

UTAH STATE BULLETIN

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Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Division of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3764. Additional rulemaking information and electronic versions of all administrative rule publications are available at <http://www.rules.utah.gov/>.

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)* of the same volume and issue number. The *Digest* is available by e-mail subscription or online. Visit <http://www.rules.utah.gov/publicat/digest.htm> for additional information.

Division of Administrative Rules, Salt Lake City 84114

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SPECIAL NOTICES

Health Health Care Financing, Coverage and Reimbursement Policy

Notice for February 2015 Medicaid Rate Changes

Effective February 1, 2015, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies as well as potential adjustments to existing codes. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/bcrp.htm>.

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between December 16, 2014, 12:00 a.m., and December 31, 2014, 11:59 p.m. are included in this, the January 15, 2015, issue of the *Utah State Bulletin*.

In this publication, each **PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **PROPOSED RULE** is usually printed. New rules or additions made to existing rules are underlined (example). Deletions made to existing rules are struck out with brackets surrounding them (~~example~~). Rules being repealed are completely struck out. A row of dots in the text between paragraphs (.) indicates that unaffected text from within a section was removed to conserve space. Unaffected sections are not usually printed. If a **PROPOSED RULE** is too long to print, the Division of Administrative Rules may include only the **RULE ANALYSIS**. A copy of each rule that is too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least February 17, 2015. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through May 15, 2015, the agency may notify the Division of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OR A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses.

The public, interest groups, and governmental agencies are invited to review and comment on **PROPOSED RULES**. *Comment may be directed to the contact person identified on the **RULE ANALYSIS** for each rule.*

PROPOSED RULES are governed by Section 63G-3-301, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5a, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page

**Administrative Services, Facilities
Construction and Management
R23-1
Procurement of Construction**

NOTICE OF PROPOSED RULE

(Repeal and Reenact)
DAR FILE NO.: 39033
FILED: 12/24/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this repeal and reenactment is to establish more specific rules on the general procurement provisions for the Division of Facilities Construction and Management.

SUMMARY OF THE RULE OR CHANGE: The previous rule reflected the requirements of the previous Utah Procurement Code which was enacted on or about 1981. The fundamental differences between the old rule and the new rule are that the new rule now reflects the current requirements listed in the 2014 Utah Procurement Code and implements the recent changes related to the 2014 Utah Procurement Code. Additionally, this rule is now more in line with the Division of Purchasing and General Services' rules.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-6-208

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings that are expected. The changes update the rule in order to implement and provide provisions related to the Utah Procurement Code, as well as to be more aligned with the Division of Purchasing and General Services rules.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings that are expected. The changes update the rule in order to implement and provide provisions related to the Utah Procurement Code, as well as to be more aligned with the Division of Purchasing and General Services rules.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings that are expected. The changes update the rule in order to implement and provide provisions related to the Utah Procurement Code, as well as to be more aligned with the Division of Purchasing and General Services rules.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings that are expected. The changes update the rule in order to implement and provide provisions related to the Utah Procurement Code, as well as to be more aligned with the Division of Purchasing and General Services rules.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs that are expected. The changes update the rule in order to implement and provide provisions related to the Utah Procurement Code, as well as to be more aligned with the Division of Purchasing and General Services rules.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated affects that the rule will have on businesses. The changes update the rule to implement and provide provisions related to the Utah Procurement Code, as well as to be more aligned with the Division of Purchasing and General Services rules.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
ROOM 4110 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
- ◆ Cecilia Niederhauser by phone at 801-538-3261, by FAX at 801-538-9694, or by Internet E-mail at cniederhauser@utah.gov
- ◆ Nicole Alder by phone at 801-538-3240, or by Internet E-mail at nicolealder@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/17/2015

THIS RULE MAY BECOME EFFECTIVE ON: 02/25/2015

AUTHORIZED BY: Bruce Whittington, Acting Director

R23. Administrative Services, Facilities Construction and Management.

~~[R23-1. Procurement of Construction.~~

~~R23-1-1. Purpose and Authority.~~

~~———— (1) In accordance with Subsection 63G-6-208, this rule establishes procedures for the procurement of construction by the Division.~~

~~———— (2) The statutory provisions governing the procurement of construction by the Division are contained in Section 63G-6-208 and Title 63A, Chapter 5.~~

~~R23-1-2. Definitions.~~

~~———— (1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 63G-6-103.~~

- ~~_____ (2) In addition:~~
- ~~_____ (a) "Acceptable Bid Security" means a bid bond meeting the requirements of Subsection R23-1-40(4).~~
- ~~_____ (b) "Board" means the State Building Board established pursuant to Section 63A-5-101.~~
- ~~_____ (c) "Cost Data" means factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.~~
- ~~_____ (d) "Director" means the Director of the Division, including, unless otherwise stated, his duly authorized designee.~~
- ~~_____ (e) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.~~
- ~~_____ (f) "Established Market Price" means a current price, established in the usual and ordinary course of trade between buyers and sellers, which can be substantiated from sources independent of the manufacturer or supplier.~~
- ~~_____ (g) "Price Data" means factual information concerning prices for supplies, services, or construction substantially identical to those being procured. Prices in this definition refer to offered or proposed selling prices and includes data relevant to both prime and subcontract prices.~~
- ~~_____ (h) "Procuring Agencies" means, individually or collectively, the state, the Division, the owner and the using agency.~~
- ~~_____ (i) "Products" means and includes materials, systems and equipment.~~
- ~~_____ (j) "Proprietary Specification" means a specification which uses a brand name to describe the standard of quality, performance, and other characteristics needed to meet the procuring agencies' requirements or which is written in such a manner that restricts the procurement to one brand.~~
- ~~_____ (k) "Public Notice" means the notice that is publicized pursuant to this rule to notify contractors of Invitations For Bids and Requests For Proposals.~~
- ~~_____ (l) "Record" shall have the meaning defined in Section 63G-2-103 of the Government Records Access and Management Act (GRAMA).~~
- ~~_____ (m) "Specification" means any description of the physical, functional or performance characteristics of a supply or construction item. It may include requirements for inspecting, testing, or preparing a supply or construction item for delivery or use.~~
- ~~_____ (n) "State" means the State of Utah.~~
- ~~_____ (o) "Subcontractor" means any person who has a contract with any person other than the procuring agency to perform any portion of the work on a project.~~
- ~~_____ (p) "Using Agency" means any state agency or any political subdivision of the state which utilizes any services or construction procured under these rules.~~
- ~~_____ (q) "Work" means the furnishing of labor or materials, or both.~~

R23-1-5. Competitive Sealed Bidding.

~~_____ (1) Use. Competitive sealed bidding, which includes multi-step sealed bidding, shall be used for the procurement of construction if the design-bid-build method of construction contract management described in Subsection R23-1-45(5)(b) is used unless a determination is made by the Director in accordance with Subsection R23-1-15(1)(c) that the competitive sealed proposals procurement method should be used.~~

- ~~_____ (2) Public Notice of Invitations For Bids.~~
- ~~_____ (a) Public notice of Invitations For Bids shall be publicized electronically on the Internet; and may be publicized in any or all of the following as determined appropriate:~~
 - ~~_____ (i) In a newspaper having general circulation in the area in which the project is located;~~
 - ~~_____ (ii) In appropriate trade publications;~~
 - ~~_____ (iii) In a newspaper having general circulation in the state;~~
 - ~~_____ (iv) By any other method determined appropriate.~~
- ~~_____ (b) A copy of the public notice shall be available for public inspection at the principal office of the Division in Salt Lake City, Utah.~~
- ~~_____ (3) Content of the Public Notice. The public notice of Invitation For Bids shall include the following:~~
 - ~~_____ (a) The closing time and date for the submission of bids;~~
 - ~~_____ (b) The location to which bids are to be delivered;~~
 - ~~_____ (c) Directions for obtaining the bidding documents;~~
 - ~~_____ (d) A brief description of the project;~~
 - ~~_____ (e) Notice of any mandatory pre-bid meetings.~~
- ~~_____ (4) Bidding Time. Bidding time is the period of time between the date of the first publication of the public notice and the final date and time set for the receipt of bids by the Division. Bidding time shall be set to provide bidders with reasonable time to prepare their bids and shall be not less than ten calendar days, unless a shorter time is deemed necessary for a particular project as determined in writing by the Director.~~
- ~~_____ (5) Bidding Documents. The bidding documents for an Invitation For Bids:~~
 - ~~_____ (a) shall include a bid form having a space in which the bid prices shall be inserted and which the bidder shall sign and submit along with all other required documents and materials; and~~
 - ~~_____ (b) may include qualification requirements as appropriate.~~
- ~~_____ (6) Addenda to the Bidding Documents.~~
 - ~~_____ (a) Addenda shall be distributed or otherwise made available to all entities known to have obtained the bidding documents.~~
 - ~~_____ (b) Addenda shall be distributed or otherwise made available within a reasonable time to allow all prospective bidders to consider them in preparing bids. If the time set for the final receipt of bids will not permit appropriate consideration, the bidding time shall be extended to allow proper consideration of the addenda.~~
- ~~_____ (7) Pre-Opening Modification or Withdrawal of Bids.~~
 - ~~_____ (a) Bids may be modified or withdrawn by the bidder by written notice delivered to the location designated in the public notice where bids are to be delivered prior to the time set for the opening of bids:~~
 - ~~_____ (b) Bid security, if any, shall be returned to the bidder when withdrawal of the bid is permitted.~~
 - ~~_____ (c) All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate project file.~~
- ~~_____ (8) Late Bids, Late Withdrawals, and Late Modifications. Any bid, withdrawal of bid, or modification of bid received after the time and date set for the submission of bids at the location designated in the notice shall be deemed to be late and shall not be considered, unless it is the only bid received in which case it may be considered.~~
- ~~_____ (9) Receipt, Opening, and Recording of Bids.~~
 - ~~_____ (a) Upon receipt, all bids and modifications shall be stored in a secure place until the time for bid opening.~~
 - ~~_____ (b) Bids and modifications shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in~~

the notice. The names of the bidders, the bid price, and other information deemed appropriate by the Director shall be read aloud or otherwise made available to the public. After the bid opening, the bids shall be tabulated or a bid abstract made. The opened bids shall be available for public inspection.

~~—————(10) Mistakes in Bids:~~

~~—————(a) If a mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of an inadvertent, nonjudgmental mistake is permissible but only at the discretion of the Director and only to the extent it is not contrary to the interest of the procuring agencies or the fair treatment of other bidders.~~

~~—————(b) When it appears from a review of the bid that a mistake may have been made, the Director may request the bidder to confirm the bid in writing. Situations in which confirmation may be requested include obvious, apparent errors on the face of the bid or a bid substantially lower than the other bids submitted.~~

~~—————(c) This subsection sets forth procedures to be applied in three situations described below in which mistakes in bids are discovered after opening but before award.~~

~~—————(i) Minor formalities are matters which, in the discretion of the Director, are of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders and with respect to which, in the Director's discretion, the effect on price, quantity, quality, delivery, or contractual conditions is not or will not be significant. The Director, in his sole discretion, may waive minor formalities or allow the bidder to correct them depending on which is in the best interest of the procuring agencies. Examples include the failure of a bidder to:~~

~~—————(A) Sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound;~~

~~—————(B) Acknowledge receipt of any addenda to the Invitation For Bids, but only if it is clear from the bid that the bidder received the addenda and intended to be bound by its terms; the addenda involved had a negligible effect on price, quantity, quality, or delivery; or the bidder acknowledged receipt of the addenda at the bid opening.~~

~~—————(ii) If the Director determines that the mistake and the intended bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.~~

~~—————(iii) A bidder may be permitted to withdraw a low bid if the Director determines a mistake is clearly evident on the face of the bid document but the intended amount of the bid is not similarly evident, or the bidder submits to the Division proof which, in the Director's judgment, demonstrates that a mistake was made.~~

~~—————(d) No bidder shall be allowed to correct a mistake or withdraw a bid because of a mistake discovered after award of the contract; provided, that mistakes of the types described in this Subsection (10) may be corrected or the award of the contract canceled if the Director determines that correction or cancellation will not prejudice the interests of the procuring agencies or fair competition.~~

~~—————(e) The Director shall approve or deny in writing all requests to correct or withdraw a bid.~~

~~—————(11) Bid Evaluation and Award. Except as provided in the following sentence, the contract is to be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the bidding documents and no bid shall be~~

~~evaluated for any requirements or criteria that are not disclosed in the bidding documents. A reciprocal preference shall be granted to a resident contractor if the provisions of Section 63G-6-405 are met.~~

~~—————(12) Cancellation of Invitations For Bids; Rejection Of Bids in Whole or In Part.~~

~~—————(a) Although issuance of an Invitation For Bids does not compel award of a contract, the Division may cancel an Invitation For Bids or reject bids received in whole or in part only when the Director determines that it is in the best interests of the procuring agencies to do so:~~

~~—————(b) The reasons for cancellation or rejection shall be made a part of the project file and available for public inspection.~~

~~—————(c) Any determination of nonresponsibility of a bidder shall be made by the Director in writing and shall be based upon the criteria that the Director shall establish as relevant to this determination with respect to the particular project. An unreasonable failure of the bidder or to promptly supply information regarding responsibility may be grounds for a determination of nonresponsibility. Any bidder or determined to be nonresponsible shall be provided with a copy of the written determination within a reasonable time. The Board finds that it would impair governmental procurement proceedings by creating a disincentive for bidders to respond to inquiries of nonresponsibility. Therefore information furnished by a bidder or pursuant to any inquiry concerning responsibility shall be classified as a protected record pursuant to Section 63G-2-305 and may be disclosed only as provided for in Subsection R23-1-35.~~

~~—————(13) Tie Bids. Tie bids shall be resolved in accordance with Section 63G-6-426.~~

~~—————(14) Subcontractor Lists. For purposes of this Subsection (14), the definitions of Section 63A-5-208 shall be applicable. Within 24 hours after the bid opening time, not including Saturdays, Sundays and state holidays, the apparent lowest three bidders, as well as other bidders that desire to be considered, shall submit to the Division a list of their first-tier subcontractors that are in excess of the dollar amounts stated in Subsection 63A-5-208(3)(a)(i)(A):~~

~~—————(a) The subcontractor list shall include the following:~~

~~—————(i) the type of work the subcontractor is to perform;~~

~~—————(ii) the subcontractor's name;~~

~~—————(iii) the subcontractor's bid amount;~~

~~—————(iv) the license number of the subcontractor issued by the Utah Division of Occupational and Professional Licensing, if such license is required under Utah law; and~~

~~—————(v) the impact that the selection of any alternate included in the solicitation would have on the information required by this Subsection (14).~~

~~—————(b) The contract documents for a specific project may require that additional information be provided regarding any contractor, subcontractor, or supplier.~~

~~—————(c) If pursuant to Subsection 63A-5-208(4)a, a bidder intends to perform the work of a subcontractor or obtain, at a later date, a bid from a qualified subcontractor, the bidder shall:~~

~~—————(i) comply with the requirements of Section 63A-5-208 and~~

~~—————(ii) clearly list himself on the subcontractor list form.~~

~~—————(d) Errors on the subcontractor list will not disqualify the bidder if the bidder can demonstrate that the error is a result of his reasonable reliance on information that was provided by the subcontractor and was used to meet the requirements of this section; and, provided that this does not result in an adjustment to the bidder's contract amount.~~

~~(c) Pursuant to Sections 63A-5-208 and 63G-2-305, information contained in the subcontractor list submitted to the Division shall be classified public except for the amount of subcontractor bids which shall be classified as protected until a contract has been awarded to the bidder at which time the subcontractor bid amounts shall be classified as public. During the time that the subcontractor bids are classified protected, they may only be made available to procurement and other officials involved with the review and approval of bids.~~

~~(15) Change of Listed Subcontractors. Subsequent to twenty-four hours after the bid opening, the contractor may change his listed subcontractors only after receiving written permission from the Director based on complying with all of the following:~~

~~(a) The contractor has established in writing that the change is in the best interest of the State and that the contractor establishes an appropriate reason for the change, which may include, but is not limited to, the following reasons:~~

~~(i) the original subcontractor has failed to perform, or is not qualified or capable of performing;~~

~~(ii) the subcontractor has requested in writing to be released;~~

~~(b) The circumstances related to the request for the change do not indicate any bad faith in the original listing of the subcontractors;~~

~~(c) Any requirement set forth by the Director to ensure that the process used to select a new subcontractor does not give rise to bid shopping;~~

~~(d) Any increase in the cost of the subject subcontractor work shall be borne by the contractor; and~~

~~(e) Any decrease in the cost of the subject subcontractor work shall result in a deductive change order being issued for the contract for such decreased amount.~~

R23-1-10. Multi-Step Sealed Bidding.

~~(1) Description. Multi-step sealed bidding is a two-phase process. In the first phase bidders submit unpriced technical offers to be evaluated. In the second phase, bids submitted by bidders whose technical offers are determined to be acceptable during the first phase are considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to arrive at technical offers and terms acceptable to the Division and suitable for competitive pricing.~~

~~(2) Use. The multi-step sealed bidding method may be used when the Director deems it to the advantage of the state. Multi-step sealed bidding may be used when it is considered desirable:~~

~~(a) to invite and evaluate technical offers or statements of qualifications to determine their acceptability to fulfill the purchase description requirements;~~

~~(b) to conduct discussions for the purposes of facilitating understanding of the technical offer and purchase description requirements and, where appropriate, obtain supplemental information; permit amendments of technical offers, or amend the purchase description;~~

~~(c) to accomplish (a) or (b) prior to soliciting bids; and~~

~~(d) to award the contract to the lowest responsive and responsible bidder in accordance with the competitive sealed bidding procedures.~~

~~(3) Pre-Bid Conferences In Multi-Step Sealed Bidding. The Division may hold one or more pre-bid conferences prior to the submission of unpriced technical offers or at any time during the evaluation of the unpriced technical offers.~~

~~(4) Procedure for Phase One of Multi-Step Sealed Bidding.~~

~~(a) Public Notice. Multi-step sealed bidding shall be initiated by the issuance of a Public Notice in the form required by Subsections R23-1-5(2) and (3).~~

~~(b) Invitation for Bids. The multi-step Invitation for Bids shall state:~~

~~(i) that unpriced technical offers are requested;~~

~~(ii) when bids are to be submitted (if they are to be submitted at the same time as the unpriced technical offers, the bids shall be submitted in a separate sealed envelope);~~

~~(iii) that it is a multi-step sealed bid procurement, and bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;~~

~~(iv) the criteria to be used in the evaluation of the unpriced technical offers;~~

~~(v) that the Division, to the extent the Director finds necessary, may conduct oral or written discussions of the unpriced technical offers;~~

~~(vi) that the item being procured shall be furnished in accordance with the bidders technical offer as found to be finally acceptable and shall meet the requirements of the Invitation for Bids; and~~

~~(vii) that bidders may designate those portions of the unpriced technical offers which the bidder believes qualifies as a protected record as provided in Section R23-1-35. Such designated portions may be disclosed only as provided for in Section R23-1-35.~~

~~(c) Amendments to the Invitation for Bids. After receipt of unpriced technical offers, amendments to the Invitation for Bids shall be distributed only to bidders who submitted unpriced technical offers and they shall be allowed to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the Director, a contemplated amendment will significantly change the nature of the procurement, the Invitation for Bids shall be canceled in accordance with Subsection R23-1-5(12) and a new Invitation for Bids may be issued.~~

~~(d) Receipt and Handling of Unpriced Technical Offers. After the date and time established for the receipt of unpriced technical offers, a register of bidders shall be open to public inspection. Prior to award, unpriced technical offers shall be shown only to those involved with the evaluation of the offers who shall adhere to the requirements of GRAMA and this rule. Except for those portions classified as protected under Section R23-1-35 or otherwise subject to non-disclosure under applicable law, unpriced technical offers shall be open to public inspection after award of the contract.~~

~~(e) Evaluation of Unpriced Technical Offers. The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids which may include an evaluation of the past performance of the bidder. The unpriced technical offers shall be categorized as acceptable or unacceptable. The Director shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.~~

~~(f) Discussion of Unpriced Technical Offers. Discussion of technical offers may be conducted with bidders who submit an acceptable technical offer. During the course of discussions, any~~

information derived from one unpriced technical offer shall not be disclosed to any other bidder. Once discussions are begun, any bidder who has not been notified that its offer has been found unacceptable may submit supplemental information modifying or otherwise amending its technical offer until the closing date established by the Director. Submission may be made at the request of the Director or upon the bidder's own initiative.

(g) ~~Notice of Unacceptable Unpriced Technical Offer.~~ When the Director determines a bidder's unpriced technical offer to be unacceptable, he shall notify the bidder in writing. Such bidders shall not be afforded an additional opportunity to supplement technical offers.

(h) ~~Confidentiality of Past Performance and Reference Information.~~ Confidentiality of past performance and reference information shall be maintained in accordance with Subsection R23-1-15(10).

(5) ~~Mistakes During Multi-Step Sealed Bidding.~~ Mistakes may be corrected or bids may be withdrawn during phase one:

- (a) before unpriced technical offers are considered;
- (b) after any discussions have commenced under Subsection R23-1-10(4)(f); or
- (c) when responding to any amendment of the Invitation for Bids. Otherwise mistakes may be corrected or withdrawal permitted in accordance with Subsection R23-1-5(10).

(6) ~~Carrying Out Phase Two.~~

(a) ~~Initiation.~~ Upon the completion of phase one, the Director shall either:

(i) open bids submitted in phase one (if bids were required to be submitted) from bidders whose unpriced technical offers were found to be acceptable; provided, however, that the offers have remained unchanged, and the Invitation for Bids has not been amended subsequent to the submittal of bids; or

(ii) invite each acceptable bidder to submit a bid.

(b) ~~Conduct.~~ Phase two is to be conducted as any other competitive sealed bid procurement except:

- (i) as specifically set forth in Section R23-1-10; and
- (ii) no public notice is given of this invitation to submit.

R23-1-15. Competitive Sealed Proposals.

(1) ~~Use.~~

(a) ~~Construction Management.~~ The competitive sealed proposals procurement method shall be used in the procurement of a construction manager under the construction manager/general contractor method of construction contract management described in Subsection R23-1-45(5)(d) due to the need to consider qualifications, past performance and services offered in addition to the cost of the services and because only a small portion of the ultimate construction cost is typically considered in this selection.

(b) ~~Design-Build.~~ In order to meet the requirements of Section 63G-6-703, competitive sealed proposals shall be used to procure design-build contracts.

(c) ~~Design-Bid-Build.~~ The competitive sealed proposals procurement method may be used for procuring a contractor under the design-bid-build method of construction contract management described in Subsection R23-1-45(5)(b) only after the Director makes a determination that it is in the best interests of the state to use the competitive sealed proposals method due to unique aspects of the project that warrant the consideration of qualifications, past performance, schedule or other factors in addition to cost.

(2) ~~Documentation.~~ The Director's determination made under Subsection R23-1-15(1)(c) shall be documented in writing and retained in the project file.

(3) ~~Public Notice.~~

(a) ~~Public notice of the Request for Proposals shall be publicized in the same manner provided for giving public notice of an Invitation for Bids, as provided in Subsection R23-1-5(2).~~

(b) ~~The public notice shall include:~~

- (i) a brief description of the project;
- (ii) directions on how to obtain the Request for Proposal documents;

(iii) ~~notice of any mandatory pre-proposal meetings; and~~

(iv) ~~the closing date and time by which the first submittal of information is required;~~

(4) ~~Proposal Preparation Time.~~ Proposal preparation time is the period of time between the date of first publication of the public notice and the date and time set for the receipt of proposals by the Division. In each case, the proposal preparation time shall be set to provide offerors a reasonable time to prepare their proposals. The time between the first publication of the public notice and the earlier of the first required submittal of information or any mandatory pre-proposal meeting shall be not less than ten calendar days, unless a shorter time is deemed necessary for a particular procurement as determined, in writing, by the Director.

(5) ~~Form of Proposal.~~ The Request for Proposals may state the manner in which proposals are to be submitted, including any forms for that purpose.

(6) ~~Addenda to Requests for Proposals.~~ Addenda to the requests for proposals may be made in the same manner provided for addenda to the bidding documents in connection with Invitations for Bids set forth in Subsection R23-1-5(6) except that addenda may be issued to qualified offerors until the deadline for best and final offers.

(7) ~~Modification or Withdrawal of Proposals.~~

(a) ~~Proposals may be modified prior to the due dates established in the Request for Proposals.~~

(b) ~~Proposals may be withdrawn until the notice of selection is issued.~~

(8) ~~Late Proposals, and Late Modifications.~~ Except for modifications allowed pursuant to negotiation, any proposal, or modification received at the location designated for receipt of proposals after the due dates established in the Request for Proposals shall be deemed to be late and shall not be considered unless there are no other offerors.

(9) ~~Receipt and Registration of Proposals.~~

After the date established for the first receipt of proposals or other required information, a register of offerors shall be prepared and open to public inspection. Prior to award, proposals and modifications shall be shown only to procurement and other officials involved with the review and selection of proposals who shall adhere to the requirements of GRAMA and this rule.

(10) ~~Confidentiality of Performance Evaluations and Reference Information.~~ The Board finds that it is necessary to maintain the confidentiality of performance evaluations and reference information in order to avoid competitive injury and to encourage those persons providing the information to respond in an open and honest manner without fear of retribution. Accordingly, records containing performance evaluations and reference information are classified as protected records under the provisions of Section 63G-2-305 and shall be disclosed only to those persons involved with the

performance evaluation, the contractor that the information addresses and procurement and other officials involved with the review and selection of proposals. The Division may, however, provide reference information to other governmental entities for use in their procurement activities and to other parties when requested by the contractor that is the subject of the information. Any other disclosure of such performance evaluations and reference information shall only be as required by applicable law.

~~_____ (11) Evaluation of Proposals:~~

~~_____ (a) The evaluation of proposals shall be conducted by an evaluation committee appointed by the Director that may include representatives of the Division, the Board, other procuring agencies, and contractors, architects, engineers, and others of the general public. Each member of the selection committee shall certify as to his lack of conflicts of interest.~~

~~_____ (b) The Request for Proposals shall state all of the evaluation factors and the relative importance of price and other evaluation factors.~~

~~_____ (c) The evaluation shall be based on the evaluation factors set forth in the request for proposals. Numerical rating systems may be used but are not required. Factors not specified in the request for proposals shall not be considered.~~

~~_____ (d) Proposals may be initially classified as potentially acceptable or unacceptable. Offerors whose proposals are unacceptable shall be so notified by the Director in writing and they may not continue to participate in the selection process.~~

~~_____ (e) This classification of proposals may occur at any time during the selection process once sufficient information is received to consider the potential acceptability of the offeror.~~

~~_____ (f) The request for proposals may provide for a limited number of offerors who may be classified as potentially acceptable. In this case, the offerors considered to be most acceptable, up to the number of offerors allowed, shall be considered acceptable.~~

~~_____ (12) Proposal Discussions with Individual Offerors:~~

~~_____ (a) Unless only one proposal is received, proposal discussions with individual offerors, if held, shall be conducted with no less than the offerors submitting the two best proposals.~~

~~_____ (b) Discussions are held to:~~

~~_____ (i) Promote understanding of the procuring agency's requirements and the offerors' proposals; and~~

~~_____ (ii) Facilitate arriving at a contract that will be most advantageous to the procuring agencies taking into consideration price and the other evaluation factors set forth in the request for proposals.~~

~~_____ (c) Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors. Any oral clarification or change of a proposal shall be reduced to writing by the offeror.~~

~~_____ (13) Best and Final Offers. If utilized, the Director shall establish a common time and date to submit best and final offers. Best and final offers shall be submitted only once unless the Director makes a written determination before each subsequent round of best and final offers demonstrating that another round is in the best interest of the procuring agencies and additional discussions will be conducted or the procuring agencies' requirements may be changed. Otherwise, no discussion of, or changes in, the best and final offers shall be allowed prior to award. Offerors shall also be informed that if they do not~~

~~submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.~~

~~_____ (14) Mistakes in Proposals:~~

~~_____ (a) Mistakes discovered before the established due date. An offeror may correct mistakes discovered before the time and date established in the Request for Proposals for receipt of that information by withdrawing or correcting the proposal as provided in Subsection R23-1-15(7).~~

~~_____ (b) Confirmation of proposal. When it appears from a review of the proposal before award that a mistake has been made, the offeror may be asked to confirm the proposal. Situations in which confirmation may be requested include obvious, apparent errors on the face of the proposal or a proposal amount that is substantially lower than the other proposals submitted. If the offeror alleges mistake, the proposal may be corrected or withdrawn as provided for in this section.~~

~~_____ (c) Minor formalities. Minor formalities, unless otherwise corrected by an offeror as provided in this section, shall be treated as they are under Subsection R23-1-5(10)(c).~~

~~_____ (d) Mistakes discovered after award. Offeror shall be bound to all terms, conditions and statements in offeror's proposal after award of the contract.~~

~~_____ (15) Award:~~

~~_____ (a) Award Documentation. A brief written justification statement shall be made showing the basis on which the award was found to be most advantageous to the state taking into consideration price and the other evaluation factors set forth in the Request for Proposals.~~

~~_____ (b) One proposal received. If only one proposal is received in response to a Request for Proposals, the Director may, as he deems appropriate, make an award or, if time permits, resolicit for the purpose of obtaining additional competitive sealed proposals.~~

~~_____ (16) Publicizing Awards:~~

~~_____ (a) Notice. After the selection of the successful offeror(s); notice of award shall be available in the principal office of the Division in Salt Lake City, Utah and may be available on the Internet.~~

~~_____ (b) Information Disclosed. The following shall be disclosed with the notice of award:~~

~~_____ (i) the rankings of the proposals;~~

~~_____ (ii) the names of the selection committee members;~~

~~_____ (iii) the amount of each offeror's cost proposal;~~

~~_____ (iv) the final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores; and~~

~~_____ (v) the written justification statement supporting the selection.~~

~~_____ (c) Information Classified as Protected. After due consideration and public input, the following has been determined by the Board to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract with the Division and shall be classified as protected records:~~

~~_____ (i) the names of individual selection committee scorers in relation to their individual scores or rankings; and~~

~~_____ (ii) non-public financial statements.~~

R23-1-17. Bids Over Budget.

~~_____ (1) In the event all bids for a construction project exceed available funds as certified by the appropriate fiscal officer, and the low responsive and responsible bid does not exceed those funds by~~

~~more than 5%, the Director may, where time or economic considerations preclude resolicitation of work of a reduced scope, negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder in order to bring the bid within the amount of available funds.~~

~~(2) As an alternative to the procedure authorized in Subsection (1), when all bids for a construction project exceed available funds as certified by the Director, and the Director finds that due to time or economic considerations the re-solicitation of a reduced scope of work would not be in the interest of the state, the Director may negotiate an adjustment in the bid price using one of the following methods:~~

~~(a) reducing the scope of work in specific subcontract areas and supervising the re-bid of those subcontracts by the low responsive and responsible bidder;~~

~~(b) negotiating with the low responsive and responsible bidder for a reduction in scope and cost with the value of those reductions validated in accordance with Section R23-1-50; or~~

~~(c) revising the contract documents and soliciting new bids only from bidders who submitted a responsive bid on the original solicitation. This re-solicitation may have a shorter bid response time than otherwise required.~~

~~(3) The use of one of the alternative procedures provided for in this subsection (2) must provide for the fair and equitable treatment of bidders.~~

~~(4) The Director's written determination, including a brief explanation of the basis for the decision shall be included in the contact file.~~

~~(5) This section does not restrict in any way, the right of the Director to use any emergency or sole source procurement provisions, or any other applicable provisions of State law or rule which may be used to award the construction project.~~

R23-1-20. Small Purchases.

~~(1) Procurements of \$100,000 or Less.~~

~~(a) The Director may make procurements of construction estimated to cost \$100,000 or less by soliciting at least two firms to submit written quotations. The award shall be made to the firm offering the lowest acceptable quotation.~~

~~(b) The names of the persons submitting quotations and the date and amount of each quotation shall be recorded and maintained as a public record by the Division.~~

~~(c) If the Director determines that other factors in addition to cost should be considered in a procurement of construction estimated to cost \$100,000 or less, the Director shall solicit proposals from at least two firms. The award shall be made to the firm offering the best proposal as determined through application of the procedures provided for in Section R23-1-15 except that a public notice is not required and only invited firms may submit proposals.~~

~~(2) Procurements of \$25,000 or Less. The Director may make small purchases of construction of \$25,000 or less in any manner that the Director shall deem to be adequate and reasonable.~~

~~(3) Professional Services related to Construction. Small purchases for Architect or Engineer services may be procured as a small purchase in accordance with Rule R23-2-20. For other professional services related to construction, including cost estimators, project schedulers, building inspectors, code inspectors, special inspectors and testing entities, the Director may make small purchases of such professional services if the cost of such professional service is~~

~~\$100,000 or less in any manner that the Director shall deem to be adequate and reasonable.~~

~~(4) Division of Procurements. Procurements shall not be divided in order to qualify for the procedures outlined in this section.~~

R23-1-25. Sole Source Procurement.

~~(1) Conditions for Use of Sole Source Procurement.~~

~~The procedures concerning sole source procurement in this Section may be used if, in the discretion of the Director, a requirement is reasonably available only from a single source. Examples of circumstances which could also necessitate sole source procurement are:~~

~~(a) where the compatibility of product design, equipment, accessories, or replacement parts is the paramount consideration;~~

~~(b) where a sole supplier's item is needed for trial use or testing;~~

~~(c) procurement of public utility services;~~

~~(d) when it is a condition of a donation that will fund the full cost of the supply, material, equipment, service, or construction item.~~

~~(2) Written Determination. The determination as to whether a procurement shall be made as a sole source shall be made by the Director in writing and may cover more than one procurement. In cases of reasonable doubt, competition shall be solicited.~~

~~(3) Negotiation in Sole Source Procurement. The Director shall negotiate with the sole source vendor for considerations of price, delivery, and other terms.~~

R23-1-30. Emergency Procurements.

~~(1) Application. This section shall apply to every procurement of construction made under emergency conditions that will not permit other source selection methods to be used.~~

~~(2) Definition of Emergency Conditions. An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, natural disasters, wars, destruction of property, building or equipment failures, or any emergency proclaimed by governmental authorities.~~

~~(3) Scope of Emergency Procurements. Emergency procurements shall be limited to only those construction items necessary to meet the emergency.~~

~~(4) Authority to Make Emergency Procurements.~~

~~(a) The Division makes emergency procurements of construction when, in the Director's determination, an emergency condition exists or will exist and the need cannot be met through other procurement methods.~~

~~(b) The procurement process shall be considered unsuccessful when all bids or proposals received pursuant to an Invitation For Bids or Request For Proposals are nonresponsive, unreasonable, noncompetitive, or exceed available funds as certified by the appropriate fiscal officer, and time or other circumstances will not permit the delay required to resolicit competitive sealed bids or proposals. If emergency conditions exist after or are brought about by an unsuccessful procurement process, an emergency procurement may be made.~~

~~(5) Source Selection Methods. The source selection method used for emergency procurement shall be selected by the Director with a view to assuring that the required services of construction items are procured in time to meet the emergency. Given this constraint, as~~

much competition as the Director determines to be practicable shall be obtained.

(6) Specifications. The Director may use any appropriate specifications without being subject to the requirements of Section R23-1-55.

(7) Required Construction Contract Clauses. The Director may modify or not use the construction contract clauses otherwise required by Section R23-1-60.

(8) Written Determination. The Director shall make a written determination stating the basis for each emergency procurement and for the selection of the particular source. This determination shall be included in the project file.

R23-1-35. Protected Records.

(1) General Classification. Records submitted to the Division in a procurement process are classified as public unless a different classification is determined in accordance with Title 63G, Chapter 2, U.C.A., Government Records Access and Management Act, hereinafter referred to as GRAMA.

(2) Protected Records. Records meeting the requirements of Section 63G-2-305 will be treated as protected records if the procedural requirements of GRAMA are met. Examples of protected records include the following:

(a) trade secrets, as defined in Section 13-24-2, if the requirements of Subsection R23-1-35(3) are met;

(b) commercial information or nonindividual financial information if the requirements of Subsection 63G-2-305(2) and Subsection R23-1-35(3) are met; and

(c) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract with the Division, including, but not limited to, those records for which such a determination is made in this rule R23-1, Procurement of Construction, or Rule R23-2, Procurement of Architect-Engineer Services.

(3) Requests for Protected Status. Persons who believe that a submitted record, or portion thereof, should be protected under the classifications listed in Subsections R23-1-35(2)(a) and R23-1-35(2)(b) shall provide with the record a written claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality. Such statements must address each portion of a document for which protected status is requested.

(4) Notification. A person who complies with this Section R23-1-35 shall be notified by the Division prior to the Division's public release of any information for which business confidentiality has been asserted.

(5) Disclosure of Records and Appeal. The records access determination and any further appeal of such determination shall be made in accordance with the provisions of Sections 63G-2-309 and 63G-2-401 et seq., GRAMA.

(6) Not Limit Rights. Nothing in this rule shall be construed to limit the right of the Division to protect a record from public disclosure where such protection is allowed by law.

R23-1-40. Acceptable Bid Security; Performance and Payment Bonds.

(1) Application. The requirements for bid security and bonds under this Rule R23-1-40 shall apply as follows:

(a) For the Division, the award of construction contracts where the face amount of the contract is \$100,000 or more:

(b) For other state agencies that are required to use the same or similar documents as the Division for their construction contracts, the award of construction contracts where the face amount of the contract is \$50,000 or more, unless the Division Director, in writing, approves a \$100,000 or more requirement similarly to the Division, based on:

(i) The Division Director's finding that the agency has a selection process for such contracts that are under \$100,000, that ensures a responsible, financially solvent contractor is selected; and

(ii) that the agency has the financial capability to absorb the potential responsibility that can occur due to the lack of the bid security and bonding requirements for the contract under \$100,000.

(c) At any time the Division or any other state agency can require acceptable bid security as well as performance and payment bonds on contracts that are for amounts below the standard requirements set forth above in this Rule.

(2) Acceptable Bid Security.

(a) Invitations for Bids and Requests For Proposals shall require the submission of acceptable bid security in an amount equal to at least five percent of the bid, at the time the bid is submitted. If a contractor fails to accompany its bid with acceptable bid security, the bid shall be deemed nonresponsive, unless this failure is found to be nonsubstantial as hereinafter provided.

(b) If acceptable bid security is not furnished, the bid shall be rejected as nonresponsive, unless the failure to comply is determined by the Director to be nonsubstantial. Failure to submit an acceptable bid security may be deemed nonsubstantial if:

(i)(A) the bid security is submitted on a form other than the Division's required bid bond form and the bid security meets all other requirements including being issued by a surety meeting the requirements of Subsection (5); and

(B) the contractor provides acceptable bid security by the close of business of the next succeeding business day after the Division notified the contractor of the defective bid security; or

(ii) only one bid is received.

(3) Payment and Performance Bonds. Except as provided in Rule 23-1-40 (1) above, payment and performance bonds in the amount of 100% of the contract price are required for all contracts in excess of \$50,000. These bonds shall cover the procuring agencies and be delivered by the contractor to the Division at the same time the contract is executed. If a contractor fails to deliver the required bonds, the contractor's bid shall be found nonresponsive and its bid security shall be forfeited.

(4) Forms of Bonds. Bid Bonds, Payment Bonds and Performance Bonds must be from sureties meeting the requirements of Subsection (5) and must be on the exact bond forms most recently adopted by the Board and on file with the Division.

(5) Surety firm requirements. All surety firms must be authorized to do business in the State of Utah and be listed in the U.S. Department of the Treasury Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies for an amount not less than the amount of the bond to be issued. A co-surety may be utilized to satisfy this requirement.

(6) Waiver. The Director may waive the bonding requirement if the Director finds, in writing, that bonds cannot be reasonably obtained for the work involved.

R23-1-45. Methods of Construction Contract Management.

(1) Application. This section contains provisions applicable to the selection of the appropriate type of construction contract management.

(2) Flexibility. The Director shall have sufficient flexibility in formulating the construction contract management method for a particular project to fulfill the needs of the procuring agencies. In each instance consideration commensurate with the project's size and importance should be given to all the appropriate and effective means of obtaining both the design and construction of the project. The methods for achieving the purposes set forth in this rule are not to be construed as an exclusive list.

(3) Selecting the Method of Construction Contracting. In selecting the construction contracting method, the Director shall consider the results achieved on similar projects in the past, the methods used, and other appropriate and effective methods and how they might be adapted or combined to fulfill the needs of the procuring agencies. The use of the design-bid-build method is an appropriate contracting method for the majority of construction contracts entered into by the Division with a cost equal to or less than \$1,500,000 and the construction manager/general contractor method is an appropriate contracting method for the majority of construction contracts entered into by the Division with a cost greater than \$1,500,000. The Director shall include a statement in the project file setting forth the basis for using any construction contracting method other than those suggested in the preceding sentence.

(4) Criteria for Selecting Construction Contracting Methods. Before choosing the construction contracting method to use, the Director shall consider the factors outlined in Subsection 63G-6-501(1)(e).

(5) General Descriptions:

(a) Application of Descriptions. The following descriptions are provided for the more common contracting methods. The methods described are not all mutually exclusive and may be combined on a project. These descriptions are not intended to be fixed for all construction projects of the State. In each project, these descriptions may be adapted to fit the circumstances of that project.

(b) Design-Bid-Build. The design-bid-build method is typified by one business, acting as a general contractor, contracting with the state to complete a construction project in accordance with drawings and specifications provided by the state within a defined time period. Generally the drawings and specifications are prepared by an architectural or engineering firm under contract with the state. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the prime contractor has entered into subcontracts.

(c) Design-Build. In a design-build project, a business contracts directly with the Division to meet requirements described in a set of performance specifications. The design-build contractor is responsible for both design and construction. This method can include instances where the design-build contractor supplies the site as part of the package.

(d) Construction Manager/General Contractor. A construction manager/general contractor is a firm experienced in construction that provides professional services to evaluate and to implement drawings and specifications as they affect time, cost, and quality of construction and the ability to coordinate the construction of the project, including the administration of change orders. The

Division may contract with the construction manager/general contractor early in a project to assist in the development of a cost effective design. The construction manager/general contractor will generally become the general contractor for the project and procure subcontract work at a later date. The procurement of a construction manager/general contractor may be based, among other criteria, on proposals for a management fee which is either a lump sum or a percentage of construction costs with a guaranteed maximum cost. If the design is sufficiently developed prior to the selection of a construction manager/general contractor, the procurement may be based on proposals for a lump sum or guaranteed maximum cost for the construction of the project. The contract with the construction manager/general contractor may provide for a sharing of any savings which are achieved below the guaranteed maximum cost. When entering into any subcontract that was not specifically included in the Construction Manager/General Contractor's cost proposal submitted in the original procurement of the Construction Manager/General Contractor's services, the Construction Manager/General Contractor shall procure that subcontractor by using one of the source selection methods provided for in Sections 63G-6-401 through 63G-6-426, in a similar manner as if the subcontract work was procured directly by the Division.

R23-1-50. Cost or Pricing Data and Analysis; Audits.

(1) Applicability. Cost or pricing data shall be required when negotiating contracts and adjustments to contracts if:

(a) adequate price competition is not obtained as provided in Subsection (2); and

(b) the amounts set forth in Subsection (3) are exceeded.

(2) Adequate Price Competition. Adequate price competition is achieved for portions of contracts or entire contracts when one of the following is met:

(a) When a contract is awarded based on competitive sealed bidding;

(b) When a contractor is selected from competitive sealed proposals and cost was one of the selection criteria;

(c) For that portion of a contract that is for a lump sum amount or a fixed percentage of other costs when the contractor was selected from competitive sealed proposals and the cost of the lump sum or percentage amount was one of the selection criteria;

(d) For that portion of a contract for which adequate price competition was not otherwise obtained when competitive bids were obtained and documented by either the Division or the contractor;

(e) When costs are based upon established catalogue or market prices;

(f) When costs are set by law or rule;

(g) When the Director makes a written determination that other circumstances have resulted in adequate price competition.

(3) Amounts. This section does not apply to:

(a) Contracts or portions of contracts costing less than \$100,000, and

(b) Change orders and other price adjustments of less than \$25,000.

(4) Other Applications. The Director may apply the requirements of this section to any contract or price adjustment when he determines that it would be in the best interest of the state.

(5) Submission of Cost or Pricing Data and Certification. When cost or pricing data is required, the data shall be submitted prior to beginning price negotiation. The offeror or contractor shall keep the

data current throughout the negotiations certify as soon as practicable after agreement is reached on price that the cost or pricing data submitted are accurate, complete, and current as of a mutually determined date.

(6) ~~Refusal to Submit.~~ If the offeror refuses to submit the required data, the Director shall determine in writing whether to disqualify the noncomplying offeror, to defer award pending further investigation, or to enter into the contract. If a contractor refuses to submit the required data to support a price adjustment, the Director shall determine in writing whether to further investigate the price adjustment, to not allow any price adjustment, or to set the amount of the price adjustment.

(7) ~~Defective Cost or Pricing Data.~~ If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the Division shall be entitled to an adjustment of the contract price to exclude any significant sum, including profit or fee, to the extent the contract sum was increased because of the defective data. It is assumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee; therefore, unless there is a clear indication that the defective data were not used or relied upon, the price should be reduced by this amount. In establishing that the defective data caused an increase in the contract price, the Director shall not be required to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the correct data had been submitted at the time of agreement on price.

