department's efforts to investigate alleged overpayments.

(6) If the Department has reason to believe an overpayment has occurred and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the discretion of the Department, to offset any overpayment which may be determined.

(7) A CC provider may appeal an overpayment as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of the notice of agency action establishing the overpayment.

(8) If a provider or individual facility fails to enter into a payment plan to repay the overpayment or abide by the terms of the payment plan for 12 consecutive months, the provider will be taken off the approved provider list until all overpayments are paid in full or the arrearage on the payment plan is brought current. This is true even if there is only one overpayment.

R986-700-716. CC in Unusual Circumstances.

(1) CC may be provided for study time, to support clients in education or training activities if the parent has classes scheduled in such a way that it is not feasible or practical to pick up the child between classes. For example, if a client has one class from 8:00 a.m. to 9:00 a.m. and a second class from 11:00 a.m. to noon it might not be practical to remove the child from care between 9:00 a.m. and 11:00 a.m. These additional hours may be supported with child care.

(2) An away-from-home study hall or lab may be required as part of the class course. A client who takes courses with this requirement must verify study hall or lab class attendance. The Department will not approve more study hall hours or lab hours in this setting than hours for which the client is enrolled in school. For example: A client enrolled for ten hours of classes each week may not receive more than ten hours of this type of study hall or lab.

(3) CC may be authorized to support employment for clients who work graveyard shifts and need child care services during the day for sleep time. If no other child care options are available, child care services may be authorized for the graveyard shift or during the day, but not for both. Hours of need cannot exceed actual work hours.

(4) CC may be authorized to support employment for clients who work at home, provided the client makes at least minimum wage from the at home work, and the client has a need for child care services. The client must choose a provider setting outside the home.

R986-700-717. Child Care for Children With Disabilities or Special Needs.

(1) The Department will fund child care for children with

disabilities or special needs at a higher rate if the child has a physical, social, or mental condition or special health care need that requires;

(a) an increase in the amount of care or supervision and/or

(b) special care, which includes but is not limited to the use of special equipment, assistance with movement, feeding, toileting or the administration of medications that require specialized procedures.

(2) To be eligible under this section, the client must submit a statement from one of the professionals listed in rule R986-700-709(3)(b)(ii) or one of the following documenting the child's disability and special child care needs;

(a) Social Security Administration showing that the child is a SSI recipient,

(b) Division of Services for People with Disabilities,

(c) Division of Mental Health,

(d) State Office of Education,

(e) Baby Watch, Early Intervention Program, or

(f) by submitting a written statement from:

(i) a licensed medical doctor;

(ii) a licensed Advanced Practice Registered Nurse;

(iii) a licensed Physician's Assistant;

(iv) a licensed or certified Psychologist.

(3) Verification to support that the child is disabled and has a special need must be dated and signed by the preparer and include the following;

(a) the child's name,

(b) a description of the child's disability, and

(c) the special provisions that justify a higher payment rate.

(4) The Department may require additional information and may deny requests if adequate or complete information or justification is not provided.

(5) The higher rate is available through the month the child turns 18 years of age.

(6) Clients qualify for child care under this section if the household is at or below 85% of the state median income.

(7) The higher rate in effect for each child care category is available at any Department office.

R986-700-718. Provider Disqualification; Removal From Approved Provider Status.

(1) If a parent or provider commits an IPV, as defined in R986-100-117, the parent or provider will be responsible for repayment of the overpayment, if there is one, and will be disqualified from receipt of any funds from the Office of Child Care, including subsidy funds, grants and funds as a provider or as a parent:

(a) for a period of one year for the first IPV;

(b) for a period of two years for the second IPV; and

(c) for life for the third IPV.

(2) If the overpayment resulted from parent or provider fault not amounting to fraud or an agency error, the client and or provider will be responsible for repayment of the overpayment. There is no disqualification or ineligibility period for a fault overpayment.

(3) Effective February 1, 2018, a licensed provider that, in any six-month period, fails three times to timely certify attendance during the monthly certification period as required in rule R986-700-706(9)(f) shall be disqualified.

(4) A CC provider may appeal an overpayment, removal from approved provider status, or disqualification as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of the notice of agency action establishing the overpayment or disqualification. A provider who has been disqualified or removed from approved provider status may not continue to receive CC subsidy funds pending appeal. The disqualification period will take effect even if the provider files an appeal of the decision issued by the ALJ. If the provider fails to file an appeal within 30 days of the date of the notice of agency action and the Department issues a default decision, and the provider files a request to set aside the default, CC subsidy funds will not continue unless or until the default is set aside by the ALJ. If the request to set aside the default is denied, the provider will be disqualified pending appeal of the denial to set aside the default.

(5) A provider is ineligible for CC subsidy funds after a disqualification until all overpayments established in conjunction with the disqualification have been paid in full even if the disqualification period has ended.

(6) A provider that intentionally breaches any program rule as provided in R986-100-117, except as provided in subsection (1) of this section, or violates CC rule R986-700-706(2) through (5) or who assumes a client's identity in order to gain access to client information or payment of Department funds will be disqualified for one year for the first offense, two years for the second offense and for life for the third offense.

(7) All disqualification periods run concurrently.

(8) A disqualification issued to a provider under this subsection will follow the facility, any successor facilities, and the principal(s) of the facility.

(a) A "successor facility" is any facility that acquires the business or acquires substantially all of the assets of a facility that has been disqualified. This includes a facility whose provider changes from one status to another like a provider who was disqualified as a licensed family provider who then changes to be a license exempt provider.

(b) "Acquired" means to come into possession of, obtain control of, or obtain the right to use the assets of a business by any legal means including a gift, lease, repossession or purchase. For purposes of succession, a purchase through bankruptcy court proceedings where assets are being liquidated is not considered an acquisition, if the court places restrictions on the transfer of liabilities to the purchaser. It is not necessary to purchase the assets in order to have acquired the right to their use, nor is it necessary for the predecessor to have actually owned the assets for the successor to have acquired them. The right to the use of the asset is the determining factor.

(c) "Assets" include any property, tangible or intangible, which has value. Assets may include the acquisition of the name of the business, customers, accounts receivable, patent rights, goodwill, employees, or an agreement by the predecessor not to compete.