(8) ~~Audit.~~ The Director may, at his discretion, and at reasonable times and places, audit or cause to be audited the books and information of a contractor, prospective contractor, subcontractor, or prospective subcontractor which are related to the cost or pricing data submitted.

(9) ~~Retention of Books and Information.~~ Any contractor who receives a contract or price adjustment for which cost or pricing data is required shall maintain all books and information that relate to the cost or pricing data for three years from the date of final payment under the contract. This requirement shall also extend to any subcontractors of the contractor.

R23-1-55. Specifications.

(1) ~~General Provisions:~~

(a) ~~Purpose.~~ The purpose of a specification is to serve as a basis for obtaining a supply or construction item adequate and suitable for the procuring agencies' needs and the requirements of the project, in a cost-effective manner, taking into account, the costs of ownership and operation as well as initial acquisition costs. Specifications shall permit maximum practicable competition consistent with this purpose. Specifications shall be drafted with the objective of clearly describing the procuring agencies' requirements.

(b) ~~Preference for Commercially Available Products.~~ Recognized, commercially available products shall be procured wherever practicable. In developing specifications, accepted commercial standards shall be used and unique products shall be avoided, to the extent practicable.

(c) ~~Nonrestrictiveness Requirements.~~ All specifications shall be written in such a manner as to describe the requirements to be met, without having the effect of exclusively requiring a proprietary supply, or construction item, or procurement from a sole source, unless no other manner of description will suffice. In that event, a written

determination shall be made that it is not practicable to use a less restrictive specification.

(2) ~~Director's Responsibilities:~~

(a) ~~The Director is responsible for the preparation of all specifications:~~

(b) ~~The Division may enter into contracts with others to prepare construction specifications when there will not be a substantial conflict of interest. The Director shall retain the authority to approve all specifications:~~

(c) ~~Whenever specifications are prepared by persons other than Division personnel, the contract for the preparation of specifications shall require the specification writer to adhere to the requirements of this section:~~

(3) ~~Types of Specifications.~~ The Director may use any method of specifying construction items which he considers to be in the best interest of the state including the following:

(a) ~~By a performance specification stating the results to be achieved with the contractor choosing the means:~~

(b) ~~By a prescriptive specification describing a means for achieving desired, but normally unstated, ends. Prescriptive specifications include the following:~~

(i) ~~Descriptive specifications, providing a detailed written description of the required properties of a product and the workmanship required to fabricate, erect and install without using trade names; or~~

(ii) ~~Proprietary specifications, identifying the desired product by using manufacturers, brand names, model or type designation or important characteristics. This is further divided into two classes:~~

(A) ~~Sole Source, where a rigid standard is specified and there are no allowed substitutions due to the nature of the conditions to be met. This may only be used when very restrictive standards are necessary and there is only one proprietary product known that will meet the rigid standards needed. A sole source proprietary specification must be approved by the Director.~~

(B) ~~Or Equal, which allows substitutions if properly approved:~~

(c) ~~By a reference standard specification where documents or publications are incorporated by reference as though included in their entirety:~~

(d) ~~By a nonrestrictive specification which may describe elements of prescriptive or performance specifications, or both, in order to describe the end result, thereby giving the contractor latitude in methods, materials, delivery, conditions, cost or other characteristics or considerations to be satisfied:~~

(4) ~~Procedures for the Development of Specifications:~~

(a) ~~Specifications may designate alternate supplies or construction items where two or more design, functional, or proprietary performance criteria will satisfactorily meet the procuring agencies' requirements.~~

(b) ~~The specification shall contain a nontechnical section to include any solicitation or contract term or condition such as a requirement for the time and place of bid opening, time of delivery, payment, liquidated damages, and similar contract matters:~~

(c) ~~Use of Proprietary Specifications:~~

(i) ~~The Director shall seek to designate three brands as a standard reference and shall state that substantially equivalent products to those designated will be considered for award, with particular conditions of approval being described in the specification:~~

~~(ii) Unless the Director determines that the essential characteristics of the brand names included in the proprietary specifications are commonly known in the industry or trade, proprietary specifications shall include a description of the particular design, functional, or performance characteristics which are required.~~

~~(iii) Where a proprietary specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.~~

~~(iv) The Division shall solicit sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made in accordance with Section R23-1-25.~~

R23-1-60. Construction Contract Clauses.

~~(1) Required Contract Clauses. Pursuant to Section 63G-6-601, the document entitled "Required Construction Contract Clauses", Dated May 25, 2005, and on file with the Division, is hereby incorporated by reference. Except as provided in Subsections R23-1-30(7) and R23-1-60(2), the Division shall include these clauses in all construction contracts:~~

~~(2) Revisions to Contract Clauses. The clauses required by this section may be modified for use in any particular contract when, pursuant to Subsection 63G-6-601(5), the Director makes a written determination describing the circumstances justifying the variation or variations. Notice of any material variations from the contract clauses required by this section shall be included in any invitation for bids or request for proposals. Examples of changes that are not material variations include, but are not limited to, the following: grammatical corrections; corrections made that resolve conflicts in favor of the intent of the document as a whole; and changes that reflect State law or rule and applicable court case law.]~~

R23-1. Procurement Rules with Numbering Related to the Procurement Code.

R23-1-101. Scope of the Rules and Compliance by Using Agencies.

~~(1) Rule R23-1 applies to procurements by the Division of Facilities Construction and Management. This includes the procurement of construction, architects, engineers, design services and all other professional services and procurements related to design or construction by the Division of Facilities Construction and Management as well as other procurement items within the rule authorization of the Division of Facilities Construction and Management. Using Agencies are required to comply with these rules to extent required by the Utah Code.~~

~~(2) The statutory provisions governing the procurement referred to in R23-1-101(1) above are provided in the Utah Procurement Code, Title 63G, Chapter 6a of the Utah Code as well as Title 63A, Chapter 5 of the Utah Code.~~

R23-1-102. Definitions.

~~Terms used in this R23-1 are defined in Sections 63G-6a-103 and 104 of the Utah Procurement Code. In addition:~~

~~(1) "Actual Costs" means direct and indirect costs which have been incurred for services rendered, supplies delivered, or construction built, as distinguished from allowable costs.~~

~~(2) "Adequate Price" Competition means:~~

~~(a) when a minimum of two competitive bids, proposals, or quotes are received from responsive bidders or offerors.~~

~~(3) "Acquiring Agency" is a conducting procurement unit subject to Section 63F-1-205 acquiring new technology or technology as therein defined.~~

~~(4) "Bid Bond" is an insurance agreement, accompanied by a monetary commitment, by which a third party (the Surety) accepts liability and guarantees that the bidder will not withdraw the bid. The bidder will furnish bonds in the required amount and if the contract is awarded to the bonded bidder, the bidder will accept the contract as bid, or else the surety will pay a specific amount.~~

~~(5) "Bid Rigging" means agreement among potential competitors to manipulate the competitive bidding process, for example, by agreeing not to bid, to bid a specific price, to rotate bidding, or to give kickbacks.~~

~~(6) "Bid Security" means the deposit of cash, certified check, cashier's check, bank draft, money order, or bid bond submitted with a bid and serving to guarantee to the owner that the bidder, if awarded the contract, will execute such contract in accordance with the bidding requirements and the contract documents.~~

~~(7) "Board" means the State Building Board established pursuant to Section 63A-5-101.~~

~~(8) "Brand Name or Equal Specification" means a specification which uses a brand name specification to describe the standard of quality, performance, and other characteristics being solicited, and which invites the submission of equivalent products.~~

~~(9) "Brand Name Specification" means a specification identifying one or more products by manufacturer name, product name, unique product identification number, product description, SKU or catalogue number.~~

~~(10) "Collusion" means when two or more persons act together to achieve a fraudulent or unlawful act. Collusion inhibits free and open competition in violation of law.~~

~~(11) "Cost Analysis" means the evaluation of cost data for the purpose of arriving at estimates of costs to be incurred, prices to be paid, costs to be reimbursed, or costs actually incurred.~~

~~(12) "Cost Data" means factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.~~

~~(13) "Cronyism" is an anticompetitive practice that may violate federal and state antitrust and procurement laws. Cronyism in government contracting is a form of favoritism where contracts are awarded on the basis of friendships, associations or political connections instead of fair and open competition.~~

~~(14) "Director" means the Director of the Division, including, unless otherwise stated, the Director's duly authorized designee.~~

~~(15) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.~~

~~(16) "Mandatory Requirement" means a condition set out in the specifications/statement of work that must be met without exception.~~

~~(17) "Minor Irregularity" is a variation from the solicitation that does not affect the price of the bid, offer, or contract or does not give a bidder/offeror an advantage or benefit not shared~~

by other bidders/offerors, or does not adversely impact the interests of the procurement unit.

(18) "New Technology" means any invention, discovery, improvement, or innovation, that was not available to the acquiring agency on the effective date of the contract, whether or not patentable, including, but not limited to, new processes, emerging technology, machines, and improvements to, or new applications of, existing processes, machines, manufactures and software. Also included are new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable and any new process, machine, including software, and improvements to, or new applications of, existing processes, machines, manufactures and software.

(19) "Participating Addendum" means an agreement issued in conjunction with a Cooperative Contract that authorizes a public entity to use the Cooperative Contract.

(20) "Payment Bond" is a bond that guarantees payment for labor and materials expended on the contract.

(21) "Price Analysis" means the evaluation of price data without analysis of the separate cost components and profit.

(22) "Price Data" means factual information concerning prices for procurement items.

(23) "Record" shall have the meaning defined in Section 63G-2-103 of the Government Records Access and Management Act (GRAMA).

(24) "Section and Subsection" refers to the Utah Code.

(25) "Solicitations," in addition to the definition in 63G-6a-103 (48) also includes all documents, whether attached or incorporated by reference to the solicitation.

(26) "Surety bond" (performance bond) means a promise to pay one the obligee (owner) a certain amount if the principal (contractor) fails to meet some obligation, such as fulfilling the terms of a contract. The surety bond protects the obligee (owner) against losses resulting from the principal's failure to meet the obligation. In the event that the obligations are not met, the obligee (owner), will recover its losses via the bond.

(27) "Technology" means any type of technology defined in Section 63F-1-102(8).

(28) "Using Agency" means any state agency or any political subdivision of the state which utilizes the services procured under this Rule 23-1.

R23-1-103. Division is Issuing and Conducting Procurement Unit.

The Division is both the issuing and conducting procurement unit for procurements under this Rule R23-1.

R23-1-201. Director Appoint to Policy Board, Building Board Rules Authority.

(1) The Director shall appoint a representative to serve on the Utah State Procurement Policy Board.

(2) In accordance with Section 63G-6a-204(2), the Board rules governing procurement of construction, architect-engineer services, and leases apply to the procurement of construction, architect-engineer services, and leases of real property by the Division.

R23-1-301. Relationship with the Division of Purchasing and General Services.

(1) The Division recognizes the provisions of Part 3 of the Utah Procurement Code regarding the Chief Procurement Officer. The Division may participate as needed or required with trainings provided by the Division of Purchasing and General Services.

(2) The Director's responsibilities are provided in Title 63a, Chapter 5 of the Utah Code.

R23-1-401. Prequalification of Potential Vendors.

General procurement provisions, including prequalification of potential vendors, approved vendor lists, and small purchases shall be conducted in accordance with the requirements set forth in Sections 63G-6a-402 through 408. All definitions in the Utah Procurement Code shall apply to this Rule R23-1-4-4 unless otherwise specified in Rule 23-1. This Rule R23-4 provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R23-1-402. Thresholds for Approved Vendor Lists.

(1) Public entities may establish approved vendor lists in accordance with the requirements of Sections 63G-6a-403 and 63G-6a-404.

(a) Contracts or purchases from an approved vendor list may not exceed the following thresholds:

(i) Construction Projects: \$2,500,000 per contract, for direct construction costs, including design and allowable furniture or equipment costs, awarded using an invitation for bids or a request for proposals;

(ii) Professional and General Services, including architectural and engineering services: \$100,000; and

(b) Thresholds for other approved vendor lists may be established by the Director.

R23-1-403. Specifications.

(1) Solicitation documents shall include specifications for the procurement item(s).

(2) Specifications shall be drafted with the objective of clearly describing the Division's requirements and encouraging competition.

(a) Specifications shall emphasize the functional or performance criteria necessary to meet the needs of the Division.

(3) Persons with a conflict of interest, or who anticipate responding to the proposal for which the specifications are written, may not participate in writing specifications. The Division may retain the services of a person to assist in writing specifications, scopes of work, requirements, qualifications, or other components of a solicitation. However the person assisting in writing specifications shall not, at any time during the procurement process, be employed in any capacity by, nor have an ownership interest in, an individual, public or private corporation, governmental entity, partnership, or unincorporated association bidding on or submitting a proposal in response to the solicitation.

(a) This Rule R23-1-403(3) does not apply to the following:

(i) a design build construction project;

_____ (ii) provisions in specifications provided by the designer when the source of the specification is identified and it is not designed to be an impermissible sole source (a sole source that does not comply with the Utah Procurement Code and the applicable administrative rules); and

_____ (iii) other procurements determined in writing by the Director.

_____ (b) Violations of this Rule R23-1-403(3) may result in:

_____ (i) the bidder or offeror being declared ineligible for award of the contract;

_____ (ii) the solicitation being canceled;

_____ (iii) termination of an awarded contract; or

_____ (iv) any other action determined to be appropriate by the Director.

_____ (4) Brand Name or Equal Specifications.

_____ (a) Brand name or equal specifications may be used when:

_____ (i) "or equivalent" reference is included in the specification; and

_____ (ii) as many other brand names as practicable are also included in the specification.

_____ (b) Brand name or equal specifications shall include a description of the particular design and functional or performance characteristics which are required. Specifications unique to the brands shall be described in sufficient detail that another person can respond with an equivalent brand.

_____ (c) When a manufacturer's specification is used in a solicitation, the solicitation shall state the minimum acceptable requirements of an equivalent. When practicable, the Division shall name at least three manufacturer's specifications.

_____ (5) Brand Name Sole Source Requirements.

_____ (a) If only one brand can meet the requirement, the Division shall conduct the procurement in accordance with 63G-6a-802 and shall solicit from as many providers of the brand as practicable; and

_____ (b) If there is only one provider that can meet the requirement, the Division shall conduct the procurement in accordance with Section 63G-6a-802.

R23-1-404. Small Purchases (Commodities).

_____ Small purchases shall be conducted in accordance with the requirements set forth in Section 63G-6a-408. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

_____ (1) "Small Purchase" means a procurement conducted by the Division that does not require the use of a standard procurement process.

_____ (2) Small Purchase thresholds for commodities:

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

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

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

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

_____ (3) Whenever practicable, the Division shall use a rotation system or other system designed to allow for competition when using the small purchases process for commodities.

R23-1-405. Small Purchases Threshold for Architectural and Engineering Services.

_____ (1) The small purchase threshold for architectural or engineering services is a maximum amount of \$100,000.

_____ (2) Architectural or engineering services may be procured up to a maximum of \$100,000, by direct negotiation.

_____ (3) The Division shall follow the process described in Section 63G-6a-403 to prequalify potential vendors and Section 63G-6a-404 if the Division develops an approved vendor list, or Part 15 of the Utah Procurement Code for the selection of architectural and engineering services.

_____ (4) The Division shall include minimum specifications when using the small purchase threshold for architectural and engineering services.

R23-1-406. Small Purchases Threshold for Construction Projects.

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

_____ (2) The Division shall follow the process described in the Section 63G-6a-403 to prequalify potential vendors and Section 63G-6a-404 to develop an Approved Vendor List or other applicable selection methods described in the Utah Procurement Code for construction services.

_____ (3) The Division shall include minimum specifications when using the small purchases threshold for construction projects.

_____ (4) The Director may procure small construction projects up to a maximum of \$25,000 by direct award without seeking competitive bids or quotes after documenting that all building code approvals, licensing requirements, permitting, and other construction related requirements are met. The awarded contractor must certify that they are capable of meeting the minimum specifications of the project.

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

_____ (6) The Division shall procure construction projects over \$100,000 using an invitation to bid, request for proposals, approved vendor list, or other approved source selection method provided in the Utah Procurement Code.

R23-1-407. Quotes for Small Purchases of Commodities from \$1,001 to \$50,000.

_____ The following applies to commodities:

_____ (1) For procurement item(s) where the cost is greater than \$1,000 but up to a maximum of \$5,000, the Division shall obtain a minimum of two competitive quotes, which may be by email, phone or verbal, that include minimum specifications and shall purchase the procurement item from the responsible vendor offering the lowest quote that meets the specifications.

(2) For procurement item(s) where the cost is greater than \$5,000 up to a maximum of \$50,000, the Division shall obtain a minimum of two competitive quotes, that include minimum specifications, which must be communicated to the proposed vendors in writing, and shall purchase the procurement item from the responsible vendor offering the lowest quote that meets the specifications.

(3) For procurement item(s) costing over \$50,000, the Division shall conduct an invitation for bids or other procurement process outlined in the Utah Procurement Code.

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

R23-1-408. Small Purchases of Services of Professionals, Providers, and Consultants.

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

(2) After reviewing the qualifications, the Director may obtain professional services or consulting services up to a maximum of \$100,000 by direct negotiation.

R23-1-501. Request for Information.

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

R23-1-601. Competitive Sealed Bidding; Multiple Stage Bidding; Reverse Auction.

Competitive Sealed Bidding shall be conducted in accordance with the requirements set forth in Sections 63G-6a-601 through 63G-6a-612. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R23-1-602. Bidder Submissions.

(1) The invitation for bids shall include the information required by Section 63G-6a-603 and shall also include a "Bid Form" or forms, which shall provide lines for each of the following:

- (a) the bidder's bid price;
- (b) the bidder's acknowledged receipt of addenda issued by the procurement unit;
- (c) the bidder to identify other applicable submissions;
- and (d) the bidder's signature

(2) Bidders may be required to submit descriptive literature and/or product samples to assist the Director in evaluating whether a procurement item meets the specifications and other requirements set forth in the invitation to bid.

(a) Product samples must be furnished free of charge unless otherwise stated in the invitation for bids, and if not destroyed by testing, will upon written request within any deadline stated in the invitation for bids, be returned at the bidder's expense. Samples must be labeled or otherwise identified as specified in the invitation for bids by the procurement unit.

(3) The provisions of Rule R23-1-705 shall apply to protected records.

(4) Bid, payment and performance bonds or other security may be required for procurement items as set forth in the invitation for bids. Bid, payment and performance bond amounts shall be as prescribed by applicable law or must be based upon the estimated level of risk associated with the procurement item and may not be increased above the estimated level of risk with the intent to reduce the number of qualified bidders.

R23-1-603. Pre-Bid Conferences and Site Visits.

(1) Except as authorized in writing by the Director, pre-bid conferences and site visits must require mandatory attendance by all bidders.

(a) A pre-bid conference may be attended via the following:

- (i) attendance in person;
- (ii) teleconference participation;
- (iii) webinar participation;
- (iv) participation through other electronic media approved by the Director.

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

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

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

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

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

(g) Listening to or viewing audio or video recordings of a mandatory pre-bid conference or site visit may not be substituted for attendance.

(2) If a pre-bid conference or site visit is held, the Division shall maintain:

- (a) an attendance log including the name of each attendee, the entity the attendee is representing, and the attendee's contact information;
- (b) minutes, if there are any, of the pre-bid conference or site visit;
- (c) copies of any documents distributed by the Division to the attendees at the pre-bid conference or site visit; and
- (d) any verbal modifications made to any of the solicitation documents. All verbal modifications to the solicitation documents shall be reduced to writing.

(3) The Division shall publish as an Addendum to the solicitation, the information in R23-1-603 (2)(a) above.

R23-1-604. Addenda to Invitation for Bids.

Prior to the submission of bids, a procurement unit may issue addenda which may modify any aspect of the Invitation for Bids.

(1) Addenda shall be distributed within a reasonable time to allow prospective bidders to consider the addenda in preparing bids.

(2) After the due date and time for submitting bids, at the discretion of the Director, addenda to the Invitation for Bids may be limited to bidders that have submitted bids, provided the addenda does not make a substantial change to the Invitation for Bids that, in the opinion of the Director, likely would have impacted the number of bidders responding to the Invitation for Bids.

R23-1-605. Bids and Modifications to a Bid Received After the Due Date and Time.

(1) Bids and modifications to a bid submitted electronically or by physical delivery, after the established due date and time, will not be accepted for any reason, except as determined in R23-1-605(4).

(2) When submitting a bid or modification electronically, bidders must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time posted in the electronic system. If a bidder is in the middle of uploading a bid when the closing time arrives, the system will stop the process and the bid or modification to the bid will not be accepted.

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

(4) All bids or modifications to bids received by physical delivery will be date and time stamped by the procurement unit.

(5) To the extent that an error on the part of the Division results in a bid or modification to a bid not being received by the established due date and time, the bid or modification to a bid shall be accepted as being on time.

R23-1-606. Errors in Bids.

The following shall apply to the correction or withdrawal of an inadvertently erroneous bid, or the cancelation of an award or contract that is based on an unintentionally erroneous bid. A decision to permit the correction or withdrawal of a bid or the cancellation of any award or a contract under this Rule shall be supported in a written document, signed by the Director.

(1) Errors attributed to a bidder's error in judgment may not be corrected.

(2) Provided that there is no change in bid pricing or the cost evaluation formula, errors not attributed to a bidder's error in judgment may be corrected if it is in the best interest of the procurement unit and correcting the mistake maintains the fair treatment of other bidders.

(a) Examples include:

(i) missing signatures,

(ii) missing acknowledging receipt of an addendum;

(iii) missing copies of professional licenses, bonds, insurance certificates, provided that copies are submitted by the deadline established by the Director to correct this mistake;

(iv) typographical errors;

(v) mathematical errors not affecting the total bid price; or (vi) other errors deemed by the Director to be immaterial or inconsequential in nature.

(3) The Director shall approve or deny, in writing, a bidder's request to correct or withdraw a bid.

(4) Corrections or withdrawal of bids shall be conducted in accordance with Section 63G-6a-605.

(5) If there is any deficiency or failure to submit a required sublist and/or "bid" bond, the Division may request that the bidder who is not in compliance, submit the required sublist and/or "bid" bond by 5 p.m. of the next business day after notice is provided by the Division. Failure to cure the deficiency or failure to submit any required sublist and/or "bid" bond by 5:00 p.m. of the next business day after notice is provided by the Division shall make the bidder ineligible for consideration of award of the contract.

R23-1-607. Errors Discovered After the Award of Contract.

(1) Errors discovered after the award of a contract may only be corrected if, after consultation with the Director and the attorney general's office, it is determined that the correction of the mistake does not violate the requirements of the Utah Procurement Code or these administrative rules.

(2) Any correction made under this subsection must be supported by a written determination signed by the Director.

R23-1-608. Re-solicitation of a Bid.

(1) Re-solicitation of a bid may occur only if the Director determines that:

(a) A material change in the scope of work or specifications has occurred;

(b) procedures outlined in the Utah Procurement Code were not followed;

(c) additional public notice is desired;

(d) there was a lack of adequate competition; or

(e) other reasons exist that are in the best interests of the procurement unit.

(2) Re-solicitation may not be used to avoid awarding a contract to a qualified vendor in an attempt to steer the award of a contract to a favored vendor.

R23-1-609. Only One Bid Received.

(1) If only one responsive and responsible bid is received in response to an Invitation for Bids, including multiple stage bidding, an award may be made to the single bidder if the Director determines that the price submitted is fair and reasonable, and that other prospective bidders had a reasonable opportunity to respond, or there is not adequate time for re-solicitation. Otherwise, the bid may be rejected and:

(a) a new invitation for bids solicited;

(b) the procurement canceled; or

(c) the procurement may be conducted as a sole source under Section 63G-6a-802.

R23-1-610. Multiple or Alternate Bids.

(1) Multiple or alternate bids will not be accepted, unless otherwise specifically required or allowed in the invitation for bids.

(2) If a bidder submits multiple or alternate bids that are not requested in the invitation for bids, the Director will only accept the bidder's primary bid and will not accept any other bids constituting multiple or alternate bids.

R23-1-611. Methods to Resolve Tie Bids.

(1) In accordance with Section 63G-6a-608, in the event of tie bids, the contract shall be awarded to the procurement item offered by a Utah resident bidder, provided the bidder indicated on the invitation to bid form that it is a Utah resident bidder.

(2) If a Utah resident bidder is not identified, an acceptable method when there are two tie bids shall be for the Director to toss a coin in the presence of a minimum of three witnesses with the firm first in alphabetical order being "heads."

(3) Other methods to resolve a tie bid described in Section 63G-6a-608 may be used as deemed appropriate by the Director.

R23-1-612. Publication of Award.

(1) The Division shall, on the day on which the award of a contract is announced, make available to each bidder and to the public a notice that includes:

(a) the name of the bidder to which the contract is awarded and the price(s) of the procurement item(s); and

(b) the names and the prices of each bidder to which the contract is not awarded.

R23-1-613. Multiple Stage Bidding Process.

Multiple stage bidding shall be conducted in accordance with the requirements set forth in Section 63G-6a-609, Utah Procurement Code.

(1) The Director may hold a pre-bid conference as described in Rule R33-6-103 to discuss the multiple stage bidding process or for any other permissible purpose.

R23-1-614. Technology Acquisitions.

(1) The Division in an Invitation for Bids may state that at any time during the term of a contract, that the Division may undertake a review in consultation with the Utah Technology Advisory Board and the Department of Technology Services to determine whether a new technology exists that is in the best interest of the acquiring agency, taking into consideration cost, life-cycle, references, current customers, and other factors and that the acquiring agency reserves the right to:

(a) negotiate with the contractor for the new technology, provided the new technology is substantially within the original scope of work;

(b) terminate the contract in accordance with the existing contract terms and conditions; or

(c) conduct a new procurement for an additional or supplemental contract as needed to take into account new technology.

(2) Subject to the provisions of Section 63G-6a-802, the trial use or testing of new technology may be permitted for a duration not to exceed the maximum time necessary to evaluate the technology.

R23-1-615. Subcontractor Lists.

The Division may not consider, or award to, any bid submitted by a bidder if the bidder fails to submit a subcontractor list meeting the requirements of Section 63A-5-208 and this Rule. For purposes of this Rule R23-1-615, the definitions of Section 63A-5-208 shall be applicable. Within 24 hours after the bid opening time, not including Saturdays, Sundays and state holidays, the apparent lowest three bidders, as well as other bidders that desire to be considered, shall submit to the Division a list of their first-tier subcontractors that are in excess of the dollar amounts stated in Subsection 63A-5-208(3)(a)(i)(A).

(1) The subcontractor list shall include the following:

(a) the type of work the subcontractor is to perform;

(b) the subcontractor's name;

(c) the subcontractor's bid amount;

(d) the license number of the subcontractor issued by the Utah Division of Occupational and Professional Licensing, if such license is required under Utah law; and

(e) the impact that the selection of any alternate included in the solicitation would have on the information required by this Subsection (14).

(2) The contract documents for a specific project may require that additional information be provided regarding any contractor, subcontractor, or supplier.

(3) If pursuant to Subsection 63A-5-208(4), a bidder intends to perform the work of a subcontractor or obtain, at a later date, a bid from a qualified subcontractor, the bidder shall:

(a) comply with the requirements of Section 63A-5-208 and

(b) clearly list himself/herself on the subcontractor list form.

(4) Errors on the subcontractor list will not disqualify the bidder if the bidder can demonstrate that the error is a result of his reasonable reliance on information that was provided by the subcontractor and was used to meet the requirements of this section, and, provided that this does not result in an adjustment to the bidder's contract amount.

(5) Pursuant to Sections 63A-5-208 and 63G-2-305, information contained in the subcontractor list submitted to the Division shall be classified public except for the amount of subcontractor bids which shall be classified as protected until a contract has been awarded to the bidder at which time the subcontractor bid amounts shall be classified as public. During the time that the subcontractor bids are classified protected, they may only be made available to procurement and other officials involved with the review and approval of bids.

(6) Change of Listed Subcontractors. Subsequent to twenty-four hours after the bid opening, the contractor may change his listed subcontractors only after receiving written permission from the Director based on complying with all of the following:

(a) The contractor has established in writing that the change is in the best interest of the State and that the contractor establishes an appropriate reason for the change, which may include, but is not limited to, the following reasons:

(i) the original subcontractor has failed to perform, or is not qualified or capable of performing

(ii) the subcontractor has requested in writing to be released

(b) The circumstances related to the request for the change do not indicate any bad faith in the original listing of the subcontractors;

(c) Any requirement set forth by the Director to ensure that the process used to select a new subcontractor does not give rise to bid shopping;

(d) Any increase in the cost of the subject subcontractor work shall be borne by the contractor; and

(e) Any decrease in the cost of the subject subcontractor work shall result in a deductive change order being issued for the contract for such decreased amount.

R23-1-616. Bids Over Budget.

(1) In the event all bids for a construction project exceed available funds as certified by the appropriate fiscal officer, and the low responsive and responsible bid does not exceed those funds by more than 5%, the Director may, where time or economic considerations preclude resolicitation of work of a reduced scope, negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder in order to bring the bid within the amount of available funds.

(2) As an alternative to the procedure authorized in Subsection (1), when all bids for a construction project exceed available funds as certified by the Director, and the Director finds that due to time or economic considerations the re-solicitation of a reduced scope of work would not be in the interest of the state, the Director may negotiate an adjustment in the bid price using one of the following methods:

(a) reducing the scope of work in specific subcontract areas and supervising the re-bid of those subcontracts by the low responsive and responsible bidder;

(b) negotiating with the low responsive and responsible bidder for a reduction in scope and cost with the value of those reductions validated in accordance with Section R23-1-50; or

(c) revising the contract documents and soliciting new bids only from bidders who submitted a responsive bid on the original solicitation. This re-solicitation may have a shorter bid response time than otherwise required.

(3) The use of one of the alternative procedures provided for in this subsection (2) must provide for the fair and equitable treatment of bidders.

(4) The Director's written determination, including a brief explanation of the basis for the decision shall be included in the contact file.

(5) This Rule does not restrict in any way, the right of the Director to use any emergency or sole source procurement provisions, or any other applicable provisions of State law or rule which may be used to award the construction project.

R23-1-701. Conducting the Request for Proposals Standard Procurement Process.

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

R23-1-702. Content of the Request for Proposals.

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

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

(b) instructions for submitting price.

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

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

(b) approving content of attachments;

(c) providing the Division with redacted documents, as applicable;

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

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

(f) the requirements of Section 63G-6a-402(6).

R23-1-703. Multiple Stage RFP Process.

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

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

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

R23-1-704. (Reserved for Expansion).

Reserved.

R23-1-705. Protected Records.

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

(a) Trade Secrets, as defined in Section 13-24-2 of the Utah Code.

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

(c) Other Protected Records under GRAMA.

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

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

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

R23-1-706. Notification.

(1) A person who complies with Rule R23-1-705 shall be notified by the procurement unit prior to the public release of any information for which a claim of confidentiality has been asserted.

(2) Except as provided by court order, the procurement unit to whom the request for a record is made under GRAMA, may not disclose a record claimed to be protected under Rule R23-1-705

but which the procurement unit or State Records Committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal, is reached. This Rule R23-1-706 does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the State Records Committee. To the extent allowed by law, the parties to a dispute regarding the release of a record may agree in writing to an alternative dispute resolution process.

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

R23-1-707. Process for Submitting Proposals with Protected Business Confidential Information.

(1) If an offeror submits a proposal that contains information claimed to be business confidential or protected information, the offeror must submit two separate proposals:

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

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

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

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

R23-1-708. Pre-Proposal Conferences and Site Visits.

(1) Except as authorized in writing by the Director, pre-proposal conferences and site visits must require mandatory attendance by all offerors.

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

(i) attendance in person;

(ii) teleconference participation;

(iii) webinar participation;

(iv) participation through other electronic media approved by the Director.

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

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

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

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

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

(g) Listening to or viewing audio or video recordings of a mandatory pre-proposal conference or site visit may not be substituted for attendance.

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

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

(b) minutes, if there are any, of the pre-proposal conference or site visit;

(c) copies of any documents distributed by the Division to the attendees at the pre-proposal conference or site visit;

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

(3) The Division shall publish as an addendum to the solicitation, the information in R23-1-708(2)(a) above.

R23-1-709. Addenda to Request for Proposals.

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

(a) making changes to:

(i) the scope of work;

(ii) the schedule;

(iii) the qualification requirements;

(iv) the criteria;

(v) the weighting; or

(vi) other requirements of the Request for Proposal.

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

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

R23-1-710. Modification or Withdrawal of Proposal Prior to Deadline.

A proposals may be modified or withdrawn prior to the established due date and time for responding.

R23-1-711. Proposals and Modifications, Delivery and Time Requirements.

(1) Except as provided in R23-1-711(5) below, proposals and modifications to a proposal submitted electronically or by physical delivery, after the established due date and time, will not be accepted for any reason.

(2) When submitting a proposal or modification to a proposal electronically, offerors must allow sufficient time to complete the online forms and upload documents. The solicitation will end at the closing time posted in the electronic system. If an offeror is in the middle of uploading a proposal when the closing

time arrives, the system should stop the process and the proposal or modification to a proposal will not be accepted.

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

(4) All proposals or modifications to proposals received by physical delivery will be date and time stamped by the Division.

(5) To the extent that an error on the part of the Division results in a proposal or modification to a proposal not being received by the established due date and time, the proposal or modification to a proposal shall be accepted as being on time.

R23-1-712. Errors in Proposals.

The following shall apply to the correction or withdrawal of an unintentionally erroneous proposal, or the cancellation of an award or contract that is based on an unintentionally erroneous proposal. A decision to permit the correction or withdrawal of a proposal or the cancellation of an award or a contract shall be supported in a written document, signed by the Director.

(1) Mistakes attributed to an offeror's error in judgment may not be corrected.

(2) Unintentional errors not attributed to an offeror's error in judgment may be corrected if it is in the best interest of the procurement unit and correcting the error maintains the fair treatment of other offerors.

(a) Examples include:

(i) missing signatures,

(ii) missing acknowledgement of an addendum;

(iii) missing copies of professional licenses, bonds, insurance certificates, provided that copies are submitted by the deadline established by the Director to correct this mistake;

(iv) typographical errors;

(v) mathematical errors not affecting the total proposed price; or

(vi) other errors deemed by the Director to be immaterial or inconsequential in nature.

(3) Unintentional errors discovered after the award of a contract may only be corrected if, after consultation with the Director and the Attorney General's Office, it is determined that the correction of the error does not violate the requirements of the Utah Procurement Code or these administrative rules.

R23-1-713. Evaluation of Proposals.

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

R23-1-714. Correction or Withdrawal of Proposal, Sublist and Bond errors.

(1) In the event an offeror submits a proposal that on its face appears to be impractical, unrealistic or otherwise in error, the Director may contact the offeror to either confirm the proposal, permit a correction of the proposal, or permit the withdrawal of the proposal, in accordance with Section 63G-6a-706.

(2) Offerors may not correct errors, deficiencies, or incomplete responses in a proposal that has been determined to be not responsible, not responsive, or that does not meet the mandatory

minimum requirements stated in the request for proposals in accordance with Section 63G-6a-704.

(3) If there is any deficiency or failure to submit a required sublist and/or "bid" bond, the Division may request that the offeror who is not in compliance, submit the required sublist and/or "bid" bond by 5 p.m. of the next business day after notice is provided by the Division. Failure to cure the deficiency or failure to submit any required sublist and/or "bid" bond by 5:00 p.m. of the next business day after notice is provided by the Division shall make the offeror ineligible for consideration of award of the contract.

R23-1-715. Interviews and Presentations.

(1) Interviews and presentations may be held as outlined in the RFP.

(2) Offerors invited to interviews or presentations shall be limited to those offerors meeting minimum requirements specified in the RFP.

(3) Representations made by the offeror during interviews or presentations shall become an addendum to the offeror's proposal and shall be documented. Representations must be consistent with the offeror's original proposal and may only be used for purposes of clarifying or filling in gaps in the offeror's proposal.

(4) The Director shall establish a date and time for the interviews or presentations and shall notify eligible offerors of the procedures. Interviews and presentations will be at the offeror's expense.

R23-1-716. Best and Final Offers.

Best and Final Offers shall be conducted in accordance with Section 63G-6a-707.5. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

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

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

(i) no single proposal addresses all the specifications;

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

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

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

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

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

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

(3) Proposal modifications submitted in response to a request for best and final offers may only address the specific issues

and/or sections of the RFP described in the request for best and final offers.

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

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

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

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

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

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

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

(8) A request for best and final offers issued by the Division shall:

(a) comply with all public notice requirements provided in Section 63G-6a-406;

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

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

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

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

R23-1-717. Cost-benefit Analysis Exception: CM/GC.

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

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

(i) a management plan;

(ii) references;

(iii) statements of qualifications; and

(iv) a management fee only if requested by the Division. The management fee may not be requested by the Division if the management fee is not part of the criteria for the evaluation committee. The Division may use a fee table for this management fee.

(b) the management fee contains only the following:

(i) preconstruction phase services;

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

(iii) overhead and profit for the construction phase.

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

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

R23-1-718. Only One Proposal Received.

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

(a) conduct a review to determine if:

(i) the proposal meets the minimum requirements;

(ii) pricing and terms are reasonable; and

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

(b) if the evaluation committee determines the proposal meets the minimum requirements, pricing and terms are reasonable, and the proposal is in the best interest of the procurement unit, the procurement unit may make an award.

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

R23-1-719. Publicizing Awards.

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

(a) the contract(s) entered into as a result of the selection and the successful proposal(s), except for those portions that are to be non-disclosed under Rule R23-1-705;

(b) the unsuccessful proposals, except for those portions that are to be non-disclosed under Rule R23-1-705;

(c) the rankings of the proposals;

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

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

(f) the written justification statement supporting the selection, except for those portions that are to be non-disclosed under Rule R23-1-705.

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

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

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

(c) non-public financial statements; and

(d) past performance and reference information, which is not provided by the offeror and which is obtained as a result of the efforts of the governmental entity. To the extent such past

performance or reference information is included in the written justification statement; it is subject to public disclosure.

R23-1-801. Sole Source - Award of Contract Without Competition.

(1) Sole source procurements shall be conducted in accordance with the requirements set forth in Section 63G-6a-802, Utah Procurement Code. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and should be used in conjunction with the Procurement Code.

(2) A sole source procurement may be conducted if:

(a) there is only one source for the procurement item;

(b) the award to a specific supplier, service provider, or contractor is a condition of a donation or grant that will fund the full cost of the supply, service, or construction item; or

(c) the procurement item is needed for trial use or testing to determine whether the procurement item will benefit the procurement unit.

(3) An urgent or unexpected circumstance or requirement for a procurement item does not justify the award of a sole source procurement.

(4) Requests for a procurement to be conducted as a sole source shall be submitted in writing to the Director for approval.

(5) The sole source request shall be submitted to the Director and shall include:

(a) a description of the procurement item;

(b) the total dollar value of the procurement item, including, when applicable, the actual or estimated full lifecycle cost of maintenance and service agreements;

(c) the duration of the proposed sole source contract;

(d) an authorized signature of the requester;

(e) unless the sole source procurement is conducted under Rule R23-1-801(2)(b) or (c), research completed by the requester documenting that there are no other competing sources for the procurement item;

(f) any other information requested by the Director; and

(6) a sole source request form containing all of the requirements of Rule R23-1-801(5) may be available on the division's website and/or may be described in specifications or other contract documents.

(7) Except as provided in (b), sole source procurements over \$50,000 shall be published in accordance with Section 63G-6a-406.

(a) Sole source procurements under \$50,000 are not required to be published but may be published at the discretion of the Director.

(b) The requirement for publication of notice for a sole source procurement is waived:

(i) for public utility services;

(ii) if the award to a specific supplier, service provider, or contractor is a condition of a donation or grant that will fund the full cost of the supply, service, or construction item;

(iii) when the circumstances of the request are clear that there can only be one source; or

(iv) for other circumstances as determined in writing by the Director.

(8) A person may contest a sole source procurement prior to the closing of the public notice period set forth in Section 63G-6a-406, when public notice is required under this Rule R23-1-801 by submitting the following information in writing to the Director:

(a) the name of the contesting person; and

(b) a detailed explanation of the challenge, including documentation showing that there are other competing sources for the procurement item.

(9) Upon receipt of information contesting a sole source procurement, the Director shall conduct an investigation to determine the validity of the challenge and make a written determination either supporting or denying the challenge.

R23-1-802. Trial Use or Testing of a Procurement Item, Including New Technology.

The trial use or testing of a procurement item, including new technology, shall be conducted as set forth in Section 63G-6a-802, Utah Procurement Code.

R23-1-803. Alternative Procurement Methods.

(1) The Director may utilize alternative procurement methods to acquire procurement items such as those listed below when it is determined in writing by the Director, to be more practicable or advantageous to the procurement unit:

(a) used vehicles;

(b) livestock;

(c) hotel conference facilities and services;

(d) speaker honorariums;

(e) hosting out-of-state and international dignitaries;

(f) international promotion of the state; and

(g) any other procurement item for which a standard procurement method is not reasonably practicable.

(2) When making this determination, the Director may take into consideration whether:

(a) the potential cost of preparing, soliciting and evaluating bids or proposals is expected to exceed the benefits normally associated with such solicitations;

(b) the procurement item cannot be acquired through a standard procurement process; and

(c) the price of the procurement item is fair and reasonable.

(3) In the event that it is so determined, the Director may elect to utilize an alternative procurement method which may include any or all of the following:

(a) informal price quotations;

(b) direct negotiations; and

(c) direct award.

R23-1-804. Emergency Procurement.

(1) Emergency procurements shall be conducted in accordance with the requirements set forth in Section 63G-6a-803, and this rule.

(2) An emergency procurement is a procurement procedure where the procurement unit is authorized to obtain a procurement item without using a standard competitive procurement process.

(3) Emergency procurements are limited to those procurement items necessary to mitigate the emergency.

(4) While a standard procurement process is not required under an emergency procurement, when practicable, the Division should seek to obtain as much competition as possible through use of phone quotes, internet quotes, limited invitations to bid, or other selection methods while avoiding harm, or risk of harm, to the public health, safety, welfare, property, or impairing the ability of a public entity to function or perform required services.

(5) The Division shall make a written determination documenting the basis for the emergency and the selection of the procurement item. A record of the determination and selection shall be kept in the contract file. The documentation may be made after the emergency condition has been alleviated.

R23-1-805. Declaration of "Official State of Emergency".

Upon a declaration of an "Official State of Emergency" by the authorized state official, the Director shall implement the division's Continuity of Operations Plan, or COOP. When activated, the division shall follow the procedures outlined in the plan and take appropriate actions as directed by the procurement unit responsible for authorizing emergency acquisitions of procurement items.

R23-1-901. General Provisions.

(1) An Invitation for Bids, a Request for Proposals, or other solicitation may be canceled prior to the deadline for receipt of bids, proposals, or other submissions, when it is in the best interests of the procurement unit as determined by the Division. In the event a solicitation is cancelled, the reasons for cancellation shall be made part of the procurement file and shall be available for public inspection and the Division shall:

(a) re-solicit new bids or proposals using the same or revised specifications; or

(b) withdraw the requisition for the procurement item(s).

R23-1-902. Re-solicitation.

(1) In the event there is no initial response to an initial solicitation, the Director may:

(a) contact the known supplier community to determine why there were no responses to the solicitation;

(b) research the potential vendor community; and

(c) based upon the information in (a) and (b) require the Division to modify the solicitation documents.

(2) If the Division has modified the solicitation documents and after the re-issuance of a solicitation, there is still no competition or there is insufficient competition, the Director, shall:

(a) require the Division to further modify the procurement documents; or

(b) cancel the requisition for the procurement item(s).

R23-1-903. Cancellation Before Award.

(1) Solicitations may be cancelled before award but after opening all bids or offers when the Director determines in writing that:

(a) inadequate or ambiguous specifications were cited in the solicitation;

(b) the specifications in the solicitation have been or must be revised;

(c) the procurement item(s) being solicited are no longer required;

(d) the solicitation did not provide for consideration of all factors of cost to the procurement unit, such as cost of transportation, warranties, service and maintenance;

(e) bids or offers received indicate that the needs of the procurement unit can be satisfied by a less expensive procurement item differing from that in the solicitation;

(f) except as provided in Section 63G-6a-607, all otherwise acceptable bids or offers received are at unreasonable prices, or only one bid or offer is received and the Director cannot determine the reasonableness of the bid price or cost proposal;

(g) the responses to the solicitation were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or

(h) no responsible bid or offer has been received from a responsible bidder or offer;

R23-1-904. Alternative to Cancellation.

In the event administrative difficulties are encountered before award but after the deadline for submissions that may delay award beyond the bidders' or offerors' acceptance periods, the bidders or offerors should be requested, before expiration of their bids or offers, to extend in writing the acceptance period (with consent of sureties, if any) in order to avoid the need for cancellation.

R23-1-905. Continuation of Need.

If the solicitation has been cancelled for the reasons specified in Rule R23-1-903 (1)(f), (g) or (h) and the Director has made the written determination in Rule R23-1-903(1) and the Division has an existing contract, the Division may permit an extension of the existing contract under Section 63G-6a-802(7).

R23-1-906. Rejections and Suspension/Debarment.

(1) The Division may reject any or all bids, offers or other submissions, in whole or in part, as may be specified in the solicitation, when it is in the best interest of the procurement unit. In the event of a rejection of any or all bids, offers or other submissions, in whole or in part, the reasons for rejection shall be made part of the procurement file and shall be available for public inspection.

(2) Bids, offers, or other submissions, received from any person that is suspended, debarred, or otherwise ineligible as of the due date for receipt of bids, proposals, or other submissions shall be rejected.

R23-1-907. Rejection for Nonresponsibility or Nonresponsiveness.

(1) Subject to Section 63G-6a-903, the Director shall reject a bid or offer from a bidder or offeror determined to be nonresponsible. A responsible bidder or offeror is defined in Section 63G-6a-103(42).

(2) In accordance with Section 63G-6a-604(3) the Director may not accept a bid that is not responsive. Responsiveness is defined in Section 63G-6a-103(43).

(3) If there is any deficiency or failure to submit a required sublist and/or "bid" bond, the Division may request that the bidder/offeror who is not in compliance, submit the required sublist and/or "bid" bond by 5 p.m. of the next business day after notice is provided by the Division. Failure to cure the deficiency or failure

to submit any required sublist and/or "bid" bond by 5:00 p.m. of the next business day after notice is provided by the Division, shall make the bidder/offeror nonresponsive and therefore ineligible for consideration of award of the contract.

(4) The originals of all rejected bids, offers, or other submissions, and all written findings with respect to such rejections, shall be made part of the procurement file and available for public inspection.

R23-1-908. Debarment or Suspension From Consideration for Award of Contracts -- Process -- Causes for Debarment -- Appeal.

The procedures for a debarment or suspension from consideration for award of contracts, including appellate rights, are provided in Section 63G-6a-904. Upon any suspension or debarment, the person that is suspended or debarred shall be considered nonresponsive and ineligible for the award of contracts by the Division in accordance with the determination of suspension or debarment.

R23-1-1001. Providers of State Products.

(1) In addition to the reciprocal preference requirements contained in Section 63G-6a-1002 for the providers of procurement items produced, manufactured, mined, grown, or performed in Utah, Rule R23-1-10 outlines the process for award of a contract when there is more than one equally low preferred bidder. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(2) In the event there is more than one equally low preferred bidder, the Director shall consider the preferred bidders as tie bidders and shall follow the process specified in Section 63G-6a-608 and Rule R23-1-10.

R23-1-1002. Preference for Resident Contractors.

(1) In addition to the reciprocal preference requirements contained in Section 63G-6a-1003 for resident Utah contractors, this rule outlines the process for award of a contract when there is more than one equally low preferred resident contractor.

(2) In the event there is more than one equally low preferred resident contractor, the Director shall consider the preferred resident contractors as tie bidders and shall follow the process specified in Section 63G-6a-608 and this R23-1-10.

R23-1-1003. Exception for Federally Funded Contracts.

This Rule R23-1-10 does not apply to the extent it might jeopardize the receipt of federal funds, conflicts with federal requirements relating to a procurement that involves the expenditure of federal assistance, federal contract funds, or federal financial participation funds.

R23-1-1101. Definitions.

(1) Whenever used in this Rule, the terms "bid", "bidder" and "bid security" apply to all procurements, including non-construction procurements, when the procurement documents, regardless of the procurement type, require securities and/or bonds.

(2) All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This

administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R23-1-1102. Bid Security Requirements for Projects.

(1) Application. The requirements for bid security and bonds under this Rule R23-1-11 shall apply as follows:(a) For the Division, the award of construction contracts where the face amount of the contract is \$100,000 or more.

(b) For other state agencies that are required to use the same or similar documents as the Division for their construction contracts, the award of construction contracts where the face amount of the contract is \$50,000 or more, unless the Division Director, in writing, approves a \$100,000 or more requirement similarly to the Division, based on:

(i) The Division Director's finding that the agency has a selection process for such contracts that are under \$100,000, that ensures a responsible, financially solvent contractor is selected; and

(ii) that the agency has the financial capability to absorb the potential responsibility that can occur due to the lack of the bid security and bonding requirements for the contract under \$100,000.

(c) At any time the Division or any other state agency can require acceptable bid security as well as performance and payment bonds on contracts that are for amounts below the standard requirements set forth above in this Rule.

(2) Acceptable Bid Security. The term "bid" as used in this Rule R23-1-1102 shall also be deemed to apply to "offer."

(a) Invitations for Bids and Requests For Proposals shall require the submission of acceptable bid security in an amount equal to at least five percent of the bid, at the time the bid is submitted. If a contractor fails to accompany its bid with acceptable bid security, the bid shall be deemed nonresponsive, unless this failure is found to be nonsubstantial as hereinafter provided.

(b) If acceptable bid security is not furnished in accordance with Rule R23-1-907(3), the bid shall be rejected as nonresponsive, unless the failure to comply is determined by the Director to be nonsubstantial. Failure to submit an acceptable bid security may be deemed nonsubstantial if:

(i) the bid security is submitted on a form other than the Division's required bid bond form and the bid security meets all other requirements including being issued by a surety meeting the requirements of Subsection (5);

(ii) the contractor provides acceptable bid security by 5 p.m. of the next business day after notice is provided by the Division of the defective bid security; or

(iii) only one bid is received.

(3) Payment and Performance Bonds. Except as provided in this Rule R23-1-1102(1) above, payment and performance bonds in the amount of 100% of the contract price are required for all contracts in excess of \$50,000. These bonds shall cover the procuring agencies and be delivered by the contractor to the Division at the same time the contract is executed. If a contractor fails to deliver the required bonds, the contractor's bid shall be found nonresponsive and its bid security shall be forfeited.

(4) Forms of Bonds. Bid Bonds, Payment Bonds and Performance Bonds must be from sureties meeting the requirements of Rule R23-1-1102(5) and must be on the exact bond forms most recently adopted by the Board and on file with the Division.

(5) Surety firm requirements. All surety firms must be authorized to do business in the State of Utah and be listed in the U.S.

Department of the Treasury Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies for an amount not less than the amount of the bond to be issued. A co-surety may be utilized to satisfy this requirement.

(6) Waiver. The Director may waive any bonding requirements set forth in this Rule if the Director finds circumstances in which the Director considers any or all of the bonds to be unnecessary to protect the State. Any such waiver shall be stated in writing, explain the circumstances why the bond(s) is not necessary to protect the procurement unit, and the waiver shall be made part of the project file.

(7) The Director may require an acceptable bid security on projects that are for amounts less than the standard amount set forth in this Rule R23-1-1102.

R23-1-1201. Required Contract Clauses.

(1) The Division shall comply with Sections 63G-6a-1202 considering clauses for contracts. The Division will establish standard contract clauses to assist the Division and to help contractors and potential contractors to understand applicable requirements. These standard contract clauses may be modified as needed to meet the requirements of the particular project.

(2) The Division shall also comply with the requirements of Section 63G-6a-402(6) by requiring that for each contract and request for proposals, the inclusion of a clause that requires the Division, for the duration of the contract, to make available contact information of the winning contractor to the Department of Workforce Services in accordance with Section 35A-2-203. This requirement does not preclude a contractor from advertising job openings in other forums throughout the state.

(3) There shall be compliance with the federal contract prohibition provisions of the Sudan Accountability and Divestment Act of 2007 (Pub. L. No. 110-174) that prohibit contracting with a person doing business in Sudan.

(4) All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R23-1-1202. Establishment of Terms and Conditions.

The Division may use the Standard Terms and Conditions adopted by the Division of Purchasing and General Services for a particular procurement with modifications.

R23-1-1203. Contracts and Change Orders -- Contract Types.

The Division may use contract types to the extent authorized under Section 63G-6a-1205.

R23-1-1204. Prepayments.

Prepayments are subject to the restrictions contained in Section 63G-6a-1208.

R23-1-1205. Leases of Personal Property.

Leases of personal property are subject to the following:

(1) Leases shall be conducted in accordance with Division of Finance rules and Section 63G-6a-1209.

(2) A lease may be entered into provided the procurement unit complies with Section 63G-6a-1209 and:

(a) it is in the best interest of the procurement unit;

(b) all conditions for renewal and costs of termination are set forth in the lease; and

(c) the lease is not used to avoid a competitive procurement.

(3) Lease contracts shall be conducted with as much competition as practicable.

(4) Executive Branch Procurement Unit Leases with Purchase Option. A purchase option in a lease may be exercised if the lease containing the purchase option was awarded under an authorized procurement process. Before exercising this option, the Division shall:

(a) investigate alternative means of procuring comparable procurement items; and

(b) compare estimated costs and benefits associated with the alternative means and the exercise of the option, for example, the benefit of buying new state of the art data processing equipment compared to the estimated, initial savings associated with exercise of a purchase option.

R23-1-1206. Multi-Year Contracts.

The Division may issue multi-year contracts in accordance with Section 63G-6a-1204. Section 63G-6a-1204 does not apply to a contract for the design or construction of a facility, a road, a public transit project, or a contract for the financing of equipment.

R23-1-1207. Installment Payments.

Procurement units may make installment payments in accordance with Section 63G-6a-1208.

R23-1-1208. Change Orders.

The Division shall comply with Section 63G-6a-1207.

R23-1-1209. Requirements for Cost or Pricing Data.

(1) For contracts that expressly allow price adjustments, cost or pricing data shall be required in support of a proposal leading to the adjustment of any contract pricing.

(2) Cost or pricing data exceptions:

(a) need not be submitted when the terms of the contract state established market indices, catalog prices or other benchmarks are used as the basis for contract price adjustments or when prices are set by law or rule;

(b) if a contractor submits a price adjustment higher than established market indices, catalog prices or other benchmarks established in the contract, the Director may request additional cost or pricing data; or

(c) the Director may waive the requirement for cost or pricing data provided a written determination is made supporting the reasons for the waiver. A copy of the determination shall be kept in the contract file.

R23-1-1210. Defective Cost or Pricing Data.

(1) If defective cost or pricing data was used to adjust a contract price, the vendor and the Division may enter into discussions to negotiate a settlement.

(2) If a settlement cannot be negotiated, either party may seek relief as provided by applicable laws and rules.

R23-1-1211. Cost Analysis.

(1) Cost analysis includes the verification of cost data. Cost analysis may be used to evaluate:

- (a) specific elements of costs;
- (b) total cost of ownership and life-cycle cost;
- (c) supplemental cost schedules;
- (d) market basket cost of similar items;
- (e) the necessity for certain costs;
- (f) the reasonableness of allowances for contingencies;
- (g) the basis used for allocation of indirect costs; and
- (h) the reasonableness of the total cost or price.

R23-1-1212. Audit.

The Division may, at reasonable times and places, audit or cause to be audited by an independent third party firm, by another procurement unit, or by an agent of the procurement unit, the books, records, and performance of a contractor, prospective contractor, subcontractor, or prospective subcontractor.

R23-1-1213. Retention of Books and Records.

Contractors shall maintain all records related to the contract. These records shall be maintained by the contractor for at least six years after the final payment, unless a longer period is required by law. All accounting for contracts and contract price adjustments, including allowable incurred costs, shall be conducted in accordance with generally accepted accounting principles for government.

R23-1-1214. Inspections.

Circumstances under which the Division may perform inspections include inspections of the contractor's manufacturing/production facility or place of business, or any location where the work is performed:

- (1) whether the definition of "responsible," as defined in Section 63G-6a-103(40) and in the solicitation documents, has been met or are capable of being met; and
- (2) if the contract is being performed in accordance with its terms.

R23-1-1215. Access to Contractor's Manufacturing/Production Facilities.

(1) The Division may enter a contractor's or subcontractor's manufacturing/production facility or place of business to:

- (a) inspect procurement items for acceptance by the procurement unit pursuant to the terms of a contract;
- (b) audit cost or pricing data or audit the books and records of any contractor or subcontractor pursuant to Utah Code or Administrative Rule; and
- (c) investigate in connection with an action to debar or suspend a person from consideration for award of contracts.

R23-1-1216. Inspection of Supplies and Services.

(1) Contracts may provide that the Director or Division may inspect procurement items at the contractor's or subcontractor's facility and perform tests to determine whether the procurement items conform to solicitation and contract requirements.

R23-1-1217. Conduct of Inspections.

(1) No inspector may change any provision of the specifications or the contract without written authorization of the Director. The presence or absence of an inspector or an inspection, shall not relieve the contractor or subcontractor from any requirements of the contract.

(2) When an inspection is made, the contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

R23-1-1301. Purpose.

The purpose of this rule is to comply with the provisions of Sections 63G-6a-1302 and 1303 of the Utah Procurement Code. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

R23-1-1302. Construction Management Rule.

As required by Section 63G-6a-1302, this rule contains provisions applicable to:

- (1) selecting the appropriate method of management for construction contracts;
- (2) documenting the selection of a particular method of construction contract management; and
- (3) the selection of a construction manager/general contractor.

R23-1-1303. Application.

The provisions of Rules R23-1-1302 through R23-1-1306 shall apply to all procurements of construction.

R23-1-1304. Methods of Construction Contract Management.

(1) This Rule contains provisions applicable to the selection of the appropriate type of construction contract management.

(2) It is intended that the Director have sufficient flexibility in formulating the construction contract management method for a particular project to fulfill the needs of the procurement unit. The methods for achieving the purposes set forth in this rule are not to be construed as an exclusive list.

(3) Before choosing the construction contracting method to use, a careful assessment must be made by the Director of requirements the project shall consider, at a minimum, the following factors:

- (a) when the project must be ready to be occupied;
- (b) the type of project, for example, housing, offices, labs, heavy or specialized construction;
- (c) the extent to which the requirements of the procurement unit and the way in which they are to be met are known;
- (d) the location of the project;
- (e) the size, scope, complexity, and economics of the project;
- (f) the amount and type of financing available for the project, including whether the budget is fixed or what the source of

funding is, for example, general or special appropriation, federal assistance moneys, general obligation bonds or revenue bonds, lapsing/nonlapsing status and legislative intent language;

(g) the availability, qualification, and experience of the procurement unit's personnel to be assigned to the project and how much time the procurement unit's personnel can devote to the project;

(h) the availability, qualifications and experience of outside consultants and contractors to complete the project under the various methods being considered;

(i) the results achieved on similar projects in the past and the methods used; and

(j) the comparative advantages and disadvantages of the construction contracting method and how they might be adapted or combined to fulfill the needs of the procuring agencies.

(5) The following descriptions are provided for the more common construction contracting management methods which may be used by the procurement unit. The methods described are not all mutually exclusive and may be combined on a project. These descriptions are not intended to be fixed in respect to all construction projects. In each project, these descriptions may be adapted to fit the circumstances of that project.

(a) Single Prime (General) Contractor. The single prime contractor method is typified by one business, acting as a general contractor, contracting with the procurement unit to timely complete an entire construction project in accordance with drawings and specifications provided by the procurement unit. Generally the drawings and specifications are prepared by an architectural or engineering firm under contract with the procurement unit. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the prime contractor has entered into subcontracts.

(b) Design-Build. In a design-build project, an entity, often a team of a general contractor and a designer, contract directly with a procurement unit to meet the procurement unit's requirements as described in a set of performance specifications, and/or a program. Design responsibility and construction responsibility both rest with the design-build contractor. This method can include instances where the design-build contractor supplies the site as part of the package.

(c) Construction Manager/General Contractor (Construction Manager at Risk). The Division may contract with the construction manager early in a project to assist in the development of a cost effective design. In a Construction Manager/General Contractor (CM/GC) method, the CM/GC becomes the general contractor and is at risk for all the responsibilities of a general contractor for the project, including meeting the specifications, complying with applicable laws, rules and regulations, that the project will be completed on time and will not exceed a specified maximum price.

R23-1-1305. Selection of Construction Method Documentation.

The Director shall include in the contract file a written statement describing the facts that led to the selection of a particular method of construction contract management for each project.

R23-1-1306. Special Provisions Regarding Construction Manager/General Contractor.

(1) In the selection of a construction manager/general contractor, a standard procurement process as defined in Section 63G-6a-103 may be used or an exception allowed under Part 8 of the Utah Procurement Code.

(2) When the CM/GC enters into any subcontract that was not specifically included in the construction manager/general contractor's cost proposal, the CM/GC shall procure the subcontractor(s) by using a standard procurement process as defined in Section 63G-6a-103 of the Utah Procurement Code or an exception to the requirement to use a standard procurement process, described in Part 8 of the Utah Procurement Code.

R23-1-1307. Special Provisions Regarding Design-Build.

(1) The Board authorizes the Division for State building construction projects to use a design-build provider as one method of construction contracting management.

(2) A design-build contract may include a provision for obtaining the site for the construction project.

(3) A design-build contract or a construction manager/general contractor contract may include provision by the contractor of operations, maintenance, or financing.

R23-1-1308. Drug and Alcohol Testing Required for State Contracts: Definitions.

The rules applicable to the Division for drug and alcohol testing are in Rule 23-7 of the Utah Administrative Code.

R23-1-1401. Procurement of Design-Build Transportation Project Contracts.

The Board recognizes that the Utah Department of Transportation is the rulemaking authority for rules under Section 63G-6a-1402(3)(a)(ii) governing the procurement of design-build transportation projects.

R23-1-1501. Architect-Engineer Procurement Process, General Process.

(1) Application. The provisions of Part 15 of the Utah Procurement Code apply to every procurement of services within the scope of the practice of architecture as defined by Section 58-3a-102, or professional engineering as defined in Section 58-22-102, except as authorized by Rule R33-4-105. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(2) Architect-Engineer Evaluation Committee. The Director shall designate members of the Architect-Engineer Evaluation Committee. The evaluation committee must consist of at least three members who are qualified under Section 63G-6a-707.

(3) Request for Statement of Qualifications. The Division shall issue a public notice for a request for statement of qualifications to rank architects or engineers. The Division shall:

(a) state in the request for statement of qualifications:

(i) the type of procurement item to which the request for statement of qualifications relates;

_____ (ii) the scope of work to be performed;
_____ (iii) the instructions and the deadline for providing information in response to the request for statement of qualifications;

_____ (iv) criteria used to evaluate statements of qualifications including:

- _____ (A) basic information about the person or firm;
- _____ (B) experience and work history;
- _____ (C) management and staff;
- _____ (D) qualifications and certification;
- _____ (E) licenses and certifications;
- _____ (F) applicable performance ratings;
- _____ (G) financial statements; and
- _____ (H) other pertinent information.

_____ (b) Key personal identified in the statement of qualifications may not be changed without the advance written approval of the procurement unit.

_____ (4) Not include Cost in Response. Architects and engineers shall not include cost in a response to a request for statement of qualifications.

_____ (5) Evaluation of Statement of Qualifications. The evaluation committee shall evaluate statements of qualifications in accordance with Section 63G-6a-707 to rank (score) architects or engineers without considering cost.

_____ (6) Negotiation and Award of Contract. The Director shall negotiate a contract with the most qualified firm for the required services at compensation determined to be fair and reasonable based on the Division's rate table or as may be reasonably adjusted by the Director for the particular scope of work, location or other aspects of the services.

_____ (7) Failure to Negotiate Contract With the Highest Ranked Firm.

_____ (a) If fair and reasonable compensation, contract requirements, and contract documents cannot be agreed upon with the highest ranked firm, the Director shall advise the firm in writing of the termination of negotiations.

_____ (b) Upon failure to negotiate a contract with the highest ranked firm, the Director shall proceed in accordance with Section 63G-6a-1505 of the Utah Procurement Code.

_____ (8) Notice of Award.

_____ (a) The Director shall award a contract to the highest ranked firm with which the fee negotiation was successful.

_____ (b) Notice of the award shall be made available to the public.

_____ (8) Written Justification Statements. The Division shall issue a statement justifying the ranking of the firm with which fee negotiation was successful.

R23-1-1502. Disclosure of Submittals, Performance Evaluations, and References.

_____ (1) Except as provided in this rule, submittals shall be open to public inspection after notice of the selection results.

_____ (2) The classification of records as protected and the treatment of such records shall be as provided in Rule R23-1-705.

_____ (3) The Board finds that it is necessary to maintain the confidentiality of performance evaluations and reference information in order to avoid competitive injury and to encourage those persons providing the information to respond in an open and honest manner without fear of retribution. Accordingly, records

containing performance evaluations and reference information are classified as protected records under the provisions of Subsection 63G-2-305(6) and shall be disclosed only to those persons involved with the performance evaluation, the architect or engineer that the information addresses and persons involved with the review and selection of submittals. The Division may, however, provide reference information to other governmental entities for use in their procurement activities and to other parties when requested by the architect or engineer that is the subject of the information. Any other disclosure of such performance evaluations and reference information shall only be as required by applicable law.

R23-1-1503. Publicizing Selections.

_____ (1) Notice. After the selection of the successful firm, notice of the selection shall be available in the principal office of the Division in Salt Lake City, Utah and may be available on the Internet

_____ (2) Information Disclosed. The following shall be disclosed with the notice of selection

_____ (a) the ranking of the firms

_____ (b) the names of the selection committee members;

_____ (c) the final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores; an

_____ (d) the written justification statement supporting the selection.

_____ (3) Information Classified as Protected. After due consideration and public input, the following has been determined by the Board to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract with the Division and shall be classified as protected records:

_____ (a) the names of individual selection committee scorers in relation to their individual scores or rankings; and

_____ (b) non-public financial statements.

R23-1-1504. Performance Evaluation.

_____ (1) The Division shall evaluate the performance of the architectural or engineering firm and shall provide an opportunity for the using agency to comment on the Division's evaluation.

_____ (2) This evaluation shall become a part of the record of that architectural or engineering firm within the Division. The architectural or engineering firm shall be provided a copy of its evaluation at the end of the project and may enter its response in the file.

_____ (3) Confidentiality of the evaluation information shall be addressed as provided in Subsection R23-2-11(3).

R23-1-1601. Conduct.

Controversies and protests shall be conducted in accordance with the requirements set forth in Sections 63G-6a-1601 through 13G-6a-604. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R23-1-1602. Verification of Legal Authority.

A person filing a protest may be asked to verify that the person has legal authority to file a protest on behalf of the public or

private corporation, governmental entity, sole proprietorship, partnership, or unincorporated association.

R23-1-1603. Intervention in a Protest.

(1) Application. This Rule contains provisions applicable to intervention in a protest, including who may intervene and the time and manner of intervention.

(2) Period of Time to File. After a timely protest is filed in accordance with the Utah Procurement Code, the Protest Officer shall notify awardees of the subject procurement and may notify others of the protest. A Motion to Intervene must be filed with the Protest Officer no later than ten days from the date such notice is sent by the Protest Officer. Only those Motions to Intervene made within the time prescribed in this Rule will be considered timely. The entity or entities who conducted the procurement and those who are the intended beneficiaries of the procurement are automatically considered a Party of Record and need not file any Motion to Intervene.

(3) Contents of a Motion to Intervene. A copy of the Motion to Intervene shall also be mailed or emailed to the person protesting the procurement.

(4) Any Motion to Intervene must state, to the extent known, the position taken by the person seeking intervention and the basis in fact and law for that position. A motion to intervene must also state the person's interest in sufficient factual detail to demonstrate that:

(a) the person seeking to intervene has a right to participate which is expressly conferred by statute or by Commission rule, order, or other action;

(b) the person seeking to intervene has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a:

(i) consumer;

(ii) customer;

(iii) competitor;

(iv) security holder of a party; or

(v) the person's participation is in the public interest.

(5) Granting of Status. If no written objection to the timely Motion to Intervene is filed with the Protest Officer within seven calendar days after the Motion to Intervene is received by the protesting person, the person seeking intervention becomes a party at the end of this seven day period. If an objection is timely filed, the person seeking intervention becomes a party only when the motion is expressly granted by the Protest Officer based on a determination that a reason for intervention exists as stated in this Rule. Notwithstanding any provision of this Rule, an awardee of the procurement that is the subject of a protest will not be denied their Motion to Intervene, regardless of its content, unless it is not timely filed with the Protest Officer.

(6) Late Motions. If a motion to intervene is not timely filed, the motion shall be denied by the Protest Officer.

R23-1-1701. Statutory and Rule Requirements.

Appeals to a protest decision shall be conducted in accordance with the requirements set forth in Section 63G-6a-1701 through 63G-6a-1706, Utah Procurement Code. Utah Administrative Code Rules R33-17-101 through R33-17-105 shall also apply.

R23-1-1801. Process.

(1) A person who receives an adverse decision, or a procurement unit (the Division), may appeal a decision of a procurement appeals panel to the Utah Court of Appeals within seven days after the day on which the decision is issued.

(2) All appeals to the Utah Court of Appeals are subject to the provisions of the requirements set forth in Section 63G-6a-1801 through 63G-6a-1803.

(3) The Division may only appeal a procurement appeals panel decision in accordance with Section 63G-6a-1802(2).

R23-1-1901. Encouraged to Obtain Legal Advice From Legal Counsel.

(1) All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

(2) Part 19 of the Utah Procurement Code, Sections 63G-6a-901 through 63G-6a-1911 contain provisions regarding:

(a) limitations on challenges of:

(i) a procurement;

(ii) a procurement process;

(iii) the award of a contract relating to a procurement;

(iv) a debarment; or

(v) a suspension; and

(b) the effect of a timely protest or appeal;

(c) the costs to or against a protester;

(d) the effect of prior determinations by employees, agents, or other persons appointed by the procurement unit;

(e) the effect of a violation found after award of a contract;

(f) the effect of a violation found prior to the award of a contract;

(g) interest rates; and

(h) a listing of determinations that are final and conclusive unless they are arbitrary and capricious or clearly erroneous.

(3) Due to the complex nature of protests and appeals, any person involved in the procurement process, protest or appeal, is encouraged to seek advice from the person's own legal counsel.

R23-1-2001. General Provisions Related to Records.

General provisions related to records are in Part 20 of the Utah Procurement Code and in Rule R23-1-12.

R23-1-2101. Cooperative Purchasing.

Cooperative purchasing shall be conducted in accordance with the requirements set forth in Section 63G-6a-2105 and the Utah Administrative Code Rule R23-1. This Rule provides additional requirements and procedures and must be used in conjunction with the Utah Procurement Code.

R23-1-2102. State Cooperative Contracts.

(1) The Division shall obtain procurement items from state cooperative contracts whether statewide or regional unless the chief procurement officer determines, in accordance with Section 63G-6a-408(5)(b)(i), that it is in the best interest of the state to obtain an individual procurement item outside the state contract.

(2) In accordance with Section 63G-6a-2105, the Division, public entities, nonprofit organizations, and agencies of the federal government may obtain procurement items from state cooperative contracts awarded by the chief procurement officer.

R23-1-2201. Reserved.

Part 22 of Title 63G, Chapter 6a, the Utah Procurement Code, does not exist at this point in time. Rules R23-1-1 through R23-1-24 are designed to match the corresponding Part of the Utah Procurement Code. When Part 22 of the Utah Procurement Code contains statutory language, the Board will consider whether to prepare draft rules for the rulemaking process.

R23-1-2301. Reserved.

Part 23 of Title 63G, Chapter 6a, the Utah Procurement Code, does not exist at this point in time. Rules R23-1-1 through R23-1-24 are designed to match the corresponding Part of the Utah Procurement Code. When Part 23 of the Utah Procurement Code contains statutory language, the Board will consider whether to prepare draft rules for the rulemaking process.

R23-1-2401. Unlawful Conduct.

Unlawful conduct shall be governed in accordance with the requirements set forth in Sections 63G-6a-2401 through 2407. All definitions in the Utah Procurement Code shall apply to this Rule unless otherwise specified in this Rule. This administrative rule provides additional requirements and procedures and must be used in conjunction with the Procurement Code.

R23-1-2402. Laws and Executive Orders Pertaining to Gifts, Meals, and Gratuities for Executive Branch Procurement Professionals.

(1) A Division employee classified as a "Procurement Professional" shall be governed by:

- (a) Part 24 of the Utah Procurement Code, "Unlawful Conduct and Penalties."
- (b) Executive Order EO/003/2010 issued by the Governor (<http://www.rules.utah.gov/execdoks/2010/ExecDoc149415.htm>);
- (c) Title 67, Part 16 "Utah Public Officers' and Employees' Ethics Act:"
- (d) Section 76-8-103, "Bribery or Offering a Bribe;" and
- (e) any other applicable law.

R23-1-2403. Laws and Executive Orders Pertaining to Gifts, Meals, and Gratuities for Executive Branch Employees.

(1) A Division employee not classified as a "Procurement Professional" shall be governed by:

- (a) Executive Order EO/003/2010 issued by the Governor (<http://www.rules.utah.gov/execdoks/2010/ExecDoc149415.htm>);
- (c) Title 67, Part 16 "Utah Public Officers' and Employees' Ethics Act:"
- (d) Section 76-8-103, "Bribery or Offering a Bribe;" and
- (e) any other applicable law.

R23-1-2404. Socialization with Vendors and Contractors.

(1) A procurement professional shall not:

- (a) participate in social activities with vendors or contractors that will interfere with the proper performance of the procurement professional's duties;

(b) participate in social activities with vendors or contractors that will lead to unreasonably frequent disqualification of the procurement professional from the procurement process; or

(c) participate in social activities with vendors or contractors that would appear to a reasonable person to undermine the procurement professional's independence, integrity, or impartiality.

(2) If an executive branch procurement professional participates in a social activity prohibited under R23-1-2404(1), or has a close personal relationship with a vendor or contractor, the procurement professional shall promptly notify their supervisor and the supervisor shall take the appropriate action, which may include removal of the procurement professional from the procurement or contract administration process that is affected.

R23-1-2405. Financial Conflict of Interests Prohibited.

(1) A procurement conflict of interest is a situation in which the potential exists for an executive branch employee's personal financial interests, or for the personal financial interests of a family member, to influence, or have the appearance of influencing, the employee's judgment in the execution of the employee's duties and responsibilities when conducting a procurement or administering a contract.

(2) In order to preserve the integrity of the State's procurement process, an executive branch employee may not take part in any procurement process, contracting or contract administration decision:

- (a) relating to the employee or a family member of the employee; or
- (b) relating to any entity in which the employee or a family member of the employee is an officer, director or partner, or in which the employee or a family member of the employee owns or controls 10% or more of the stock of such entity or holds or directly or indirectly controls an ownership interest of 10% or more in such entity.

(3) If a procurement process, contracting or contract administration matter arises relating to the employee or a family member of the employee, the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the procurement, contracting or administration matter. The employee must also comply with all disclosure requirements in Utah Code Title 67 Chapter 16, Utah Public Officers' and Employees' Ethics Act.

R23-1-2406. Bias Participation Prohibitions.

(1) Division employees are prohibited from participating in any and all discussions or decisions relating to the procurement, contracting or administration process if they have a bias that would appear to a reasonable person to influence their independence in performing their assigned duties and responsibilities relating to the procurement process, contracting or contract administration or prevent them from fairly and objectively evaluating a proposal in response to a bid, RFP or other solicitation. This provision shall not be construed to prevent an employee from having a bias based on the employee's review of a response to the solicitation in regard to the criteria in the solicitation.

(2) If an executive branch employee has an impermissible bias under Rule R23-1-2406(1) above regarding an individual, group, organization, or vendor responding to a bid, RFP or other

solicitation, the employee must make a written disclosure to the supervisor and the supervisor shall take appropriate action, which may include recusing the employee from any and all discussions or decisions relating to the solicitation, contracting or administration matter in question. This provision shall not be construed to prevent an employee from having a bias based on the employee's review of a response to the solicitation in regard to the criteria in the solicitation.

R23-1-2407. Professional Relationships and Social Acquaintances Not Prohibited.

(1) It is not a violation for an executive branch employee who participates in discussions or decisions relating to the procurement, contracting or administration process to have a professional relationship or social acquaintance with a person, contractor or vendor responding to a solicitation, or that is under contract with the State, provided that there is compliance with Rule R33-24-105, Rule R33-24-106, the Utah Public Officers' and Employees' Ethics Act, The Governor's Executive Order (EO 002, 2014) "Establishing an Ethics Policy for Executive Branch Agencies and Employees," and other applicable State laws.

KEY: contracts, procurement, [~~architects, engineers,~~] public buildings

Date of Enactment or Last Substantive Amendment: [~~August 7, 2012~~]2015

Notice of Continuation: December 18, 2014

Authorizing, and Implemented or Interpreted Law: [~~63G-6-101 et seq.~~]63A-5-103 et seq.; 63G-2-101 et seq.; 63G-6-208(2)

Administrative Services, Purchasing and General Services

R33-26-202

Information Technology Equipment

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39042

FILED: 12/29/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendment is the further continuation of updates of rules.

SUMMARY OF THE RULE OR CHANGE: This amendment defines electronic data devices and how to dispose of them.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6a

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** No anticipated cost or savings are expected. This change simply describes the procedures on how to dispose of the devices.

◆ **LOCAL GOVERNMENTS:** No anticipated cost or savings are expected. This change simply describes the procedures on how to dispose of the devices.

◆ **SMALL BUSINESSES:** No anticipated cost or savings are expected. This change simply describes the procedures on how to dispose of the devices.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No anticipated cost or savings are expected. This change simply describes the procedures on how to dispose of the devices.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No anticipated cost are expected. This change simply describes the procedures on how to dispose of the devices.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These amendments have no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/17/2015

THIS RULE MAY BECOME EFFECTIVE ON: 02/24/2015

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

R33-26. State Surplus Property.

R33-26-202. Information Technology Equipment.

(1) For the purpose of this rule, Electronic Data Device means an electronic device capable of downloading, storing or transferring State-owned data. Electronic Data Devices include:

(a) Computers;

(b) Tablets (iPads, Surface Pro, Google Nexus, Samsung Galaxy, etc.);

(c) Smart phones;

(d) Personal Digital Assistants (PDAs);

(e) Digital copiers and multifunction printers;

(f) Flash drives and other portable data storage devices;

and

(g) Other similar devices.

(2) The State has determined that the security risk of a potential data breach resulting from the improper disposal or sale of

an electronic data device, as defined in this rule, outweigh the potential revenue that may be received by the State from the sale of an electronic data device deemed surplus property. Therefore, the State has adopted this Administrative Rule regarding the proper disposal of State-owned surplus electronic data devices:

(a) Each State agency shall ensure that all surplus State-owned electronic data devices are disposed of in accordance with the following procedures.

(b) Surplus State-owned electronic devices defined under this Rule may not be sold or gifted via on-line auction or any other means.

(c) Surplus State-owned electronic data devices must be disposed of through the vendor under contract with the State, unless a separate contractual agreement has been entered into with the manufacturer or supplier of the device for proper destruction and disposal.

(d) The Division of Purchasing shall enter into a contract with a vendor for the destruction and proper disposal of all State-owned surplus electronic data devices.

(e) Proper disposal includes:

(i) Recycling components and parts after the State-owned electronic data device has been destroyed to the point that State-owned data cannot be retrieved;

(ii) Disposal in a landfill approved for electronic waste after the State-owned electronic data device has been destroyed to the point that State-owned data cannot be retrieved; or

(iii) Computers, digital copiers and multifunction printers that have had the hard drive destroyed may be resold by the contractor.

(f) State agencies shall request assistance from the Department of Technology Services (DTS) to destroy the hard drives of computers and other State-owned surplus electronic data devices purchased through DTS prior to the agency transferring the devices to the vendor under contract with the State.

(g) State agencies shall contact the vendor under contract with the State to destroy and properly dispose of all other State-owned surplus electronic data communication devices.

~~(4)~~(3) Subject to subsection (1) and (2), State-owned information technology equipment may be transferred directly to public institutions, such as schools and libraries, by the owning agency.

~~(2)~~(4) Subject to subsection (1) and (2), [P]ursuant to the provisions of Section 63A-2-407, state-owned information technology equipment may be transferred directly to non-profit entities for distribution to, and use by, persons with a disability as defined in Subsection 62A-5-101(9). However, interagency transfers and sales of surplus property to state and local agencies shall have priority over transfers under this subsection.

~~(3) Prior to submitting information technology equipment to the state surplus property contractor, another department or agency, or donating it directly to public institutions or non-profit entities, agencies shall delete all information from all storage devices. Information shall be deleted in such a manner as to not be retrievable by data recovery technologies.~~

~~(4)~~(5) Subject to subsection (1) and (2), [E]xcept as it relates to a vehicle or federal surplus property, the transfer of surplus property from one agency directly to another does not require approval by the division, the director of the division, or any other person.

KEY: government purchasing, procurement rules, general procurement [procedures]provisions, state surplus property[~~], federal surplus property, public sales~~

Date of Enactment or Last Substantive Amendment: [July 8, 2014]2015

Authorizing, and Implemented or Interpreted Law: 63G-2

Attorney General, Administration **R105-1**

Attorney General's Selection of Outside Counsel, Expert Witnesses and Other Litigation Support Services

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39032

FILED: 12/24/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to implement S.B. 264 from the 2014 General Session regarding the cap on contingency fees, as well as include and implement recent changes related to the Utah Procurement Code.

SUMMARY OF THE RULE OR CHANGE: Primarily provides a cap on contingency fees to implement S.B. 264 (2014) with an opt-out, as well as includes and implements recent changes related to the Utah Procurement Code.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 67-5-32(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no anticipated costs or savings that are expected. The changes update the rule in order to implement S.B. 264 (2014) and provide provisions related to the Utah Procurement Code.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings that are expected. The changes update the rule in order to implement S.B. 264 (2014) and provide provisions related to the Utah Procurement Code.

◆ **SMALL BUSINESSES:** There are no anticipated costs or savings that are expected. The changes update the rule in order to implement S.B. 264 (2014) and provide provisions related to the Utah Procurement Code.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings that are expected. The changes update the rule in order to implement S.B. 264 (2014) and provide provisions related to the Utah Procurement Code.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs or savings that are expected. The changes update the rule in order to implement S.B. 264 (2014) and provide provisions related to the Utah Procurement Code.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated effects that the rule will have on businesses. The changes update the rule in order to implement S.B. 264 (2014) and provide provisions related to the Utah Procurement Code.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ATTORNEY GENERAL
 ADMINISTRATION
 ROOM 230 UTAH STATE CAPITOL
 350 N STATE ST
 SALT LAKE CITY, UT 84114
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
 ♦ Nicole Alder by phone at 801-538-3240, or by Internet E-mail at nicolealder@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/17/2015

THIS RULE MAY BECOME EFFECTIVE ON: 02/25/2015

AUTHORIZED BY: Brian Tarbet, Chief Civil Deputy Attorney General

R105. Attorney General, Administration.
R105-1. Attorney General's Selection of Outside Counsel, Expert Witnesses and Other Litigation Support Services.

R105-1-1. Purpose and Authority.
 A. ~~[This]~~The purpose of this rule is to provide the requirements for procurements that are managed by the Attorney General, including the hiring of outside counsel, expert witnesses, litigation support services and procurement items.
 B. This rule is adopted pursuant to authority granted by the Utah Procurement Code and Section 67-5-32(1)(a), including authority to manage procurement of procurement items directly or by delegation of the Chief Procurement Officer of the Division of Purchasing of the Department of Administrative Services.

R105-1-2. Definitions.
 Terms in this Rule R105-1 shall be as defined in the Utah Procurement Code. ~~[Additional]~~The definitions ~~[are provided below]~~in Rule R33-1 also apply to this Rule R105-1, except in case of conflict, the definitions in this Rule R105-1 shall control. Additional definitions are provided below.

A. "Agency" means any department, division, agency, commission, board, council, committee, authority, institution, or other entity within the State government of Utah (see Utah Code Ann. Sec. 67-5-3).

B. "Attorney General" means the Attorney General of the State of Utah, or the Attorney General's designee.

C. "Emergency" means a determination by the Attorney General in writing that a provision of this Rule needs to be waived due to the need for timeliness, litigation deadlines, confidentiality, or other emergency circumstances.

D. "Expert witness" means a person whose knowledge, skill, experience, training or education in a scientific, technical, or other specialized area, would enable the person to give testimony under Rule 702 of the Utah Rules of Evidence.

E. "Litigation Support Services" includes any goods, services, software, or technology.

F. "Outside counsel" means an attorney or attorneys who are not, or a law firm whose attorneys are not, employed by the Attorney General's office, pursuant to Utah Code Ann. Sec. 67-5-7 et seq., which the Attorney General appoints, pursuant to Utah Code Ann. Sec. 67-5-5, to represent, ~~[or]~~ provide legal advice, or counsel to ~~[;]~~ an agency of the State. "Outside counsel" may or may not be designated as "Special Assistant Attorney General", as the Attorney General determines.

G. "Procurement item" or "Procurement ~~[H]~~items" means any goods, services, software or technology.

H. "Small purchase" means a ~~[determination by the Attorney General in writing that the fee expected to be charged:]~~ purchase under Rule R105-1-7.

~~1. By outside counsel, expert witnesses or other professional litigation support services will be \$100,000.00 or less;~~

~~2. A procurement item for litigation support services, will be \$50,000 or less; or~~

~~3. Such other small purchase delegated to the Attorney General by the Chief Procurement Officer pursuant to the Utah Procurement Code.~~

I. "Sole source" means a determination by the Attorney General, in writing, that the sole source requirements of the Utah Procurement Code and this Rule have been met.

J. "State" means the State of Utah.

R105-1-3. Special Considerations to Best Serve the Public.

A. This rule applies to the procurement and appointment ~~[by]~~of outside counsel, expert witnesses, ~~[and]~~litigation support services, litigation related consultants, as well as management software and services by the Attorney General.

B. In order to ~~[have an effective legal strategy or to protect reputations,]~~properly fulfill the responsibilities of the Office, the procurement of outside counsel, expert witnesses, ~~[and]~~litigation support services, litigation related consultants, as well as management software and services often requires that public notice of a particular procurement not be provided. The provisions of the Utah Procurement Code and this Rule ~~[regarding an emergency procurement]~~must be met. Such a procurement must be processed as an emergency procurement or be a procurement that does not require notice.

C. The Attorney General may select outside counsel, expert witnesses~~[and]~~, professional litigation support services, litigation related consultants, as well as management software and services

pursuant to ~~[a request for proposals]~~ any authorized process under the Utah Procurement Code, ~~[rather than an Invitation for Bids, whenever the Attorney General does not make those selections through the small purchase, sole source, or emergency provisions of this rule.]~~ In any such selection process, it may be specified that the outside counsel is responsible for providing the expert witnesses or other litigation goods and services through the ~~[outside counsel's]~~ selection process for outside counsel and pursuant to the contract provisions with the Attorney General.

D. If a procurement item is not procured through the request for proposals, ~~[small, purchase]~~ small purchases, prequalification and vendor list, sole source, or emergency provisions of this rule, the Attorney General may determine to use an Invitation for Bids or any other procurement process allowed by the Utah Procurement Code provided that the following applicable Utah laws are met:

1. The Utah Procurement Code; and
2. Administrative Rules of the Division of Purchasing and General Services, when such rules of the Division of Purchasing and General Services are referred to in this Rule R105-1, except as otherwise exempted or in conflict with this Rule R105-1.

E. The Attorney General may, in a multistate case involving other states as parties aligned with Utah, elect to enter into a fee sharing agreement in which each state contributes to a litigation fund that is used to purchase expert witnesses and/or other litigation support services including litigation related consultants, as well as management software and services, or through a similar group procurement agreement. The agreement shall be treated collectively as a sole source procurement of all goods and services purchased under the terms of the agreement.

F. The Attorney General may, in a multistate case involving other states as parties aligned with Utah, select outside counsel jointly with some or all of the other states as a sole source procurement. If a contingency fee (not based on hourly rates) is used in the multistate case, it shall not be subject to the fee limitations of Rule R105-1-11.

~~[E]G.~~ The Attorney General's office shall ensure that the procurement [for] of outside counsel is supported by a determination by the Attorney General that the procurement is in the best interests of the state, in light of available resources of the Attorney General's office.

~~[F]H.~~ The Attorney General's office shall provide for the fair and equitable treatment of all potential providers of outside counsel, expert witnesses, and other litigation support services including litigation related consultants, as well as management software and services consistent with the limitations and procedures set forth in this Rule R105-1.

I. The Attorney General's office shall ensure that fees for outside counsel, whether based on an hourly rate, contingency fee, or other arrangement, are reasonable and do not exceed industry standards.

R105-1-4. [Initial Determination of Whether the Procurement is a Small Purchase, Sole Source or Emergency.] Available Procurement Processes.

(1) In General. Prior to any procurement for legal services, the Attorney General shall first determine ~~[whether the provisions in this rule for a]~~ which process under the Utah Procurement Code shall be used, including but not limited to, small purchase, prequalification and vendor list, sole source[or], emergency procurement, [are applicable and if so, may use such provisions.] [availability of a

statewide or regional contract, invitation for bids, or request for proposals.

(2) Prequalification and Approved Vendor Lists. Rule R33-4-101 and R33-4-102 shall apply to the Prequalification of Potential Vendors and Thresholds for Approved Vendor Lists, except that the maximum threshold for procuring the services of a licensed attorney(s) shall be \$250,000.

R105-1-5. [Use of Request for Proposal Process] Invitation for Bids.

~~[If the procurement is not a small purchase, sole source or emergency procurement, the request for proposal process may be used when the procurement includes a factor other than price. This will often apply to professional services, such as outside counsel, expert witnesses and professional litigation support services. In any such selection process, it may be specified that the outside counsel is responsible for providing the expert witnesses or other litigation goods and services through the outside counsel's selection process and pursuant to the contract provisions with the Attorney General.]~~ Any competitive sealed bidding (invitation for bids) or multiple stage bidding process may occur in accordance with Sections 63G-6a-601 through 63G-6a-612, as well as Rule R33-6.

R105-1-6. Request for Proposal Process.

~~[The Requests for Proposals shall be subject to the following:]~~

A. ~~[The requirements of the Utah Procurement Code for Requests for Proposals shall be met, except that the emergency procurement provisions of the Utah Procurement Code and this Rule may be used to waive certain requirements as necessary.]~~ The Request for Proposal process may be used in accordance with Sections 63G-6a-701 through 63G-6a-711. The process shall also be subject to Rule R33-7 except as otherwise specified in this Rule R105-1.