(d) "Substantially all" means acquisition of 90 percent or more of all of the predecessor's assets.

(f) A "principal" is the individual or individuals who were responsible for the day to day business of the child care center provided that individual had an ownership interest in the center. An ownership interest includes a shareholder, director or officer of a corporation and a partner, member or manager of a limited liability partnership or company.

R986-700-740. Child Care Quality System (CCQS) Definitions and Acronyms.

In addition to the definitions of terms found in 35A Chapter 3 and R986-100-104, and the acronyms found in R986-100-103, the following definitions apply to CCQS:

(1) "CC subsidy" means a Child Care Assistance subsidy payment.

(2) "CCDF" means the Child Care and Development Fund.

(3) "CCL" means Utah Department of Health, Child Care Licensing Program.

(4) "Certified quality rating" means the CCQS rating determined by applying the CCQS framework and assigned by OCC.

(5) "Certified Quality Rating Review Committee" or "Review Committee" means a committee consisting of one representative from OCC, one representative from a licensed

private child care program; and one expert in the field of early childhood education or school-age children, which reviews disputed quality ratings and makes recommendations to the Director of Adjudication concerning final certified quality rating decisions.

(6) "Child care program" or "program" refers to an individual location of a child care business.

(7) "Child Care Quality System" or "CCQS" refers to the comprehensive statewide system administered by OCC that provides quality ratings to eligible programs and supports programs in attaining higher levels of quality.

(8) "CCQS status" means the status assigned by OCC to a program without a default rating or certified quality rating.

(9) DWS-eligible child care program or "eligible provider" means a provider who:

(a) meets CCDF eligibility requirements;

(b) is compliant with CCL licensing requirements;

(c) has followed the CCL process to indicate the program will accept funding from OCC, including funding for children covered by CC subsidy; and

(d) can potentially receive CC subsidy and OCC grants, including ESG, if approved.

(10) "Enhanced Subsidy Grant" or "ESG" refers to monthly payments issued to an eligible program serving children covered by CC subsidies and achieving a rating of High Quality or High Quality Plus.

(11) "License in good standing" means a program is licensed by CCL, but not with a conditional license.

(12) "OCC" means the Department of Workforce Services, Office of Child Care.

(13) "Not participating" is a CCQS Status referring to a program that:

(a) has withdrawn from participation in the CCQS;

(b) does not hold a center license in good standing from CCL;

(c) is ineligible due to being disqualified by OCC; or

(d) has not applied for a certified quality rating and has not elected to become DWS-eligible.

R986-700-741. CCQS Rating and Status.

(1) Each licensed center program shall receive a CCQS rating or status, unless the program withdraws from participation following the process established by OCC policy.

(a) A licensed center program who chooses not to apply for a certified quality rating will receive a default rating.

(b) A DWS-Eligible child care program is required to participate in CCQS to remain an eligible provider. Participation means maintaining at least a default rating. An eligible provider is not required to submit an application for a certified quality rating.

(c) All CCQS ratings or statuses shall be made public on the Care About Childcare website.

(d) A DWS-eligible child care program which withdraws from participation in CCQS will become ineligible to receive CC subsidy and OCC grants or funding.

(2) A program may apply for a certified quality rating in accordance with OCC policy through the Care About Childcare website.

(a) A rating shall be awarded or a status shall be assigned no later than 180 days after the application was submitted.

(b) Certified quality ratings will be published publicly on the first day of the month of the certified rating period.

(3) A certified quality rating shall remain in place during the 12-month certified quality rating period unless a program:

(a) loses its license in good standing and goes on conditional license; or

(b) is disqualified from accepting funds from CCDF.

(4) The 12-month certified quality rating period may be modified when a program is receiving CCQS technical assistance and support from OCC, in accordance with OCC policy.

(5) Recertification. Upon expiration of the certified quality rating period, a program must recertify in order to maintain a certified quality rating.

(a) A program must follow the recertification procedures established by OCC policy.

(b) A program failing to recertify in a timely manner may receive one of the following ratings or statuses until a certified quality rating is awarded:

(i) a default Foundation of Quality rating for a program that is DWS-Eligible;

(ii) not participating status for a program that is not DWS-Eligible; or

(iii) denied participation status for a program operating on a conditional license at the time of recertification.

R986-700-742. Enhanced Subsidy Grant (ESG).

(1) To receive an Enhanced Subsidy Grant (ESG) a program must:

(a) receive a certified quality rating of:

(i) High Quality; or

(ii) High Quality Plus;

(b) serve children for whom child care was paid for with CC subsidy payments during the 12-month period used to calculate the ESG;

(c) maintain a license in good standing with CCL during the 12-month certification period;

(d) maintain status as a DWS-Eligible child care program during the 12-month certification period;

(e) agree to the comply with the requirements outlined in the certified quality rating award notice;

(f) agree to the amount of the ESG stated on the certified quality rating award notice;

(g) agree to receive the ESG through the process established by OCC policy; and

(h) not have a pending administrative review on the awarded certified quality rating.

(i) Upon final disposition of a pending administrative review, an ESG may be issued retroactively where all other ESG requirements are met.

(2) An ESG for a program that has an outstanding adjudicated overpayment or other debt owing to OCC shall be issued as follows:

(a) if the overpayment amount is less than the monthly ESG amount, the ESG shall be reduced by the amount of outstanding overpayment due; or

(b) if the overpayment amount is greater than the monthly ESG, a monthly ESG shall continue to be reduced until the overpayment is fully repaid.

(3) An overpayment for which there is pending administrative review or appeal shall not impact the ESG until final disposition of the action is issued.

(4) The monthly ESG will be calculated in accordance with OCC policy.

R986-700-743. CCQS Rating Administrative Review.

(1) A child care program may request a review of a certified quality rating following the process established by OCC policy.

(2) A review request shall be submitted within 30 calendar days of the date of the certified rating award notice except where there is good cause for failing to request a review within this timeframe.

(a) Good cause for failing to timely request review is limited to circumstances that are:

(i) beyond the party's control, or;

(ii) compelling and reasonable.