B. The Request for Proposal process may be issued in stages, or may be issued after a request for information or other procurement process allowed by the Utah Procurement Code or this Rule.

C. The Request for Proposal, shall contain, in addition to the requirements of Rule R33-7-102, at a minimum, the following information:

1. A description of the project.
2. Any fee arrangements.
3. The persons or entities being sought in the procurement, including whether an individual person, firm or association of firms may respond.
4. The qualification criteria and the relative importance of the criteria. Examples of criteria include:
 - a. Identification by name and experience of the proposed service provider(s);
 - b. A description of the duties and responsibilities of each person providing the service; and
 - c. The ability of the persons providing the service to meet the needs of the project, including the consideration of any association with other persons, expert witnesses or firms;
5. The Contractual Requirements, which may be accomplished by including a copy of the contract.
6. A request for a conflicts analysis, including potential conflicts of interest or other related matters concerning the offeror's ability to ethically perform the requested services.

7. Requirements regarding the date, time, place, form and method concerning the filing of the Response to the Request for Proposals.

8. A statement that the Attorney General reserves the right to reject late-filed or nonconforming proposals.

9. A statement that the Attorney General reserves the right to reject all proposals. The Attorney General also reserves the right to modify or cancel the Request for Proposal Process and may or may not initiate a new Request for Proposal Process for the particular procurement matter.

D. Public notice of the Request for Proposals shall be provided in accordance with the Utah Procurement Code.

E. The award process, including notice of award, shall be made by the Attorney General in accordance with the Utah Procurement Code and this Rule.

F. A record of the procurement shall be made in accordance with the Utah Procurement Code and this Rule, including Rule R105-1-14.

G. In any selection process for outside counsel, it may be specified that the outside counsel is responsible for providing the expert witnesses or other litigation goods and services including litigation related consultants, as well as management software and services through the outside counsel's selection process and pursuant to the contract provisions with the Attorney General.

H. Minimum scores for any of the criteria may be used.

R105-1-7. Small Purchases.

~~A. [If the Attorney General determines that an anticipated procurement meets the definition of a small purchase under this Rule, the Attorney General shall make a finding in writing to that effect prior to the procurement.]~~Small Purchases shall be conducted in accordance with the Utah Procurement Code and Rule R33-4-104, except that the maximum thresholds for small purchases shall be as described in this Rule R105-1-7.

~~B. [Upon making the finding in writing required by subsection A of this Rule, the Attorney General may proceed with the procurement in accordance with the small purchase requirements of the Utah Procurement Code.]~~For Outside Counsel, litigation related consultants, management software and services, as well as expert witnesses, the small purchase maximum threshold is \$250,000. A written justification statement shall be filed explaining the reason(s) for selection of the particular attorney, law firm or expert witness for the particular matter.

~~C. [Small purchases may be by a direct award, by the use of a request for quotes or rotational system among qualified providers in accordance with policies established by the Attorney General.]~~For the selection of litigation support services that are not covered under Rule R105-1-7(B), including but not limited to court reporting, litigation related copying and printing services, the small purchase maximum threshold is \$50,000. For a purchase between \$2500 and \$50,000, a minimum of two quotes shall be obtained or there shall be developed a rotation system of qualified persons or firms that meet the qualifications for the service. For any purchase of \$2500 or less, a direct award may be made.

~~D. [The procurement shall be made with as much competition as reasonably practicable while avoiding harm, or a risk of harm, to public health, safety, welfare or property.]~~The Attorney General may make such other small purchases delegated to the

Attorney General by the Chief Procurement Officer pursuant to the Utah Procurement Code.

E. Under Section 63G-6a-408(3), a threshold stated in this Rule may be exceeded if the Attorney General (not a designee) or a person specifically designated in writing by the Attorney General gives written authorization to exceed the threshold that includes the reasons for exceeding the threshold.

R105-1-8. Sole Source.

~~A. [If the Attorney General determines in writing after reasonable efforts to locate providers for a project, that the circumstances described for a sole source in accordance with the Utah Procurement Code exists, or if a sole source may be justified based on another provision of the Utah Procurement Code, the Attorney General may use the Sole Source procedures of the Utah Procurement Code.]~~Sole Source procurement shall be conducted in accordance with the requirements set forth in Section 63G-6a-802 of the Utah Procurement Code.

~~B. [The Attorney General may publish notice of the sole source procurement on the internet or other means in order to learn if there is any other qualified entity or product that meets the needs of the procurement.]~~Unless the Attorney General determines that a publication of a sole source shall be published, sole sourced procurement items under this Rule need not be published regardless of cost, all of which is in accordance with Section 63G-6a-802(4)(b)(ii).

~~C. The Attorney General shall negotiate with the provider to ensure that the terms of the contract, including price and delivery, are in the best interest of the state.~~

]

R105-1-9. Emergency Procurements and Waiver of Requirements.

~~A. [If an emergency as defined in this Rule or the Utah Procurement Code exists, the Attorney General may authorize waiver of any provision of this Rule in order to eliminate or reduce the impact of the emergency situation.]~~Emergency procurements shall be conducted in accordance with the requirements set forth in Section 63G-6a-803 of the Utah Procurement Code and Rule R33-8-401.

~~B. An emergency procurement [or the balance of the procurement that is not waived, shall be processed in accordance with the Utah Procurement Code and this Rule.]~~is a procurement procedure where the Attorney General does not need to use a standard procurement process.

~~C. [The authorization shall be in writing, stating the emergency condition upon which the emergency procurement or waiver of the requirement is made.]~~An emergency procurement may only be used when an emergency exists as defined in this Rule.

~~D. [The procurement shall be made with as much competition as reasonably practicable while avoiding harm, or a risk of harm, to public health, safety, welfare or property.]~~Emergency procurements are limited to those procurement items necessary to mitigate the emergency.

~~E. While a standard procurement process is not required under an emergency procurement, when practicable, the Attorney General should seek to obtain as much competition as possible through the use of phone quotes, internet quotes, limited invitations to bid, or other selection methods while avoiding harm, or risk of harm, to the public health, safety, welfare, property or impairing the ability of a public entity to function or perform required services.~~

F. The Attorney General shall make a written determination documenting the basis for the emergency and the selection. A record of the determination and selection shall be kept in the contract file. The documentation may be made after the emergency condition has been alleviated.

R105-1-10. Confidentiality.

Except when an emergency exists under Rule R105-1-9 and in accordance with applicable law, where public inspection may be delayed until such time as the cause for the emergency no longer exists, the following shall be met:

A. [Receipt, Opening, and Recording of Bids.]Protected Records.

1. [Receipt. Upon receipt, all bids and modifications will be time stamped, but not opened. Bids submitted through electronic means shall be received in such a manner that the time and date of submittal, along with the contents of such bids shall be securely stored until the time and date set for bid opening. They shall be stored in a secure place until bid opening time.]The following are protected records and may be redacted subject to the procedures described below in accordance with the Governmental Records Access and Management Act (GRAMA) Title 63G, Chapter 2 of the Utah Code:

a. Trade Secrets, as defined in Section 13-24-2;

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

c. Other Protected Records under GRAMA.

2. [Opening and Recording. Bids and modifications shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in the Invitation for Bids. The names of the bidders, the bid price, and other information as is deemed appropriate by the procurement officer, shall be read aloud or otherwise be made available. The opened bids shall be available for public inspection except to the extent the bidder designates trade secrets or other proprietary data to be confidential as set forth in subsection 3 of this section. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. Make and model, and model or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary. Bids submitted through electronic means shall be received in such a manner that the requirements of this section can be readily met.]Process For Requesting Non-Disclosure. Any person requesting that a record be protected shall include with the bid/proposal or submitted document:

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

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

c. Pricing may not be classified as business confidential and will be considered public information.

d. An entire set of bidding documents or proposal documents may not be designated as "PROTECTED", "CONFIDENTIAL" or "PROPRIETARY" and shall be considered non-responsive unless the offeror removes the designation.

e. This term bid or proposal for purposes of this Rule shall apply to any document submitted to the Attorney General for purposes of a procurement matter.

[----- 3. Confidential Data. The Attorney General shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data, the Attorney General shall inform the bidders in writing what portions of the bids will be disclosed.

] B. [Protected Records.]Notification.[The following are protected records and will be redacted subject to the procedures described below. From any public disclosure of records as allowed by the Governmental Records Access and Management Act (GRAMA) Title 63G, Chapter 2 of the Utah Code. The protections below apply to the various procurement records including records submitted by offerors and their subcontractors or consultants at any tier.]

1. [Trade Secrets. Trade Secrets, as defined in Utah Code Ann. Section 13-24-2, will be protected and not be subject to public disclosure if the procedures of subsection C of this Rule are met.]A person who complies with this Rule R105-1-10 shall be notified by the Attorney General's office prior to the public release of any information for which a claim of confidentiality has been asserted.

2. [Certain commercial information or non-individual financial information. Commercial information or non-individual financial information subject to the provisions of Utah Code Ann. Section 63G-2-305(2) will be a protected record and not be subject to public disclosure if the procedures of subsection C of this Rule are met.]Except as provided by court order, the Attorney General's office to whom the request for a record is made under GRAMA, may not disclose a record claimed to be protected under this Rule but which the Attorney General's Office or State Records Committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal, is reached. This Rule does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the State Records Committee. To the extent allowed by law, the parties to a dispute regarding the release of a record may agree in writing to an alternative dispute resolution process.

3. [Other Protected Records under GRAMA. There will be no public disclosure of other submitted records that are subject to non-disclosure or being a protected record under a GRAMA statute provided that the requirements of subsection C of this Rule are met unless GRAMA requires such nondisclosure without any preconditions.]Any allowed disclosure of public records submitted in the request for proposals process will be made only after the selection of the successful offeror(s) has been made public in compliance with Section 63G-6a-709.5.

C. [Process for Requesting Non-Disclosure.]Publicizing Awards.[Any person (firm) who believes that a record should be protected under subsection B of this Rule shall include with their proposal or submitted document:]

1. [A written indication of which provisions of the submittal(s) are claimed to be considered for business confidentiality (including trade secret or other reason for non-disclosure under GRAMA; and]In addition to the requirements of Section 63G-6a-709.5, the following shall be disclosed after receipt by the Attorney General's Office of a GRAMA request and payment of any lawfully enacted and applicable fees:

a. the contract(s) entered into as a result of the selection and the successful proposal(s), except for those portions that are to be non-disclosed under this Rule or State law;

~~b. unsuccessful proposals, except for those portions that are to be non-disclosed under this Rule or State law;~~

~~c. the rankings of the proposals;~~

~~d. the names of the members of any evaluation committee members (reviewing authority);~~

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

~~f. the written justification statement supporting the selection, except for those portions that are to be non-disclosed under this Rule or State law.~~

~~2. [A concise statement of reasons supporting each claimed provision of business confidentiality.] After due consideration and public input, the following has been determined by the Procurement Policy Board and the Attorney General's Office to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, and, to the extent allowed by law, will not be disclosed by the Attorney General's Office at any time to the public, including under any GRAMA request:~~

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

~~b. any individual scorer's/evaluator's notes, drafts, and working documents;~~

~~c. non-public financial statements; and~~

~~d. past performance and reference information, which is not provided by the offeror and which is obtained as a result of the efforts of the Attorney General's Office. To the extent such past performance or reference information is included in the written justification statement, the justification statement is still subject to public disclosure.~~

~~3. In regard to an Invitation for bids issued by the Attorney General's Office, the Attorney General's Office shall, on the day on which the award of a contract is announced, make available to each bidder and to the public, a notice that includes:~~

~~a. the name of the bidder to which the contract is awarded and the price(s) of the procurement item(s); and~~

~~b. the names and the prices of each bidder to which the contract is not awarded.~~

~~[D. Notification. The person who complies with subsection C of this Rule shall be notified by the governmental entity prior to the public release of any information for which business confidentiality has been asserted.~~

~~E. Non-Disclosure and Dispute Process. Except as provided by court order, the governmental entity to whom the request for a record is made under GRAMA, may not disclose a record claimed to be protected under subsection B of this Rule but which the governmental entity or State Records Committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal. This subsection E does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the records committee. To the extent provided by law, the parties to a dispute regarding the release of a record may agree in writing to an alternative dispute resolution process.~~

~~F. Timing of Public Disclosure. Any allowed public disclosure of records submitted in the request for proposal process will only be made after the selection of the successful offeror(s) has been made public.~~

~~G. Publicizing Awards.~~

~~1. After the selection of the successful offeror(s), notice of award shall be available in the purchasing agency's office and may be available on the internet.~~

~~2. The following shall be disclosed to the public after notice of the selection of the successful offeror(s) and after receipt of a GRAMA request and payment of any lawfully enacted and applicable fees:~~

~~a. The contract(s) entered into as a result of the selection and the successful proposal(s), except for those portions that are to be non-disclosed under R33-3-204;~~

~~b. The unsuccessful proposals, except for those portions that are to be non-disclosed under R33-3-204;~~

~~c. The rankings of the proposals;~~

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

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

~~f. The written justification statement supporting the selection, except for those portions that are to be non-disclosed under this Rule.~~

~~3. After due consideration and public input, the following has been determined by the Attorney General to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with the Attorney General, and will not be disclosed by the Attorney General at any time to the public including under any GRAMA request:~~

~~a. The names of individual scorers in relation to their individual scores or rankings;~~

~~b. Non-public financial statements; and~~

~~c. Past performance and reference information, which is not provided by the offeror and which is obtained as a result of the efforts of the Attorney General. To the extent such past performance or reference information is included in the written justification statement, it is subject to public disclosure.~~

~~]~~
R105-1-11. Special Provisions regarding [Contingency Fee— contracts for] Procurement of Outside Counsel.

~~A. The Attorney General shall not enter into a [contingency fee—] contract for outside [litigation or anticipated litigation—] counsel [services—] unless the following requirements are met throughout the contract period and any extensions thereof:~~

~~1. The Attorney General shall review the proposed fee arrangement to hire outside counsel to ensure that that there is a reasonable, good faith legal basis to pursue the litigation in the interest of the citizens of the State, and ensure that fees for outside counsel, whether based on an hourly rate, contingency fee, or other arrangement, are reasonable and consistent with industry standards.~~

~~[4]2. The Attorney General shall retain [complete—]oversight and control over the course and conduct of the litigation or anticipated litigation;~~

~~[2]3. The Attorney General shall [appoint—]designate a member of the [Utah—]Attorney General's Office to personally oversee the litigation;~~

~~[3]4. The [Utah—]Attorney General shall retain veto power over any decisions made by outside counsel, and no lawsuit will be filed, or party added to or served with process in any lawsuit, by~~

outside counsel, without express written permission of the Attorney General;

[4]5. The [Utah-]Attorney General shall be apprised of, attend and/or participate in all settlement offers or conferences; and

[5]6. Decisions regarding settlement of the case shall be made by the Utah Attorney General and not the outside counsel[-], provided that the Attorney General may give outside counsel a reasonable range of specific settlement authority in writing, within which outside counsel is authorized to settle the case.

B. [This Rule R105-1-11 does not apply to the hiring of outside bond counsel.]Every contingency fee contract for outside counsel shall be reasonable and not exceed industry standards for the type of case and level of expertise needed. Unless subject to the Opt-Out Provisions of Rule R105-1-11 C or an exception under Rule R105-1-11 D, contingency fees (not based on hourly rates) paid by the State of Utah shall be no greater than:

1. 33 and 1/3 percent of the first \$5,000,000 recovered;

2. 25% of any additional amounts recovered above \$5,000,000, up to a total of \$25,000,000 recovered;

3. 10 percent for any amount in excess of \$25,000,000 recovered; and

4. A total maximum contingency fee paid by the State of Utah to not exceed \$50,000,000.

C. Opt-out.

1. A contingency fee contract in excess of the limits set forth in Rule R105-1-11 B 1 through Rule R105-1-11 B 4, or that otherwise differs materially from any limitations contained in this Rule R105-1, may only be entered into upon a written finding by the Attorney General that the higher fee or different terms are appropriate given the needs of the case, reasonable and do not exceed industry standards, given the nature of the case, and that the contract will not encourage unwarranted high risk litigation that is not in the interests of the citizens of the State. This written finding shall be posted on the Attorney General's website. The written finding may be filed at any time, including, but not limited to, before or after the filing of a protest or any other objection, claim or litigation regarding the procurement.

2. The Attorney General shall provide the written finding that the higher fee is appropriate to the Governor at least seven calendar days before the contingency fee contract is to be signed, except when an emergency exists under Rule R105-1-9, in which case the Attorney General shall, if time permits given the emergency, provide the written finding one day before the contingency fee contract is to be signed.

3. If the Governor so requests prior to the contingency fee contract being signed, the Attorney General shall call a meeting of all Division Directors in the Attorney General's Office to review the Attorney General's written finding. The contract shall only be signed if at least two thirds of the Division Directors whose Divisions are not directly involved in the procurement agree that the higher fee or different terms are in the interests of the citizens of the state. Some Directors may participate by electronic means.

D. Exceptions: This Rule R105-1-11 does not apply to the hiring of counsel for any of the following:

1. Debt collection or restitution cases;

2. Legal advice or litigation services related to international goods or services;

3. Legal advice or litigation services related to matters involving death or personal injury;

4. Bond counsel, disclosure counsel, or other similar counsel involved in the issuance of debt instruments by the State;

5. A multistate case under Rule R105-1-3 E or F; or

6. As otherwise provided in Utah Code, including Section 26-19-7(2)(b)(ii), wherein the Office of Recovery Services pays a contingency fee of 33.3% in Medicaid reimbursement cases.

E. Notwithstanding any other provision of this Rule R105-1-11, the solicitation for outside counsel may provide a lower fee limitation and/or provide for weights and scoring of the proposed fees in accordance with the Utah Procurement Code, which will allow for a competitive process and may provide for fees below the limitations set forth in this Rule.

R105-1-12. Transparency in Contingency Fee Contracts with Outside Counsel.

A. Except as otherwise provided by GRAMA, applicable law, Rules of Professional Conduct or this Rule, a copy of the executed ~~[contingency fee]~~contract with outside counsel shall be made available for public inspection in accordance with GRAMA.

B. Any payment by the Attorney General under a contingency fee contract shall be made available for public inspection in accordance with GRAMA.

C. Upon request of the President of the Utah Senate or Speaker of the Utah House of Representatives, the ~~[Utah-]~~Attorney General shall make available all contracts for hiring outside counsel on a contingency fee basis in the preceding year from the date of the request as well as any known names of the parties to the legal matter, the amount of any recovery and the amount of any contingency fee paid. Notwithstanding this, the Attorney General may withhold information that is confidential under GRAMA, Rules of Professional Conduct or applicable law unless the Attorney General determines that such release of information can lawfully be provided to the President of the Utah Senate or Speaker of the Utah House of Representatives can be adequately assured of confidentiality through a ~~[confidential]~~confidentiality agreement or similar document.

R105-1-13. Contracts.

Those awarded a contract under this Rule shall be required to enter into a written contract with the Attorney General. The written contract shall contain all material terms set forth in:

A. The final procurement documents issued by the Utah Attorney General;

B. The provisions in documents submitted by the provider to the extent such provisions are accepted by the Attorney General;

C. A termination for cause and a termination for convenience clause; and

D. Any terms required by law, whether by the constitutions, statutes, or rules or regulations of the United States or the State of Utah.

R105-1-14. Retention and Non-availability of Files.

A. All proposals submitted to the Attorney General under this rule become the property of the State of Utah and the office of the Attorney General.

B. All information in all proposals shall be placed in a file relating to the project for which the proposal was submitted. Each file shall contain:

1. If applicable, a copy of all written determinations of the Attorney General required by the Utah Procurement Code or this Rule;
2. A copy of the procurement documents and any written documentation related to notification requirements; and
3. All responses to procurements and modifications, in writing, to any procurement if those modifications have been negotiated by the Attorney General.
4. All records shall be maintained or disposed of in accordance with Part 20 of the Utah Procurement Code.

R105-1-15. Cancellations, Rejections, and Debarment.

Cancellations, rejections and debarments shall be subject to the provisions of the Utah Procurement Code and, except as otherwise provided in this Rule R105, Rule R33-9.

R105-1-16. Preferences.

Preferences shall be subject to the provision of the Utah Procurement Code, and except as otherwise provided in this Rule R105, Rule R33-10.

R105-1-17. Bond and Security.

Any bonds or security shall comply with Part 11 of the Utah Procurement Code and Rule R33-11.

R105-1-18. Terms and Conditions, Contracts, Multiple Year, Multiple Award, Change Orders and Costs.

There shall be compliance, as applicable, with Part 12 of the Utah Procurement Code and Rule R33-12.

R105-1-19. Controversies and Protests.

Part 16 of the Utah Procurement Code shall apply as well as Rule R33-16.

R105-1-20. Procurement Appeals Board, Appeals to Court and Court.

Parts 17, 18 and 19 of the Utah Procurement Code shall apply as well as Rules R33-17, R33-18 and R33-19.

R105-1-21. Interaction between Procurement Units.

Part 21 of the Utah Procurement Code shall apply as well as Rule R33-21.

R105-1-22. Unlawful Conduct and Penalties.

There shall be compliance with Part 24 of the Utah Procurement Code and Rule R33-24.

KEY: Attorney General, litigation support, outside counsel, expert witnesses

Date of Enactment or Last Substantive Amendment: [~~April 24, 2012~~]2015

Authorizing, and Implemented or Interpreted Law: Art VII Sec 16; 67-5; 63G-6

**Capitol Preservation Board (State),
Administration
R131-2
Capitol Hill Complex Facility Use**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 39025
FILED: 12/23/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to establish more specific rules in which the Capitol Complex Facility may be used in a way that protects the safety of the people and maintains the integrity of the Complex and delicate artwork.

SUMMARY OF THE RULE OR CHANGE: The inclusion of additional prohibited items in order to protect the safety of the people and maintain the integrity of the Complex and delicate artwork. (DAR NOTE: A corresponding 120-day (emergency) rule that is effective as of 12/23/2014 is under DAR No. 39024 in this issue, January 15, 2015, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63C-9-301

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** No anticipated costs or savings are expected. This change simply describes the prohibited items for the use of the Capitol Hill Complex Facility.
- ◆ **LOCAL GOVERNMENTS:** No anticipated costs or savings are expected. This change simply describes the prohibited items for the use of the Capitol Hill Complex Facility.
- ◆ **SMALL BUSINESSES:** No anticipated costs or savings are expected. This change simply describes the prohibited items for the use of the Capitol Hill Complex Facility.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No anticipated costs or savings are expected. This change simply describes the prohibited items for the use of the Capitol Hill Complex Facility.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs because the rule only describes the prohibited items for the use of the Capitol Hill Complex Facility.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated affects that the rule will have on businesses specifically, with the exception that there are certain prohibitions on items during events held at the Capitol Hill Complex Facility that business with need to abide by.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED,
DURING REGULAR BUSINESS HOURS, AT:

CAPITOL PRESERVATION BOARD (STATE)
ADMINISTRATION
ROOM E110 EAST BUILDING
420 N STATE ST
SALT LAKE CITY, UT 84114-2110
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
◆ Allyson Gamble by phone at 801-537-9156, by FAX at 801-538-3221, or by Internet E-mail at agamble@utah.gov
◆ Nicole Alder by phone at 801-538-3240, or by Internet E-mail at nicolealder@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON
THIS RULE BY SUBMITTING WRITTEN COMMENTS NO
LATER THAN AT 5:00 PM ON 02/17/2015

THIS RULE MAY BECOME EFFECTIVE ON: 02/24/2015

AUTHORIZED BY: Allyson Gamble, Executive Director

R131. Capitol Preservation Board (State), Administration.

R131-2. Capitol Hill Complex Facility Use.

R131-2-1. Purpose and Application.

(1) The purpose of this rule is to define conditions for public access and use of the Capitol Hill Complex and to establish procedures for receiving and deciding complaints regarding the access or use of the Capitol Hill Complex.

(2) Except as expressly stated herein, or in rule R131-11, this rule R131-2 does not apply to free speech activities. Free speech activities conducted at the Capitol Hill Complex are governed by rule R131-11.

R131-2-2. Authority.

(1) The State Capitol Preservation Board adopts this Capitol Hill Complex Facility Use Rule pursuant to Section 63C-9-301.

R131-2-3. Definitions.

As used in this rule R131-2:

(1) "Board" means the State Capitol Preservation Board created by Section 63C-9-201.

(2) "Capitol Hill Complex" means all grounds, monuments, parking areas, buildings, including the Capitol, and other man-made and natural objects within the area bounded by 300 North Street, Columbus Street, 500 North Street, and East Capitol Boulevard. Capitol Hill Complex also includes:

(a) the White Community Memorial Chapel and the Council Hall Travel Information Center building and their grounds and parking areas;

(b) the Daughters of the Utah Pioneers museum and buildings, grounds and parking areas, and other state-owned property included within the area bounded by Columbus Street, North Main Street, and Apricot Avenue;

(c) state owned property included within the area bounded by Columbus Street, Wall Street, and 400 North Street; and

(d) state owned property included within the area bounded by Columbus Street, West Capitol Street, and 500 North Street, and any other facilities and grounds owned by the state of Utah that are located within the immediate vicinity.

(3) "Capitol Hill Facilities" means all buildings on the Capitol Hill Complex, including the Capitol, exterior steps, entrances, streets, parking areas and other paved areas of the Capitol Hill Complex.

(4) "Capitol Hill Grounds" means landscaped and unpaved public areas of the Capitol Hill Complex. Maintenance and utility structures and areas are not considered Capitol Hill Grounds for the purpose of any public use.

(5) "Catering Service(s)" means the serving of food and/or beverages on Capitol Hill.

(6) "Commercial Activities" means events that sponsored or conducted for the promotion of commercial products or services, and include advertising, private parties, private company or organization meetings, and any other non-public organization event. Commercial activities do not include private, community service, state sponsored, or free speech activities.

(7) "Community Service Activities" means events sponsored by governmental, quasi-governmental and charitable organizations, city and county government departments and agencies, public schools, and charitable organizations held to support or recognize the public or charitable functions of such sponsoring group. To the extent the event is sponsored by a private charitable organization, the organization must have an Internal Revenue Code Section 501(c)(3) active status and the event must be related to such status.

(8) "Event" or "Events" are commercial, community service, private, and state sponsored activities involving one or more persons. Events may include banquets, receptions, award ceremonies, weddings, colloquia, concerts, dances, and seminars. A free speech activity is not an event for purposes of rule R131-2 and R131-10. The term "activity" or "activities" may be substituted in this rule for the term "event" or "events."

(9) "Executive Director" means the executive director appointed by the Board under Section 63C-9-102, or a designee supervised by the executive director.

(10) "Facility Use Application" ("Application") means a form approved by the executive director used to apply to reserve Capitol Hill Facilities or Capitol Hill Grounds for an event.

(11) "Facility Use Permit" ("Permit") means a written permit issued by the executive director authorizing the use of an area of the Capitol Hill Complex for an event in accordance with this rule.

(12) "Free Speech Activity" is as defined in rule R131-11.

(13) "Cafe Operator" means the Capitol Hill cafe operator located on the first floor of the East Senate Building who is under contract with the Board to provide food/beverages in the State Room and may be allowed to cater in other areas on the Capitol Hill Complex.

(14) "Private Activity" means an event sponsored by private individuals, businesses or organizations that is not a commercial or community service activity.

(15) "Authorized Caterer" means a person or entity authorized to provide catering services on the Capitol Hill Complex, and is not the Cafe Operator.

(16) "Solicitation" is as defined in rule R131-10.

(17) "State" means the state of Utah and any of its agencies, departments, divisions, officers, legislators, members of the judiciary, persons serving on state boards or commissions, and employees of the above entities and persons.

(18) "State Sponsored Activity" means any event sponsored by the state that is related to official state business. Official state business does not include award ceremonies, lobbying activities, retirement parties, or similar social parties, social activities or social events. Management retreats may be considered a State Sponsored Activity if it has a supporting agenda and documentation establishing that the primary purpose of the retreat is to conduct official state business. In order to be considered a State Sponsored Activity, such activity must obtain written approval from the Executive Director and/or the Board's Budget Development and Board Operations Subcommittee.

(19) "User(s)" means any person that uses the facilities or grounds as well as any applicant for a facility use permit.

R131-2-4. Facility Use Permit - Application.

(1) Each person or group seeking to hold an event or solicitation at the Capitol Hill Complex shall submit a completed Facility Use Application at least fourteen calendar days prior to the anticipated date of the event. Applications may not be submitted, and facilities will not be scheduled, more than 365 calendar days before the date of the event. An applicant may only make one application for one continuous event at a time. For State Sponsored Activities that involve a reoccurring meeting schedule, one application may be used for all the reoccurring meetings. For all events, other than State Sponsored Activities or Free Speech Activities, there shall be a non-waivable and non-refundable application processing fee, which shall be paid at the time of submission of the application.

(2) The executive director shall provide a Facility Use Permit Application form. The form shall request and applicants shall provide all necessary information, including all material aspects of the proposed event or solicitation. This necessary information is required even if the Applicant requests a waiver. The application shall include the following information:

- (a) the applicant's organization's name, address, telephone and facsimile number;
- (b) the names and addresses of the person(s) responsible for supervising the event during set up, take down, clean up and the duration of the event;
- (c) the nature of the applicant; i.e. individual, business entity, governmental department or other;
- (d) the name and address of the legally recognized agent for service of process;
- (e) a specific description of the area of the facility and/or grounds being requested for use;
- (f) the type of proposed activity and the number of anticipated participants;
- (g) the dates and times of the proposed activity and a description of the schedule and agenda of the event;
- (h) a complete description of equipment and apparatus to be used for the event;
- (i) any other special considerations or accommodations being requested; and

(j) whether the applicant requests exemption or waiver of any requirement of this rule or provision of the Facility Use Application.

(3) In addition, the applicant shall submit with the Facility Use Application:

(a) documentation supporting any requested exemption or waiver;

(b) proof of liability insurance covering the applicant and the event in the amount as identified in the Schedule of Costs and Fees as referred to in rule R131-2-7(1)(a);

(c) a deposit and down payment in the amounts as identified in the Schedule of Costs and Fees as described in rule R131-2-7(1)(a) for the type of event proposed; and

(d) other information as requested by the executive director.

(4) Applications shall be reviewed by the executive director for completeness, activity classification, costs and fees.

(5) Priority for use of the Capitol Hill Complex will be given to applications for state sponsored activities. During the actual hours of legislative sessions, priority will be given to free speech activities over commercial, community service and private activities. Otherwise, applications will be approved, and requested facilities reserved, on a first-come, first-serve basis.

R131-2-5. Facility Use Permit - Denial - Appeal - Cancellation - Revocation - Transfer.

(1) Within ten working days of receipt of a completed application, the executive director shall issue a Facility Use Permit or notice of denial of the application.

(2) The executive director may deny an application if:

(a) the application does not comply with the applicable rules;

(b) the event would conflict or interfere with a state sponsored activity, a time or place reserved for free speech activities, the operation of state business, or a legislative session; and/or

(c) the event poses a safety or security risk to persons or property.

(3) The executive director may place conditions on the approval that alleviates such concerns.

(4)(a) If the applicant disagrees with a denial of the application or conditions placed on the approval, the applicant may appeal the executive director's determination by delivering the written appeal and reasons for the disagreement to the executive director within five working days of the issuance of the notice of denial or approval with conditions.

(b) Within ten working days after the executive director receives the written appeal, the executive director may modify or affirm the determination.

(c) If the matter is still unresolved after the issuance of the executive director's reconsideration determination, the applicant may appeal the matter, in writing, within ten working days to the Board's Budget Development and Board Operations Subcommittee chair who will determine the process of the appeal.

(d) The applicant may appeal the Subcommittee Chair's determination in writing within ten working days of receipt of the written determination, by submitting a written appeal at the Board's office. The Board shall consider the appeal at its next regularly scheduled meeting.

(5) Facility Use Permits are non-transferable. The purpose, time, place and other conditions of the Facility Use Permit may not be changed without the advance written consent of the executive director. At least thirty calendar days advance written notice is required for the applicant to request a change in the date, time and/or place of the event or solicitation. If there is no conflict with another scheduled event or solicitation, the executive director may adjust the Facility Use Permit in regard to the date, time and/or place based upon the request.

(6) An event may be re-scheduled if the executive director determines that an event will conflict with a governmental function, free speech activity or state sponsored activity.

(a) The executive director may revoke any issued permit if this rule R131-2, any applicable law, or any provision of the permit is being violated. The permit may also be revoked if the safety or health of any person is threatened.

(b) The applicant may cancel the permit and receive a full refund of fees and any deposits if written notice of cancellation is received by the executive director at least 30 calendar days prior to the scheduled event. Failure to timely cancel the event will result in the forfeiture of any deposit and fees.

R131-2-6. General Requirements for Use of the Capitol Hill Complex.

(1) General Requirements.

(a) These are the requirements for use of the Capitol Hill Complex. This rule R131-2-6 shall apply to free speech activities, all other activities, groups and individuals using the Capitol Hill Complex.

(b) Except for state holidays, the Capitol building will be open to the general public Monday through Saturday from 8:00 a.m. to 8:00 p.m. and on Sunday from 8:00 a.m. to 6:00 p.m. Free speech activities may be conducted beyond the times identified in this subsection, as specified in rule R131-11. Unless otherwise authorized, Capitol Hill Facilities and Capitol Hill Grounds, including the Capitol Rotunda, are available for permitted use, activities or events from 8:00 a.m. to 11:00 p.m.

(c) Activities, except free speech activities, may be specifically denied during legislative sessions.

(d) No event may disrupt or interfere with any legislative session, legislative meeting, or the conduct of any state or governmental business, meeting or proceeding on the Capitol Hill Complex. No person shall unlawfully intimidate or interfere with persons seeking to enter or exit any facility, or use of the Capitol Hill Complex.

(e) Levels of audible sound generated by any individual or group, indoors or on the plaza between the House and Senate Buildings, whether amplified or not, shall not exceed 85 decibels or a more restrictive limit established by applicable laws or ordinances. All outdoor events shall not exceed noise limits established by applicable laws or ordinances.

(f) Fire exits, staircases, doorways, roads, sidewalks, hallways and pathways shall not be blocked, and the efficient flow of pedestrian traffic shall not be obstructed at any time.

(g) Alteration and damage to the Capitol Hill Grounds including grass, plants, shrubs, trees, paving or concrete is prohibited.

(h) No object or substance of any kind shall be placed on or in the Capitol Plaza fountain. Standing on or in the fountain is prohibited.

(i) All costs to repair any damage or replace any destruction, regardless of the amount or cost of restoration or refurbishing, shall be

at the expense of the person(s) responsible for such damage or destruction.

(j) The consumption, distribution, or open storage of alcoholic beverages is prohibited.

(k) Service animals are permitted, but the presence of other animals is allowed only with advance written permission of the executive director. Owners/caretakers are responsible for the safety to the animal, persons, grounds and facilities.

(l) Camping is prohibited on the Capitol Hill Complex.

(m) Littering is prohibited.

(n) Commercial solicitation as defined in rule R131-10 is prohibited except as provided in rule R131-10.

(o) The use of a personal space heater is prohibited, except as provided in Subsection (i).

(i) Any person with a medical related condition may obtain approval by the Executive Director to use a personal space heater provided the person submits a signed statement by a Utah licensed physician verifying that the medical related condition requires a change in the standard room temperature and the use of the space heater meets the specifications in Subsection (ii).

(ii) If a space heater is approved by the Executive Director, the space heater shall not exceed 900 watts at its highest setting, be equipped with a self-limiting element temperature setting for the ceramic elements, have a tip-over safety device, be equipped with a built-in timer not to exceed eight hours per setting, be equipped with a programmable thermostat, and be equipped with an overheat protection feature.

(p) Tables, chairs, furniture, art and other objects in the Capitol Building shall only be moved by the Board's staff. No outside furniture, including tables or chairs, shall be allowed in the Capitol Building or any other facility on the Capitol Hill Complex without the advance written approval of the Executive Director.

(2) Decorations.

(a) All cords must be taped down with 3M #471 tape or equivalent as determined by the executive director.

(b) There shall be no posting or affixing of placards, banners, or signs to any part of any building or on the grounds. All signs or placards used at the Capitol Hill Complex shall be hand held.

(c) No adhesive material, wire, nails, or fasteners of any kind may be used on the buildings or grounds.

(d) Nothing may be used as a decoration, or be used in the process of decorating, that marks or damages structure(s).

(e) All decorations and supporting structures shall be temporary.

(f) Any writing or use of ink, paint or sprays applied to any area of any building is prohibited.

(g) Users may not decorate the inside or outside of any facility or any portion of the grounds without the advance written approval of the Executive Director. Users must submit any decoration requests in writing to the Executive Director at least ten working days in advance.

(h) Signs, posters, decorations, displays, or other media shall be in compliance with the state law regarding Pornographic and Harmful Materials and Performance, Section 76-10-1201 et seq.

(i) Leaving any item(s) against the exterior or interior walls, pillars, busts, statues, portraits or staircases of the Capitol building is prohibited.

(j) Balloons are not allowed inside the Capitol building.

(3) Set up/Clean up.

(a) All deliveries and loading/unloading of materials shall be limited to routes and elevators as specified by the executive director.

(b) All decorations, displays and exhibits shall be taken down by the designated end time of the event in a manner that is least disruptive to state business.

(c) Users shall leave all facilities and grounds in its original condition and appearance.

(4) Parking.

(a) Parking is limited. All posted parking restrictions on the Capitol Hill Complex, including reserved parking stalls, shall be observed.

(b) Parking for large vehicles or trailers shall require the prior approval of the executive director, which approval may be withheld if the large vehicle or trailer may interfere with the access or use of the Capitol Hill Complex.

(c) Except as expressly allowed by the executive director, overnight parking is prohibited.

(5) Compliance with Laws.

(a) Users shall conform to all applicable and constitutional laws and requirements, including health, safety, fire, building and other codes and similar requirements. Occupancy limits as posted in or applicable to any public area will dictate, unless otherwise limited for public safety, the number of persons who can assemble in the public areas. Under no circumstance will occupancy limits be exceeded. State Capitol security personnel shall use reasonable efforts to ensure compliance with occupancy, safety, and health requirements.

(b) Safety requirements as used in this rule include safety and security requirements made known to the executive director by the Utah Department of Public Safety or the federal government for the safety and security of special events and/or persons on the Capitol Hill Complex.

(c) "No Smoking" statutes, rules and policies, including the Utah Indoor Clean Air Act, Title 26, Chapter 38, Utah Code shall be observed.

(d) The following are all prohibited: Open flames[;]; flammable fluids[;]; candles[;] with flames; burning incense; smoke; fog machines; disseminating dust, powder, glitter or confetti; and explosives; [are prohibited.]except that a gelled alcohol food warming fuel used for food preparation or warming, whether catered or not, is allowed provided that it is in:

(i) a one ounce capacity container (29.6 ml) on a noncombustible surface; or

(ii) a container on a noncombustible surface, not exceeding one quart (946.g ml) capacity with a controlled pouring device that will limit the flow to a one ounce (29.6 ml) serving.

(e) All persons must obey all applicable firearm laws, rules, and regulations.

(6) Security and Supervision.

(a) The Facility Use Application shall be reviewed by the senior ranking officer in charge of security for the Capitol Hill Complex, who shall determine the total number of uniformed security officers required for the proposed event based upon the nature of the event and the risk factors that are reasonably anticipated. Such determination by the senior ranking officer may increase the minimum number of required officers stated in this subsection. At a minimum: one uniformed security officer shall be required for any event consisting of 1-399 participants; two uniformed security officers shall be required for any event consisting of 400 or more participants. The

applicant shall pay, in addition to all other required fees, the cost of the providing of all required security officers. These security fees may not be waived. This subparagraph shall not apply to free speech activities or state sponsored activities.

(b) At least one representative of the applicant identified in the application and permit shall be present during the entire activity;

(c) The activity sponsor (permit holder) is responsible for restricting the area of use by participants to the specified room and rest room areas of the reserved facilities.

(d) The activity sponsor (permit holder) shall control entrances to allow only authorized persons to enter any permitted facility or grounds.

(7) Photography, Portraits and Video/Filming.

(a) Any photography, videotaping or filming, shall require advance notice to, and permission from the executive director for scheduling.

(b) Any photography, videotaping or filming, which includes wedding participants and family portraits, and which may take place anywhere in the facilities or grounds of the Capitol Hill Complex, will be required to comply with this Rule.

(i) Such photography, videotaping or filming, may be scheduled by the executive director on Tuesday from 3 p.m. to 6 p.m., Friday from 12 p.m. to 6 p.m., and Saturday from 8 a.m. to 4 p.m. The executive director may allow a different time than specified herein upon written request and if the executive director determines that such other time can be accommodated by any necessary state personnel and does not conflict with state business and any other scheduled events. The executive director may reschedule as needed to accommodate events and state business whether scheduled or not.

(ii) In regard to inside the Capitol building, such photography, videotaping or filming may occur in the following areas: the East grand stairs, the West grand stairs, and the center of the Rotunda or other areas as approved by the executive director.

(iii) A processing fee shall be required for such photography, videotaping or filming. Additionally, a deposit may be required to cover the costs of any anticipated cleanup by the state after the session. These fees shall be described in the Fee Schedule approved by the Board.

(c) Any photography, videotaping or filming that is for the purpose of promoting any private business purposes, including television commercials, movies and photography for business advertising, shall be required to submit a Facility Use Application, pay the required fee from the Fee Schedule approved by the Board, and the time and location must be approved by the Executive Director.

(d) Unless specifically endorsed by an authorized official of the State of Utah, any photography, videotaping or filming shall not expressly or impliedly indicate any State of Utah endorsement of any product, service or any other aspect of the depiction.

(e) This subsection (7) shall not apply to tourists and does not apply to the extent it is the exercise of a free speech activity.

(8) Liability.

(a) The state, Board, executive director and their designees, employees and agents shall not be deemed in default of any issued permit, or liable for any damages if the performance of any or all of their obligations under the permit are delayed or become impossible because of any act of God, terrorism, war, riot or civil disobedience, epidemic, strike, lock-out or labor dispute, fire, or any other cause beyond their reasonable control.

(b) Except as required by law, the state shall not be responsible for any property damage or loss, nor any personal injury sustained during, or as a result of, any use, activity or event.

(c) Users/applicants shall be responsible for any personal injury, vandalism, damage, loss, or other destruction of property caused by the user or an attendee at the applicant's event.

(9) Indemnification. Individuals and organizations using the Capitol Hill Complex do so at their own risk and shall indemnify and hold harmless the state from and against any and all suits, damages, claims or other liabilities due to personal injury or death, and from damage to or loss of property arising out of or resulting from the conduct of such use or activities on the Capitol Hill Complex.

(10) Food Services, Cafe Operator and Authorized Caterer Requirements.

(a) In General. Catering services on the Capitol Hill Complex shall be exclusively provided by the Cafe Operator and Authorized Caterer for those areas of the Capitol Hill Complex under the jurisdiction of the Board and to the extent expanded by the Legislative Management Committee or the Governor's Office, whichever is applicable. Multiple Authorized Caterers may be approved by the Executive Director. The Cafe Operator shall be responsible for all activities in the kitchen, servery, dining and conference rooms associated with the dining room, known as the "State Room," and located on the first floor of the East Senate Building. The Cafe Operator shall have the exclusive right to provide food and beverages in the State Room, but may give permission for an Authorized Caterer to provide food and beverages in the State Room.

(b) Authorized Caterer Requirements. In order to qualify as an Authorized Caterer, an application must be approved by the Executive Director based on meeting the following requirements:

(i) Quality Control Policies. The Authorized Caterer must have quality control policies that are consistent with those set forth in the contract between the Board and the Cafe Operator. The Executive Director shall provide a form describing the minimum standards.

(ii) Application Form. A person or entity seeking to be an Authorized Caterer shall complete an application form approved by the Executive Director.

(iii) Insurance. A Certificate of Insurance shall be provided to the Executive Director for all of the following insurance and such insurance shall be maintained throughout the term of the catering event and for at least one year thereafter:

(A) The Authorized Caterer shall maintain Commercial General Liability insurance with per occurrence limits of at least \$1,000,000 and general aggregate limits of at least \$2,000,000. The selected Authorized Caterer shall also maintain, if applicable to the Authorized Caterer's operations or the specific activity, Business Automobile Liability insurance covering Caterer's owned, non-owned, and hired motor vehicles and/or Professional Liability (errors and omissions) insurance with liability limits of at least \$1,000,000 per occurrence. Such insurance policies shall be endorsed to be primary and not contributing to any other insurance maintained by the Board or the State of Utah.

(B) The Budget Development and Board Operations Subcommittee reserves the right at any time to require additional coverage from that required in this Rule, at the Authorized Caterer's expense for the additional coverage, based upon the specific risks presented by any proposed event and as recommended by the State's Risk Manager.

(C) The Authorized Caterer shall maintain all employee related insurances, in the statutory amounts, such as unemployment compensation, worker's compensation, and employer's liability, for its employees or volunteers involved in performing services pursuant to the Event. Such worker's compensation and employer's liability insurance shall be endorsed to include a waiver of subrogation against the State of Utah, the Board, its agents, officers, directors and employees. Authorized Caterer shall also maintain "all risk" property insurance at replacement cost applicable to the Authorized Caterer's property and/or its equipment.

(D) The Authorized Caterer's insurance carriers and policy provisions must be acceptable to the State of Utah's Risk Manager and remain in effect for the duration of the catering event and for at least one-year thereafter. The Board shall be named as an additional insured on the Commercial General Liability, the Professional Liability Insurance and all other required insurance policies. The Authorized Caterer will cause any of its subcontractors, who provide materials or perform services related to the catering service(s), to also maintain the insurance coverages and provisions listed above.

(E) The Authorized Caterer shall submit certificates of insurance as evidence of the above required coverage to the Executive Director prior to any entering into a contract related to the catering event. Such certificates shall provide the Board with thirty (30) calendar days written notice prior to the cancellation or material change of the applicable coverage, as evidenced by return receipt or certified mail, sent to the office of the Executive Director.

(iv) Indemnification: The Authorized Caterer shall hold harmless, defend and indemnify the State of Utah, the Board and its officers, employees, and agents from and against any and all acts, errors or omissions which may cause damage to property or person(s), claims, losses, damages to the facilities or grounds of the Capitol Hill Complex, causes of action, judgments, damages and expenses including, but not limited to attorney's fees because of bodily injury, sickness, disease or death, or injury to or destruction of tangible property or any other injury or damage resulting from or arising out of the negligent acts or omissions or willful misconduct of the Authorized Caterer, or its agents, employees subcontractors or anyone for whom the Authorized Caterer may be liable, except where such claims, losses, causes of action, judgments, damages and expenses result solely from the negligent acts or omissions or willful misconduct of the Board, its officers, employees or agents.

(v) Record Keeping and Audit Rights: The Authorized Caterer shall maintain accurate accounting records for all goods and services provided, and shall retain all such records for a period of at least three (3) years from the date of the catering service. Upon reasonable notice and during normal business hours, the Board, or any of its duly authorized representatives, shall have access to and the right to audit any records or other documents pertaining to the Authorized Caterer. The Board's audit rights shall extend for a period of at least three (3) years from the date of the catering service.

(vi) Equal Opportunity: The Authorized Caterer shall not unlawfully discriminate against any employee, applicant for employment, or recipient of services.

(vii) Taxes: The Authorized Caterer shall be responsible for and pay all taxes which may be levied or incurred against the Authorized Caterer, including taxes levied or incurred against Authorized Caterer's income, inventory, property, sales, or other taxes.

(viii) Taxes: Board is Exempt: The Board is exempt from State of Utah sales and excise taxes. Exemption certification information appears on all purchase orders issued by the Board and such taxes will not apply to the Board.

(ix) Suspension/Debarment. The Authorized Caterer must notify the Executive Director within 10 calendar days if debarred or suspended by any governmental entity.

(x) Comply with Facility Use Rules. The Authorized Caterer shall comply with all of the Facility Use Rules enacted by the Board. Upon submission of any evidence to the Budget Development and Board Operations Subcommittee that the Authorized Caterer has not complied with a rule enacted by the Board, the Authorized Caterer shall be removed from eligibility for providing any catering service on the Capitol Hill Complex for a period of time as determined by the Subcommittee and consistent with the Board's rules on suspension and debarment.

(xi) Inspection. The Board or the Executive Director reserves the right to inspect the Authorized Caterer's facilities and operations with respect to use, safety, sanitation and the maintenance of premises which shall be maintained at a level satisfactory to the Board.

(xii) Energy. The Authorized Caterer shall exercise due care to keep utility services at a minimum, conserve the use of energies, and control the resulting costs.

(xiii) Food Handlers Permits. All of the Authorized Caterer's employees must have a current Food Handlers Permit. Documentation shall be promptly provided upon request of the Executive Director that established that all employees and temporary employees have valid Food Handlers Permits.

(xiv) The Authorized Caterer must have a locally grown food quality assurance program similar to that required of the Cafe Operator, which covers the food or products that are not provided by nationally recognized vendors.

(xv) Fees and costs associated with catering services, including the Cafe Operator or the Authorized Caterer, shall be the responsibility of the Applicant and cannot be waived.

(xvi) Security.

(A) An Authorized Caterer shall provide to the Executive Director at least 24 hours in advance of any catered event, a list of all full-time and part-time employees that will be involved with the catering service on the Capitol Hill Complex.

(B) The Applicant shall be assessed a fee to provide for the presence of at least one Board employee to be present and to assist with ingress and egress from the Capitol Hill Complex, set-up, coordination and assurance of appropriate performance under this Rule as well as timely and appropriate clean-up after the event. This fee cannot be waived.

(11) Public Notices, Employee Postings, Required Use of Bulletin Boards.

(a) Notices of Capitol Hill Complex meetings, information or announcements related to state of other governmental business shall be posted at executive director approved locations. If any posting is to be done by a person not officed in the Capitol Hill Complex, the executive director shall be notified prior to the posting for approval of the location(s) and duration of the posting. Such persons are also responsible to remove the notices after the related meeting or activity within 24-48 hours.

(b) Posting of handbills, leaflets, circulars, advertising or other printed materials by state employees officed in the Capitol Hill Complex shall be on executive director approved bulletin boards.

(12) Enforcement of Rules.

(a) If any person or group is found to be in violation of any of the applicable laws and rules, a law enforcement officer or state capitol security officer may issue a warning to cease and desist from any non-complying acts. If the law enforcement or security officer observes a non-compliant act after a warning, the officer may take disciplinary action including citations, fines, cancellations of event or activity, or removal from the Capitol Hill Complex.

(13) Waivers.

The ~~Executive Director~~[~~Budget Development and Board Operations Subcommittee~~] may waive the requirements of any provision of R131-2-6 provided that the provision of Rule R131-2-6 does not specifically indicate that it is non-waivable, upon being presented with compelling reasons that the waiver will substantially benefit the public of the state of Utah and that the facilities, grounds and persons will be appropriately protected. Any approved waiver must still require compliance with all other provisions of this Rule. The waiver request must be submitted in writing to the Executive Director[~~for consideration by the Subcommittee at its next regularly scheduled meeting,~~] and must accompany any required Facility Use Application. Conditions may be placed on any approved waiver by the ~~Executive Director~~[~~Subcommittee~~] to assure the appropriate protection of facilities, grounds and persons. An appeal [~~to the Board~~] of a denial or the conditions of such waiver may be filed and processed similarly to the denial of a Facility Use Application as described in R131-2-5.

R131-2-7. Fees and Charges.

(1) Fees.

(a) Application Fee. There shall be an application fee for a Facility Use Permit to cover the cost of processing the application, as specified on the Board's fee schedule. This fee is separate from rental and other fees.

(b) Rental of Space Fee. Persons using the Capitol Hill Complex pursuant to a Facility Use Permit shall be charged a rental of the space fee as specified on the Board's fee schedule.

(c) Security Fee. A security fee shall also be assessed as provided in this Rule, as specified on the Board's fee schedule.

(d) Rental of Equipment fee. A rental of equipment fee shall be assessed as specified on the Board's fee schedule.

(e) Room Setup Fees. The Board's fee schedule shall provide for room setup fees.

(f) Additional Board Staff fee. If an Applicant requests that additional Board staff be present for an event, then an additional fee shall be assessed.

(g) Authorized Caterer Fee. Any fee or costs of an Authorized Caterer are the responsibility of the Applicant. The State of Utah, the Capitol Preservation Board, State Officials, employees and anyone for whom the State may be liable, shall have no liable whatsoever for such fee or costs owed to the Authorized Caterer.

(h) A "Schedule of Costs and Fees" is available during regular working hours at the executive director's office. This Schedule of Costs and Fees shall include all the fees referred to in this Rule R131-2-7. Additionally, fees may be assessed for technology assistance, recording, insurance coverage, cleaning and repairs. The

Schedule of Costs and Fees may have special fees for community service activities, state employee events, including state employee recognition events, state retirement events, or state employee holiday/social events. There are no fees for free speech activities, except costs for requested use of state equipment or supplies shall be assessed in accordance with the Schedule of Costs and Fees. State Sponsored Activities shall not be required to pay any fees under this Rule.

R131-2-8. Specific Facilities.

(1) The following applies to all events and solicitations, except for free speech activities.

(a) Use of caucus rooms, committee rooms, the House of Representatives or Senate Chambers will be separately administered by the legislative branch. Requests for all other rooms must be submitted in writing to the executive director for scheduling and staffing. If the requested room is under the control of the Governor, the judiciary, or other elected officials, the executive director shall forward the request to the appropriate representative of such branch of government or elected official. The executive director will notify the applicant of the approval or denial of the requested space by the approving organization.

(b) The State Office Building auditorium shall be available to all state entities on a first-come, first-serve basis for governmental functions. All state entities shall reserve this facility in advance with the executive director.

(c) After-hours access to the State Office Building shall be through the first floor south doors.

(d) During legislative sessions, legislative meetings or other legislative activities, use of the legislative space will be subject to the applicable legislative rules.

(e) The Gold Room and all other areas controlled by the Governor in the Capitol building shall be available in accordance with Section 67-1-16.

R131-2-9. Use of White Community Memorial Chapel.

(1) In addition to the provisions above, the following rules for the White Community Memorial Chapel shall be observed:

(a) Fire Marshal occupancy limits shall not be exceeded.

(b) The kitchen is for the exclusive use of the Preferred Caterer. No Private Caterer shall be allowed to use the White Community Memorial Chapel and its grounds. Users may use the full rest room facilities.

(c) The White Community Memorial Chapel will be available from 7:00 a.m. until 12:00 midnight, seven days a week, 365 days a year unless otherwise specified by the Board's Budget Development and Board Operations Subcommittee.

(d) If no wedding or event is scheduled the day before the scheduled wedding or event, the applicant may be allowed to use the Chapel the day before from noon to midnight for rehearsal or decorative purposes for an additional fee as identified on the Board's fee schedule.

(e) All users must complete the Facility Use Permit Application and comply with all the permit requirements listed under rules R131-2 and R131-10.

R131-2-10. Procedure for Receiving and Deciding Complaints Regarding the Access or Use of the Capitol Hill Complex.

(1) Any person that has a complaint regarding the access or use of the Capitol Hill Complex may file such complaint in writing to the executive director.

(2) The executive director will issue a written determination within thirty calendar days of the filing of the complaint or such longer time period as agreed to by the complainant.

(3) If the executive director does not issue a determination within the time period for such determination, then the complainant may file a written appeal no later than ten calendar days after the expiration of such time period. The written appeal shall be delivered to the office of the executive director and shall be considered by the Board's Budget Development and Board Operations Subcommittee chair in a manner determined appropriate by the chair.

(4) The chair will issue a written determination within thirty calendar days of the filing of the appeal or such longer time period as agreed to by the complainant.

(5) If the chair does not issue a determination within the time period for the chair's determination, the complainant may file a written appeal to the Board no later than ten calendar days after the expiration of such time period. The written appeal to the Board shall be delivered to the office of the executive director.

(6) Upon the filing of a timely appeal to the Board, the appeal shall be scheduled at the next regularly scheduled meeting of the Board.

(7) This is considered to be an administrative remedy for complaints regarding the access or use of the Capitol Hill Complex, and to the extent allowed by law, shall be considered an administrative remedy that must be pursued prior to any legal action.

R131-2-11. Fees and Charges During Legislative Session.

During the regular Utah Legislative Session, from the hours of 7:00 a.m. to 5:30 p.m., Monday through Friday, the facility use fees for specific rooms and spaces shall be reduced as follows:

(1) Facilities on Capitol Hill are available on a first come first serve basis as defined in this Rule R131-2, subject to preemption for State Sponsored Activities and any need to reserve or close off spaces for security reasons as advised by the Department of Public Safety.

(a) Subject to all the other provisions of this Rule R131-2-11, the following rooms may be reserved with no room rental being assessed:

- (i) Kletting Room located in the Senate Building;
- (ii) Olmstead Room located in the Senate Building;
- (iii) Spruce Room located in the Senate Building;
- (iv) Beehive Room located in the Senate Building;
- (v) Seagull Room located in the Senate Building;
- (vi) Copper Room located in the Senate Building;
- (vii) Rooms B110 and 1112 in the State Office Building;
- (viii) Room 130, the Multipurpose/Public Lounge located in the Capitol;
- (ix) Room 170 located in the Capitol; and
- (x) Room 210 located in the Capitol.

(b) These rooms identified in R131-2-11(2) may be reserved when the Utah Legislature is meeting in regular session in 4 hour blocks/day for a maximum of 8 total hours per week, and not concurrent.

(c) The use of the State Room in the East Senate Building is to be for public use except for certain hours established by the Executive Director when the public does not ordinarily use the State Room.

(2) The State Office Building Auditorium may be reserved during the time the Utah Legislature is meeting in regular session in two hour blocks one day a week, but is subject to the same rental fees that would apply at other times of the year and priority shall be provided to those events that are related to the regular session of the Utah Legislature.

(3) The Capitol Rotunda or Hall of Governors facilities may be reserved during the hours the Utah Legislature is meeting in regular session with no fee for the space rental itself being assessed subject to the following:

(a) The reservation shall be for a maximum of two hours which must be in one block of hours; and

(b) Priority shall be given to those events that are related to the regular session of the Utah Legislature.

(4) This Rule R131-2-11 does not prohibit the rental of these rooms for the standard fees when rental is beyond the time restrictions set forth in this Rule R131-2-11.

(a) Notwithstanding any other provision of this Rule R131-2-11, Registration (Application), Janitorial and all other associated set up and security fees that would apply if the rental was not during the Utah Legislature's regular session, shall be assessed.

(b) Those persons or entities reserving or using the facilities shall leave the space as they found it in a clean and orderly manner and comply with all other provisions of the Facility Use Rules, R131-2.

(c) The janitorial fee will only be assessed if, in the opinion of the Executive Director, that the work required to prepare the room for the next user is beyond that what is expected and reasonable. Charges for any such required janitorial services shall be assessed in half hour increments of \$50/hour per janitorial worker.

(d) The Registration (Application) fee shall be assessed at the rate of one rental even if the Registration (Application) includes more than one reservation. Multiple reservations on one application form for reservations during the Utah Legislature's regular session are encouraged in order to best coordinate all the reservations.

KEY: public buildings, facilities use
Date of Enactment or Last Substantive Amendment: ~~[August 21, 2013]~~**2015**
Notice of Continuation: December 19, 2014
Authorizing, and Implemented or Interpreted Law: 63C-9-101 et seq.

Commerce, Administration
R151-14-3
Adjudicative Proceedings

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 39034
 FILED: 12/29/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change is proposed in order to establish procedures for adjudications that are requested under Title 13, Chapter 14 et seq.

SUMMARY OF THE RULE OR CHANGE: Evidentiary hearings will be conducted to adjudicate matters brought under statutory sections that specifically call for hearings. Adjudications that are requested under other sections of the statute will be accomplished through briefing, without hearing or oral argument before the Board.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 13-14-101 et seq.

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Adjudicating certain matters without convening the Board for hearing will relieve the state from paying the costs associated with hearings (i.e., staff time, Board member per diem, mileage, and parking).

◆ **LOCAL GOVERNMENTS:** Local governments are not required to comply with or enforce the New Automobile Franchise Act rule. No fiscal impact to local government is anticipated.

◆ **SMALL BUSINESSES:** Small businesses that request an adjudication in a matter that does not require hearing will save litigation costs that are typically associated with hearings (i.e., travel costs and witness fees).

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Affected persons that request an adjudication in a matter that does not require hearing will save litigation costs that are typically associated with hearings (i.e., travel costs and witness fees).

COMPLIANCE COSTS FOR AFFECTED PERSONS: This filing establishes procedures for adjudicative proceedings. No specific compliance is required. No compliance costs are anticipated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This filing establishes procedures for adjudicating certain matters without hearing. As stated in the rule analysis, businesses that are not required to go to hearing will avoid certain litigation costs. Such savings cannot be estimated.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE
 ADMINISTRATION

HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at jjonsson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/17/2015

THIS RULE MAY BECOME EFFECTIVE ON: 02/24/2015

AUTHORIZED BY: Thomas Brady, Deputy Director

R151. Commerce, Administration.

R151-14. New Automobile Franchise Act Rule.

R151-14-3. Adjudicative Proceedings.

(1) Informal Proceeding. Adjudicative proceedings before the Board and the Executive Director are designated as informal adjudicative proceedings.

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

(3) Procedure for Substitution of Presiding Officer. In accordance with Section 63G-4-103(1)(h), the Executive Director of the Department may upon his/her own motion substitute an administrative law judge as the presiding officer to conduct certain aspects of the adjudicative proceedings before the Board if he/she determines that fairness to the parties would not be compromised by such substitution. The substitution order shall give any party who feels that such substitution would compromise fairness an opportunity to request the Executive Director to reconsider the substitution by submitting written objections and supporting arguments to the Executive Director. Upon reconsideration, the Executive Director may leave the order intact or make such other orders as he/she deems appropriate.

(4) Submissions. Except as otherwise expressly required or permitted in this Rule or in the New Automobile Franchise Act, all correspondence or other submissions shall be directed to the Chair of the Utah Motor Vehicle Franchise Advisory Board at the Utah Department of Commerce.

(5) Form of Pleadings. A notice of agency action by the agency shall comply with the requirements of the Utah Administrative Procedures Act, Section 63G-4-201(2). A request to commence an adjudicative proceeding pursuant to Section 13-14-107(1), shall be a pleading headed "BEFORE THE DEPARTMENT OF COMMERCE, UTAH MOTOR VEHICLE FRANCHISE ADVISORY BOARD" and captioned "Request for Agency Action." The pleading shall substantially comply with the Utah Administrative Procedures Act, Section 63G-4-201(3), and the Department of Commerce Administrative Procedures Act Rule, R151-4-201 to -205.

(6) Answer. If the presiding officer determines that an answer to any notice of agency action or request for agency action would be helpful to the proceedings, the presiding officer may order a party to the proceedings to file an answer.

(7)(a) An evidentiary hearing before the Board shall be held for a matter brought under:

(i) Section 13-14-202 Sale or transfer of ownership;

(ii) Section 13-14-203 Succession to franchise;

(iii) Section 13-14-301 Termination or noncontinuance of franchise; or

(iv) Section 13-14-302 Issuance of additional franchises -- Relocation of existing franchisees.

(b) An adjudication requested under any section not listed in this Subsection (7)(a) shall be conducted without hearing, as follows:

(i) Parties to the action may submit to the Executive Director or the Executive Director's designee briefs, memoranda, exhibits, expert opinions, and affidavits in support of their positions.

(ii) If it appears to the Executive Director or the Executive Director's designee that the matter raises issues of fact, the Board shall convene to act as the fact-finder.

(iii) A meeting of the Board that is convened pursuant to this Subsection (7)(b)(ii) may be live or electronic, according to the discretion of the Executive Director or the Executive Director's designee.

(iv) Parties may appear at a meeting of the Board that is convened pursuant to this Subsection (7)(b)(ii) and may answer questions of the Board. Parties may not engage in oral argument.

(v) Board deliberations shall be conducted according to Utah Administrative Code Subsection R151-4-703(2).

(8)(a) Pursuant to Utah Code Ann. Section 63G-4-203(1), discovery is prohibited, but the presiding officer may issue subpoenas requiring the appearance of witnesses at an evidentiary hearing before the Board or the production of documents.

(b) Any subpoena issued shall conform with the requirements set forth in Utah Admin Code Section R151-4-513.

(c) The party requesting a subpoena shall comply with the requirements set forth in Section R151-4-712.

([7]9) Memoranda. If the presiding officer determines that [~~prehearing briefs~~]written arguments would be helpful to the proceedings, the presiding officer may order the parties to submit memoranda in accordance with any scheduling order entered by the presiding officer.

([8]10) GRAMA. Any request for records of the proceedings before the Board and the Executive Director will be governed by GRAMA (Government Records Access and Management Act), Utah Code Ann. Section 63G-2-101 et seq. Any schedule of records classifications maintained by the Department shall be made available to the parties upon request.

KEY: adjudicative proceedings, automobiles, motor vehicles, franchises[~~recreational vehicles~~]

Date of Enactment or Last Substantive Amendment: [May 2, 2006]2015

Notice of Continuation: May 2, 2011

Authorizing, and Implemented or Interpreted Law: 13-14-101 et seq.

**Commerce, Occupational and
Professional Licensing
R156-17b
Pharmacy Practice Act Rule**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39018

FILED: 12/22/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: S.B. 55, S.B. 77, and H.B. 114 passed during the 2014 General Session. S.B. 55 created a license classification for dispensing medical practitioners and clinics and clarified acceptable methods of drug delivery. S.B. 77 created a license classification for pharmacy technician trainees and allowed pharmacies to repackage or compound a prescription drug for sale to a practitioner under circumstances outlined in the bill. H.B. 114 required that non-resident pharmacies engaged in the manufacture, production, wholesale, or distribution of prescription drugs become licensed in Utah. Various rule amendments are necessary due to these statutory amendments and this rule filing establishes those rule amendments. Other rule amendments are proposed at the request of the Board of Pharmacy.

SUMMARY OF THE RULE OR CHANGE: The following rule amendments are made throughout Rule R156-17b: updating of references, renumbering of subsections, and minor grammatical and stylistic changes. Subsections R156-17b-102(16), (17), and (18) are added because the terms "DMP" (dispensing medical practitioner), "DMP designee", and "DMPIC" (dispensing medical practitioner-in-charge) are used throughout the rule, and definition of these terms is necessary for enforcement and education purposes. Subsection R156-17b-102(40) is added because the term "patient's agent" was used in S.B. 55, and definition of this term is necessary for enforcement purposes. Subsection R156-17b-102(57) updates the United States Pharmacopeia-National Formulary (USP-NF) to include Supplement 2, dated December 1, 2014. In Subsection R156-17b-105(1), an amendment is necessary due to S.B. 55. Subsections R156-17b-302(2), (7), and (8) amendments are necessary due to S.B. 55. An amendment to Subsection R156-17b-302(3) is necessary due to H.B. 114, which required licensure of Class C pharmacies located outside Utah. An amendment to Subsection R156-17b-302(5)(f) is necessary due to amendments to Section R156-17b-617c in this filing. Subsections R156-17b-303a(3) and (4) amendments are necessary due to S.B. 77. Other amendments to Subsection R156-17b-303a(4) remove the requirement that individuals apply for a pharmacy technician license within six months after completion of a pharmacy technician training program. This requirement is no longer necessary due to establishment of the pharmacy technician trainee license. Amendments to Subsection R156-17b-

303a(6) remove the requirement that an applicant for the pharmacy technician license in Utah from another jurisdiction be licensed as a pharmacy technician in that jurisdiction. Removal of this requirement is necessary because some states do not license, register, or certify pharmacy technicians. An applicant from another jurisdiction continues to be required to: 1) engage in the practice of a pharmacy technician for a minimum of 1,000 hours in that jurisdiction; and 2) pass and maintain current PTCB (Pharmacy Technician Certification Board) and ExCPT (Exam for the Certification of Pharmacy Technicians) certification. Subsection R156-17b-303c(4) is removed because the Division is removing itself from the exam pre-approval process. Under the new process, the National Association of Boards of Pharmacy (NABP) determines who takes the North American Pharmacy Licensing Examination (NAPLEX) and the Multistate Jurisprudence Examination (MPJE). The new process will dramatically decrease the number of days that a pharmacist license application is pending with the Division. Section R156-17b-10 is no longer necessary due to S.B. 55. Subsection R156-17b-401(2) amendments are necessary due to S.B. 55 and S.B. 77. Section R156-17b-402 amendments are necessary due to S.B. 55 and S.B. 77. Subsection R156-17b-402(26) is removed due to S.B. 194, which passed during the 2013 General Session. S.B. 194 made it permissible for a pharmacy to sell prescription drugs to another pharmacy under certain conditions, and Subsection R156-17b-402(26) prohibits this practice; therefore, the existing language must be deleted. Section R156-17b-502 amendments are necessary due to S.B. 55 and S.B. 77. An amendment to Subsection R156-17b-502(2) clarifies that a pharmacy is required to comply with USP 795 and USP 797 only if these chapters are applicable to activities in the pharmacy. If a pharmacy is not engaged in compounding, it is not required to comply with USP 795 and USP 797. Subsection R156-17b-502(24) is removed because some prescription container label standards established in USP-NF Chapter 17 are too subjective and difficult to enforce. Section R156-17b-601 amendments are necessary due to S.B. 77. Section R156-17b-603 amendments are necessary due to S.B. 77. Subsection R156-17b-603(3)(c) is removed because it is unnecessary and causes confusion. Sections R156-17b-604 and R156-17b-605 amendments are necessary due to S.B. 55. In Subsection R156-17b-606(1)(b), the number of years that a pharmacist must be licensed before qualifying as an approved preceptor is reduced from two to one. Section R156-17b-607 amendments are necessary due to S.B. 55 and S.B. 77. Section R156-17b-608 amendments are necessary due to S.B. 55. Sections R156-17b-609, R156-17b-610, R156-17b-612, and R156-17b-613 amendments are necessary due to S.B. 55 and S.B. 77. Subsection R156-17b-614a(1)(b) amendment requires that a pharmacy have a sink if a pharmacy transfers drugs from a manufacturer's or distributor's original container to another container. Pharmacies that only label containers are not required to have a sink that is separate from restroom facilities. Amendment to Subsections R156-17b-614a(1)(f) and (g) creates separate security system standards for pharmacies that dispense controlled substances.

Amendment to Subsection R156-17b-614a(2) requires that a pharmacy keep a daily written or electronic log of the temperature of a refrigerator or freezer on days of operation. Each log entry must be retained for three years. Amendments to Subsection R156-17b-614a(3)(d) clarify that the master worksheet used for compounding may be stored electronically and that it must contain sample label information, not a sample label. Amendments to Subsection R156-17b-614a(5) remove the requirement that a pharmacy post the license of the facility and the license of each pharmacist, pharmacy intern, and pharmacy technician who is employed in the facility. This requirement is replaced with the requirement that a pharmacy maintain at the facility a current list of licensed employees involved in the practice of pharmacy. Amendments to Subsection R156-17b-614a(7) prohibit a pharmacy from dispensing a prescription drug or device to a patient unless a pharmacist or DMP is physically present and immediately available in the facility. Amendment to Subsection R156-17b-614a(9) decreases the period that a pharmacy must maintain a record of the initials or identification codes of each dispensing pharmacist or DMP. In the past, a pharmacy has been required to maintain this record permanently. The amendment decreases the period to five years. The amendment to Subsection R156-17b-614a(16) removes the requirement that a pharmacy's perimeter walls extend to the hard deck if the pharmacy stores drugs in a locked cabinet. Section R156-17b-614f is added for the purpose of establishing operating standards for a pharmacy that engages in central prescription processing or filling. Section R156-17b-615 amendments are necessary due to H.B. 114. Subsection R156-17b-615(6) is removed because it is not reasonable for all Class C pharmacies located outside Utah to undergo an inspection by the Division. Subsection R156-17b-615(20) is removed because H.B. 114 requires licensing of a pharmacy located outside Utah that engages in manufacturing, wholesaling, or distribution of prescription drugs in Utah. Subsection R156-17b-615(19) prohibits a Class C pharmacy from being located at the same address as a Class A, B, D, or E pharmacy. Additionally, Subsection R156-17b-619(19) establishes standards for Class C pharmacies located at the same address. Section R156-17b-617c amendments establish animal narcotic detection training facility as a classification of Class E pharmacy. Subsection R156-17b-617c(2) is removed because an employee working in these facilities is exempt under Section R156-37-305, and this is not the correct section to exempt these employees from a controlled substance license. Section R156-17b-618 amendments specify conditions under which an ownership change would require that a pharmacy submit a new license application. Section R156-17b-622 is added due to S.B. 55 for the purpose of establishing standards for a dispensing training program that DMP designees must complete in order to begin dispensing prescription drugs from a DMP clinic pharmacy. Section R156-17b-623 is moved from another section. Section R156-17b-624 is added due to S.B. 77.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-17b-101 and Section 58-37-1 and

Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a) and Subsection 58-17b-601(1)

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates United States Pharmacopeia-National Formulary (USP 37-NF32) through Supplement 2, published by United States Pharmacopeia, December 1, 2014

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Under the current rule, any ownership change to a pharmacy requires that the pharmacy submit a new license application. Under amendments to Section R156-17b-618, a pharmacy undergoing certain types of ownership changes will no longer be required to submit a new license application. The Division is unable to estimate the number of pharmacies that will no longer be required to submit a license application due to this amendment; however, the Division will experience a cost impact of \$200 per license application that is not submitted. Administering the pre-approval process for the NAPLEX and MPJE examinations distracts Division staff from their primary responsibility of processing pharmacist license applications. As a result, the Division will experience saving impact due to removing itself from the exam pre-approval processes under amendments to Section R156-17b-303c. The Division is unable to estimate the extent of savings impact caused by this amendment. Amendment to Section R156-17b-402 enables the Division to fine a DMP clinic pharmacy or DMP for delegating the dispensing of a drug to a DMP designee who has not completed a dispensing training program that meets standards established in Section R156-17b-622. The fine amount for a first offense is between \$500 and \$2,000; however, the Division is unable to estimate the number of citations to be issued under this provision.

◆ **LOCAL GOVERNMENTS:** The proposed amendments apply only to pharmacies, pharmacists, pharmacy technicians, pharmacy technician trainees, pharmacy interns, and applicants for licensure in the pharmacy profession. As a result, the proposed amendments do not apply to local governments.

◆ **SMALL BUSINESSES:** In Section R156-17b-102, several DMP clinic pharmacies qualify as small businesses. Where Utah law previously prohibited prescribing practitioners from dispensing drugs, S.B. 55 permits the practice and requires standards to be established in administrative rule. Under Subsection R156-17b-102(17), a DMP designee working at a DMP clinic pharmacy must complete a formal or on-the-job dispensing training program that meets standards established in Section R156-17b-622. The Division is unable to estimate the extent of cost impact caused by this amendment. Under Subsection R156-17b-622(39), the term "patient's agent" is defined so as to permit a pharmacy to send a patient's medications to a doctor's office or other medical facility if requested by the patient, for patient pick up. In some cases, allowing a pharmacy to do this will save the pharmacy the expense of having to mail the medication directly to the patient. In Section R156-17b-402, the amendment enables the Division to fine a DMP clinic pharmacy for delegating the

dispensing of a drug to a DMP designee who has not completed a dispensing training program that meets standards established in Section R156-17b-622. The fine amount for a first offense is between \$500 and \$2,000. The Division is unable to estimate the number of citations the Division will issue under this provision. Section R156-17b-612 amendment removes compliance with prescription container label standards established in United States Pharmacopeia (USP) 17 as an operating standard for pharmacies. Although many pharmacies already comply with USP 17, some do not. Removing USP 17 as a required standard will result in a cost savings for pharmacies that are not yet in compliance with the standard. Due to a wide range of circumstances, the Division cannot quantify anticipated savings to licensees. In Subsection R156-17b-614a(1)(b), a pharmacy that does not repackage drugs is not required to install a sink that is separate from restroom facilities, removing a cost previously embedded in the rule. Due to a wide range of circumstances, the Division cannot quantify anticipated savings to licensees. In Subsection R156-17b-614a(1)(f), a pharmacy that does not dispense controlled substances must be secured with a lock on entrances to the facility where drugs are stored. This type of pharmacy is not required to have a security system that detects entry when the facility is closed. Due to a wide range of circumstances, the Division cannot quantify anticipated savings to licensees. In Subsection R156-17b-614a(2), a pharmacy is required to keep a written or electronic log of the temperature of a refrigerator or freezer that is needed to properly store drugs. Most pharmacies that store drugs in a refrigerator or freezer already keep a daily written or electronic log of the temperature; however, if this is not a current practice in a particular pharmacy, the pharmacy will experience financial and administrative costs in order to become compliant. Due to a wide range of circumstances, the division cannot quantify anticipated costs to licensees. In Subsection R156-17b-614a(5), the requirement that a pharmacy post on the wall the licenses of the facility and licensed employees is removed. It is replaced with a requirement that a pharmacy maintain at the facility a current list of licensed employees involved in the practice of pharmacy. This amendment may result in cost savings for pharmacies because there is no longer a need to purchase frames necessary for posting licenses on the wall. In Subsection R156-17b-614a(16), a pharmacy that stores drugs in a locked cabinet and has a drop/false ceiling is not required to install perimeter walls that extend to the hard deck. This amendment may result in cost savings for these pharmacies. Due to a wide range of circumstances, the division cannot quantify anticipated savings to licensees. In Section R156-17b-618, a pharmacy undergoing certain types of ownership changes will no longer be required to submit a new license application. Pharmacies benefiting from this change will no longer have to pay the license application and fingerprint fee of \$280. In Section R156-17b-622, standards are established for a dispensing training program that a DMP designee must complete in order to begin dispensing prescription drugs from a DMP clinic pharmacy. These standards may have cost impact on a DMP clinic pharmacy. Due to a wide range of circumstances, the division cannot

quantify anticipated cost impact to a DMP clinic pharmacy. In Section R156-17b-624, Utah law previously did not address whether a pharmacy could repackage or compound a prescription drug for sale to a practitioner for office use. S.B. 77 permits this practice and requires standards to be established in administrative rule. In this section, a pharmacy is allowed to repackage or compound a prescription drug for sale to a practitioner for office use provided that the pharmacy is in compliance with all applicable federal and state laws and regulations regarding the practice of pharmacy, including, but not limited to the Food, Drug, and Cosmetic Act. To comply with federal law, a pharmacy engaged in office-use compounding must register with the FDA as an outsourcing facility and pay an annual fee of approximately \$15,000. This is a significant financial burden on pharmacies that currently engage in office-use compounding; however, FDA representatives indicate that Utah pharmacies are required to comply with the federal law. This rule directs licensees to comply with the federal law.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: In Section R156-17b-102, where Utah law previously prohibited prescribing practitioners from dispensing drugs, S.B. 55 permits the practice and requires standards to be established in administrative rule. Under Subsection R156-17b-102(17), a DMP designee working at a DMP clinic pharmacy must complete a formal or on-the-job dispensing training program that meets standards established in Section R156-17b-622. The division is unable to estimate the extent of cost impact caused by this amendment. Under Subsection R156-17b-102(39), a pharmacy may send a patient's medications to a doctor's office or other medical facility where the patient can pick them up. In some cases, allowing a patient to pick up medications somewhere other than a pharmacy will result in cost savings for the patient. The division is unable to estimate the extent of cost savings caused by this amendment. In Section R156-17b-303a, under the current rule, individuals must apply for the pharmacy technician license within six months after completion of a pharmacy technician training program. If an individual fails to apply for a pharmacy technician license within the six-month period, the individual must complete another program. The amendment removes the six-month deadline, so some applicants will avoid costs associated with having to complete another training program. On-the-job training programs typically have no tuition fee, and formal program tuition fees range from \$99 to \$500. The division is unable to estimate how many applicants will experience a financial benefit. Subsection R156-17b-303c(4) is removed because the division is removing itself from the exam pre-approval process. Under the new process, NABP determines who takes the NAPLEX and MPJE. NABP expects to collect a fee of approximately \$100 from each candidate seeking eligibility to take the exams. Subsection R156-17b-402(87) enables the division to fine a DMP for delegating the dispensing of a drug to a DMP designee who has not completed a dispensing training program that meets standards established in Section R156-17b-622. The fine amount for an initial offense of this type is between \$500 and \$2,000. The division is unable to

estimate the number of citations the division will issue under this provision. In Section R156-17b-622, standards are established for a dispensing training program that a DMP designee must complete in order to begin dispensing prescription drugs under the supervision of a DMP at a DMP clinic pharmacy. These standards may have cost impact on a DMP designee. Due to a wide range of circumstances, the division cannot quantify anticipated cost impact to a DMP designee.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In Section R156-17b-102, Utah law previously prohibited prescribing practitioners from dispensing drugs. S.B. 55 permits the practice and requires standards to be established in administrative rule. Under Subsection R156-17b-102(17), a DMP designee working at a DMP clinic pharmacy must complete a formal or on-the-job dispensing training program that meets standards established in Section R156-17b-622. The Division is unable to estimate the extent of cost impact caused by this amendment. Under Subsection R156-17b-102(39), a pharmacy may send a patient's medications to a doctor's office or other medical facility where the patient can pick them up. In some cases, allowing a patient to pick up medications somewhere other than a pharmacy will result in cost savings for the patient. The Division is unable to estimate the extent of cost savings caused by this amendment. In Section R156-17b-303a, individuals must apply for the pharmacy technician license within six months after completion of a pharmacy technician training program. If an individual fails to apply for a pharmacy technician license within the six-month period, the individual must complete another program. The amendment removes the six-month deadline, so some applicants will avoid costs associated with having to complete another training program. On-the-job training programs typically have no tuition fee, and formal program tuition fees range from \$99 to \$500. The Division is unable to estimate how many applicants will experience a financial benefit. Subsection R156-17b-303c(4) is removed because the Division is removing itself from the exam pre-approval process. Under the new process, NABP determines who takes the NAPLEX and MPJE. NABP expects to collect a fee of approximately \$100 from each candidate seeking eligibility to take the exams. Subsection R156-17b-402(87) enables the Division to fine a DMP for delegating the dispensing of a drug to a DMP designee who has not completed a dispensing training program that meets standards established in Section R156-17b-622. The fine amount for an initial offense of this type is between \$500 and \$2,000. The Division is unable to estimate the number of citations the Division will issue under this provision. In Section R156-17b-622, standards are established for a dispensing training program that a DMP designee must complete in order to begin dispensing prescription drugs under the supervision of a DMP at a DMP clinic pharmacy. These standards may have cost impact on a DMP designee. Due to a wide range of circumstances, the Division cannot quantify anticipated cost impact to a DMP designee.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This is a comprehensive filing that makes technical corrections throughout the Pharmacy Practice Act Rule. No fiscal impact to businesses is anticipated from these corrections. The filing also responds to legislative action (S.B. 55, S.B. 77, and H.B. 114 in the 2014 General Session) that allows medical practitioners to dispense prescriptions in certain circumstances. No fiscal impact to businesses is anticipated beyond that considered by the legislature in determining to modify the regulatory scheme. The filing also expands the time frame in which an individual may apply for a pharmacy technician license after completing a training program, and eliminates an examination that is currently required for licensure. Any savings that result from these amendments will affect individuals, not businesses. In addition, the subsections dealing with disciplinary proceedings and administrative penalties are clarified to apply to all licenses and to address issues involving improper delegation of duties. Finally, existing provisions regarding physical facilities, including security, and business operations are modified to clarify, as well as to reduce regulation in areas where public safety is not at risk. Any associated fiscal impact to businesses is anticipated to be minimal, with any costs being well within a pharmacy's existing compliance costs.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE
OCCUPATIONAL AND PROFESSIONAL
LICENSING
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Rich Oborn by phone at 801-530-6767, by FAX at 801-530-6511, or by Internet E-mail at roborn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/17/2015

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 01/20/2015 08:30 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 210 (second floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 02/24/2015

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.**R156-17b. Pharmacy Practice Act Rule.****R156-17b-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 17b, as used in Title 58, Chapters 1 and 17b or this rule:

- (1) "Accredited by ASHP" means a program that:
 - (a) was accredited by the ASHP on the day ~~[on which]~~ the applicant for licensure completed the program; or
 - (b) was in ASHP candidate status on the day ~~[on which]~~ the applicant for licensure completed the program.
- (2) "ACPE" means the American Council on Pharmaceutical Education or Accreditation Council for Pharmacy Education.
- (3) "Analytical laboratory":
 - (a) means a facility in possession of prescription drugs for the purpose of analysis; and
 - (b) does not include a laboratory possessing prescription drugs used as standards and controls in performing drug monitoring or drug screening analysis if the prescription drugs are pre-diluted in a human or animal body fluid, human or animal body fluid components, organic solvents, or inorganic buffers at a concentration not exceeding one milligram per milliliter when labeled or otherwise designated as being for in-vitro diagnostic use.
- (4) "ASHP" means the American Society of Health System Pharmacists.
- (5) "Authorized distributor of record" means a pharmaceutical wholesaler with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drugs. An ongoing relationship is deemed to exist between such pharmaceutical wholesaler and a manufacturer, as defined in Section 1504 of the Internal Revenue Code, when the pharmaceutical wholesaler has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship, and the pharmaceutical wholesaler is listed on the manufacturer's current list of authorized distributors of record.
- (6) "Authorized personnel" means any person who is a part of the pharmacy staff who participates in the operational processes of the pharmacy and contributes to the natural flow of pharmaceutical care.
- (7) "Centralized Prescription Filling" means the filling by a pharmacy of a request from another pharmacy to fill or refill a prescription drug order.
- (8) "Centralized Prescription Processing" means the processing by a pharmacy of a request from another pharmacy to fill or refill a prescription drug order or to perform processing functions such as dispensing, drug utilization review (DUR), claims adjudication, refill authorizations, and therapeutic interventions.
- (9) "Chain pharmacy warehouse" means a physical location for prescription drugs that acts as a central warehouse and performs intracompany sales or transfers of the prescription drugs to a group of chain pharmacies that have the same common ownership and control.
- (10) "Co-licensed partner or product" means an instance where two or more parties have the right to engage in the manufacturing and/or marketing of a prescription drug, consistent with FDA's implementation of the Prescription Drug Marketing Act.
- (11) "Cooperative pharmacy warehouse" means a physical location for drugs that acts as a central warehouse and is owned, operated or affiliated with a group purchasing organization

(GPO) or pharmacy buying cooperative and distributes those drugs exclusively to its members.

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

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

(14) "Dispense", as defined in Subsection 58-17b-102(22), does not include transferring medications for a patient from a legally dispensed prescription for that particular patient into a daily or weekly drug container to facilitate the patient taking the correct medication.

(15) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, or other similar or related article, including any component part or accessory, which is required under Federal law to bear the label, "Caution: Federal or State law requires dispensing by or on the order of a physician."

(16) "DMP" means a dispensing medical practitioner licensed under Section 58-17b, Part 8.

(17) "DMP designee" means an individual, acting under the direction of a DMP, who:

(a)(i) holds an active health care professional license under one of the following chapters:

(A) Chapter 67, Utah Medical Practice Act;

(B) Chapter 68, Utah Osteopathic Medical Practice Act;

(C) Chapter 70a, Physician Assistant Act;

(D) Chapter 31b, Nurse Practice Act;

(E) Chapter 16a, Utah Optometry Practice Act;

(F) Chapter 44a, Nurse Midwife Practice Act; or

(G) Chapter 17b, Pharmacy Practice Act; or

(ii) is a medical assistant as defined in Subsection 58-67-102(9);

(b) meets requirements established in Subsection 58-17b-803(4)(c); and

(c) can document successful completion of a formal or on-the-job dispensing training program that meets standards established in Section R156-17b-622.

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

~~(19)~~ "Drop shipment" means the sale of a prescription drug to a pharmaceutical wholesaler by the manufacturer of the drug; by the manufacturer's co-licensed product partner, third party logistics provider, or exclusive distributor; or by an authorized distributor of record that purchased the product directly from the manufacturer or from one of these entities; whereby:

(a) the pharmaceutical wholesale distributor takes title to but not physical possession of such prescription drug;

(b) the pharmaceutical wholesale distributor invoices the pharmacy, pharmacy warehouse, or other person authorized by law to dispense to administer such drug; and

(c) the pharmacy, pharmacy warehouse, or other person authorized by law to dispense or administer such drug receives delivery of the prescription drug directly from the manufacturer; from the co-licensed product partner, third party logistics provider, or exclusive distributor; or from an authorized distributor of record

that purchases the product directly from the manufacturer or from one of these entities.

(17)20 "Drug therapy management" means the review of a drug therapy regimen of a patient by one or more pharmacists for the purpose of evaluating and rendering advice to one or more practitioners regarding adjustment of the regimen.

(18)21 "Drugs", as used in this rule, means drugs or devices.

(19)22 "Durable medical equipment" or "DME" means equipment that:

- (a) can withstand repeated use;
- (b) is primarily and customarily used to serve a medical purpose;
- (c) generally is not useful to a person in the absence of an illness or injury;
- (d) is suitable for use in a health care facility or in the home; and
- (e) may include devices and medical supplies.

(20)23 "Entities under common administrative control" means an entity holds the power, actual as well as legal to influence the management, direction, or functioning of a business or organization.

(21)24 "Entities under common ownership" means entity assets are held indivisibly rather than in the names of individual members.

(22)25 "ExCPT", as used in this rule, means the Exam for the Certification of Pharmacy Technicians.

(23)26 "FDA" means the United States Food and Drug Administration and any successor agency.

(24)27 "High-risk, medium-risk, and low-risk drugs" refers to the risk to a patient's health from compounding sterile preparations, as referred to in USP-NF Chapter 797, for details of determining risk level.

(25)28 "Hospice facility pharmacy" means a pharmacy that supplies drugs to patients in a licensed healthcare facility for terminal patients.

(26)29 "Hospital clinic pharmacy" means a pharmacy that is located in an outpatient treatment area where a pharmacist or pharmacy intern is compounding, admixing, or dispensing prescription drugs, and where:

- (a) prescription drugs or devices are under the control of the pharmacist, or the facility for administration to patients of that facility;
- (b) prescription drugs or devices are dispensed by the pharmacist or pharmacy intern; or
- (c) prescription drugs are administered in accordance with the order of a practitioner by an employee or agent of the facility.

(27)30 "Legend drug" or "prescription drug" means any drug or device that has been determined to be unsafe for self-medication or any drug or device that bears or is required to bear the legend:

- (a) "Caution: federal law prohibits dispensing without prescription";
- (b) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or
- (c) "Rx only".

(28)31 "Maintenance medications" means medications the patient takes on an ongoing basis.

(29)32 "Manufacturer's exclusive distributor" means an entity that contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the drug's sale or disposition. Such manufacturer's exclusive distributor shall be licensed as a pharmaceutical wholesaler under this chapter and be an "authorized distributor of record" to be considered part of the "normal distribution channel".