(b) Good cause excludes ordinary illness, lack of

transportation and temporary absences.

(3) Quality Rating Pending Review. The certified quality rating issued in the quality rating award notice shall be published by OCC and remain published until the review is complete. Issuance of an ESG shall be temporarily suspended until the review is complete.

(4) OCC Review. All requests for review submitted to OCC shall be subject to an OCC review. Upon final determination of the OCC review, a notice of determination shall be sent to the program.

(5) If a program does not agree with the OCC review determination, the program may request a review by the Certified Quality Rating Review Committee.

(a) A review request shall be submitted within 30 calendar days of the date of the OCC review determination, except where there is good cause for failing to request a review within this timeframe pursuant to R994-700-742(2).

(b) A review by the Review Committee is an informal adjudicative proceeding under the Utah Administrative Procedures Act.

(c) A review may:

(i) include an OCC staff member to present the conclusions of the OCC review;

(ii) provide an opportunity for the program to present their reasons and evidence for the review request; and

(iii) include witnesses or legal representatives, as applicable; and

(iv) a request for any additional documentation relevant to the review, from either OCC or the program.

(d) Failure by the program to respond to any request by the Review Committee shall result in a dismissal of the review request.

(e) The Review Committee will issue a recommendation to the Department of Workforce Services Director of Adjudication once the review process is complete.

(6) The Director of Adjudication will make a final certified quality rating decision based upon the recommendation of the Review Committee. The Director of Adjudication decision is the final agency action pursuant to the Utah Administrative Procedures Act.

R986-700-751. Background Checks.

(1) Sections R986-700-751 through 756 apply to child care providers identified in Utah Code Section 35A-3-310.5(1) and license-exempt providers and other programs and grantees not subject to CCL requirements.

(2) The following persons must submit to a background check:

(a) The provider;

(b) Each person age 12 years old or older who is living in the household where the child care is provided; and

(c) Each person who is employed or volunteering at the facility where the child care is provided, if the person's activities involve care or supervision of children or unsupervised access to children.

(3) If child care is provided in the child's home, a background check must be done on each person age 12 years old or older living in the child's home who is not on the client's child care case.

(4) A client is not eligible for a subsidy if the client chooses a provider and any person described in Subsection (2) above has:

(a) a supported finding of severe abuse or neglect by the Department of Human Services, a substantiated finding by a Juvenile court under Subsection 78-3a-320 or a criminal conviction related to neglect, physical abuse, or sexual abuse of any person; or

(b) a conviction for an offense as identified in R986-700-754; or

(c) an adjudication in juvenile court of an act which if committed by an adult would be an offense identified in R986-700-754.

R986-700-752. Definitions.

Terms used in the section R986-700-751 through 756 are defined as followed:

(1) "Convicted" includes a conviction by a jury or court, a guilty plea or a plea of no contest, an adjudication in juvenile court or an individual who is currently subjected to a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, or a plea in abeyance.

(2) "Covered Individual" means:

(a) each person providing child care;

(b) all individuals 12 years old or older residing in a residence where child care is provided;

(c) each person who is employed or volunteering at the facility where the child care is provided, if the person's activities involve care or supervision of children or unsupervised access to children.

(3) "Supported" means a finding by the Utah Department of Human Services (DHS), at the completion of an investigation by DHS, that there is a reasonable basis to conclude that one or more of the following severe types of abuse or neglect has occurred:

(a) if committed by a person 18 years of age or older;

(i) severe or chronic physical abuse;

(ii) sexual abuse;

(iii) sexual exploitation;

(iv) abandonment;

(v) medical neglect resulting in death, disability, or serious illness;

(vi) chronic or severe neglect; or

(vii) chronic or severe emotional abuse

(b) if committed by a person under the age of 18:

(i) serious physical injury, as defined in Subsection 76-5-109(1)(f) to another child which indicates a significant risk to other children, or

(ii) sexual behavior with or upon another child which indicates a significant risk to other children.

R986-700-753. Criminal Background Checks.

(1) The Department will contract with the CCL to perform a criminal background check, which includes a review of the Bureau of Criminal Identification, (BCI) database maintained by the Department of Public Safety pursuant to Part 2 of Chapter 10, Title 53; and if a fingerprint card, waiver and fee are submitted, CCL will submit the fingerprint card and fee to the Utah Department of Public Safety for submission to the FBI for a national criminal history record check.

(2) Each client requesting approval of a covered child care provider must submit to CCL a form, which will include a certification, completed and signed by the child care provider as part of the DWS FFN approved provider process. Additional household members must give permission to run the background check. The provider shall pay all applicable background check fees. A fingerprint card and fee, prepared either by the local law enforcement agency or an agency approved by local law enforcement, shall also be submitted if required by Subsection (4) below. If the fingerprints are submitted electronically, they must be submitted in conformity with the CCL guidelines regarding electronic submissions. Fingerprints are not required to be submitted if:

(a) The covered individual has previously submitted fingerprints to CCL for a Next Generation national criminal history record check;

(b) The covered individual has resided in Utah continuously since the fingerprints were submitted; and

(c) The covered individual has not permitted his or her background check to lapse or expire since the fingerprints were submitted.

(3) The provider must state in writing, based upon the provider's best information and belief, that no covered person, including the provider's own children, has ever been convicted of a felony, misdemeanor or had a supported finding from DHS or a substantiated finding from a juvenile court of severe abuse or neglect of a child. If the provider is aware of any such conviction or supported or substantiated finding, but is not certain it will result in a disqualification, CCL will obtain information from the provider to assess the threat to children. If the provider knowingly makes false representations or material omissions to CCL regarding a covered individual's record, the provider will be responsible for repayment to the Department of the child care subsidy paid by the Department. If a provider signs an attestation, a disqualification based on a covered individual who no longer lives in the home can be cured under certain conditions.

(4) All providers, caregivers who are 16 years old and older, and covered individuals who are 18 years and older are required to submit fingerprints under these rules as requested. In addition, the Department may conduct background checks annually.

(5) If CCL takes an action adverse to any covered individual based upon the background check, CCL will send a denial letter to the provider and the covered individual.