(30)33 "Medical supplies" means items for medical use that are suitable for use in a health care facility or in the home and that are disposable or semi-disposable and are non-reusable.

(31)34 "MPJE" means the Multistate Jurisprudence Examination.

(32)35 "NABP" means the National Association of Boards of Pharmacy.

(33)36 "NAPLEX" means North American Pharmacy Licensing Examination.

(34)37 "Normal distribution channel" means a chain of custody for a prescription drug that goes directly, by drop shipment as defined in Subsection (16)19, or via intracompany transfer from a manufacturer; or from the manufacturer's co-licensed partner, third-party logistics provider, or the exclusive distributor to:

- (a) a pharmacy or other designated persons authorized under this chapter to dispense or administer prescription drugs to a patient;
- (b) a chain pharmacy warehouse that performs intracompany sales or transfers of such drugs to a group of pharmacies under common ownership and control;
- (c) a cooperative pharmacy warehouse to a pharmacy that is a member of the pharmacy buying cooperative or GPO to a patient;
- (d) an authorized distributor of record, and then to either a pharmacy or other designated persons authorized under this chapter to dispense or administer such drug for use by a patient;
- (e) an authorized distributor of record, and then to a chain pharmacy warehouse that performs intracompany sales or transfers of such drugs to a group of pharmacies under common ownership and control; or
- (f) an authorized distributor of record to another authorized distributor of record to a licensed pharmaceutical facility or a licensed healthcare practitioner authorized under this chapter to dispense or administer such drug for use by a patient.

(35)38 "Other health care facilities" means any entity as defined in Utah Code Subsection 26-21-2(13)(a) or Utah Administrative Code R432-1-3(55).

(36)39 "Parenteral" means a method of drug delivery injected into body tissues but not via the gastrointestinal tract.

(40) "Patient's agent" means a:
 (a) relative, friend or other authorized designee of the patient involved in the patient's care; or
 (b) if requested by the patient or the individual under Subsection (40)(a), one of the following facilities:
 (i) an office of a licensed prescribing practitioner in Utah;
 (ii) a long-term care facility where the patient resides; or
 (iii) a hospital, office, clinic or other medical facility that provides health care services.

([37]41) "Pedigree" means a document or electronic file containing information that records each distribution of any given prescription drug.

([38]42) "PIC", as used in this rule, means the pharmacist-in-charge.

([39]43) "Prepackaged" or "Prepackaging" means the act of transferring a drug, manually or by use of an automated pharmacy system, from a manufacturer's or distributor's original container to another container in advance of receiving a prescription drug order or for a patient's immediate need for dispensing by a pharmacy or practitioner authorized to dispense in the establishment ~~in which~~ where the prepackaging occurred.

([40]44) "Prescription files" means all hard-copy and electronic prescriptions that includes pharmacist notes or technician notes, clarifications or information written or attached that is pertinent to the prescription.

([41]45) "PTCB" means the Pharmacy Technician Certification Board.

([42]46) "Qualified continuing education", as used in this rule, means continuing education that meets the standards set forth in Section R156-17b-309.

([43]47) "Refill" means to fill again.

([44]48) "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling to further the distribution of a prescription drug, excluding that completed by the pharmacist or DMP responsible for dispensing the product to a patient.

([45]49) "Research facility" means a facility ~~in~~ which where research takes place that has policies and procedures describing such research.

([46]50) "Reverse distributor" means a person or company that retrieves unusable or outdated drugs from a pharmacy ~~or pharmacist~~ for the purpose of removing those drugs from stock and destroying them.

([47]51) "Sterile products preparation facility" means any facility, or portion of the facility, that compounds sterile products using aseptic technique.

([48]52) "Supervisor" means a licensed pharmacist or DMP in good standing with the Division.

([49]53) "Third party logistics provider" means anyone who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution, or other similar services on behalf of a manufacturer, but does not take title to the prescription drug or have any authoritative control over the prescription drug's sale. Such third party logistics provider shall be licensed as a pharmaceutical wholesaler under this chapter and be an "authorized distributor of record" to be considered part of the "normal distribution channel".

([50]54) "Unauthorized personnel" means any person who is not participating in the operational processes of the pharmacy who in some way would interrupt the natural flow of pharmaceutical care.

([51]55) "Unit dose" means the ordered amount of a drug in a dosage form prepared for a one-time administration to an individual and indicates the name, strength, lot number and beyond use date for the drug.

([52]56) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 17b, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-17b-502.

([53]57) "USP-NF" means the United States Pharmacopeia-National Formulary (USP 37-NF 32), 2014 edition, which is official from May 1, 2014 through Supplement [+]2, dated ~~August 1~~ December 1, 2014, which is hereby adopted and incorporated by reference.

([54]58) "Wholesaler" means a wholesale distributor who supplies or distributes drugs or medical devices that are restricted by federal law to sales based on the order of a physician to a person other than the consumer or patient.

([55]59) "Wholesale distribution" means the distribution of drugs to persons other than consumers or patients, but does not include:

- (a) intracompany sales or transfers;
- (b) the sale, purchase, distribution, trade, or other transfer of a prescription drug for emergency medical reasons, as defined under 21 CFR 203.3(m), including any amendments thereto;
- (c) the sale, purchase, or trade of a drug pursuant to a prescription;
- (d) the distribution of drug samples;
- (e) the return or transfer of prescription drugs to the original manufacturer, original wholesale distributor, reverse distributor, or a third party returns processor;
- (f) the sale, purchase, distribution, trade, or transfer of a prescription drug from one authorized distributor of record to one additional authorized distributor of record during a time period for which there is documentation from the manufacturer that the manufacturer is able to supply a prescription drug and the supplying authorized distributor of record states in writing that the prescription drug being supplied had until that time been exclusively in the normal distribution channel;
- (g) the sale, purchase or exchange of blood or blood components for transfusions;
- (h) the sale, transfer, merger or consolidation of all or part of the business of a pharmacy;
- (i) delivery of a prescription drug by a common carrier; or
- (j) other transactions excluded from the definition of "wholesale distribution" under 21 CFR 203.3 (cc), including any amendments thereto.

R156-17b-105. Licensure - Administrative Inspection.

In accordance with Subsection 58-17b-103(3)(f), the procedure for disposing of any drugs or devices seized by the Division during an administrative inspection ~~with~~ shall be handled as follows:

(1) Any legal drugs or devices found and temporarily seized by the Division that are found to be in compliance with this chapter ~~with~~ shall be returned to the PIC or DMP of the pharmacy involved at the conclusion of any investigative or adjudicative proceedings and appeals.

(2) Any drugs or devices that are temporarily seized by the Division that are found to be unlawfully possessed, adulterated, misbranded, outdated, or otherwise in violation of this rule shall be destroyed by Division personnel at the conclusion of any investigative or adjudicative proceedings and appeals. The destruction of any seized controlled substance drugs ~~with~~ shall be witnessed by two Division individuals. A controlled substance destruction form ~~with~~ shall be completed and retained by the Division.

(3) An investigator may, upon determination that the violations observed are of a nature that pose an imminent peril to the public health, safety and welfare, recommend to the Division Director to issue an emergency licensure action, such as cease and desist.

(4) In accordance with Subsections 58-17b-103(1) and 58-17b-601(1), a secure email address must be established by the PIC or DMPIC and responsible party for the pharmacy to be used for self-audits or pharmacy alerts initiated by the Division. The PIC or DMPIC and responsible party shall cause the Division's Licensing Bureau to be notified on the applicable form prescribed by the Division of the secure email address or any change thereof within seven days of any email address change. Only one email address shall be used for each pharmacy.

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

In accordance with Subsection 58-17b-302(4), the classification of pharmacies holding licenses are clarified as:

(1) A Class A pharmacy includes all retail operations located in Utah and requires a PIC.

(2) A Class B pharmacy includes an institutional pharmacy that provides services to a target population unique to the needs of the healthcare services required by the patient. All Class B pharmacies require a PIC or DMPIC except for pharmaceutical administration facilities and methadone clinics. Examples of Class B pharmacies include:

- (a) closed door pharmacies;
- (b) hospital clinic pharmac[y]ies;
- (c) methadone clinic[s] pharmacies;
- (d) nuclear pharmacies;
- (e) branch pharmacies;
- (f) hospice facility pharmac[y]ies;
- (g) veterinarian pharmaceutical facility pharmacies;
- (h) pharmaceutical administration facility pharmacies;

[~~and~~]

- (i) sterile product preparation facility pharmacies[-]; and
- (j) [~~A retail pharmacy that prepares sterile products does not require a separate license as a Class B pharmacy.~~] dispensing medical practitioner clinic pharmacies.

(3) A Class C pharmacy includes a pharmacy[ies ~~located in Utah~~] that [~~are~~]is involved in:

- (a) manufacturing;
- (b) producing;
- (c) wholesaling;
- (d) distributing; [~~and~~]or
- (e) reverse distributing.

(4) A Class D pharmacy [~~includes pharmacies located outside the State of Utah.~~] Class D pharmacies requires a PIC licensed in the state where the pharmacy is located and includes an out-of-state mail order pharmacy[ies]. Facilities [~~that have~~]with multiple locations [~~must~~]shall have licenses for each facility and [~~every~~]each component part of a facility.

(5) A Class E pharmacy [~~includes those pharmacies that do~~]does not require a PIC and includes:

- (a) analytical laboratory pharmacies;
- (b) animal control pharmacies;
- (c) durable medical equipment provider pharmacies;

(d) human clinical investigational drug research facility pharmacies;~~and~~

(e) medical gas provider pharmacies[-]; and

~~_____~~ (f) animal narcotic detection training facility pharmacies.

(6) All pharmacy licenses [~~will~~]shall be converted to the appropriate classification by the Division as identified in Section 58-17b-302.

(7) Each Class A and each Class B pharmacy required to have a PIC or DMPIC shall have one PIC or DMPIC who is employed on a full-time basis as defined by the employer, who acts as a PIC or DMPIC for one pharmacy. However, the PIC or DMPIC may be the PIC or DMPIC of more than one Class A or Class B pharmacy, if the additional Class A or Class B pharmacies are not open to provide pharmacy services simultaneously.

(8) [~~The~~]A PIC or DMPIC shall comply with the provisions of Section R156-17b-603.

R156-17b-303a. Qualifications for Licensure - Education Requirements.

(1) In accordance with Subsections 58-17b-303(2) and 58-17b-304(7)(b), the credentialing agency recognized to provide certification and evaluate equivalency of a foreign educated pharmacy graduate is the Foreign Pharmacy Graduate Examination Committee (FPGEC) of the National Association of Boards of Pharmacy Foundation.

(2) In accordance with Subsection 58-17b-304(7), an applicant for a pharmacy intern license shall demonstrate that he meets one of the following education criteria:

(a) current admission in a College of Pharmacy accredited by the ACPE by written verification from the Dean of the College;

(b) a graduate degree from a school or college of pharmacy [~~which~~]that is accredited by the ACPE; or

(c) a graduate degree from a foreign pharmacy school as established by a certificate of equivalency from an approved credentialing agency defined in Subsection (1).

(3) In accordance with Subsection 58-17b-305(1)(f), a pharmacy technician shall complete a training program that is:

(a) accredited by ASHP; or

(b) conducted by:

(i) the National Pharmacy Technician Association;

(ii) Pharmacy Technicians University; or

(iii) a branch of the Armed Forces of the United States,

and

(c) meets the following standards:

(i) completion of at least 180 hours of directly supervised practical training in a licensed pharmacy as determined appropriate by a licensed pharmacist in good standing; and

(ii) written protocols and guidelines for the teaching pharmacist outlining the utilization and supervision of pharmacy technician[s ~~in training~~] trainees that address:

(A) the specific manner in which supervision will be completed; and

(B) an evaluative procedure to verify the accuracy and completeness of all acts, tasks and functions performed by the pharmacy technician [~~in training~~] trainee.

(4) An individual shall complete a pharmacy technician training program and successfully pass the required examination[s] as listed in Subsection R156-17b-303c(4) within two years [~~from~~]

~~the date of the first day of the training program]after obtaining a pharmacy technician trainee license, unless otherwise approved by the Division in collaboration with the Board for good cause showing exceptional circumstances.~~

~~(a) Unless otherwise approved under Subsection (4), [A]n individual who fails to apply for and obtain a pharmacy technician license within the two-year time frame[or within six months after completion of a pharmacy technician training program, whichever comes first:~~

~~———— (i) is no longer eligible for employment as a technician-in-training and shall work in the pharmacy only as supportive personnel; and~~

~~———— (ii) shall repeat a pharmacy technician training program in its entirety if the individual pursues licensure as a pharmacy technician.~~

(5)(a) Pharmacy technician training programs that received Division approval on or before April 30, 2014 are exempt from satisfying standards established in Subsection R156-17b-303a(3) for students enrolled on or before December 31, 2018.

(b) A student in a program described in Subsection (5)(a) shall comply with the program completion deadline and testing requirements in Subsection (4), except that the license application shall be submitted to the Division no later than December 31, 2021.

(c) A program in ASHP candidate status shall notify a student prior to enrollment that if the program is denied accreditation status while the student is enrolled in the program, the student will be required to complete education in another program with no assurance of how many credits will transfer to the new program.

(d) A program in ASHP candidate status that is denied accreditation shall immediately notify the Division, enrolled students and student practice sites, of the denial. The notice shall instruct each student and practice site that:

(i) the program no longer satisfies the pharmacy technician license education requirement in [the State of]Utah; and

(ii) enrollment in a different program meeting requirements established in Subsection R156-17b-303a(3) is necessary for the student to complete training and to satisfy the pharmacy technician license education requirement in [the State of]Utah.

(6) An applicant ~~from another jurisdiction seeking~~[for] licensure as a pharmacy technician ~~in Utah~~ is deemed to have met the qualifications for licensure in Subsection 58-17b-305(1)(f) and 58-17b-305(1)(g) if the applicant:

~~———— (a) is currently licensed and in good standing in another state and has not had any adverse action taken on that license;~~

~~———— (b) [a] has engaged in the practice [as]of a pharmacy technician for a minimum of 1,000 hours in that [state]jurisdiction within the past two years or has equivalent experience as approved by the Division in collaboration with the Board; and~~

~~———— (c) [b] has passed and maintained current PTCB or ExCPT certification.~~

R156-17b-303c. Qualifications for Licensure - Examinations.

(1) In accordance with Subsection 58-17b-303(1)(h), the examinations that shall be successfully passed by an applicant for licensure as a pharmacist are:

(a) the NAPLEX with a passing score as established by NABP; and

(b) the Multistate Pharmacy Jurisprudence Examination (MPJE) with a minimum passing score as established by NABP.

(2) An individual who has failed either examination twice shall meet with the Board to request an additional authorization to test. The Division, in collaboration with the Board, may require additional training as a condition for approval of an authorization to retest.

(3) In accordance with Subsection 58-17b-303(3)(j), an applicant applying by endorsement is required to pass the MPJE.

~~———— (4) Applicants taking the NAPLEX or MPJE examination shall pass the exams within six months from the date of the Division's approval for the applicant to take the exam. If the applicant does not pass the required exam within six months, the pending license application shall be denied.~~

~~———— (5) [4] In accordance with Subsection 58-17b-305(1)(g), an applicant applying for licensure as a pharmacy technician shall pass the PTCB or ExCPT with a passing score as established by the certifying body. The certificate shall exhibit a valid date and that the certification is active.~~

~~———— (6) [5] A graduate of a foreign pharmacy school shall obtain a passing score on the Foreign Pharmacy Graduate Examination Committee (FPGEC) examination.~~

[R156-17b-310. Exemption from Licensure — Dispensing of Cosmetic, Injectable Weight Loss, or Cancer Drug Treatment Regimen Drugs.

~~———— (1) A cosmetic drug that can be dispensed by a prescribing practitioner or optometrist in accordance with Subsection 58-17b-309 is limited to Latisse.~~

~~———— (2) An injectable weight loss drug that can be dispensed by a prescribing practitioner in accordance with Subsection 58-17b-309 is limited to human chorionic gonadotropin.~~

~~———— (3) A cancer drug treatment regimen that can be dispensed by a prescribing practitioner or an individual employed by the prescribing practitioner in accordance with Subsection 58-17b-309.5(1) and (2) means a prescription drug used to treat cancer, manage its symptoms, or provide continuity of care for a cancer patient.~~

~~———— (a) A prescribing practitioner who chooses to dispense prescription medications shall disclose to the patient that the cancer drug treatment regimen may be obtained from a pharmacy unaffiliated with the prescribing practitioner and offer to the patient the opportunity to consult with a pharmacist of the patient's choosing if the patient desires patient counseling.~~

~~———— (b) Practitioners are required to document this interaction by keeping a signature log of all patients who have received this written information. These records are required to be kept for a period of five years and shall be readily available for inspection.~~

~~———— (4) A prescribing practitioner who chooses to dispense prescription medications shall meet the standards set forth in R156-17b-603 through R156-17b-605 and R156-17b-609 through R156-17b-611; however, a prescribing practitioner is not required to employ a pharmacist in charge.~~

~~———— (5) In accordance with Subsections 58-17b-309(4)(c) and 58-17b-309.5(2)(b)(viii), a prescribing practitioner or optometrist who chooses to dispense a cosmetic drug, a prescribing practitioner who chooses to dispense an injectable weight loss drug, as listed in Subsections (1) and (2), or a prescribing practitioner or the prescribing practitioner's employee who chooses to dispense drugs~~

used to treat cancer, manage its symptoms, or provide continuity of care for a cancer patient to the prescribing practitioner's or optometrist's patients shall have a label securely affixed to the container indicating the following minimum information:

~~(a) the name, address and telephone number of the prescribing practitioner or optometrist prescribing and dispensing the drug;~~

~~(b) the serial number of the prescription as assigned by the dispensing prescribing practitioner or optometrist;~~

~~(c) the filling date of the prescription or its last dispensing date;~~

~~(d) the name of the patient;~~

~~(e) the directions for use and cautionary statements, if any, which are contained in the prescription order or are needed;~~

~~(f) the trade, generic or chemical name, amount dispensed and the strength of dosage form; and~~

~~(g) the beyond use date.~~

~~(6) A prescribing practitioner or optometrist who chooses to dispense a cosmetic drug, or a prescribing practitioner who chooses to dispense an injectable weight loss drug, as listed in Subsections (1) and (2), or a prescribing practitioner or the prescribing practitioner's employee who chooses to dispense drugs used to treat cancer, manage its symptoms, or provide continuity of care for a cancer patient shall keep inventory records for each drug dispensed pursuant to R156-17b-605 and a prescription dispensing medication profile for each patient receiving a drug dispensed by the prescribing practitioner or optometrist pursuant to R156-17b-609. Those records shall be made available to the Division upon request by the Division.~~

~~(a) The general requirements for an inventory of drugs dispensed by a prescribing practitioner, the prescribing practitioner's employee, or optometrist include:~~

~~(i) the prescribing practitioner or optometrist shall be responsible for taking all required inventories, but may delegate the performance of taking the inventory to another person;~~

~~(ii) the inventory records shall be maintained for a period of five years and be readily available for inspection;~~

~~(iii) the inventory records shall be filed separately from all other records;~~

~~(iv) the person taking the inventory and the prescribing practitioner or optometrist shall indicate the time the inventory was taken and shall sign and date the inventory with the date the inventory was taken. The signature of the prescribing practitioner or optometrist and the date of the inventory shall be documented within 72 hours or three working days of the completed initial, annual, change of ownership and closing inventory;~~

~~(v) the initial inventory shall be completed within three working days of the date on which the prescribing practitioner or optometrist begins to dispense a drug under Sections 58-17b-309 and 58-17b-309.5; and~~

~~(vi) the annual inventory shall be within 12 months following the inventory date of each year and may be taken within four days of the specified inventory date and shall include all stocks including out-of-date drugs.~~

~~(b) A prescription dispensing medication profile shall be maintained for every patient receiving a drug that is dispensed by a prescribing practitioner or optometrist in accordance with Sections 58-17b-309 and 58-17b-309.5 for a period of at least one year from the date of the most recent prescription fill or refill. The medication~~

~~profile shall be kept as part of the patient's medical record and include, as a minimum, the following information:~~

~~(i) full name of the patient, address, telephone number, date of birth or age, and gender;~~

~~(ii) patient history where significant, including known allergies and drug reactions; and~~

~~(iii) a list of drugs being dispensed including:~~

~~(A) name of prescription drug;~~

~~(B) strength of prescription drug;~~

~~(C) quantity dispensed;~~

~~(D) prescription drug lot number and name of manufacturer;~~

~~(E) date of filling or refilling;~~

~~(F) charge for the prescription drug as dispensed to the patient;~~

~~(G) any additional comments relevant to the patient's drug use; and~~

~~(H) documentation that patient counseling was provided in accordance with Subsection (7).~~

~~(7) A prescribing practitioner or optometrist who is dispensing a cosmetic drug or injectable weight loss drug listed in Subsections (1) and (2) in accordance with Subsection 58-17b-309(4)(e), or a prescribing practitioner or the prescribing practitioner's employee who chooses to dispense drugs used to treat cancer, manage its symptoms, or provide continuity of care for a cancer patient in accordance with Section 58-17b-309.5, shall include the following elements when providing patient counseling:~~

~~(a) the name and description of the prescription drug;~~

~~(b) the dosage form, dose, route of administration and duration of drug therapy;~~

~~(c) intended use of the drug and expected action;~~

~~(d) special directions and precautions for preparation, administration and use by the patient;~~

~~(e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;~~

~~(f) techniques for self-monitoring drug therapy;~~

~~(g) proper storage;~~

~~(h) prescription refill information;~~

~~(i) action to be taken in the event of a missed dose;~~

~~(j) prescribing practitioner or optometrist comments relevant to the individual's drug therapy, including any other information specific to the patient or drug; and~~

~~(k) the date after which the prescription should not be taken or used, or the beyond use date.~~

~~(8) In accordance with Subsection 58-17b-309(4)(e), the medication storage standards that shall be maintained by a prescribing practitioner or optometrist who dispenses a drug under Subsections (1) and (2), or a prescribing practitioner or the prescribing practitioner's employee who chooses to dispense drugs used to treat cancer, manage its symptoms, or provide continuity of care for a cancer patient in accordance with Section 58-17b-309.5; provides that the storage space shall be:~~

~~(a) kept in an area that is well lighted, well ventilated, clean and sanitary;~~

~~(b) equipped to permit the orderly storage of prescription drugs in a manner to permit clear identification, separation and easy retrieval of products and an environment necessary to maintain the integrity of the drug inventory;~~

~~(c) equipped with a security system to permit detection of entry at all times when the prescribing practitioner's or optometrist's office or clinic is closed;~~
~~(d) at a temperature which is maintained within a range compatible with the proper storage of drugs; and~~
~~(e) securely locked with only the prescribing practitioner or optometrist having access when the prescribing practitioner's or optometrist's office or clinic is closed.~~
~~(9) In accordance with Subsections 58-17b-309(5) and 58-17b-309.5(1)(b), if a cosmetic drug or a weight loss drug listed in Subsections (1) and (2), or a drug used to treat cancer, manage its symptoms, or provide continuity of care for a cancer patient requires reconstitution or compounding to prepare the drug for administration, the prescribing practitioner or optometrist shall follow the USP-NF 797 standards for sterile compounding.~~
~~(10) In accordance with Subsection 58-17b-309(5), factors that shall be considered by licensing boards when determining if a drug may be dispensed by a prescribing practitioner, the prescribing practitioner's employee or optometrist, include whether:~~
~~(a)(i) the drug has FDA approval;~~
~~(ii)(A) is prescribed and dispensed for the conditions or indication for which the drug was approved to treat; or~~
~~(B) the prescribing practitioner or optometrist takes full responsibility for prescribing and dispensing a drug for off-label use;~~
~~(b) the drug has been approved for self administration by the FDA;~~
~~(c) the stability of the drug is adequate for the supply being dispensed; and~~
~~(d) the drug can be safely dispensed by a prescribing practitioner or optometrist.~~
~~(11) Standards for reporting to the Utah Controlled Substance Database shall be the same standards as set forth in the Utah Controlled Substance Database Act, Title 58, Chapter 37f, and the Utah Controlled Substance Database Act Rule, R156-37f.~~

JR156-17b-401. Disciplinary Proceedings.

(1) An individual licensed as a pharmacy intern who is currently under disciplinary action and qualifies for licensure as a pharmacist may be issued a pharmacist license under the same restrictions as the pharmacy intern license.
 (2) A pharmacist, pharmacy intern, ~~or~~ pharmacy technician, pharmacy technician trainee, or DMP whose license or registration is suspended under Subsection 58-17b-701(6) may petition the Division at any time ~~[that he can]~~to demonstrate the ability to resume competent practice.

R156-17b-402. Administrative Penalties.

In accordance with Subsection 58-17b-401(6) and Sections 58-17b-501 and 58-17b-502, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply:

(1) preventing or refusing to permit any authorized agent of the Division to conduct an inspection, in violation of Subsection 58-17b-501(1):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$5,000

(2) failing to deliver the license or permit or certificate to the Division upon demand, in violation Subsection 58-17b-501(2):
 initial offense: \$100 - \$1,000
 subsequent offense(s): \$500 - \$2,000
 (3) using the title pharmacist, druggist, pharmacy intern, pharmacy technician, pharmacy technician trainee or any other term having a similar meaning or any term having similar meaning when not licensed to do so, in violation of Subsection 58-17b-501(3)(a):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
 (4) conducting or transacting business under a name ~~[which]that~~ contains as part of that name the words drugstore, pharmacy, drugs, medicine store, medicines, drug shop, apothecary, prescriptions or any other term having a similar meaning or in any manner advertising otherwise describing or referring to the place of the conducted business or profession when not licensed to do so, in violation of Subsection 58-17b-501(3)(b):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
 (5) buying, selling, causing to be sold, or offering for sale any drug or device ~~[which]that~~ bears the inscription sample, not for resale, investigational purposes, or experimental use only or other similar words inspection, in violation of Subsection 58-17b-501(4):
 initial offense: \$1,000 - \$5,000
 subsequent offense(s): \$10,000
 (6) using to the licensee's own advantage or revealing to anyone other than the Division, Board or its authorized representatives, any information acquired under the authority of this chapter concerning any method or process ~~[which]that~~ is a trade secret, in violation of Subsection 58-17b-501(5):
 initial offense: \$100 - \$500
 subsequent offense(s): \$200 - \$1,000
 (7) illegally procuring or attempting to procure any drug for the licensee or to have someone else procure or attempt to procure a drug, in violation of Subsection 58-17b-501(6):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
 (8) filling, refilling or advertising the filling or refilling of prescription drugs when not licensed do to so, in violation of Subsection 58-17b-501(7):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
 (9) requiring any employed pharmacist, pharmacy intern, pharmacy technician, pharmacy technician trainee or authorized supportive personnel to engage in any conduct in violation of this chapter, in violation of Subsection 58-17b-501(8):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,500 - \$10,000
 (10) being in possession of a drug for an unlawful purpose, in violation of Subsection 58-17b-501(9):
 initial offense: \$500 - \$1,000
 subsequent offense(s): \$1,500 - \$5,000
 (11) dispensing a prescription drug to anyone who does not have a prescription from a practitioner or to anyone who is known or should be known as attempting to obtain drugs by fraud or misrepresentation, in violation of Subsection 58-17b-501(10):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,500 - \$10,000

(12) selling, dispensing or otherwise trafficking in prescription drugs when not licensed to do so or when not exempted from licensure, in violation of Subsection 58-17b-501(11):

initial offense: \$1,000 - \$5,000

subsequent offense(s): \$10,000

(13) using a prescription drug or controlled substance for the licensee that was not lawfully prescribed for the licensee by a practitioner, in violation of Subsection 58-17b-501(12):

initial offense: \$100 - \$500

subsequent offense(s): \$1,000 - \$2,500

(14) willfully deceiving or attempting to deceive the Division, the Board or its authorized agents as to any relevant matter regarding compliance under this chapter, in violation of Subsection 58-17b-502(1):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(15) paying rebates to practitioners or any other health care provider, or entering into any agreement with a medical practitioner or any other person for the payment or acceptance of compensation for recommending the professional services of either party, in violation of Subsection 58-17b-502(2):

initial offense: \$2,500 - \$5,000

subsequent offense(s): \$5,500 - \$10,000

(16) misbranding or adulteration of any drug or device or the sale, distribution or dispensing of any outdated, misbranded, or adulterated drugs or devices, in violation of Subsection 58-17b-502(3):

initial offense: \$1,000 - \$5,000

subsequent offense(s): \$10,000

(17) engaging in the sale or purchase of drugs that are samples or packages bearing the inscription "sample" or "not for resale" or similar words or phrases, in violation of Subsection 58-17b-502(4):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(18) accepting back and redistributing any unused drugs, with the exception as provided in Section 58-17b-503, in violation of Subsection 58-17b-502(5):

initial offense: \$1,000 - \$5,000

subsequent offense(s): \$10,000

(19) engaging in an act in violation of this chapter committed by a person for any form of compensation if the act is incidental to the person's professional activities, including the activities of a pharmacist, pharmacy intern, ~~or~~ pharmacy technician, or pharmacy technician trainee in violation of Subsection 58-17b-502(6):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(20) violating Federal Title II, PL 91, Controlled Substances Act or Title 58, Chapter 37, Utah Controlled Substances Act, or rules and regulations adopted under either act, in violation of Subsection 58-17b-502(7):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(21) requiring or permitting pharmacy interns, ~~or~~ pharmacy technicians, or pharmacy technician trainees to engage in activities outside the scope of practice for their respective license classifications, or beyond their scopes of training and ability, in violation of Subsection 58-17b-502(8):

initial offense: \$100 - \$500

subsequent offense(s): \$500 - \$1,000

(22) administering without appropriate training, guidelines, lawful order, or in conflict with a practitioner's written guidelines or protocol for administering, in violation of Subsection 58-17b-502(9):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(23) disclosing confidential patient information in violation of the provision of the Health Insurance Portability and Accountability Act of 1996 or other applicable law, in violation of Subsection 58-17b-502(10):

initial offense: \$100 - \$500

subsequent offense(s): \$500 - \$1,000

(24) engaging in the practice of pharmacy without a licensed pharmacist designated as the PIC, in violation of Subsection 58-17b-502(11):

initial offense: \$100 - \$500

subsequent offense(s): \$2,000 - \$10,000

(25) failing to report to the Division any adverse action taken by another licensing jurisdiction, government agency, law enforcement agency or court, in violation of Subsection 58-17b-502(12):

initial offense: \$100 - \$500

subsequent offense(s): \$500 - \$1,000

~~[(26) preparing a prescription drug, including compounding a prescription drug, for sale to another pharmacist or pharmaceutical facility, in violation of Subsection 58-17b-502(13):~~

~~initial offense: \$100 - \$500~~

~~subsequent offense(s): \$500 - \$1,000~~

[(27)26] preparing a prescription drug in a dosage form ~~[which]that~~ is regularly and commonly available from a manufacturer in quantities and strengths prescribed by a practitioner, in violation of Subsection 58-17b-502([4]13):

initial offense: \$500 - \$1,000

subsequent offense(s): \$2,500 - \$5,000

[(28]27] violating any ethical code provision of the American Pharmaceutical Association Code of Ethics for Pharmacists, October 27, 1994, in violation of Subsection R156-17b-502(1):

initial offense: \$250 - \$500

subsequent offense(s): \$2,000 - \$10,000

[(29]28] failing to comply with USP-NF Chapter 795 guidelines, in violation of Subsection R156-17b-502(2):

initial offense: \$250 - \$500

subsequent offense(s): \$500 - \$750

[(30]29] failing to comply with USP-NF Chapter 797 guidelines, in violation of Subsection R156-17b-502(2):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

[(31]30] failing to comply with the continuing education requirements set forth in this rule, in violation of Subsection R156-17b-502(3):

initial offense: \$100 - \$500

subsequent offense(s): \$500 - \$1,000

[(32]31] failing to provide the Division with a current mailing address within 10 days following any change of address, in violation of Subsection R156-17b-502(4):

initial offense: \$50 - \$100

subsequent offense(s): \$200 - \$300
 ([33]32) defaulting on a student loan, in violation of Subsection R156-17b-502(5):
 initial offense: \$100 - \$200
 subsequent offense(s): \$200 - \$500
 ([34]33) failing to abide by all applicable federal and state law regarding the practice of pharmacy, in violation of Subsection R156-17b-502(6):
 initial offense: \$500 - \$1,000
 subsequent offense(s): \$2,000 - \$10,000
 ([35]34) failing to comply with administrative inspections, in violation of Subsection R156-17b-502(7):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
 ([36]35) failing to return a self-inspection report according to the deadline established by the Division, or providing false information on a self-inspection report, in violation of Subsection R156-17b-502(8):
 initial offense: \$100 - \$250
 subsequent offense(s): \$300 - \$500
 ([37]36) violating the laws and rules regulating operating standards in a pharmacy discovered upon inspection by the Division, in violation of Subsection R156-17b-502(9):
 initial violation: \$50 - \$100
 failure to comply within determined time: \$250 - \$500
 subsequent violations: \$250 - \$500
 failure to comply within established time: \$750 - \$1,000
 ([38]37) abandoning a pharmacy and/or leaving drugs accessible to the public, in violation of Subsection R156-17b-502(10):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
 ([39]38) failing to identify license classification when communicating by any means, in violation of Subsection R156-17b-502(11):
 initial offense: \$100 - \$500
 subsequent offense(s): \$500 - \$1,000
 ([40]39) failing to maintain an appropriate ratio of personnel, in violation of Subsection R156-17b-502(12):
 Pharmacist initial offense: \$100 - \$250
 Pharmacist subsequent offense(s): \$500 - \$2,500
 Pharmacy initial offense: \$250 - \$1,000
 Pharmacy subsequent offense(s): \$500 - \$5,000
 ([41]40) allowing any unauthorized persons in the pharmacy, in violation of Subsection R156-17b-502(13):
 Pharmacist initial offense: \$50 - \$100
 Pharmacist subsequent offense(s): \$250 - \$500
 Pharmacy initial offense: \$250 - \$500
 Pharmacy subsequent offense(s): \$1,000 - \$2,000
 ([42]41) failing to offer to counsel any person receiving a prescription medication, in violation of Subsection R156-17b-502(14):
 Pharmacy personnel initial offense: \$500 - \$2,500
 Pharmacy personnel subsequent offense(s): \$5,000 - \$10,000
 Pharmacy: \$2,000 per occurrence
 ([43]42) failing to pay an administrative fine within the time designated by the Division, in violation of Subsection R156-17b-502(15):

Double the original penalty amount up to \$10,000
 ([44]43) failing to comply with the PIC or DMPIC standards as established in Section R156-17b-603, in violation of Subsection R156-17b-502(16):
 initial offense: \$500 - \$2,000
 subsequent offense(s) \$2,000 - \$10,000
 ([45]44) failing to take appropriate steps to avoid or resolve identified drug therapy management problems as referenced in Subsection R156-17b-611(3), in violation of Subsection R156-17b-502(17):
 initial offense: \$500 - \$2,500
 subsequent offense: \$5,000 - \$10,000
 ([46]45) dispensing a medication that has been discontinued by the FDA, in violation of Subsection R156-17b-502(18):
 initial offense: \$100 - \$500
 subsequent offense: \$200 - \$1,000
 ([47]46) failing to keep or report accurate records of training hours, in violation of Subsection R156-17b-502(19):
 initial offense: \$100 - \$500
 subsequent offense: \$200 - \$1,000
 ([48]47) failing to provide PIC or DMPIC information to the Division within 30 days of a change in PIC or DMPIC, in violation of Subsection R156-17b-502(20):
 initial offense: \$100 - \$500
 subsequent offense: \$200 - \$1,000
 ([49]48) requiring a pharmacy, PIC, or any other pharmacist to operate a pharmacy with unsafe personnel ratio, in violation of Subsection R156-17b-502(21):
 initial offense: \$500 - \$2,000
 subsequent offense: \$2,000 - \$10,000
 ([50]49) failing to update the Division within seven calendar days of any change in the email address designated for use in self-audits or pharmacy alerts, in violation of Subsection R156-17b-502(22):
 Pharmacist initial offense: \$100 - \$300
 Pharmacist subsequent offense(s): \$500 - \$1,000
 Pharmacy initial offense: \$250 - \$500
 Pharmacy subsequent offense(s): \$500 - \$1,250
 ([51]50) practicing or attempting to practice as a pharmacist, pharmacist intern, ~~or~~ pharmacy technician, or pharmacy technician trainee or operating a pharmacy without a license, in violation of Subsection 58-1-501(1)(a):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
 ([52]51) impersonating a licensee or practicing under a false name, in violation of Subsection 58-1-501(1)(b):
 initial offense: \$500 - \$2,000
 subsequent offense(s): \$2,000 - \$10,000
 ([53]52) knowingly employing an unlicensed person, in violation of Subsection 58-1-501(1)(c):
 initial offense: \$500 - \$1,000
 subsequent offense(s): \$1,000 - \$5,000
 ([54]53) knowingly permitting the use of a license by another person, in violation of Subsection 58-1-501(1)(d):
 initial offense: \$500 - \$1,000
 subsequent offense(s): \$1,000 - \$5,000
 ([55]54) obtaining a passing score, applying for or obtaining a license or otherwise dealing with the Division or Board

through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission, in violation of Subsection 58-1-501(1)(e):

initial offense: \$100 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(~~56~~55) issuing a prescription without prescriptive authority conferred by a license or an exemption to licensure, in violation of Subsection 58-1-501(1)(f)(i)(A) and 58-1-501(2)(m)(i):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(~~57~~56) issuing a prescription without prescriptive authority conferred by a license or an exemption to licensure without obtaining information sufficient to establish a diagnosis, identify underlying conditions and contraindications to treatment in a situation other than an emergency or an on-call cross coverage situation, in violation of Subsection 58-1-501(1)(f)(i)(B) and 58-1-501(2)(m)(ii):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(~~58~~57) violating or aiding or abetting any other person to violate any statute, rule or order regulating pharmacy, in violation of Subsection 58-1-501(2)(a):

initial offense: \$100 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(~~59~~58) violating or aiding or abetting any other person to violate any generally accepted professional or ethical standard, in violation of Subsection 58-1-501(2)(b):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(~~60~~59) engaging in conduct that results in conviction of, or a plea of nolo contendere, or a plea of guilty or nolo contendere held in abeyance to a crime, in violation of Subsection 58-1-501(2)(c):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(~~61~~60) engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority, that if the conduct had occurred in this state, would constitute grounds for denial of licensure or disciplinary action, in violation of Subsection 58-1-501(2)(d):

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(~~62~~61) engaging in conduct, including the use of intoxicants, drugs, or similar chemicals, to the extent that the conduct does or may impair the ability to safely engage in practice as a pharmacist, pharmacy intern, ~~or~~ pharmacy technician, or pharmacy technician trainee, in violation of Subsection 58-1-501(2)(e):

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(~~63~~62) practicing or attempting to practice as a pharmacist, pharmacy intern, ~~or~~ pharmacy technician, or pharmacy technician trainee when physically or mentally unfit to do so, in violation of Subsection 58-1-501(2)(f):

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(~~64~~63) practicing or attempting to practice as a pharmacist, pharmacy intern, ~~or~~ pharmacy technician, or pharmacy technician trainee through gross incompetence, gross

negligence or a pattern of incompetency or negligence, in violation of Subsection 58-1-501(2)(g):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(~~65~~64) practicing or attempting to practice as a pharmacist, pharmacy intern, ~~or~~ pharmacy technician, or pharmacy technician trainee by any form of action or communication [~~which~~that] is false, misleading, deceptive or fraudulent, in violation of Subsection 58-1-501(2)(h):

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(~~66~~65) practicing or attempting to practice as a pharmacist, pharmacy intern, ~~or~~ pharmacy technician, or pharmacy technician trainee beyond the individual's scope of competency, abilities or education, in violation of Subsection 58-1-501(2)(i):

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(~~67~~66) practicing or attempting to practice as a pharmacist, pharmacy intern, ~~or~~ pharmacy technician, or pharmacy technician trainee beyond the scope of licensure, in violation of Subsection 58-1-501(2)(j):

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(~~68~~67) verbally, physically or mentally abusing or exploiting any person through conduct connected with the licensee's practice, in violation of Subsection 58-1-501(2)(k):

initial offense: \$100 - \$1,000

subsequent offense(s): \$500 - \$2,000

(~~69~~68) acting as a supervisor without meeting the qualification requirements for that position as defined by statute or rule, in violation of Subsection 58-1-501(2)(l):

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(~~70~~69) violating a provision of Section 58-1-501.5, in violation of Subsection 58-1-501(2)(n):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,000 - \$10,000

(~~71~~70) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct, in violation of Subsection R156-1-501(1):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(~~72~~71) practicing a regulated occupation or profession in, through, or with a limited liability company that has omitted the words, "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company, in violation of Subsection R156-1-501(2):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(~~73~~72) practicing a regulated occupation or profession in, through, or with a limited partnership that has omitted the words, "limited partnership," "limited," or the abbreviation "L.P." or "L.td."

in the commercial use of the name of the limited partnership, in violation of Subsection R156-1-501(3):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(~~74~~73) practicing a regulated occupation or profession in, through, or with a professional corporation that has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation, in violation of Subsection R156-1-501(4):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(~~75~~74) using a capitalized DBA (doing-business-as name) that has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing, in violation of Subsection R156-1-501(5):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(~~76~~75) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain," May 2004, established by the Federation of State Medical Boards of the United States, Inc., which is hereby adopted and incorporated by reference, in violation of R156-1-501(6):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(~~77~~76) engaging in prohibited acts as defined in Section 58-37-8, in violation of Section 58-37-8:

initial offense: \$1,000 - \$5,000

subsequent offense(s) \$5,000 - \$10,000

(~~78~~77) self-prescribing or self-administering by a licensee of any Schedule II or Schedule III controlled substance [~~which~~that] is not prescribed by another practitioner having authority to prescribe the drug, in violation of Subsection R156-37-502(1)(a):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(~~79~~78) prescribing or administering a controlled substance for a condition that the licensee is not licensed or competent to treat, in violation of Subsection R156-37-502(1)(b):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(~~80~~79) violating any federal or state law relating to controlled substances, in violation of Subsection R156-37-502(2):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(~~81~~80) failing to deliver to the Division all controlled substance certificates issued by the Division, to the Division, upon an action [~~which~~that] revokes, suspends, or limits the license, in violation of R156-37-502(3):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(~~82~~81) failing to maintain controls over controlled substances [~~which~~that] would be considered by a prudent licensee to be effective against diversion, theft, or shortage of controlled substances, in violation of Subsection R156-37-502(4):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(~~83~~82) being unable to account for shortages of controlled substances in any controlled substances inventory for

which the licensee has responsibility, in violation of Subsection R156-37-502(5):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(~~84~~83) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(1)(s), except for legitimate medical purposes as permitted by law, in violation of Subsection R156-37-502(6):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(~~85~~84) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records, in violation of Subsection R156-37-502(7):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(~~86~~85) failing to submit controlled substance prescription information to the database manager after being notified in writing to do so, in violation of Subsection R156-37-502(8):

initial offense: \$500 - \$2,000

subsequent offense(s): \$2,500 - \$10,000

(~~87~~86) any other conduct [~~which~~that] constitutes unprofessional or unlawful conduct:

initial offense: \$100 - \$500

subsequent offense(s): \$200 - \$1,000

(87) if licensed as a DMP or DMP clinic pharmacy, delegating the dispensing of a drug to a DMP designee who has not completed a formal or on-the-job dispensing training program that meets standards established in Section R156-17b-622, in violation of Subsection R156-17b-502 (25):

initial offense: \$500 - \$2,000

subsequent offense: \$2,500 - \$10,000

R156-17b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

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

(2) failing to comply with the USP-NF Chapters 795 and 797 if such chapters are applicable to activities performed in the pharmacy;

(3) failing to comply with the continuing education requirements set forth in these rules;

(4) failing to provide the Division with a current mailing address within a 10 business day period of time following any change of address;

(5) defaulting on a student loan;

(6) failing to abide by all applicable federal and state law regarding the practice of pharmacy;

(7) failing to comply with administrative inspections;

(8) failing to return according to the deadline established by the Division, or providing false information on a self-inspection report;

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

(10) abandoning a pharmacy or leaving prescription drugs accessible to the public;

(11) failing to identify licensure classification when communicating by any means;

(12) practicing pharmacy with an inappropriate pharmacist to pharmacy intern ratio established by Subsection R156-17b-606(1)(d) or pharmacist to pharmacy technician ratio as established by Subsection R156-17b-601(3);

(13) allowing any unauthorized persons in the pharmacy;

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

(15) failing to pay an administrative fine that has been assessed in the time designated by the Division;

(16) failing to comply with the PIC or DMPIC standards as established in Section R156-17b-603;

(17) failing to adhere to institutional policies and procedures related to technician checking of medications when technician checking is utilized;

(18) failing to take appropriate steps to avoid or resolve identified drug therapy management problems as referenced in Subsection R156-17b-611(3);

(19) dispensing medication that has been discontinued by the FDA;

(20) failing to keep or report accurate records of training hours;

(21) failing to provide PIC or DMPIC information to the Division within 30 days of a change in PIC or DMPIC;

(22) requiring a pharmacy, [~~PIC, or any other~~] pharmacist, or DMP to operate the pharmacy or allow operation of the pharmacy with a ratio of supervising pharmacist or DMP to ~~other pharmacy~~ [~~technician/pharmacy intern/support~~] personnel [~~which, under the~~]in circumstances [~~of the particular practice setting, that result[s] in, or reasonably would be expected to result in, an unreasonable risk of harm to public health, safety, and welfare;~~

(23) failing to update the Division within seven calendar days of any change in the email address designated for use in self-audits or pharmacy alerts; and

~~[(24) effective November 30, 2014, failing to comply with prescription container label standards established in USP-NF Chapter 17.~~

[(24) failing to ensure, as a DMP or DMP clinic pharmacy, that a DMP designee has completed a formal or on-the-job dispensing training program that meets standards established in Section R156-17b-622.