(6) A background check must be submitted for each covered individual:

(a) Prior to the date the person becomes a covered individual, unless:

(1) The person is turning 12 years old and resides in the facility where child care is being provided, in which case the background check form must be submitted and authorized within ten business days of the date the child turns 12 years old;

(2) The person is currently employed by another child care provider within the State and has a current background check; or

(3) The person has been separated from employment from another child care provider within the State for no more than 180 days and has a current background check; and

(b) On an annual basis for each covered individual.

(7) A person may not begin work as a covered individual until the person has completed a fingerprint-based check and the results have been received. After the fingerprint-based check has been completed but prior to full completion of the background check process, a covered individual must be supervised by a person who has fully completed and passed the background check process.

R986-700-754. Exclusion from Child Care Due to Criminal Convictions.

(1) As required by Utah Code Subsection 35A-3-310.5(4), if the criminal conviction was a felony, or is a misdemeanor that is not excluded under paragraphs (2) or (3) below, the covered individual may not provide child care or reside in a home where child care is provided.

(2) As allowed by Utah Code Subsection 35A-3-310.5(5), the Department hereby excludes the following misdemeanors and determines that a misdemeanor conviction listed below does not disqualify a covered individual from providing child care:

(a) any class B or C misdemeanor offense under Title 32A, Alcoholic Beverage Control Act, except for 32A-12-203, Unlawful sale or furnishing to minors;

(b) any class B or C misdemeanor offense under Title 41, Chapter 6a, Traffic Code except for 41-6a-502, Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration, when the individual had a child in the car at the time of the offense;

(c) any class B or C misdemeanor offense under Title 58, Chapter 37, Utah Controlled Substances Act;

(d) any Class B or C misdemeanor offense under Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(e) any class B or C misdemeanor offense under Title 58, Chapter 37b, Imitation Controlled Substances Act;

(f) any class B or C misdemeanor offense under Title 76, Chapter 4, Inchoate Offenses, except for 76-4-401, Enticing a Minor;

(g) any class B or C conviction under Chapter 6, Title 76, Offenses Against Property, Utah Criminal Code;

(h) any class B or C conviction under Chapter 6a, Title 76, Pyramid Schemes, Utah Criminal Code;

(i) any class B or C misdemeanor offense under Title 76, Chapter 7, Subsection 103, Adultery, and 104, Fornication;

(j) any class B or C conviction under Chapter 8, Title 76, Offenses Against the Administration of Government, Utah Criminal Code except 76-8-1201 through 1207, Public Assistance Fraud; and 76-8-1301 False statements regarding unemployment compensation;

(k) any class B or C conviction under Chapter 9, Title 76, Offenses Against Public Order and Decency, Utah Criminal Code, except for:

(i) 76-9-301, Cruelty to Animals;

(ii) 76-9-301.1, Dog Fighting;

(iii) 76-9-301.8, Bestiality;

(iv) 76-9-702, Lewdness;

(v) 76-9-702.5, Lewdness Involving Child; and

(vi) 76-9-702.7, Voyeurism; and

(l) any class B or C conviction under Chapter 10, Title 76, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for:

(i) 76-10-509.5, Providing Certain Weapons to a Minor;

(ii) 76-10-509.6, Parent or guardian providing firearm to violent minor;

(iii) 76-10-509.7, Parent or Guardian Knowing of a Minor's Possession of a Dangerous Weapon;

(iv) 76-10-1201 to 1229.5, Pornographic Material or Performance;

(v) 76-10-1301 to 1314, Prostitution; and

(vi) 76-10-2301, Contributing to the Delinquency of a Minor and

(m) any class A misdemeanor where the conviction occurred more than ten years ago and the offense would be an excludable offense listed in this section.

(3) The Department will rely on the criminal background screening as conclusive evidence of the conviction and the Department may revoke or deny approval for a provider based on that evidence.

(4) If a covered individual causes a provider to be disqualified as a provider based upon the criminal background screening and the covered individual disagrees with the information provided by BCI, the covered individual may challenge the information by contacting BCI directly. If the information causing the disqualification came from a Utah court, the covered individual must contact that court or seek an expungement as provided in Utah Code Ann. Sections 77-18-10 through 77-18-15.

(5) All child care providers must report all felony and misdemeanor arrests, charges or convictions of covered individuals to DOH within 48 hours of the arrest, notice of the charge, or conviction. All child care providers must also report a person aged 12 or older moving into the home where child care is provided within ten calendar days of that person moving in. A release for a background check must also be provided for that person within the time requested by the Department or DOH.

(6)(a) Pursuant to Utah Code Ann. Section 35A-3-310.5(5)(b), the Department's designee for considering and

exempting individual cases is the Child Care Licensing Administrator within the Utah Department of Health.

(b) The Department's designee may exempt a covered individual from being excluded from providing child care due to a criminal conviction if the Department's designee determines that the nature of the background check finding or relevant mitigating circumstances indicate the covered individual does not pose a risk to children.

(c) Notwithstanding Subsection (b) above, the Department's designee shall not exempt a covered individual convicted of any of the following:

(i) Any offense specifically not excluded under Subsection (2) above;

(ii) Any "violent felony" as that term is used in Section 76-3-203.5(1)(c) of the Utah Code;

(iii) Any felony against a child, including child pornography;

(iv) Any felony involving abuse or neglect of a spouse, child, or vulnerable adult;

(v) Any felony involving rape or sexual assault;

(vi) Any felony involving kidnapping;

(vii) Any felony involving arson;

(viii) Any felony involving physical assault or battery;

(ix) Any drug-related felony, unless the offense was a non-violent offense and occurred at least ten years prior to the date of the background check; or

(x) Any violent misdemeanor committed as an adult against a child, including offenses involving child abuse, child endangerment, sexual assault, or child pornography.

R986-700-755. Covered Individuals with Arrests or Pending Criminal Charges.

If CCL determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would not be excluded under R986-700-754, the Department will act to protect the health and safety of children in child care that the covered individual may have contact with. The Department may revoke or suspend approval of the provider if necessary to protect the health and safety of children in care.

R986-700-756. Exclusion From Child Care Due to Finding of Abuse, Neglect, or Exploitation.