R156-17b-601. Operating Standards - Pharmacy Technician and Pharmacy Technician Trainee.

In accordance with Subsection 58-17b-102(5[3]6), practice as a licensed pharmacy technician is defined as follows:

(1) [~~The~~]A pharmacy technician may perform any task associated with the physical preparation and processing of prescription and medication orders including:

(a) receiving written prescriptions;

(b) taking refill orders;

(c) entering and retrieving information into and from a database or patient profile;

(d) preparing labels;

(e) retrieving medications from inventory;

(f) counting and pouring into containers;

(g) placing medications into patient storage containers;

(h) affixing labels;

(i) compounding;

(j) counseling for over-the-counter drugs and dietary supplements under the direction of the supervising pharmacist as referenced in Subsection 58-17b-102(5[3]6);

(k) accepting new prescription drug orders left on voicemail for a pharmacist to review;

(l) performing checks of certain medications prepared for distribution filled or prepared by another technician within a Class B hospital pharmacy, such as medications prepared for distribution to an automated dispensing cabinet, cart fill, crash cart medication tray, or unit dosing from a prepared stock bottle, in accordance with the following operating standards:

(i) technicians authorized by a hospital to check medications shall have at least one year of experience working as a pharmacy technician and at least six months experience at the hospital where the technician is authorized to check medications;

(ii) technicians shall only check steps in the medication distribution process that do not require the professional judgment of a pharmacist and that are supported by sufficient automation or technology to ensure accuracy (e.g. barcode scanning, drug identification automation, checklists, visual aids);

(iii) hospitals that authorize technicians to check medications shall have a training program and ongoing competency assessment that is documented and retrievable for the duration of each technician's employment and at least three years beyond employment, and shall maintain a list of technicians on staff that are allowed to check medications;

(iv) hospitals that authorize technicians to check medications shall have a medication error reporting system in place and shall be able to produce documentation of its use;

(v) a supervising pharmacist shall be immediately available during all times that a pharmacy technician is checking medications;

(vi) hospitals that authorize technicians to check medications shall have comprehensive policies and procedures that guide technician checking that include the following:

(A) process for technician training and ongoing competency assessment and documentation;

(B) process for supervising technicians who check medications;

(C) list of medications, or types of medications that may or may not be checked by a technician;

(D) description of the automation or technology [~~that will~~]to be utilized by the institution to augment the technician check;

(E) process for maintaining a permanent log of the unique initials or identification codes [~~which~~]that identify each technician responsible for checked medications by name; and

(F) description of processes used to track and respond to medication errors; and

(m) additional tasks not requiring the judgment of a pharmacist.

~~(2) A pharmacy technician trainee may perform any task in Subsection (1) with the exception of performing checks of certain medications prepared for distribution filled or prepared by another technician within a Class B hospital pharmacy as described in Subsection (1)(l).~~

~~(2)3~~ The pharmacy technician shall not receive new prescriptions or medication orders as described in Subsection 58-17b-102(5)36(b)(iv), clarify prescriptions or medication orders nor perform drug utilization reviews. A new prescription, as used in Subsection 58-17b-102(5)36(b)(iv), does not include authorization of a refill of a legend drug.

~~(3)4~~ Pharmacy technicians shall have general supervision by a pharmacist in accordance with Subsection R156-17b-603(2)3(s).

~~(4)5~~ No more than one pharmacy technician~~[-in-training]~~ trainee per shift shall practice in a pharmacy. A pharmacy technician~~[-in-training]~~ trainee shall practice only under the direct supervision of a pharmacist.

R156-17b-602. Operating Standards - Pharmacy Intern.

A pharmacy intern may provide services including the practice of pharmacy under the supervision of an approved preceptor, as defined in Subsection 58-17b-102(48)50, provided the pharmacy intern met the criteria as established in Subsection R156-17b-306.

R156-17b-603. Operating Standards - Pharmacist-[i]In-charge or Dispensing-Medical-Practitioner-In-Charge.

(1) The PIC or DMPIC shall have the responsibility to oversee the operation of the pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs, durable medical equipment and medical supplies. The PIC or DMPIC shall be personally in full and actual charge of the pharmacy.

(2) In accordance with Subsections 58-17b-103(1) and 58-17b-601(1), a ~~secure~~unique email address shall be established by the PIC~~[-or responsible party]~~, DMPIC, or responsible party for the pharmacy to be used for self-audits or pharmacy alerts initiated by the Division. The PIC, DMPIC, or responsible party shall notify the Division of the pharmacy's ~~secure~~email address ~~initially as follows~~:

~~(a) at the September 30, 2013 renewal for all licensees; and~~

~~(b) thereafter, on~~in the initial application for licensure.

(3) The duties of the PIC or DMPIC shall include:

(a) assuring that a pharmacist[s],~~[-and]~~ pharmacy intern[s], DMP, or DMP designee dispenses drugs or devices, including:

(i) packaging, preparation, compounding and labeling; and

(ii) ensuring that drugs are dispensed safely and accurately as prescribed;

(b) assuring that pharmacy personnel deliver drugs to the patient or the patient's agent, including ensuring that drugs are delivered safely and accurately as prescribed;

~~(c) assuring that a pharmacist, pharmacy intern or pharmacy technician communicates to the patient or the patient's agent information about the prescription drug or device or non-prescription products;~~

~~(d)e~~ assuring that a pharmacist~~[-or]~~, pharmacy intern, or DMP communicates to the patient or the patient's agent, at their request, information concerning any prescription drugs dispensed to the patient by the pharmacist~~[-or]~~, pharmacy intern, or DMP;

~~(e)d~~ assuring that a reasonable effort is made to obtain, record and maintain patient medication records;

~~(f)e~~ education and training of pharmacy ~~technicians~~personnel;

~~(g)f~~ establishment of policies for procurement of prescription drugs and devices and other products dispensed from the pharmacy;

~~(h)g~~ disposal and distribution of drugs from the pharmacy;

~~(i)h~~ bulk compounding of drugs;

~~(j)i~~ storage of all materials, including drugs, chemicals and biologicals;

~~(k)j~~ maintenance of records of all transactions of the pharmacy necessary to maintain accurate control over and accountability for all pharmaceutical materials required by applicable state and federal laws and regulations;

~~(l)k~~ establishment and maintenance of effective controls against theft or diversion of prescription drugs and records for such drugs;

~~(m)l~~ if records are kept on a data processing system, the maintenance of records stored in that system shall be in compliance with pharmacy requirements;

~~(n)m~~ legal operation of the pharmacy including meeting all inspection and other requirements of all state and federal laws, rules and regulations governing the practice of pharmacy;

~~(n) implementation of an ongoing quality assurance program that monitors performance of the automated pharmacy system, which is evidenced by written policies and procedures developed for pharmaceutical care;~~

~~(o) if permitted to use an [assuring that any] automated pharmacy system for dispensing purposes;~~

~~(i) ensuring that the system is in good working order and accurately dispenses the correct strength, dosage form and quantity of the drug prescribed while maintaining appropriate record keeping and security safeguards; and~~

~~(p)ii~~ implementation of an ongoing quality assurance program that monitors performance of the automated pharmacy system, which is evidenced by written policies and procedures developed for pharmaceutical care;

~~(q)p~~ assuring that all relevant information is submitted to the Controlled Substance Database in the appropriate format and in a timely manner;

~~(r)q~~ assuring that all pharmacy personnel ~~[working in the pharmacy]~~ have the appropriate licensure;

~~(s)r~~ assuring that no pharmacy ~~or pharmacist~~ operates ~~[the pharmacy or allows operation of the pharmacy]~~ with a ratio of pharmacist or DMP to other pharmacy ~~technician/pharmacy intern/support~~ personnel ~~[which, under the] circumstances [of the particular practice setting,] that result[s] in, or reasonably would be expected to result in, an unreasonable risk of harm to public health, safety, and welfare;~~

~~(t)s~~ assuring that the PIC or DMPIC assigned to the pharmacy is recorded with the Division and that the Division is notified of a change in PIC or DMPIC within 30 days of the change; and

(~~u~~)t) assuring, with regard to the [~~secure~~]unique email address used for self-audits and pharmacy alerts, that:

- (i) the pharmacy uses a single email address; and
- (ii) the pharmacy notifies the Division, on the form prescribed, of any change in the email address within seven calendar days of the change.

R156-17b-604. Operating Standards - Closing a Pharmacy.

At least 14 days prior to the closing of a pharmacy, the PIC or DMPIC shall comply with the following:

(1) If the pharmacy is registered to possess controlled substances, send a written notification to the appropriate regional office of the Drug Enforcement Administration (DEA) containing the following information:

- (a) the name, address and DEA registration number of the pharmacy;
- (b) the anticipated date of closing;
- (c) the name, address and DEA registration number of the pharmacy acquiring the controlled substances; and
- (d) the date [~~on which~~]the transfer of controlled substances will occur.

(2) If the pharmacy dispenses prescription drug orders, post a closing notice sign in a conspicuous place in the front of the prescription department and at all public entrance doors to the pharmacy. Such closing notice shall contain the following information:

- (a) the date of closing; and
- (b) the name, address and telephone number of the pharmacy acquiring the prescription drug orders, including refill information and patient medication records of the pharmacy.

(3) On the date of closing, the PIC or DMPIC shall remove all prescription drugs from the pharmacy by one or a combination of the following methods:

- (a) return prescription drugs to manufacturer or supplier for credit or disposal; or
- (b) transfer, sell or give away prescription drugs to a person who is legally entitled to possess drugs, such as a hospital or another pharmacy.

(4) If the pharmacy dispenses prescription drug orders:

- (a) transfer the prescription drug order files, including refill information and patient medication records, to a licensed pharmacy within a reasonable distance of the closing pharmacy; and
- (b) move all signs or notify the landlord or owner of the property that it is unlawful to use the word "pharmacy", or any other word or combination of words of the same or similar meaning, or any graphic representation that would mislead or tend to mislead the public that a pharmacy is located at this address.

(5) Within 10 days of the closing of the pharmacy, the PIC or DMPIC shall forward to the Division a written notice of the closing that includes the following information:

- (a) the actual date of closing;
- (b) the license issued to the pharmacy;
- (c) a statement attesting:
 - (i) that an inventory as specified in Subsection R156-17b-605(~~5~~)4 has been conducted; and
 - (ii) the manner in which the legend drugs and controlled substances possessed by the pharmacy were transferred or disposed;
- (d) if the pharmacy dispenses prescription drug orders, the name and address of the pharmacy to which the prescription

drug orders, including refill information and patient medication records, were transferred.

(6) If the pharmacy is registered to possess controlled substances, a letter shall be sent to the appropriate DEA regional office explaining that the pharmacy has closed. The letter shall include the following items:

- (a) DEA registration certificate;
- (b) all unused DEA order forms (Form 222) with the word "VOID" written on the face of each order form; and
- (c) copy #2 of any DEA order forms (Form 222) used to transfer Schedule II controlled substances from the closed pharmacy.

(7) If the pharmacy is closed suddenly due to fire, destruction, natural disaster, death, property seizure, eviction, bankruptcy or other emergency circumstances and the PIC or DMPIC cannot provide notification 14 days prior to the closing, the PIC or DMPIC shall comply with the provisions of Subsection (1) as far in advance of the closing as allowed by the circumstances.

(8) If the PIC or DMPIC is not available to comply with the requirements of this section, the owner or legal representative shall be responsible for compliance with the provisions of this section.

(9) Notwithstanding the requirements of this section, a DMP clinic pharmacy that closes but employs licensed practitioners who desire to continue providing services other than dispensing may continue to use prescription drugs in their practice as authorized under their respective licensing act.

R156-17b-605. Operating Standards - Inventory Requirements.

(1) All out of date legend drugs and controlled substances shall be removed from the inventory at regular intervals and in correlation to the beyond use date imprinted on the label.

(2) General requirements for inventory of a pharmacy shall include the following:

- (a) the PIC or DMPIC shall be responsible for taking all required inventories, but may delegate the performance of the inventory to another person or persons;
- (b) the inventory records shall be maintained for a period of five years and be readily available for inspection;
- (c) the inventory records shall be filed separately from all other records;

(d) the inventory records shall be in a written, typewritten, or printed form and include all stocks of controlled substances on hand on the date of the inventory including any that are out of date drugs and drugs in automated pharmacy systems. An inventory taken by use of a verbal recording device shall be promptly transcribed;

(e) the inventory may be taken either as the opening of the business or the close of business on the inventory date;

(f) the person taking the inventory and the PIC or DMPIC shall indicate the time the inventory was taken and shall sign and date the inventory with the date the inventory was taken. The signature of the PIC or DMPIC and the date of the inventory shall be documented within 72 hours or three working days of the completed initial, annual, change of ownership and closing inventory;

(g) the person taking the inventory shall make an exact count or measure all controlled substances listed in Schedule I or II;

(h) the person taking the inventory shall make an estimated count or measure of all Schedule III, IV or V controlled substances, unless the container holds more than 1,000 tablets or capsules in which case an exact count of the contents shall be made;

(i) the inventory of Schedule I and II controlled substances shall be listed separately from the inventory of Schedule III, IV and V controlled substances;

(j) if the pharmacy maintains a perpetual inventory of any of the drugs required to be inventories, the perpetual inventory shall be reconciled on the date of the inventory.

(3) Requirements for taking the initial controlled substances inventory shall include the following:

(a) all pharmacies having any stock of controlled substances shall take an inventory on the opening day of business. Such inventory shall include all controlled substances including any out-of-date drugs and drugs in automated pharmacy systems;

(b) in the event a pharmacy commences business with no controlled substances on hand, the pharmacy shall record this fact as the initial inventory. An inventory reporting no Schedule I and II controlled substances shall be listed separately from an inventory reporting no Schedule III, IV, and V controlled substances;

(c) the initial inventory shall serve as the pharmacy's inventory until the next completed inventory as specified in Subsection (4) of this section; and

(d) when combining two pharmacies, each pharmacy shall:

(i) conduct a separate closing pharmacy inventory of controlled substances on the date of closure; and

(ii) conduct a combined opening inventory of controlled substances for the new pharmacy prior to opening.

(4) Requirement for annual controlled substances inventory shall be within 12 months following the inventory date of each year and may be taken within four days of the specified inventory date and shall include all stocks including out-of-date drugs and drugs in automated pharmacy systems.

(5) Requirements for change of ownership shall include the following:

(a) a pharmacy that changes ownership shall take an inventory of all legend drugs and controlled substances including out-of-date drugs and drugs in automated pharmacy systems on the date of the change of ownership;

(b) such inventory shall constitute, for the purpose of this section, the closing inventory for the seller and the initial inventory for the buyer; and

(c) transfer of Schedule I and II controlled substances shall require the use of official DEA order forms (Form 222).

(6) Requirement for taking inventory when closing a pharmacy includes the PIC, DMPIC, owner, or the legal representative of a pharmacy that ceases to operate as a pharmacy shall forward to the Division, within ten days of cessation of operation, a statement attesting that an inventory has been conducted, the date of closing and a statement attesting the manner by which legend drugs and controlled substances possessed by the pharmacy were transferred or disposed.

(7) All pharmacies shall maintain a perpetual inventory of all Schedule II controlled substances ~~which~~ that shall be reconciled according to facility policy.

R156-17b-606. Operating Standards - Approved Preceptor.

In accordance with Subsection 58-17b-601(1), the operating standards for a pharmacist acting as a preceptor include:

(1) meeting the following criteria:

(a) hold a Utah pharmacist license that is active and in good standing;

(b) document engaging in active practice as a licensed pharmacist for not less than ~~two~~ one year[s] in any jurisdiction;

(c) not be under any sanction which, when considered by the Division and Board, would be of such a nature that the best interests of the intern and the public would not be served;

(d) provide direct, on-site supervision to:

(i) no more than two pharmacy interns during a working shift except as provided in Subsection (ii);

(ii) up to five pharmacy interns at public-health outreach programs such as informational health fairs, chronic disease state screening and education programs, and immunization clinics, provided:

(A) the totality of the circumstances are safe and appropriate according to generally recognized industry standards of practice; and

(B) the preceptor has obtained written approval from the pharmacy interns' schools of pharmacy for the intern's participation; and

(e) refer to the intern training guidelines as outlined in the Pharmacy Coordinating Council of Utah Internship Competencies, October 12, 2004, as information about a range of best practices for training interns;

(2) maintaining adequate records to document the number of internship hours completed by the intern and evaluating the quality of the intern's performance during the internship;

(3) completing the preceptor section of a Utah Pharmacy Intern Experience Affidavit found in the application packet at the conclusion of the preceptor/intern relationship regardless of the time or circumstances under which that relationship is concluded; and

(4) being responsible for the intern's actions related to the practice of pharmacy while practicing as a pharmacy intern under supervision.

R156-17b-607. Operating Standards - Supportive Personnel.

(1) In accordance with Subsection 58-17b-102(~~66~~)69)

(a), supportive personnel may assist in any tasks not related to drug preparation or processing including:

(a) stock ordering and restocking;

(b) cashiering;

(c) billing;

(d) filing;

(e) receiving a written prescription and delivering it to the pharmacist, pharmacy intern, ~~or~~ pharmacy technician, pharmacy technician trainee, DMP, or DMP designee;

(f) housekeeping; and

(g) delivering a pre-filled prescription to a patient.

(2) Supportive personnel shall not enter information into a patient prescription profile or accept verbal refill information.

(3) In accordance with Subsection 58-17b-102(~~66~~)69)(b) ~~[the supervision of supportive personnel is defined as follows:~~

~~(a)~~ all supportive personnel shall be under the supervision of a licensed pharmacist or DMP.~~;~~~~and~~

~~(b)~~ ~~[t]~~The licensed pharmacist or DMP shall be present in the area where the person being supervised is performing services and shall be immediately available to assist the person being supervised in the services being performed except for the delivery of prefilled prescriptions as provided in Subsection (1)(g) above.

(4) In accordance with Subsection 58-17b-601(1), a pharmacist, pharmacy intern, ~~or~~ pharmacy technician, pharmacy technician trainee, DMP, or DMP designee whose license has been revoked or is suspended shall not be allowed to provide any support services in a pharmacy.

R156-17b-608. Common Carrier Delivery.

A pharmacy that employs the United States Postal Service or other common carrier to deliver a filled prescription directly to a patient shall, under the direction of the ~~[pharmacist-in-charge]~~PIC, DMPIC, or other responsible employee:

(1) use adequate storage or shipping containers and shipping processes to ensure drug stability and potency. The shipping processes shall include the use of appropriate packaging material and devices, according to the recommendations of the manufacturer or the United States Pharmacopeia Chapter 1079, in order to ensure that the drug is kept at appropriate storage temperatures throughout the delivery process to maintain the integrity of the medication;

(2) use shipping containers that are sealed in a manner to detect evidence of opening or tampering;

(3) develop and implement policies and procedures to ensure accountability, safe delivery, and compliance with temperature requirements. The policies and procedures shall address when drugs do not arrive at their destination in a timely manner or when there is evidence that the integrity of a drug was compromised during shipment. In these instances, the pharmacy shall make provisions for the replacement of the drugs;

(4)(i) provide for an electronic, telephonic, or written communication mechanism for a pharmacy~~[pharmacist, or a pharmacy intern working under the direct supervision of a pharmacist,]~~ to offer counseling to the patient as defined in Section 58-17b-613~~;~~~~;~~and

~~(ii)~~ ~~[including]~~provide documentation of such counseling; and

(5) provide information to the patient indicating what the patient should do if the integrity of the packaging or drug was compromised during shipment.

R156-17b-609. Operating Standards - Medication Profile System.

In accordance with Subsections 58-17b-601(1) and 58-17b-604(1), the following operating standards shall apply with respect to medication profile systems:

(1) Patient profiles, once established, shall be maintained by a ~~[pharmacist in a]~~pharmacy dispensing to patients on a recurring basis for a minimum of one year from the date of the most recent prescription filled or refilled; except that a hospital pharmacy may delete the patient profile for an inpatient upon discharge if a record of prescriptions is maintained as a part of the hospital record.

(2) Information to be included in the profile shall be determined by a responsible pharmacist or DMP at the pharmaceutical facility but shall include as a minimum:

(a) full name of the patient, address, telephone number, date of birth or age and gender;

(b) patient history where significant, including known allergies and drug reactions, and a list of prescription drugs obtained by the patient at the pharmacy including:

(i) name of prescription drug;

(ii) strength of prescription drug;

(iii) quantity dispensed;

(iv) date of filling or refilling;

(v) charge for the prescription drug as dispensed to the patient; and

(c) any additional comments relevant to the patient's drug use.

(3) Patient medication profile information shall be recorded by a pharmacist, pharmacy intern, ~~or~~ pharmacy technician, pharmacy technician trainee, or DMP designee.

R156-17b-610. Operating Standards - Patient Counseling.

In accordance with Subsection 58-17b-601(1), guidelines for providing patient counseling established in Section 58-17b-613 include the following:

(1) Counseling shall be offered orally in person unless the patient or patient's agent is not at the pharmacy or a specific communication barrier prohibits oral communication.

(2) A pharmacy facility shall orally offer to counsel but shall not be required to counsel a patient or patient's agent when the patient or patient's agent refuses such counseling.

(3) Based upon the ~~[pharmacist's or pharmacy intern's]~~ professional judgment of the pharmacist, pharmacy intern, or DMP, patient counseling may ~~[be discussed to]~~include the following elements:

(a) the name and description of the prescription drug;

(b) the dosage form, dose, route of administration and duration of drug therapy;

(c) intended use of the drug, when known, and expected action;

(d) special directions and precautions for preparation, administration and use by the patient;

(e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(f) techniques for self-monitoring drug therapy;

(g) proper storage;

(h) prescription refill information;

(i) action to be taken in the event of a missed dose;

(j) pharmacist comments relevant to the individual's drug therapy, including any other information specific to the patient or drug; and

(k) the date after which the prescription should not be taken or used, or the beyond use date.

(4) The offer to counsel shall be documented and said documentation shall be available to the Division. These records shall be maintained for a period of five years and be available for inspection within 7-10 business days.

(5) Only a pharmacist~~[-or-]~~, pharmacy intern, or DMP may orally provide counseling to a patient or patient's agent and answer questions concerning prescription drugs.

(6) If a prescription drug order is delivered to the patient or the patient's agent at the patient's or other designated location, the following is applicable:

(a) the information specified in Subsection (~~[+]~~3) of this section shall be delivered with the dispensed prescription in writing;

(b) if prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container, the telephone number of the pharmacy and the statement "Written information about this prescription has been provided for you. Please read this information before you take this medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions."; and

(c) written information provided in Subsection (~~[8]~~6)(b) of this section shall be in the form of patient information leaflets similar to USP-NF patient information monographs or equivalent information.

(7) Patient counseling shall not be required for inpatients of a hospital or institution where other licensed health care professionals are authorized to administer the patient's drugs.

R156-17b-612. Operating Standards - Prescriptions.

In accordance with Subsection 58-17b-601(1), the following shall apply to prescriptions:

(1) Prescription orders for controlled substances (including prescription transfers) shall be handled according to the rules of the Federal Drug Enforcement Administration.

(2) A prescription issued by an authorized licensed practitioner, if verbally communicated by an agent of that practitioner upon that practitioner's specific instruction and authorization, may be accepted by a pharmacist~~[-or-]~~ pharmacy intern, or DMP.

(3) A prescription issued by a licensed prescribing practitioner, if electronically communicated by an agent of that practitioner, upon that practitioner's specific instruction and authorization, may be accepted by a pharmacist, pharmacy intern, [and] pharmacy technician, pharmacy technician trainee, DMP, or DMP designee.

(4) In accordance with Sections 58-17b-609 and 58-17b-611, prescription files, including refill information, shall be maintained for a minimum of five years and shall be immediately retrievable in written or electronic format.

(5) Prescriptions for legend drugs having a remaining authorization for refill may be transferred by the pharmacist~~[-or-]~~ pharmacy intern, or DMP at the pharmacy holding the prescription to a pharmacist~~[-or-]~~ pharmacy intern or DMP at another pharmacy upon the authorization of the patient to whom the prescription was issued or electronically as authorized under Subsection R156-17b-613(9). The transferring pharmacist~~[-or-]~~ pharmacy intern, or DMP and receiving pharmacist~~[-or-]~~ pharmacy intern, or DMP shall act diligently to ensure that the total number of authorized refills is not exceeded. The following additional terms apply to such a transfer:

(a) the transfer shall be communicated directly between pharmacist~~[-or-]~~ pharmacy interns, or DMP or as authorized under Subsection R156-17b-613(9);

(b) both the original and the transferred prescription drug orders shall be maintained for a period of five years from the date of the last refill;

(c) the pharmacist~~[-or-]~~ pharmacy intern, or DMP transferring the prescription drug order shall void the prescription electronically or write void/transfer on the face of the invalidated prescription manually;

(d) the pharmacist~~[-or-]~~ pharmacy intern, or DMP receiving the transferred prescription drug order shall:

(i) indicate on the prescription record that the prescription was transferred electronically or manually; and

(ii) record on the transferred prescription drug order the following information:

(A) original date of issuance and date of dispensing or receipt, if different from date of issuance;

(B) original prescription number and the number of refills authorized on the original prescription drug order;

(C) number of valid refills remaining and the date of last refill, if applicable;

(D) the name and address of the pharmacy and the name of the pharmacist~~[-or-]~~ pharmacy intern, or DMP to ~~[which]~~whom such prescription is transferred; and

(E) the name of the pharmacist~~[-or-]~~ pharmacy intern, or DMP transferring the prescription drug order information;

(e) the data processing system shall have a mechanism to prohibit the transfer or refilling of legend drugs or controlled substance prescription drug orders ~~[which]~~that have been previously transferred; and

(f) a pharmacist~~[-or-]~~ pharmacy intern, or DMP may not refuse to transfer original prescription information to another pharmacist~~[-or-]~~ pharmacy intern, or DMP who is acting on behalf of a patient and who is making a request for this information as specified in Subsection (12) of this section.

(6) Prescriptions for terminal patients in licensed hospices, home health agencies or nursing homes may be partially filled if the patient has a medical diagnosis documenting a terminal illness and may not need the full prescription amount.

(7) Refills may be dispensed only in accordance with the prescriber's authorization as indicated on the original prescription drug order;

(8) If there are no refill instructions on the original prescription drug order, or if all refills authorized on the original prescription drug order have been dispensed, authorization from the prescribing practitioner shall be obtained prior to dispensing any refills.

(9) Refills of prescription drug orders for legend drugs may not be refilled after one year from the date of issuance of the original prescription drug order without obtaining authorization from the prescribing practitioner prior to dispensing any additional quantities of the drug.

(10) Refills of prescription drug orders for controlled substances shall be done in accordance with Subsection 58-37-6(7) (f).

(11) A pharmacist or DMP may exercise ~~[his-]~~ professional judgment in refilling a prescription drug order for a drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner, provided:

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

(b) either:

(i) a natural or manmade disaster has occurred [~~which~~that prohibits the pharmacist or DMP from being able to contact the practitioner; or

(ii) the pharmacist or DMP is unable to contact the practitioner after a reasonable effort, the effort should be documented and said documentation should be available to the Division;

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

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

(e) the pharmacist or DMP informs the practitioner of the emergency refill at the earliest reasonable time;

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

(g) the pharmacist or DMP affixes a label to the dispensing container as specified in Section 58-17b-602.

(12) If the prescription was originally filled at another pharmacy, the pharmacist or DMP may exercise his professional judgment in refilling the prescription provided:

(a) the patient has the prescription container label, receipt or other documentation from the other pharmacy [~~which~~that contains the essential information;

(b) after a reasonable effort, the pharmacist or DMP is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(c) the pharmacist or DMP, in his or her professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of (a) and (b) of this subsection; and

(d) the pharmacist or DMP complies with the requirements of Subsections (11)(c) through (g) of this section.

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

(14) In accordance with Subsection 58-37-6(7)(e), a prescription may not be written, issued, filled, or dispensed for a Schedule I controlled substance unless:

(a) the person who writes the prescription is licensed to prescribe Schedule I controlled substances; and

(b) the prescribed controlled substance is to be used in research.

~~(15) Effective November 30, 2014, prescription container labels shall comply with standards established in USP-NF Chapter 17.~~

R156-17b-613. Operating Standards - Issuing Prescription Orders by Electronic Means.

In accordance with Subsections 58-17b-102([~~27~~29) through ([~~28~~30), 58-17b-602(1), R156-82, and R156-1, prescription orders may be issued by electronic means of communication according to the following standards:

(1) Prescription orders for Schedule II - V controlled substances received by electronic means of communication shall be handled according to Part 1304.04 of Section 21 of the CFR.

(2) Prescription orders for non-controlled substances received by electronic means of communication may be dispensed by a pharmacist, [~~or~~] pharmacy intern, or DMP only if all of the following conditions are satisfied:

(a) all electronically transmitted prescription orders shall include the following:

(i) all information that is required to be contained in a prescription order pursuant to Section 58-17b-602;

(ii) the time and date of the transmission, and if a facsimile transmission, the electronically encoded date, time and fax number of the sender; and

(iii) the name of the pharmacy intended to receive the transmission;

(b) the prescription order shall be transmitted under the direct supervision of the prescribing practitioner or his designated agent;

(c) the pharmacist or DMP shall exercise professional judgment regarding the accuracy and authenticity of the transmitted prescription. Practitioners or their agents transmitting medication orders using electronic equipment are to provide voice verification when requested by the pharmacist receiving the medication order. The pharmacist or DMP is responsible for assuring that each electronically transferred prescription order is valid and shall authenticate a prescription order issued by a prescribing practitioner [~~which~~that has been transmitted to the dispensing pharmacy before filling it, whenever there is a question;

(d) a practitioner may authorize an agent to electronically transmit a prescription provided that the identifying information of the transmitting agent is included on the transmission. The practitioner's electronic signature, or other secure method of validation, shall be provided with the electronic prescription; and

(e) an electronically transmitted prescription order that meets the requirements above shall be deemed to be the original prescription.

(3) This section does not apply to the use of electronic equipment to transmit prescription orders within inpatient medical facilities.

(4) No agreement between a prescribing practitioner and a pharmacy shall require that prescription orders be transmitted by electronic means from the prescribing practitioner to that pharmacy only.

(5) The pharmacist or DMP shall retain a printed copy of an electronic prescription, or a record of an electronic prescription that is readily retrievable and printable, for a minimum of five years. The printed copy shall be of non-fading legibility.

(6) Wholesalers, distributors, manufacturers, pharmacists and pharmacies shall not supply electronic equipment to any prescriber for transmitting prescription orders.

(7) An electronically transmitted prescription order shall be transmitted to the pharmacy of the patient's choice.

(8) Prescription orders electronically transmitted to the pharmacy by the patient shall not be filled or dispensed.

(9) A prescription order for a legend drug or controlled substance in Schedule III through V may be transferred up to the

maximum refills permitted by law or by the prescriber by electronic transmission providing the pharmacies share a real-time, on-line database provided that:

(a) the information required to be on the transferred prescription has the same information as described in Subsection R156-17b-612(5)(a) through (f); and

(b) pharmacists, pharmacy interns, ~~or~~ pharmacy technicians, or pharmacy technician trainees, DMPs, and DMP designees electronically accessing the same prescription drug order records may electronically transfer prescription information if the data processing system has a mechanism to send a message to the transferring pharmacy containing the following information:

(i) the fact that the prescription drug order was transferred;

(ii) the unique identification number of the prescription drug order transferred;

(iii) the name of the pharmacy to which it was transferred; and

(iv) the date and time of the transfer.

R156-17b-614a. Operating Standards - General Operating Standards, Class A and B Pharmacy.

(1) In accordance with Subsection 58-17b-601(1), the following operating standards apply to all Class A and Class B pharmacies, which may be supplemented by additional standards defined in this rule applicable to specific types of Class A and B pharmacies. The general operating standards include:

(a) shall be well lighted, well ventilated, clean and sanitary;

(b) if transferring a drug from a manufacturer's or distributor's original container to another container, the dispensing area, if any, shall have a sink with hot and cold culinary water separate and apart from any restroom facilities. This does not apply to clean rooms where sterile products are prepared. Clean rooms should not have sinks or floor drains that expose the area to an open sewer. All required equipment shall be clean and in good operating condition;

(c) be equipped to permit the orderly storage of prescription drugs and durable medical equipment in a manner to permit clear identification, separation and easy retrieval of products and an environment necessary to maintain the integrity of the product inventory;

(d) be equipped to permit practice within the standards and ethics of the profession as dictated by the usual and ordinary scope of practice to be conducted within that facility;

(e) be stocked with the quality and quantity of product necessary for the facility to meet its scope of practice in a manner consistent with the public health, safety and welfare; and

(f) if dispensing controlled substances, be equipped with a security system to:

(i) permit detection of entry at all times when the facility is closed; and

(ii) provide notice of unauthorized entry to an individual ~~who is able to respond quickly and reasonably assess the entry and resolve the matter;~~ and

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

(2) The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs. If a

refrigerator or freezer is necessary to properly store drugs at the pharmacy, ~~the pharmacy shall keep a daily written or electronic log of the temperature of the refrigerator [and] or freezer on days of operation. The pharmacy shall retain each log entry for at least three years~~ ~~shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration or freezing~~.

(3) Facilities engaged in simple, moderate or complex non-sterile or any level of sterile compounding activities shall be required to maintain proper records and procedure manuals and establish quality control measures to ensure stability, equivalency where applicable and sterility. The following requirements shall be met:

(a) shall follow USP-NF Chapter 795, compounding of non-sterile preparations, and USP-NF Chapter 797 if compounding sterile preparations;

(b) may compound in anticipation of receiving prescriptions in limited amounts;

(c) bulk active ingredients shall:

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

(ii) not be listed on the federal Food and Drug Administration list of drug products withdrawn or removed from the market for reasons of safety or effectiveness;

(d) a master worksheet shall be ~~developed and~~ approved by a pharmacist or DMP for each batch of sterile or non-sterile pharmaceuticals to be prepared. Once approved, a duplicate of the master worksheet shall be used as the preparation worksheet from which each batch is prepared and on which all documentation for that batch occurs. The master worksheet sheet may be stored electronically and shall contain at a minimum:

(i) the formula;

(ii) the components;

(iii) the compounding directions;

(iv) a sample label information;

(v) evaluation and testing requirements;

(vi) sterilization methods, if applicable;

(vii) specific equipment used during preparation such as specific compounding device; and

(viii) storage requirements;

(e) a preparation worksheet sheet for each batch of sterile or non-sterile pharmaceuticals shall document the following:

(i) identity of all solutions and ingredients and their corresponding amounts, concentrations, or volumes;

(ii) manufacturer lot number for each component;

(iii) component manufacturer or suitable identifying number;

(iv) container specifications (e.g. syringe, pump cassette);

(v) unique lot or control number assigned to batch;

(vi) beyond use date of batch prepared products;

(vii) date of preparation;

(viii) name, initials or electronic signature of the person or persons involved in the preparation;

(ix) names, initials or electronic signature of the responsible pharmacist or DMP;

(x) end-product evaluation and testing specifications, if applicable; and

(xi) comparison of actual yield to anticipated yield, when appropriate;

(f) the label of each batch prepared of sterile or non-sterile pharmaceuticals shall bear at a minimum:

- (i) the unique lot number assigned to the batch;
- (ii) all solution and ingredient names, amounts, strengths and concentrations, when applicable;
- (iii) quantity;
- (iv) beyond use date and time, when applicable;
- (v) appropriate ancillary instructions, such as storage instructions or cautionary statements, including cytotoxic warning labels where appropriate; and
- (vi) device-specific instructions, where appropriate;
- (g) the beyond use date assigned shall be based on currently available drug stability information and sterility considerations or appropriate in-house or contract service stability testing;

(i) sources of drug stability information shall include the following:

- (A) references can be found in Trissel's "Handbook on Injectable Drugs", 17th Edition, October 31, 2012;
- (B) manufacturer recommendations; and
- (C) reliable, published research;
- (ii) when interpreting published drug stability information, the pharmacist or DMP shall consider all aspects of the final sterile product being prepared such as drug reservoir, drug concentration and storage conditions; and
- (iii) methods for establishing beyond use dates shall be documented; and
- (h) there shall be a documented, ongoing quality control program that monitors and evaluates personnel performance, equipment and facilities that follows the USP-NF Chapters 795 and 797 standards.

(4) The facility shall have current and retrievable editions of the following reference publications in print or electronic format and readily available and retrievable to facility personnel:

- (a) Title 58, Chapter 1, Division of Occupational and Professional Licensing Act
- (b) R156-1, General Rule of the Division of Occupational and Professional Licensing;
- (c) Title 58, Chapter 17b, Pharmacy Practice Act;
- (d) R156-17b, Utah Pharmacy Practice Act Rule;
- (e) Title 58, Chapter 37, Utah Controlled Substances Act;
- (f) R156-37, Utah Controlled Substances Act Rule;
- (g) Title 58, Chapter 37f, Controlled Substance Database Act;

(h) R156-37f, Controlled Substance Database Act Rule;

(i) Code of Federal Regulations (CFR) 21, Food and Drugs, Part 1300 to end or equivalent such as the USP DI Drug Reference Guides;

(j) current FDA Approved Drug Products (orange book); and

(k) any other general drug references necessary to permit practice dictated by the usual and ordinary scope of practice to be conducted within that facility.

(5) The facility shall maintain a current list of licensed employees involved in the practice of pharmacy at the facility. The list shall include individual licensee names, license classifications, license numbers, and license expiration dates. The list shall be readily retrievable for inspection by the Division and may be maintained in paper or electronic form.~~[The facility shall post the~~

~~license of the facility and the license or a copy of the license of each pharmacist, pharmacy intern and pharmacy technician who is employed in the facility, but may not post the license of any pharmacist, pharmacy intern or pharmacy technician not actually employed in the facility.]~~

(6) Facilities shall have a counseling area to allow for confidential patient counseling, where applicable.

~~(7) A pharmacy shall not dispense a prescription drug or device to a patient unless a pharmacist or DMP is physically present and immediately available in the facility. [If the pharmacy is located within a larger facility such as a grocery or department store, and a licensed Utah pharmacist is not immediately available in the facility, the pharmacy shall not remain open to pharmacy patients and shall be locked in such a way as to bar entry to the public or any non-pharmacy personnel. All pharmacies located within a larger facility shall be locked and enclosed in such a way as to bar entry by the public or any non-pharmacy personnel when the pharmacy is closed.]~~

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

(9) The facility or parent company shall maintain a [permanent log]record for not less than 5 years of the initials or identification codes ~~[which]that~~ identify each dispensing pharmacist or DMP by name. The initials or identification code shall be unique to ensure that each pharmacist or DMP can be identified; therefore identical initials or identification codes shall not be used.

(10) The pharmacy facility shall maintain copy 3 of DEA order form (Form 222) ~~[which]that~~ has been properly dated, initialed and filed and all copies of each unaccepted or defective order form and any attached statements or other documents.

(11) If applicable, a hard copy of the power of attorney authorizing a pharmacist, DMP, or DMP designee to sign DEA order forms (Form 222) shall be available to the Division whenever necessary.

(12) A [P]pharmacist[s], DMP or other responsible individual[s] shall verify that controlled substances are listed on the suppliers' invoices and were actually received by clearly recording their initials and the actual date of receipt of the controlled substances.

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

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

(15) The pharmacy facility shall maintain hard copy reports of surrender or destruction of controlled substances and legend drugs submitted to appropriate state or federal agencies.

(16) If the pharmacy does not store drugs in a locked cabinet and has~~[includes]~~ a drop/false ceiling, the pharmacy's perimeter walls shall extend to the hard deck, or other measures shall be taken to prevent unauthorized entry into the pharmacy.

R156-17b-614f. Operating Standards - Class A, B, D, and E - Central Prescription Processing and Filling.

In accordance with Subsection 58-17b-601(1), the following operating standards apply to Class A, Class B, Class D and Class E pharmacies that engage in central prescription processing or central prescription filling. The operating standards include:

(1) A pharmacy may perform centralized prescription processing or centralized prescription filling services for a dispensing pharmacy if the parties:

(a) have common ownership or common administrative control; or

(b) have a written contract outlining the services to be provided and the responsibilities and accountabilities of each party in fulfilling the terms of said contract in compliance with federal and state laws and regulations; and

(c) share a common electronic file or have appropriate technology to allow access to sufficient information necessary or required to fill or refill a prescription drug order.

(2) The parties performing or contracting for centralized prescription processing or filling services shall maintain a policy and procedures manual, and documentation of implementation, which shall be made available to the Division upon inspection and which includes the following:

(a) a description of how the parties will comply with federal and state laws and regulations;

(b) appropriate records to identify the responsible pharmacists and the dispensing and counseling process;

(c) a mechanism for tracking the prescription drug order during each step in the dispensing process;

(d) a description of adequate security to protect the integrity and prevent the illegal use or disclosure of protected health information; and

(e) a continuous quality improvement program for pharmacy services designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems.

R156-17b-615. Operating Standards - Class C Pharmacy - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer~~[in Utah].~~

In accordance with Subsections 58-17b-102(~~[44]47~~) and 58-17b-601(1), the operating standards for Class C pharmacies designated as pharmaceutical wholesaler/distributor and pharmaceutical manufacturer licensees includes the following:

(1) ~~[Every]Each~~ pharmaceutical wholesaler or manufacturer that ~~[engages in the wholesale distribution and manufacturing of]~~distributes or manufactures drugs or medical devices ~~[located in this state]in Utah~~ shall be licensed by the Division. A separate license shall be obtained for each separate location engaged in the distribution or manufacturing of prescription drugs. Business names cannot be identical to the name used by another unrelated wholesaler licensed to purchase drugs and devices in Utah.

(2) Manufacturers distributing only their own FDA-approved prescription drugs or co-licensed product shall satisfy this requirement by registering their establishment with the Federal Food and Drug Administration pursuant to 21 CFR Part 207 and submitting the information required by 21 CFR Part 205, including any amendments thereto, to the Division.

(3) An applicant for licensure as a pharmaceutical wholesale distributor shall provide the following minimum information:

(a) All trade or business names used by the licensee (including "doing business as" and "formerly known as");

(b) Name of the owner and operator of the license as follows:

(i) if a person, the name, business address, social security number and date of birth;

(ii) if a partnership, the name, business address, and social security number and date of birth of each partner, and the partnership's federal employer identification number;

(iii) if a corporation, the name, business address, social security number and date of birth, and title of each corporate officer and director, the corporate names, the name of the state of incorporation, federal employer identification number, and the name of the parent company, if any, but if a publicly traded corporation, the social security number and date of birth for each corporate officer shall not be required;

(iv) if a sole proprietorship, the full name, business address, social security number and date of birth of the sole proprietor and the name and federal employer identification number of the business entity;

(v) if a limited liability company, the name of each member, social security number of each member, the name of each manager, the name of the limited liability company and federal employer identification number, and the name of the state ~~in~~ ~~which~~ ~~where~~ the limited liability company was organized; and

(c) any other relevant information required by the Division.

(4) The licensed facility need not be under the supervision of a licensed pharmacist, but shall be under the supervision of a designated representative who meets the following criteria:

(a) is at least 21 years of age;

(b) has been employed full time for at least three years in a pharmacy or with a pharmaceutical wholesaler in a capacity related to the dispensing and distribution of, and recordkeeping related to prescription drugs;

(c) is employed by the applicant full time in a managerial level position;

(d) is actively involved in and aware of the actual daily operation of the pharmaceutical wholesale distribution;

(e) is physically present at the facility during regular business hours, except when the absence of the designated representative is authorized, including but not limited to, sick leave and vacation leave; and

(f) is serving in the capacity of a designated representative for only one licensee at a time.

(5) The licensee shall provide the name, business address, and telephone number of a person to serve as the designated representative for each facility of the pharmaceutical wholesaler that engages in the distribution of drugs or devices.

~~[~~~~(6) Each facility that engages in pharmaceutical wholesale distribution and manufacturing facilities shall undergo an inspection by the Division for the purposes of inspecting the pharmaceutical wholesale distribution or manufacturing operation prior to initial licensure and periodically thereafter with a schedule to be determined by the Division.~~~~]~~

~~[(7)]6~~ All pharmaceutical wholesalers and manufacturer shall publicly display or have readily available all licenses and the most recent inspection report administered by the Division.

~~[(8)]7~~ All Class C pharmacies shall:

(a) be of suitable size and construction to facilitate cleaning, maintenance and proper operations;

(b) have storage areas designed to provide adequate lighting, ventilation, sanitation, space, equipment and security conditions;

(c) have the ability to control temperature and humidity within tolerances required by all prescription drugs and prescription drug precursors handled or used in the distribution or manufacturing activities of the applicant or licensee;

(d) provide for a quarantine area for storage of prescription drugs and prescription drug precursors that are outdated, damaged, deteriorated, misbranded, adulterated, opened or unsealed containers that have once been appropriately sealed or closed or in any other way unsuitable for use or entry into distribution or manufacturing;

(e) be maintained in a clean and orderly condition; and

(f) be free from infestation by insects, rodents, birds or vermin of any kind.