(1) Pursuant to Utah Code Subsection 62A-4a-1005(2)(a)(v) CCL will screen all covered individuals, including children residing in a home where child care is provided, for a history of a supported finding of severe abuse, neglect, or exploitation from the licensing information system maintained by the Utah Department of Human Services (DHS) and the juvenile court records. The juvenile court records need only be accessed as provided in 35A-3-310.5(2)(c).

(2) If a covered individual appears on the licensing information system, the threat to the safety and health of children will be assessed. The Department or CCL may revoke any existing approval and refuse to permit child care in the home until the Department or CCL is reasonably convinced that the covered individual no longer resides in the home.

(3) If the Department or CCL denies or revokes approval of a child care subsidy based upon the licensing information system, the Department will send a written decision to the client.

(4) If the DHS determines a covered individual has a supported finding of severe abuse, neglect or exploitation after the Department approves a child care subsidy, the covered individual has ten calendar days to notify CCL. Failure to notify CCL may result in the child care provider being liable for an overpayment for all subsidy amounts paid to the client between the finding and when it is reported or discovered.

R986-700-757. Consequences for Failure to Comply; Appeals.

(1) A child care provider that fails to comply with Sections R986-700-751 through -756 will be removed from approved provider status until the provider complies. The child care provider may also be held liable for additional penalties under Section R986-700-718 if the requirements for liability under that section are met.

(2) A child care provider or covered individual may appeal an adverse action related to the background check requirements by following the procedure for appeals set forth in Section R986-700-705(7).

R986-700-778. Training and Scholarships for Early Childhood Teachers.

The Department may contract without outside entities, as funding permits, to provide training, scholarships and consulting services to assist individuals who intend to receive a Child Development Associate Credential (CDA).

R986-700-779. Educational Improvement Opportunities Outside of the Regular School Day Grant Program.

(1) This rule is authorized by Section 53F-5-210, which creates a grant program for out-of-school time programs and instructs the Department to make rules to administer the grant program for private providers, nonprofit providers, and municipalities.

(2) The purpose of this rule is to outline procedures for the Educational Improvement Opportunities Outside of the Regular School Day Grant Program, including the acceptance of grant applications and the awarding of grants.

(3) Terms used in this rule have the definitions given to them in Section 53F-5-210. For purposes of this rule, "private matching funds" as used in Subsection 53F-5-210(7) means funds from a private source that have not been earmarked or pledged as a match for any other purpose. "Private matching funds" specifically excludes the following:

(a) any federal funds, and

(b) parent funds or any other funds, if the practical effect of earmarking or pledging the funds is to pass the cost of the match along to parents.

(4) For each year the Department is authorized to solicit grant applications, the Department shall publish a grant application timeline that includes the start and end dates for application acceptance and anticipated timeframes for grant evaluation, acceptance or rejection, and funding. The Department may disregard any application that does not comply with the grant application timeline.

(5) The Department shall create a grant application consistent with the requirements of Subsections 53F-5-210(4) and (7)(a). Applicants shall apply for grants using the application the Department creates. The Department may disregard incomplete or non-conforming applications.

(6) The Department shall evaluate and accept or reject grant applications in accordance with the criteria set forth in Subsection 53F-5-210(5).

(7) Grant recipients shall execute and comply with a standard grant terms and conditions agreement with the Department as a condition of receiving a grant under this rule.

(8) Grant recipients shall claim grant funds by submitting reimbursement requests in accordance with Department reimbursement procedures.

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Notice of Continuation September 3, 2015 **35A-3-310**
53F-5-210

R990. Workforce Services, Housing and Community Development.
R990-100. Community Services Block Grant Rules.
R990-100-1. Authority.

This rule is authorized under Section 35A, Chapter 8, Part 10, State Community Services Act, which allows the Housing and Community Development Division (HCDD) to receive funds for and to administer federal aid programs.

R990-100-1a. Acronyms.

(1) HCDD: Housing and Community Development Division
(2) CSBG: Community Services Block Grant
(3) SCSO: State Community Services Office

R990-100-1b. Definitions.

In addition to the definitions of terms found in Section 35A-8-1002 and the Community Services Block Grant Program, 42 U.S.C. 9902, the following definitions apply to this rule:

(1) "Community Action Programs" means local private and public non-profit organizations that carry out the Community Action Program (CAP), which was founded by the 1964 Economic Opportunity Act to fight poverty by empowering the low-income as part of the War on Poverty.

(2) "CSBG Act" means the Community Opportunities, Accountability, and Training and Educational Services Act of 1998 (also known as the COATES Act, Pub. L. No. 105 et seq., 42 U.S.C. Chapter 106).

R990-100-2. Purpose.

The purpose of this rule is to establish standards and procedures for the Community Services Block Grant authorized under the Community Opportunities, Accountability, and Training and Educational Services Act of 1998 (CSBG Act), contracted to eligible entities (counties or combinations of counties and Community Action Programs) to provide a range of services and activities having a measurable and potentially major impact on causes of poverty in the local communities.

R990-100-3. Eligible Grantees for CSBG Programs and Projects.

(1) Utah shall distribute at least 90 percent of available funds as pass-through grants to eligible entities to administer directly or, at the eligible entity's option, to sub-contract, for the performance of eligible activities. Eligibility for the 5 percent discretionary funds will be established by the state plan.

(2) When a public eligible entity chooses to sub-contract all program operations to a private entity, the private entity must be a non-profit organization directed by a board whose composition complies with 42 U.S.C. 9910.

R990-100-4. Assurances Required by CSBG Act.

Each eligible entity shall be required through the application and agreement process to submit a certification of assurances based on CSBG programmatic, administrative and financial requirements of the Act as outlined by CSBG Program Directives prepared by the SCSO.

R990-100-5. Compliance.

Each eligible entity must maintain its eligibility to receive CSBG funds by being in compliance with applicable laws, regulations, performance requirements, CSBG organizational standards as defined by the Department of Health and Human Services' Office of Community Services, and contractual agreements. The state reserves the right to examine any aspects of CSBG funded activities to ensure compliance.

R990-100-6. Qualifications.

Each eligible entity shall demonstrate that it has in place, or shall have in place before undertaking CSBG funded program activities, management systems adequate to ensure that CSBG funds are spent efficiently and effectively. When activities are sub-contracted, the eligible entity shall have in place a system and assume the responsibility for monitoring and evaluating sub-contracts. Files must be retained containing the monitoring and evaluation results and be available for the State's review for at least three years after the completion of the contract. In no case shall the state provide funds to a grantee if available evidence suggests that the grantee cannot fulfill its obligations under the terms of the assurances required by the CSBG Act and the state plan for the use of CSBG funds.

R990-100-7. Program Participant Eligibility.

Income eligibility at or below 125% of the federal poverty level for program participation shall be based on the Office of Management and Budget official poverty guidelines as described in 42 U.S.C. 9902. Income verification shall be consistent with the income verification policy established by SCSO.

R990-100-8. Funds Allocation.

(1) CSBG funds shall be allocated on the basis of federal fiscal years beginning October 1 to eligible entities by the following formula:

(a) Each eligible entity selected for funding shall be awarded an equal, minimum base amount.

(b) The amount remaining after subtraction of the sum of the minimum base amount shall be allocated among the eligible entities based on a poverty formula developed by SCSO.

R990-100-9. Approval Process.

Criteria shall be used to review applications for CSBG funds and shall be distributed to eligible entities as SCSO Program Directives. Each eligible entity shall annually submit an application and community action plan based on needs identified within the community. Application and action plans are reviewed by SCSO staff for consistency with program requirements and community needs. A CSBG eligible entity shall be notified of application status 30 days or less after the closing date of application submissions. Any application found to be incomplete or inadequate will be returned to the eligible entity for appropriate changes. The SCSO will provide technical assistance to any eligible entity that demonstrates need throughout the application process.

R990-100-10. Award Procedures.

The state shall contract with an eligible entity on October 1 contingent upon Federal authorization and appropriation for CSBG. Once signed, this contract shall be binding on both parties.

R990-100-11. Fiscal Operations Procedures.

(1) Each eligible entity shall have an acceptable procedure describing functions of its fiscal office and including at a minimum:
(a) Purchasing procedure,
(b) System of cash control,
(c) Payroll system, and
(d) Internal and external reporting systems.

(2) Fiscal procedures shall be in compliance with applicable state and federal regulations, including 45 CFR Part 75, and conform with generally accepted accounting procedures.

R990-100-12. Financial Reports and Reimbursements.

(1) Financial reports are to be submitted on a no more frequently than monthly and no less frequently than quarterly basis.

(2) Each eligible entity shall receive reimbursement based on a monthly financial status report and certification of work program activities.

(3) Each report must be signed by either:
(a) the contract signatory, or
(b) someone designated by the signatory, with a letter of designation filed with the state.

(4) Final reimbursement requests shall be due by the date stipulated by SCSO contract.

R990-100-13. Administrative Cost.

Administrative costs include allowable expenditures, as per 45 CFR Part 75, incurred to administer the CSBG through an indirect cost rate, approved by a cognizant Federal Agency or a cost allocation plan approved by the SCSO.

R990-100-14. Travel and Per Diem.

Travel, per diem, and allowances for staff and board members shall be determined by approved eligible entity guidelines which establish rates of reimbursement.

R990-100-15. Purchasing, Receiving and Accounts Payable.

(1) An eligible entity shall develop and have approved procedures for handling purchasing, receiving, and accounts payable that comply with 45 CFR Part 75. In the absence of a local procedure, the state procedure shall be followed. These procedures shall include:

(a) Pre-numbered purchase orders and vouchers for any items of cost and expense.

(b) Procedures to insure procurement at competitive prices.

(c) Receiving reports to control the receipt of merchandise.

(d) Effective review following prescribed procedures for program coding, pricing and extending vendors' invoices.

(e) Invoices matched with purchase orders and receiving reports.

(f) Adequate controls, such as checklists for statement - closing procedures to insure that open invoices and uninvolved amounts for goods and services are properly accrued or recorded in the books or controlled through worksheet entries.

(g) Adequate segregation of duties in that different individuals are responsible for:

(i) Purchase;

(ii) Receipt of merchandise or services; and

(iii) Voucher approval.

(2) A list of anticipated equipment purchases must accompany the application for funding. Purchases over $1,000 must receive written state approval.

R990-100-16. Property and Equipment.

(1) Each eligible entity shall develop procedures for control of property and equipment that comply with 45 CFR Part 75. These procedures shall include; but are not limited to:

(a) An effective system of authorization and approval of equipment purchase;

(b) Accounting practices for recording assets;

(c) Detailed records of individual assets which are maintained and periodically balanced with the general ledger accounts;

(d) Effective procedures for authorizing and accounting for equipment disposal; and

(e) Secure storage of property and equipment.

R990-100-17. Purchase or Improvement of Land or Buildings.

Funds shall not be used for purchase or improvement of land, or the purchase, construction, or permanent improvement other than low-cost residential weatherization or other energy related home repairs of any building or other facility except as this prohibition may be waived under conditions described in 42 U.S.C. 9918.

R990-100-18. Personnel Policies.

(1) Each eligible entity shall maintain written personnel policies, available for review, which shall include:

(a) Classification and pay plan;

(b) Policies governing selection, appointment, and written evaluation;

(c) Conditions of employment and employee performance;

(d) Employee benefits;

(e) Employee-management relations including procedures for filing and handling grievances, complaints and rights of appeal;

(f) Personnel records and payroll procedures;

(g) Job description for each position;

(h) Drug Free Work Place Policy; and

(i) Whistle Blower Policy.

R990-100-19. Civil Rights.

(1) Any CSBG funded program shall comply with the nondiscrimination provisions contained in 42 U.S.C. 9918.

(2) An eligible entity shall be required to have on file an affirmative action plan that describes what the entity will do to ensure that current and prospective employees and program participants are treated in a non-discriminatory manner. This plan shall also include a grievance procedure to address allegations of discrimination by prospective and current staff members or program participants.

(3) The provisions of this section shall apply to each grantee and sub-grantee, except where special conditions apply, i.e., Indians, migrants, or seasonal farm workers.

R990-100-20. Prohibition of Political Activities.

Each eligible entity shall be responsible for assuring adherence to political activity prohibitions contained in 42 U.S.C. 9918. Monitoring of any sub-grantees shall be required as a part of the eligible entity's administrative responsibilities. A description of this process is to be available for state review during monitoring visits or upon request. Violations of the prohibitions are to be reported to the SCSO immediately along with reports of measures taken by the eligible entity to restore compliance.

R990-100-21. Audits and Inspection.

Each eligible entity shall have performed by an independent certified public accounting firm an annual audit that conforms with the provisions and requirements of 45 CFR Part 75, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards. The audit shall be due no later than one year following the end of the grantee's fiscal year.

R990-100-22. Suspension or Termination of Funds.

(1) If monitoring reports or independent audit reports show continuing, substantial non-compliance with contract requirements, accounting procedures, or fiscal control requirements, HCDD may request the eligible entity to submit and implement a Quality Improvement Plan within 60 days of notice of deficiency. Action to suspend or terminate funding will not be taken, however, unless timely and reasonable communication with the eligible entity fails to produce corrective action to HCDD's satisfaction. The eligible entity shall not be relieved of liability to the state for funds expended for improper purpose or federal audit exceptions sustained by the state by virtue of any breach of the contract by the agency, and the state may withhold or recover any payments to the eligible entity until the exact amount of damage due the state from the eligible entity is determined.

(2) Pursuant to the provisions of the contract between the state and eligible entity, delegation of funds and activities to others may not be made without prior approval of HCDD, SCSO.

(3) If HCDD takes action to suspend or terminate funding to an eligible entity, HCDD will issue a notice of agency action detailing the reasoning for terminating or suspending funding, including information concerning any Quality Improvement Plan and communication concerning the failure to produce correction action.

(4) An entity that receives a notice of agency action may request a hearing on the record, pursuant to 42 U.S.C. 9908(b)(8).

(a) The request for hearing must be in writing, approved and signed by the entity's elected officials, and must set forth the grounds for the request.

(b) The request for hearing must be filed with Department of

Workforce Services Division of Adjudication within 30 calendar days from the date of the notice of agency action.

(c) In computing the time allowed for filing a request for hearing, the date as it appears in the notice of agency action is not included. The last day of the request period is included in the computation unless it is a Saturday, Sunday, or legal holiday when the offices of the Department are closed. If the last day permitted for filing an request falls on a Saturday, Sunday, or legal holiday, the time permitted for filing a appeal will be extended to the next day when the Department offices are open.

(d) The date of receipt of a request is the date the request is actually received by the Department of Workforce Services Division of Adjudication, as shown by the Department's date stamp on the document or other credible evidence such as a written or electronic notation of the date of receipt, and not the post mark date from the post office. If the appeal is faxed to the Department of Workforce Services Division of Adjudication, the date of receipt is the date recorded on the fax.

(e) If an eligible entity does not request a hearing within the 30-day limit, the notice of agency action will be effective at the end of the 30 days.

(5) The hearing on the record will be conducted in accordance with the procedures outlined in R986-100-124 through R986-100-133.

(6) If the eligible entity disagrees with the Administrative Law Judge decision, the entity may appeal to the Department of Workforce Services Executive Director or person designated by the Executive Director. The appeal must be filed, in writing, within 30 days of the issuance of the decision of the Administrative Law Judge.

(a) The decision by the Department of Workforce Services Executive Director or person designated by the Executive Director, constitutes the final agency decision.

(7) If the eligible entity disagrees with a final agency decision to terminate funding, it may appeal to the Secretary of the U.S. Department of Health and Human Services, as provided in 45 C.F.R. 96.92.

(a) Pursuant to 45 C.F.R. 96.92, if an eligible entity has made a request for review, SCSO may not discontinue current or future funding until the U.S. Department of Health and Human Services confirms the final agency decision.

(b) Pursuant to 45 C.F.R. 96.92, if an eligible entity does not make a request for review within the 30-day limit, the final agency decision will be effective at the end of the 30 days.

R990-100-24. Amendments/Waivers.

An eligible entity may request contract period end dates be extended for up to 180 days to spend program or project carryover funds amounting to less than ten percent, or an amount approved by the state, of the total contract amount.

R990-100-25. Program Monitoring and Evaluations.

(1) Monitoring will be accomplished through review of the fiscal, programmatic, and progress reports and on-site visits. On-site visits shall automatically be initiated in response to a written complaint of financial or programmatic non-compliance.

(a) Monitoring will relate to eligible entity compliance with federal assurances and federal and state requirements in program management and operation.

(2) Evaluation of CSBG funded programs shall be conducted by the state or by the eligible entity and shall be distinct from both compliance monitoring and the state's examination of a CSBG eligible entity to ensure the entity is eligible to receive CSBG funds and is in compliance with any CSBG related obligations.

(a) Evaluation will involve an attempt to measure program performance project results, and to determine the impact of an eligible entity's efforts.

(b) For the most part, CSBG evaluations will be a joint state/local effort, but the state reserves the right to conduct evaluations of CSBG programs at any time for purposes it considers appropriate. In these circumstances, reasonable efforts will be made to accommodate the concerns of any eligible entity that is involved.

R990-100-26. Program Reporting Requirements.

An eligible entity shall maintain client profile records on individual clients, households or groups of clients, if appropriate. A compiled report of the number and characteristics of clients served shall be submitted to SCSO on an annual basis by the SCSO stated due date.

R990-100-28. Citizen Participation.

(1) The state requires citizen participation and supports maximum participation of any interested persons and groups in the development and implementation of the CSBG programs at the state and local level, in advisory or administering capacity.

(2) Tripartite boards are required for governing boards of private, non-profit organizations and for the administering/advisory boards of public agencies and shall conform to the requirements outlined in 42 U.S.C. 9910.

(a) A minimum of one third of the board is to represent low income. A description of the democratic selection process for representatives of the low-income is to be available for review.

(b) One third of the members of the board are to be elected public officials, currently holding office, or their representatives, except if not enough public officials are willing or available, appointed public officials may serve. Minutes of meetings or letters of appointment must be on file for review.

(c) The remaining members are to be officials or members of business, industry, labor, religious, welfare, education or other major groups in the community. A description of the process used for selection of private sector representatives is to be available for review. The description shall include a process for interested private sector groups to petition for membership and how the petition will be considered.

(2) As a part of the community needs assessment portion of the planning phase (conducted every three years), each eligible entity shall conduct public forums for low-income residents of the areas. These forums are to allow a discussion and listing of problems as viewed by the low-income and their suggestions for solutions.

R990-100-29. Federal Program Regulations.

The CSBG is subject to regulations periodically published in the Federal Register.

R990-100-30. Required Documentation and Forms.

The required application, budget and reporting forms shall be designated through SCSO CSBG Program Directives.

R990-100-31. Application Process and Submission Timetable.

(1) The grant application phase of CSBG for eligible entities involves:

(a) A community needs assessment developed under prescribed criteria outlined in a CSBG Program Directives, problem analysis, resource analysis, service delivery system description, prioritization process and coordination policy process with appropriate documentation submitted to SCSO by the date published by the SCSO every three years, starting in 1998;

(b) The development of a community action plan for addressing problems identified and prioritized includes;

(i) Community review of the draft community action plan;

(ii) Approval of final plan by local boards or by local officials;

(iii) Submission of the plan to SCSO by the date published by the SCSO.

(c) As part of the application package, the applicant must submit an administrative budget separate from the program operation budget.

R990-100-32. Budget Estimate.

Following receipt of federal continuing resolution or budget information, the state shall make available to eligible applicants, an estimate of funding amounts for each geographical area, based on the formula contained in the State Plan.

R990-100-33. Public Review and Comment.

(1) After the community action plan has been prepared, but before Board approval, the applicant must provide ample opportunity for its review by low-income residents, the community as a whole, and relevant community organizations and agencies. Notice of the availability of the application for citizen review and comment shall also be given by providing written notice to organizations and agencies, to the local media, and posting of notice in public places convenient to low-income residents. The eligible entity must submit any comments of persons and organizations choosing to respond with the application to the SCSO.

KEY: antipoverty programs, grants, community action programs
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Notice of Continuation July 6, 2017

R995. Workforce Services, School Readiness Board.
R995-100. School Readiness Board.
R955-100-100. Purpose.

This rule describes the processes and procedures used by the School Readiness Board to administer and monitor the preschool grant programs in Title 35A, Chapter 15, Preschool Programs, and to implement the tool used to determine whether a preschool program is high quality.

R955-100-101. Authority.

This rule is required by Sections 35A-3-301(9) and 35A-3-302(10) and is enacted under the authority of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

R955-100-102. Definitions.

(1) The terms used in this rule are defined in 35A-15-102.
(2) In addition:
(a) "Department" means the Department of Workforce Services.
(b) "OCC" means the Department of Workforce Services, Office of Child Care.
(c) "SRB" means School Readiness Board.

R955-100-103. Role of Department.

(1) The Department provides staff support to the SRB pursuant to Section 35A-15-201(4).
(2) Department staff shall develop grant documentation in consultation with the SRB.

R955-100-200. Becoming High Quality School Readiness Grant Program.

(1) During each program year, grant recipients shall administer and report results of the assessments required in the grant agreement.
(a) If a grant recipient fails to administer and report the results of the required assessments, the recipient shall be placed on a performance improvement plan.
(b) If a grant recipient fails to comply with the performance improvement plan, the recipient may be ineligible to receive additional reimbursements or future grant funding.
(2) Grant recipients will be subject to monitoring and reporting requirements as required by the Department and OCC under guidance from the SRB.
(a) Grant recipients shall submit the annual reports required by Sections 35A-15-301(7) and 35A-15-301(8) following the instructions contained in the grant agreement.
(b) Grant recipients shall submit any other reports, including quarterly reports, as provided in the grant agreement.
(c) If a grant recipient fails to submit required reports, the recipient shall be placed on a performance improvement plan.
(d) If a grant recipient fails to comply with the performance improvement plan, the recipient may be ineligible to receive additional reimbursements or future grant funding.
(3) Grants shall be monitored in accordance with Department grant monitoring policy and procedure.
(a) Monitoring may include but is not limited to fiscal operations, and the terms, conditions, attachments, scope of work, and performance requirements of the grant agreement.
(b) Monitoring may include, but is not limited to, both announced and unannounced site visits, desk audit, third party monitoring, expenditure document review and/or video/phone conferencing. Any onsite monitoring will take place during normal business hours.
(c) A grant recipient who fails to comply with monitoring may be placed on a performance improvement plan.
(d) If the Department determines a grant recipient is not in compliance with the grant agreement, the recipient may be placed on a performance improvement plan or the agreement may be terminated in accordance with the terms of the grant agreement.
(e) If a grant recipient fails to comply with a performance improvement plan, the recipient may be ineligible to receive additional reimbursements or future grant funding.

R955-100-300. Expanded Student Access to High Quality School Readiness Programs Grant Program.

(1) The SRB will select an evidence-based tool as required in Section 35A-15-303(4)(a) to determine whether a school readiness program is high quality.
(2) The SRB will implement the tool in accordance with best practices as defined by the tool's creator.
(3) Grants shall be administered and monitored in accordance with Department policy and procedure.
(a) Monitoring may include but is not limited to fiscal operations, and the terms, conditions, attachments, scope of work, and performance requirements of the grant agreement.
(b) Monitoring may include, but is not limited to, both announced and unannounced site visits, desk audit, third party monitoring, expenditure document review and/or video/phone conferencing. Any onsite monitoring will take place during normal business hours.
(c) A grant recipient who fails to comply with monitoring may be placed on a performance improvement plan.
(d) If the Department determines a grant recipient is not in compliance with the grant agreement, the recipient may be placed on a performance improvement plan or the agreement may be terminated in accordance with the terms of the grant agreement.
(i) If a grant recipient fails to comply with a performance improvement plan, the recipient may be ineligible to receive additional reimbursements or future grant funding.

KEY: preschool, grant programs
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35A-15-302