([9]8) Each facility used for wholesale drug distribution or manufacturing of prescription drugs shall:

(a) be secure from unauthorized entry;

(b) limit access from the outside to a minimum in conformance with local building codes, life and safety codes and control access to persons to ensure unauthorized entry is not made;

(c) limit entry into areas where prescription drugs, prescription drug precursors, or prescription drug devices are held to authorized persons who have a need to be in those areas;

(d) be well lighted on the outside perimeter;

(e) be equipped with an alarm system to permit detection of entry and notification of appropriate authorities at all times when the facility is not occupied for the purpose of engaging in distribution or manufacturing of prescription drugs; and

(f) be equipped with security measures, systems and procedures necessary to provide reasonable security against theft and diversion of prescription drugs or alteration or tampering with computers and records pertaining to prescription drugs or prescription drug precursors.

([10]9) Each facility shall provide the storage of prescription drugs, prescription drug precursors, and prescription drug devices in accordance with the following:

(a) all prescription drugs and prescription drug precursors shall be stored at appropriate temperature, humidity and other conditions in accordance with labeling of such prescription drugs or prescription drug precursors or with requirements in the USP-NF;

(b) if no storage requirements are established for a specific prescription drug, prescription drug precursor, or prescription drug devices, the products shall be held in a condition of controlled temperature and humidity as defined in the USP-NF to ensure that its identity, strength, quality and purity are not adversely affected; and

(c) there shall be established a system of manual, electromechanical or electronic recording of temperature and humidity in the areas in which prescription drugs, prescription drug precursors, and prescription drug devices are held to permit review of the record and ensure that the products have not been subjected to conditions ~~which~~ that are outside of established limits.

([11]10) Each person who is engaged in pharmaceutical wholesale distribution of prescription drugs for human use that leave, or have ever left, the normal distribution channel shall, before

each pharmaceutical wholesale distribution of such drug, provide a pedigree to the person who receives such drug. A retail pharmacy or pharmacy warehouse shall comply with the requirements of this section only if the pharmacy engages in pharmaceutical wholesale distribution of prescription drugs. The pedigree shall:

(a) include all necessary identifying information concerning each sale in the chain of distribution of the product from the manufacturer, through acquisition and sale by any pharmaceutical wholesaler, until sale to a pharmacy or other person dispensing or administering the prescription drug. At a minimum, the necessary chain of distribution information shall include:

(i) name, address, telephone number, and if available, the email address of each owner of the prescription drug, and each pharmaceutical wholesaler of the prescription drug;

(ii) name and address of each location from which the product was shipped, if different from the owner's;

(iii) transaction dates;

(iv) name of the prescription drug;

(v) dosage form and strength of the prescription drug;

(vi) size of the container;

(vii) number of containers;

(viii) lot number of the prescription drug;

(ix) name of the manufacturer of the finished dose form;

and

(x) National Drug Code (NDC) number.

(b) be maintained by the purchaser and the pharmaceutical wholesaler for five years from the date of sale or transfer and be available for inspection or use upon a request of an authorized officer of the law.

([12]11) Each facility shall comply with the following requirements:

(a) in general, each person who is engaged in pharmaceutical wholesale distribution of prescription drugs shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of the prescription drugs. These records shall include pedigrees for all prescription drugs that leave the normal distribution channel;

(b) upon receipt, each outside shipping container containing prescription drugs, prescription drug precursors, or prescription drug devices shall be visibly examined for identity and to prevent the acceptance of prescription drugs, prescription drug precursors, or prescription drug devices that are contaminated, reveal damage to the containers or are otherwise unfit for distribution:

(i) prescription drugs, prescription drug precursors, or prescription drug devices that are outdated, damaged, deteriorated, misbranded, adulterated or in any other way unfit for distribution or use in manufacturing shall be quarantined and physically separated from other prescription drugs, prescription drug precursors or prescription drug devices until they are appropriately destroyed or returned to their supplier; and

(ii) any prescription drug or prescription drug precursor whose immediate sealed or outer secondary sealed container has been opened or in any other way breached shall be identified as such and shall be quarantined and physically separated from other prescription drugs and prescription drug precursors until they are appropriately destroyed or returned to their supplier;

(c) each outgoing shipment shall be carefully inspected for identity of the prescription drug products or devices and to

ensure that there is no delivery of prescription drugs or devices that have been damaged in storage or held under improper conditions:

(i) if the conditions or circumstances surrounding the return of any prescription drug or prescription drug precursor cast any doubt on the product's safety, identity, strength, quality or purity, then the drug shall be appropriately destroyed or returned to the supplier, unless examination, testing or other investigation proves that the product meets appropriate and applicable standards related to the product's safety, identity, strength, quality and purity;

(ii) returns of expired, damaged, recalled, or otherwise non-saleable prescription drugs shall be distributed by the receiving pharmaceutical wholesale distributor only to the original manufacturer or a third party returns processor that is licensed as a pharmaceutical wholesale distributor under this chapter;

(iii) returns or exchanges of prescription drugs (saleable or otherwise), including any redistribution by a receiving pharmaceutical wholesaler, shall not be subject to the pedigree requirements, so long as they are exempt from the pedigree requirement under the FDA's Prescription Drug Marketing Act guidance or regulations; and

(d) licensee under this Act and pharmacies or other persons authorized by law to dispense or administer prescription drugs for use by a patient shall be accountable for administering their returns process and ensuring that all aspects of their operation are secure and do not permit the entry of adulterated and counterfeit prescription drugs.

(~~13~~12) A manufacturer or pharmaceutical wholesaler shall furnish prescription drugs only to a person licensed by the Division or to another appropriate state licensing authority to possess, dispense or administer such drugs for use by a patient.

(~~14~~13) Prescription drugs furnished by a manufacturer or pharmaceutical wholesaler shall be delivered only to the business address of a person described in Subsections R156-17b-102(~~16~~19) (c) and R156-17b-615(13), or to the premises listed on the license, or to an authorized person or agent of the licensee at the premises of the manufacturer or pharmaceutical wholesaler if the identity and authority of the authorized agent is properly established.

(~~15~~14) Each facility shall establish and maintain records of all transactions regarding the receipt and distribution or other disposition of prescription drugs and prescription drug precursors and shall make inventories of prescription drugs and prescription drug precursors and required records available for inspection by authorized representatives of the federal, state and local law enforcement agencies in accordance with the following:

(a) there shall be a record of the source of the prescription drugs or prescription drug precursors to include the name and principal address of the seller or transferor and the address of the location from which the drugs were shipped;

(b) there shall be a record of the identity and quantity of the prescription drug or prescription drug precursor received, manufactured, distributed or shipped or otherwise disposed of by specific product and strength;

(c) there shall be a record of the dates of receipt and distribution or other disposal of any product;

(d) there shall be a record of the identity of persons to whom distribution is made to include name and principal address of the receiver and the address of the location to which the products were shipped;

(e) inventories of prescription drugs and prescription drug precursors shall be made available during regular business hours to authorized representatives of federal, state and local law enforcement authorities;

(f) required records shall be made available for inspection during regular business hours to authorized representatives of federal, state and local law enforcement authorities and such records shall be maintained for a period of two years following disposition of the products; and

(g) records that are maintained on site or immediately retrievable from computer or other electronic means shall be made readily available for authorized inspection during the retention period; or if records are stored at another location, they shall be made available within two working days after request by an authorized law enforcement authority during the two year period of retention.

(~~16~~15) Each facility shall establish, maintain and adhere to written policies and procedures [~~which~~that] shall be followed for the receipt, security, storage, inventory, manufacturing, distribution or other disposal of prescription drugs or prescription drug precursors, including policies and procedures for identifying, recording and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories. In addition, the policies shall include the following:

(a) a procedure whereby the oldest approved stock of a prescription drug or precursor product is distributed or used first with a provision for deviation from the requirement if such deviation is temporary and appropriate;

(b) a procedure to be followed for handling recalls and withdrawals of prescription drugs adequate to deal with recalls and withdrawals due to:

(i) any action initiated at the request of the FDA or other federal, state or local law enforcement or other authorized administrative or regulatory agency;

(ii) any voluntary action to remove defective or potentially defective drugs from the market; or

(iii) any action undertaken to promote public health, safety or welfare by replacement of existing product with an improved product or new package design;

(c) a procedure to prepare for, protect against or handle any crisis that affects security or operation of any facility in the event of strike, fire, flood or other natural disaster or other situations of local, state or national emergency;

(d) a procedure to ensure that any outdated prescription drugs or prescription drug precursors shall be segregated from other drugs or precursors and either returned to the manufacturer, other appropriate party or appropriately destroyed;

(e) a procedure for providing for documentation of the disposition of outdated, adulterated or otherwise unsafe prescription drugs or prescription drug precursors and the maintenance of that documentation available for inspection by authorized federal, state or local authorities for a period of five years after disposition of the product;

(f) a procedure for identifying, investigating and reporting significant drug inventory discrepancies (involving counterfeit drugs suspected of being counterfeit, contraband, or suspect of being contraband) and reporting of such discrepancies within three (3) business days to the Division and/or appropriate federal or state agency upon discovery of such discrepancies; and

(g) a procedure for reporting criminal or suspected criminal activities involving the inventory of drugs and devices to the Division, FDA and if applicable, Drug Enforcement Administration (DEA), within three (3) business days.

~~(17)~~16 Each facility shall establish, maintain and make available for inspection by authorized federal, state and local law enforcement authorities, lists of all officers, directors, managers and other persons in charge which lists shall include a description of their duties and a summary of their background and qualifications.

~~(18)~~17 Each facility shall comply with laws including:

(a) operating within applicable federal, state and local laws and regulations;

(b) permitting the state licensing authority and authorized federal, state and local law enforcement officials, upon presentation of proper credentials, to enter and inspect their premises and delivery vehicles and to audit their records and written operating policies and procedures, at reasonable times and in a reasonable manner, to the extent authorized by law; and

(c) obtaining a controlled substance license from the Division and registering with the Drug Enforcement Administration (DEA) if they engage in distribution or manufacturing of controlled substances and shall comply with all federal, state and local regulations applicable to the distribution or manufacturing of controlled substances.

~~(19)~~18 Each facility shall be subject to and shall abide by applicable federal, state and local laws that relate to the salvaging or reprocessing of prescription drug products.

~~(20)~~19 ~~[A person who is engaged in the wholesale distribution or manufacturing of prescription drugs but does not have a facility located within Utah in which prescription drugs are located, stored, distributed or manufactured is exempt from Utah licensure as a Class C pharmacy, if said person is currently licensed and in good standing in each state of the United States in which that person has a facility engaged in distribution or manufacturing of prescription drugs entered into interstate commerce.~~

~~(21) No facility located at the same address shall be dually licensed as both a Class C pharmacy and any other classification of Class A or B pharmacy. A Class C pharmacy shall not be located in the same building as a separately licensed Class A, B, D, or E pharmacy unless the two pharmacies are located in different suites as recognized by the United States Postal Service. Two Class C pharmacies may be located at the same address in the same suite if the pharmacies:~~

~~(a) are under the same ownership;~~

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

~~(c) have traceability with a clear audit trail that distinguishes a pharmacy's purchases and distributions. [Nothing within this section prevents a facility from obtaining licensure for a secondary address which operates separate and apart from any other facility upon obtaining proper licensure.]~~

R156-17b-616. Operating Standards - Class D Pharmacy - Out of State Mail Order Pharmacies.

(1) In accordance with Subsections 58-1-301(3) and 58-17b-306(2), an application for licensure as a Class D pharmacy shall include:

(a) a pharmacy care protocol that includes the operating standards established in Subsections R156-17b-610(1) and (8) and R156-17b-612(1) through (4);

(b) a copy of the pharmacist's license for the PIC; and

(c) a copy of the most recent state inspection or NABP inspection completed as part of the NABP Verified Pharmacy Program (VPP) showing the status of compliance with the laws and regulations for physical facility, records and operations.

(2) An out of state mail order pharmacy that compounds ~~must~~shall follow the USP-NF Chapter 795 Compounding of non-sterile preparations and Chapter 797 Compounding of sterile preparations.

R156-17b-617a. Class E Pharmacy Operating Standards - General Provisions.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), Class E pharmacies shall have a written pharmacy care protocol ~~which~~that includes:

(a) the identity of the supervisor or director;

(b) a detailed plan of care;

(c) the identity of the drugs ~~that will~~to be purchased, stored, used and accounted for; and

(d) the identity of any licensed healthcare provider associated with the operation.

(2) A Class E pharmacy preparing sterile compounds ~~must~~shall follow the USP-NF Chapter 797 Compounding for sterile preparations.

R156-17b-617c. Class E Pharmacy Operating Standards - Animal Control or Animal Narcotic Detection Training.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), an animal control or animal narcotic detection training facility shall:

(a) maintain for immediate retrieval a perpetual inventory of all drugs including controlled substances that are purchased, stored, processed and administered;

(b) maintain for immediate retrieval a current list of authorized employees and their training with regards to the handling and use of legend drugs and/or controlled substances in relation to euthanasia, ~~or~~immobilization, or narcotic detection training of animals;

(c) maintain, for immediate retrieval documentation of all required materials pertaining to legitimate animal scientific drug research, guidance policy and other relevant documentation from the agency's Institutional Review Board, if applicable;

(d) maintain stocks of legend drugs and controlled substances to the smallest quantity needed for efficient operation to conduct animal euthanasia, ~~or~~immobilization, or narcotic detection training purposes;

(e) maintain all legend drugs and controlled substances in an area within a building having perimeter security ~~which~~that limits access during working hours, provides adequate security after working hours, and has the following security controls:

(i) a permanently secured safe or steel cabinet substantially constructed with self-closing and self-locking doors employing either multiple position combination or key lock type locking mechanisms; and

(ii) requisite key control, combination limitations, and change procedures;

(f) have a responsible party who is the only person authorized to purchase and reconcile legend drugs and controlled substances and is responsible for the inventory of the animal control or animal narcotic detection training facility pharmacy;

(g) ensure that only defined and approved individuals pursuant to the written facility protocol have access to legend drugs and controlled substances; and

(h) develop and maintain written policies and procedures for immediate retrieval ~~[which]~~that include the following:

(i) the type of activity conducted with regards to legend drugs and/or controlled substances;

(ii) how medications are purchased, inventoried, prepared and used in relation to euthanasia, ~~[or]~~immobilization, or narcotic detection training of animals;

(iii) the type, form and quantity of legend drugs and/or controlled substances handled;

(iv) the type of safe or equally secure enclosures or other storage system used for the storage and retrieval of legend drugs and/or controlled substances;

(v) security measures in place to protect against theft or loss of legend drugs and controlled substances;

(vi) adequate supervision of employees having access to manufacturing and storage areas;

(vii) maintenance of records documenting the initial and ongoing training of authorized employees with regard to all applicable protocols;

(viii) maintenance of records documenting all approved and trained authorized employees who may have access to the legend drugs and controlled substances; and

(ix) procedures for allowing the presence of business guests, visitors, maintenance personnel, and non-employee service personnel.

~~_____ (2) In accordance with Section 58-37-6 and Subsection R156-37-305(1), individuals employed by an agency of the State or any of its political subdivisions who are specifically authorized in writing by their employer to possess specified controlled substances in specified reasonable and necessary quantities for the purpose of euthanasia or immobilization upon animals, shall be exempt from having a controlled substance license if the employing agency or jurisdiction has obtained a controlled substance license and a DEA registration number, and uses the controlled substances according to a written protocol in performing animal euthanasia or immobilization.~~

R156-17b-617f. Class E Pharmacy Operating Standards - Medical Gas Provider.

In accordance with Section 58-17b-302 and Subsection 58-17b~~[-]~~601(1), a medical gas facility shall:

(a) develop standard operating policy and procedures manual;

(b) conduct training and maintain evidence of employee training programs and completion certificates;

(c) maintain documentation and records of all transactions to include:

(i) batch production records

(ii) certificates of analysis

(iii) dates of calibration of gauges;

(d) provide adequate space for orderly placement of equipment and finished product;

(e) maintain gas tanks securely;

(f) designate return and quarantine areas for separation of products;

(g) label all products;

(h) fill cylinders without using adapters; and

(i) comply with all FDA standards and requirements.

R156-17b-618. Change in Ownership or Location.

(1) In accordance with Section 58-17b-614, except for changes in ownership caused by a change in the stockholders in corporations ~~[which]~~that are publicly listed and whose stock is publicly traded, a licensed pharmaceutical facility shall make application for a new license and receive approval from the Division no later than ten business days prior to any of the following proposed changes:

(a) location or address, except for a reassignment of a new address by the United States Postal Service that does not involve any change of location;

(b) name, except for a doing-business-as (DBA) name change that is properly registered with the Division of Corporations and filed with the Division of Occupational and Professional Licensing; or

(c) ownership~~[-]~~ when one of the following occurs:

(i) a change in entity type; or

(ii) the sale or transfer of 51% or more of an entity's ownership or membership interest to another individual or entity.

(2) Upon approval of the change in location, name, or ownership, and the issuance of a new license, the original license shall be surrendered to the Division.

~~(b)3~~ Upon approval of the name change, the original licenses shall be surrendered to the Division.

R156-17b-622. Standards - Dispensing Training Program.

(1) In accordance with Subsection R156-17b-102(17), a formal or on-the-job dispensing training program completed by a DMP designee is one that covers the following topics to the extent that the topics are relevant and current to the DMP practice where the DMP designee is employed:

(a) role of the DMP designee;

(b) laws affecting prescription drug dispensing;

(c) pharmacology including the identification of drugs by trade and generic names, and therapeutic classifications;

(d) pharmaceutical terminology, abbreviations and symbols;

(e) pharmaceutical calculations;

(f) drug packaging and labeling;

(g) computer applications in the pharmacy;

(h) sterile and non-sterile compounding;

(i) medication errors and safety;

(j) prescription and order entry and fill process;

(k) pharmacy inventory management; and

(l) pharmacy billing and reimbursement.

(2) Documentation demonstrating successful completion of a formal or on-the-job dispensing training program shall include the following information:

(a) name of individual trained;

(b) name of individual or entity that provided training;

- (c) list of topics covered during the training program; and
(d) training completion date.

R156-17b-623. Standards - Approved Cosmetic Drugs and Injectable Weight Loss Drugs for Dispensing Medical Practitioners.

(1) A cosmetic drug that may be dispensed by a DMP in accordance with Section 58-17b-803 is limited to Latisse.

(2) An injectable weight loss drug that may be dispensed by a DMP in accordance with Section 58-17b-803 is limited to human chorionic gonadotropin.

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

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

KEY: pharmacists, licensing, pharmacies

Date of Enactment or Last Substantive Amendment: [~~August 21, 2014~~2015]

Notice of Continuation: February 23, 2010

Authorizing, and Implemented or Interpreted Law: 58-17b-101; 58-17b-601(1); 58-37-1; 58-1-106(1)(a); 58-1-202(1)(a)

Commerce, Occupational and
Professional Licensing
R156-37

Utah Controlled Substances Act Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39015

FILED: 12/18/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: S.B. 55 and S.B. 138 were passed during the 2014 General Session. S.B. 55 created a new license classification within the Pharmacy Practice Act (Title 58, Chapter 17b) for dispensing medication practitioner clinic pharmacies. S.B. 138 amended the Controlled Substances Act (Title 58, Chapter 37) to allow a prescriber to include more than one prescription of a controlled substance per prescription form. Various rule amendments are necessary due to these statutory revisions. Other rule amendments are being proposed at the request of the Board of Pharmacy.

SUMMARY OF THE RULE OR CHANGE: The following rule amendments are made throughout Rule R156-37: updating of references, renumbering of paragraphs, and minor

grammatical and stylistic changes. In Subsection R156-37-301(1), amendments are necessary due to S.B. 55. Other amendments are necessary due to recent amendments to Rule R156-17b. Subsection R156-37-302(2)(b) is unnecessary because employees of animal control facilities are exempted from controlled substance licensure in Subsection R156-37-305(4). Section R156-37-304 is removed because the Board of Pharmacy and other licensing boards requested that the controlled substance examination no longer be required. Subsection R156-37-305(1) is removed because this exemption was moved to Subsection R156-37-305(3). In Subsection R156-37-305(2), individuals and entities engaged in research using pharmaceuticals within a university research facility are exempt from controlled substance licensure. The Board of Pharmacy supports this amendment primarily because S.B. 14 passed in the 2013 General Session exempted these individuals and facilities from pharmacy and pharmacist licensure. In Subsection R156-37-305(4), individuals employed by a facility engaged in certain activities are exempted from controlled substance licensure. An individual may qualify for this exemption as long as the facility employing that individual has obtained a controlled substance license, has obtained a Drug Enforcement Administration (DEA) registration number, and uses the controlled substances according to a written protocol. Subsection R156-37-603(3) is removed due to S.B. 138 (2014). Subsection R156-37606(1)(b) is removed because the Division no longer authorizes licensees to dispose of controlled substances in the manner described in this subsection.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 58-1-106(1)(a) and Subsection 58-37-6(1)(a) and Subsection 58-37f-301(1)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: Proposed amendments to Subsections R156-37-305(2) and (3) grant controlled substance license exemptions to certain individuals and entities. The Division is unable to estimate the number of individuals and entities that will no longer be required to submit a license application due to this amendment; however, the Division will experience a cost impact of \$100 per initial license application and \$78 per license renewal application that is not submitted. Removing the exam requirement in Section R156-37-304 does not have a cost impact on the Division because this is a true or false open-book exam that is part of the license application. The Division has never collected a fee for this exam.
- ◆ LOCAL GOVERNMENTS: The proposed amendments apply only to certain licensees and applicants for a controlled substance license. As a result, the proposed amendments do not apply to local governments.
- ◆ SMALL BUSINESSES: The proposed amendments to Subsections R156-37-305(2) and (3) grant controlled substance license exemptions to certain entities. The Division is unable to estimate the number of entities that will no longer be required to submit a license application due to this amendment; however, impacted entities will experience a

cost savings of \$100 per initial license application and \$78 per license renewal application that is not submitted.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendments to Subsections R156-37-305(2) and (3) grant controlled substance license exemptions to certain individuals. The Division is unable to estimate the number of individuals that will no longer be required to submit a license application due to this amendment; however, impacted individuals will experience a cost savings of \$100 per initial license application and \$78 per license renewal application that is not submitted.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments to Subsections R156-37-305(2) and (3) grant controlled substance license exemptions to certain individuals. The Division is unable to estimate the number of individuals that will no longer be required to submit a license application due to this amendment; however, impacted individuals will experience a cost savings of \$100 per initial license application and \$78 per license renewal application that is not submitted.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In addition to making technical corrections, this filing expands the list of persons who may be licensed to deal with controlled substances; eliminates an examination requirement from the licensing process; deletes a provision (prohibiting a prescriber from including more than one controlled substance on a single prescription form), which has become moot due to legislative action; and deletes language describing a controlled substance disposal method that the Division no longer approves. It is not anticipated that this filing will pose any fiscal impact to businesses. Any savings that businesses might realize from being permitted to use a single prescription form for multiple controlled substances will be minimal, as will any costs that might attend a business's being minimally restricted in its methods of drug disposal.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE
OCCUPATIONAL AND PROFESSIONAL
LICENSING
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Rich Oborn by phone at 801-530-6767, by FAX at 801-530-6511, or by Internet E-mail at roborn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/17/2015

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 01/20/2015 08:30 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 210 (second floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 02/24/2015

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-37. Utah Controlled Substances Act Rule.
R156-37-301. License Classifications - Restrictions.

(1) Consistent with the provisions of law, the Division may issue a controlled substance license to manufacture, produce, distribute, dispense, prescribe, obtain, administer, analyze, or conduct research with controlled substances in Schedules I, II, III, IV, or V to qualified persons. Licenses shall be issued to qualified persons in the following categories:

- (a) pharmacist;
- (b) optometrist;
- (c) podiatric physician;
- (d) dentist;
- (e) osteopathic physician and surgeon;
- (f) physician and surgeon;
- (g) physician assistant;
- (h) veterinarian;
- (i) advanced practice registered nurse or advanced practice registered nurse-certified registered nurse anesthetist;
- (j) certified nurse midwife;
- (k) naturopathic physician;
- (l) Class A pharmacy-retail operations located in Utah;
- (m) Class B pharmacy located in Utah providing services to a target population unique to the needs of the healthcare services required by the patient, including:
 - (i) closed door pharmacy;
 - (ii) hospital clinic pharmacy;
 - (iii) methadone clinic[s] pharmacy;
 - (iv) nuclear pharmacy;
 - (v) branch pharmacy;
 - (vi) hospice facility pharmacy;
 - (vii) veterinarian pharmaceutical facility pharmacy;
 - (viii) pharmaceutical administration facility pharmacy;
- ~~[-and]~~
- (ix) sterile product preparation facility pharmacy; and
- (x) dispensing medical practitioner clinic pharmacy.
- (n) Class C pharmacy [~~located in Utah~~]-engaged in:
 - (i) manufacturing;
 - (ii) producing;
 - (iii) wholesaling; ~~[-and]~~
 - (iv) distributing; and
 - (v) reverse distributing.
- (o) Class D Out-of-state mail order pharmacies.
- (p) Class E pharmacy including:
 - (i) medical gases provider[s]; ~~[-and]~~
 - (ii) analytical [~~laboratories~~]laboratory pharmacy;
 - (iii) animal control pharmacy;
 - (iv) human clinical investigational drug research facility pharmacy; and

~~(v) animal narcotic detection training facility pharmacy.~~

(q) Utah Department of Corrections for the conduct of execution by the administration of lethal injection under its statutory authority and in accordance with its policies and procedures.

(2) A license may be restricted to the extent determined by the Division, in collaboration with appropriate licensing boards, that a restriction is necessary to protect the public health, safety or welfare, or the welfare of the licensee. A person receiving a restricted license shall manufacture, produce, obtain, distribute, dispense, prescribe, administer, analyze, or conduct research with controlled substances only to the extent of the terms and conditions under which the restricted license is issued by the Division.

R156-37-302. Qualifications for Licensure - Application Requirements.

(1) An applicant for a controlled substance license shall:

(a) submit an application in a form as prescribed by the Division; and

(b) shall pay the required fee as established by the Division under the provisions of Section 63J-1-504.

(2) Any person seeking a controlled substance license shall:

~~(a)~~ be currently licensed by the state in the appropriate professional license classification as listed in R156-37-301 and shall maintain that license classification as current at all times while holding a controlled substance license ~~or~~

~~(b)~~ be engaged in the following activities which require the administration of a controlled substance but do not require licensure under Subsection (a):

~~(i)~~ animal capture for transport or relocation as an employee or under contract with a state or federal government agency; or

~~(ii)~~ other activity approved by the Division in collaboration with the appropriate board].

(3) The Division and the reviewing board may request from the applicant information ~~which~~ that is reasonable and necessary to permit an evaluation of the applicant's:

(a) qualifications to engage in practice with controlled substances; and

(b) the public interest in the issuance of a controlled substance license to the applicant.

(4) To determine if an applicant is qualified for licensure, the Division may assign the application to a qualified and appropriate licensing board for review and recommendation to the Division with respect to issuance of a license.

~~R156-37-304. Qualifications for Licensure - Examinations.~~

~~Each applicant for a controlled substance license shall be required to pass an examination administered at the direction of the Division on the subject of controlled substance laws.~~

~~R156-37-305. Exemption from Licensure - [Animal Euthanasia and] Law Enforcement Personnel, University Research, Narcotic Detection Training of Animals, and Animal Control.~~

In accordance with Subsection 58-37-6(2)(d), the following persons are exempt from licensure under Title 58, Chapter 37:

~~(1) [Individuals employed by an agency of the State or any of its political subdivisions, who are specifically authorized in writing by the state agency or the political subdivision to possess specified controlled substances in specified reasonable and necessary quantities for the purpose of euthanasia upon animals, shall be exempt from having a controlled substance license if the agency or jurisdiction employing that individual has obtained a controlled substance license, a DEA registration number, and uses the controlled substances according to a written protocol in performing animal euthanasia.~~

~~(2)~~ Law enforcement agencies and their sworn personnel are exempt from the licensing requirements of the Controlled Substance Act to the extent their official duties require them to possess controlled substances; they act within the scope of their enforcement responsibilities; they maintain accurate records of controlled substances ~~which~~ that come into their possession; and they maintain an effective audit trail. Nothing herein shall authorize law enforcement personnel to purchase or possess controlled substances for administration to animals unless the purchase or possession is in accordance with a duly issued controlled substance license.

~~(2)~~ Individuals and entities engaged in research using pharmaceuticals as defined in Subsection 58-17b-102(65) within a research facility as defined in Subsection R156-17b-102(49).

~~(3)~~ Individuals employed by a facility engaged in the following activities if the facility employing that individual has a controlled substance license in Utah, a DEA registration number, and uses the controlled substances according to a written protocol:

~~(a)~~ narcotic detection training of animals for law enforcement use; or

~~(b)~~ animal control, including:

~~(i)~~ animal euthanasia; or

~~(ii)~~ animal immobilization.

R156-37-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) a licensee with authority to prescribe or administer controlled substances:

(a) prescribing or administering to himself any Schedule II or III controlled substance ~~which~~ that is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug;

(b) prescribing or administering a controlled substance for a condition he is not licensed or competent to treat;

(2) violating any federal or state law relating to controlled substances;

(3) failing to deliver to the Division all controlled substance license certificates issued by the Division to the Division upon an action ~~which~~ that revokes, suspends or limits the license;

(4) failing to maintain controls over controlled substances ~~which~~ that would be considered by a prudent practitioner to be effective against diversion, theft, or shortage of controlled substances;

(5) being unable to account for shortages of any controlled substance inventory for which the licensee has responsibility;

(6) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to prescribe, sell,

furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(1)(s), except for legitimate medical purposes as permitted by law;

(7) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records;

(8) failing to submit controlled substance prescription information to the database manager after being notified in writing to do so.

R156-37-603. Restrictions Upon the Prescription, Dispensing and Administration of Controlled Substances.

(1) A practitioner may prescribe or administer the Schedule II controlled substance cocaine hydrochloride only as a topical anesthetic for mucous membranes in surgical situations in which it is properly indicated and as local anesthetic for the repair of facial and pediatric lacerations when the controlled substance is mixed and dispensed by a registered pharmacist in the proper formulation and dosage.

(2) A practitioner shall not prescribe or administer a controlled substance without taking into account the drug's potential for abuse, the possibility the drug may lead to dependence, the possibility the patient will obtain the drug for a nontherapeutic use or to distribute to others, and the possibility of an illicit market for the drug.

~~(3) [When writing a prescription for a controlled substance, each prescription shall contain only one controlled substance per prescription form and no other legend drug or prescription item shall be included on that form.~~

~~(4)~~ In accordance with Subsection 58-37-6(7)(f)(v)(D), unless the prescriber determines there is a valid medical reason to allow an earlier dispensing date, the dispensing date of a second or third prescription shall be no less than 30 days from the dispensing date of the previous prescription, to allow for receipt of the subsequent prescription before the previous prescription runs out.

~~(5)~~4 If a practitioner fails to document his intentions relative to refills of controlled substances in Schedules III through V on a prescription form, it shall mean no refills are authorized. No refill is permitted on a prescription for a Schedule II controlled substance.

~~(6)~~5 Refills of controlled substance prescriptions shall be permitted for the period from the original date of the prescription as follows:

(a) Schedules III and IV for six months from the original date of the prescription; and

(b) Schedule V for one year from the original date of the prescription.

~~(7)~~6 No refill may be dispensed until such time has passed since the date of the last dispensing that 80% of the medication in the previous dispensing should have been consumed if taken according to the prescriber's instruction.

~~(8)~~7 No prescription for a controlled substance shall be issued or dispensed without specific instructions from the prescriber on how and when the drug is to be used.

~~(9)~~8 Refills after expiration of the original prescription term requires the issuance of a new prescription by the prescribing practitioner.

~~(10)~~9 Each prescription for a controlled substance and the number of refills authorized shall be documented in the patient records by the prescribing practitioner.

~~(11)~~10 A practitioner shall not prescribe or administer a Schedule II controlled stimulant for any purpose except:

(a) the treatment of narcolepsy as confirmed by neurological evaluation;

(b) the treatment of abnormal behavioral syndrome, attention deficit disorder, hyperkinetic syndrome, or related disorders;

(c) the treatment of drug-induced brain dysfunction;

(d) the differential diagnostic psychiatric evaluation of depression;

(e) the treatment of depression shown to be refractory to other therapeutic modalities, including pharmacologic approaches, such as tricyclic antidepressants or MAO inhibitors;

(f) in the terminal stages of disease, as adjunctive therapy in the treatment of chronic severe pain or chronic severe pain accompanied by depression;

(g) the clinical investigation of the effects of the drugs, in which case the practitioner shall submit to the Division a written investigative protocol for its review and approval before the investigation has begun. The investigation shall be conducted in strict compliance with the investigative protocol, and the practitioner shall, within 60 days following the conclusion of the investigation, submit to the Division a written report detailing the findings and conclusions of the investigation; or

(h) in treatment of depression associated with medical illness after due consideration of other therapeutic modalities.

~~(12)~~11 A practitioner may prescribe, dispense or administer a Schedule II controlled stimulant when properly indicated for any purpose listed in Subsection ~~(11)~~10, provided that all of the following conditions are met:

(a) before initiating treatment utilizing a Schedule II controlled stimulant, the practitioner obtains an appropriate history and physical examination, and rules out the existence of any recognized contraindications to the use of the controlled substance to be utilized;

(b) the practitioner shall not prescribe, dispense or administer any Schedule II controlled stimulant when he knows or has reason to believe that a recognized contraindication to its use exists;

(c) the practitioner shall not prescribe, dispense or administer any Schedule II controlled stimulant in the treatment of a patient who he knows or should know is pregnant; and

(d) the practitioner shall not initiate or shall discontinue prescribing, dispensing or administering all Schedule II controlled stimulants immediately upon ascertaining or having reason to believe that the patient has consumed or disposed of any controlled stimulant other than in compliance with the treating practitioner's directions.

R156-37-606. Disposal of Controlled Substances.

(1) Any disposal of controlled substances by licensees shall~~;~~

~~(a)~~ be consistent with the provisions of 1307.21 of the Code of Federal Regulations~~;~~~~or~~

~~(b) require the authorization of the Division after submission to the Division to the attention of Chief Investigator of a detailed listing of the controlled substances and the quantity of each. Disposal shall be conducted in the presence of one of its investigators or a Division authorized agent as is specifically instructed by the Division in its written authorization].~~

(2) Records of disposal of controlled substances shall be maintained and made available on request to the Division or its agents for inspection for a period of five years.

KEY: controlled substances, licensing

Date of Enactment or Last Substantive Amendment: [January 8, 2013]2015

Notice of Continuation: February 21, 2012

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-37-6(1)(a); 58-37f-301(1)

Commerce, Occupational and Professional Licensing **R156-37f-102** Definitions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39020

FILED: 12/22/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Board of Pharmacy and Division of Occupational and Professional determined a proposed rule amendment needed to be filed to clarify the term "positive identification".

SUMMARY OF THE RULE OR CHANGE: This proposed rule fling establishes a definition of a term used in Subsection 58-37f-203(2)(e). The Utah Board of Pharmacy requested that "positive identification" be defined because it is not clear how a pharmacist should positively identify a customer before releasing a controlled substance.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 58-1-106(1)(a) and Subsection 58-37f-301(1)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$75 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

♦ **LOCAL GOVERNMENTS:** The proposed amendments apply only to pharmacies. As a result, the proposed amendments do not apply to local governments.

♦ **SMALL BUSINESSES:** The proposed amendments apply only to pharmacies, which many qualify as a small business.

Pharmacies will need to train their employees on how to positively identify a customer before releasing a controlled substance. This training may have cost impact on a pharmacy; however, the Division is unable to estimate the extent of the impact due to a wide range of circumstances for each pharmacy.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments apply only to pharmacies. As a result, the proposed amendments do not apply to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments apply only to pharmacies. As a result, the proposed amendments do not apply to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This filing defines the term "positive identification" as a guide for pharmacists, who are required to verify a customer's identity before dispensing a controlled substance. The definition is not anticipated to have a fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE
OCCUPATIONAL AND PROFESSIONAL
LICENSING
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Rich Oborn by phone at 801-530-6767, by FAX at 801-530-6511, or by Internet E-mail at roborn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/17/2015

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 01/20/2015 08:30 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 210 (second floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 02/24/2015

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-37f. Controlled Substance Database Act Rule.
R156-37f-102. Definitions.**

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

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

- (2) "DEA" means Drug Enforcement Administration.
- (3) "NABP" means the National Association of Boards of Pharmacy.
- (4) "NCPDP" means National Council for Prescription Drug Programs.
- (5) "NDC" means National Drug Code.
- (6) "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.
- ([6]Z) "Research facility" means a facility in which research takes place that has policies and procedures describing such research.
- ([7]8) "Rx" means a prescription.

KEY: controlled substance database, licensing
Date of Enactment or Last Substantive Amendment:
~~[November 21, 2013]~~2015
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)
(a); 58-37f-301(1)

Environmental Quality, Radiation
 Control
R313-28-31
 General and Administrative
 Requirements

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 39016
 FILED: 12/19/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the change is based on a petition for rulemaking. The petitioner requested that hand-held medical x-ray systems be allowed for use on patients. During a review of the petition, the Utah Radiation Control Board (Board) determined that rulemaking proceedings should be initiated to address the petition.

SUMMARY OF THE RULE OR CHANGE: The proposed change to Section R313-28-31 adds a new Subsection R313-28-31(6). This subsection outlines the requirements that

apply to the use of hand-held medical x-ray equipment, as well as some regulatory exclusions. The requirements specify the actions needed to protect the operator of the x-ray system and members of the public. The rule also requires that each operator of hand-held x-ray equipment complete training supplied by the manufacturer and keep records of the training.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-3-108 and Subsection 19-3-104(4)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no additional cost to the state budget because a registration and radiation safety inspection program exists for all types of x-ray systems. Allowing the use of hand-held medical x-ray systems will generate some additional revenue for the registration and inspection of such systems. Because the number of systems to be purchased by practitioners is unknown, the amount of this additional revenue is also unknown.
- ◆ **LOCAL GOVERNMENTS:** Local government health clinics may have a need to acquire a hand-held medical x-ray system. The cost for registering the system is \$35 per year and the inspection cost is \$105 per inspection.
- ◆ **SMALL BUSINESSES:** The Division of Radiation Control is currently regulating many healing arts facilities that are a small business. If the facility acquires a hand-held medical x-ray system, the cost for registering the system is \$35 per year and the inspection cost is \$105 per inspection.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Division of Radiation Control is currently regulating many healing arts facilities that fit within the definition of person. The cost to all persons that acquire a hand-held medical x-ray system is \$35 per year for registering the system and \$105 per radiation safety inspection.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is compliance cost for a protective apron. The average cost for a protective apron is \$150. If it is assumed that a facility needs to protect the x-ray system operator and one member of the public during each diagnostic procedure, then the facility must obtain two protective aprons at a total cost of \$300.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There exists a regulatory program within the department to register x-ray machines and to perform a radiation safety inspection of x-ray systems. The annual registration fee is \$35 per x-ray tube and the inspection fee is \$105 per inspection. Facilities that own a hand-held medical x-ray system will be required to pay these fees. A regulated facility with a hand-held medical x-ray system will have to obtain protective aprons to protect the operator of the x-ray system and members of the public who may be exposed to the radiation. The cost for a protective apron is minimal and is about \$150 per apron.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED,
DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
RADIATION CONTROL
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Craig Jones by phone at 801-536-4264, by FAX at 801-533-4097, or by Internet E-mail at cwjones@utah.gov
♦ John Hultquist by phone at 801-536-4263, by FAX at 801-536-4250, or by Internet E-mail at jhultquist@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON
THIS RULE BY SUBMITTING WRITTEN COMMENTS NO
LATER THAN AT 5:00 PM ON 02/17/2015

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2015

AUTHORIZED BY: Rusty Lundberg, Director

R313. Environmental Quality, Radiation Control.

R313-28. Use of X-Rays in the Healing Arts.

R313-28-31. General and Administrative Requirements.

(1) Persons shall not make, sell, lease, transfer, lend, or install x-ray equipment or the accessories used in connection with x-ray equipment unless the accessories and equipment, when properly placed in operation and properly used, will meet the applicable requirements of these rules.

(2) The registrant shall be responsible for directing the operation of the x-ray machines which are under the registrant's administrative control. The registrant or registrant's agent shall assure that the requirements of R313-28-31(2)(a) through R313-28-31(2)(i) are met in the operation of the x-ray machines.

(a) An x-ray machine which does not meet the provisions of these rules shall not be operated for diagnostic purposes, when directed by the Director.

(b) Individuals who will be operating the x-ray equipment shall be instructed in the registrant's written radiation safety program and be qualified in the safe use of the equipment. Required operator qualifications are listed in R313-28-350.

(c) The registrant of a facility shall create and make available to x-ray operators written safety procedures, including patient holding and restrictions of the operating technique required for the safe operation of the x-ray systems. Individuals who operate x-ray systems shall be responsible for complying with these rules.

(d) Except for individuals who cannot be moved out of the room and the patient being examined, only the staff and ancillary personnel or other individuals needed for the medical procedure or training shall be present in the room during the radiographic exposure and shall be positioned as follows:

(i) individuals other than the patient shall be positioned so that no part of the body will be struck by the useful beam unless protected by not less than 0.5 mm lead equivalent material;

(ii) the x-ray operator, other staff, ancillary personnel and other individuals needed for the medical procedure shall be protected from primary beam scatter by protective aprons or barriers unless it can be shown that by virtue of distances employed, EXPOSURE levels are reduced to the limits specified in R313-15-201; and

(iii) patients who are not being examined and cannot be removed from the room shall be protected from the primary beam scatter by whole body protective barriers of not less than 0.25 mm lead equivalent material or shall be so positioned that the nearest portion of the body is at least two meters from both the tube head and nearest edge of the image receptor.

(e) For patients who have not passed reproductive age, gonad shielding of not less than 0.5 mm lead equivalent material shall be used during radiographic procedures in which the gonads are in the useful beam, except for cases in which this would interfere with the diagnostic procedure.

(f) Individuals shall be exposed to the useful beam for healing arts purposes only when the exposure has been specifically ordered and authorized by a licensed practitioner of the healing arts after a medical consultation. Deliberate exposures for the following purposes are prohibited:

(i) exposure of an individual for training, demonstration or other non-healing arts purposes; and

(ii) exposure of an individual for the purpose of healing arts screening except as authorized by R313-28-31(2)(i).

(g) When a patient or film must be provided with auxiliary support during a radiation exposure:

(i) mechanical holding devices shall be used when the technique permits. The written procedures, required by R313-28-31(2)(c), shall list individual projections where mechanical holding devices can be utilized;

(ii) written safety procedures, as required by R313-28-31(2)(c), shall indicate the requirements for selecting an individual to hold patients or films and the procedure that individual shall follow;

(iii) the individual holding patients or films during radiographic examinations shall be instructed in personal radiation safety and protected as required by R313-28-31(2)(d)(i);

(iv) Individuals shall not be used routinely to hold film or patients;

(v) In those cases where the patient must hold the film, except during intraoral examinations, portions of the body other than the area of clinical interest struck by the useful beam shall be protected by not less than 0.5 mm lead equivalent material; and

(vi) Facilities shall have protective aprons and gloves available in sufficient numbers to provide protection to personnel who are involved with x-ray operations and who are otherwise not shielded.

(h) Personnel monitoring. Individuals who are associated with the operation of an x-ray system are subject to the applicable requirements of R313-15.

(i) Healing arts screening. Persons proposing to conduct a healing arts screening program shall not initiate the program without prior approval of the Director. When requesting approval, that person shall submit the information outlined in R313-28-400. If information submitted becomes invalid or outdated, the Director shall be notified immediately.

(3) Maintenance of records and information. The registrant shall maintain at least the following information for each x-ray machine:

- (a) model numbers of major components;
- (b) record of surveys or calculations to demonstrate compliance with R313-15-302, calibration, maintenance and modifications performed on the x-ray machine; and
- (c) a shielding design report for the x-ray suite which states assumed values for workload and use factors and includes a drawing of surrounding areas showing assumed values for occupancy factors.

(4) X-ray records. Facilities shall maintain an x-ray record containing the patient's name, the types of examinations, and the dates the examinations were performed. When the patient or film must be provided with human auxiliary support, the name of the human holder shall be recorded. The registrant shall retain these records for three years after the record is made.

(5) Portable or mobile equipment shall be used only for examinations where it is impractical to transfer the patient to a stationary radiographic installation.

(6) Hand-held medical x-ray systems. X-ray equipment designed to be hand-held shall comply with Section R313-28-31, excluding Subsection R313-28-31(5), and R313-28-52, excluding Subsections R313-28-52(8)(b)(i) and (ii).

(a) When operating hand-held equipment for which it is not possible for the operator to remain at least six feet from the x-ray machine during x-ray exposure, protective aprons of at least 0.5 millimeter lead equivalence shall be provided for the operator to protect the operator's torso and gonads from backscatter radiation;

(b) In addition to the dose limits in R313-15-301, operators of hand-held x-ray equipment shall ensure that members of the public that may be exposed to scatter radiation or primary beam transmission from the hand-held device are not exposed above 2 milliroentgen per hour;

(i) Operators will ensure that members of the public likely to be exposed to greater than 2 milliroentgen per hour will be provided protective aprons of at least 0.5 millimeter lead equivalence or are moved to a distance such that the exposure rate to the individual is below 2 milliroentgen per hour; and

(c) In addition to the requirements of Subsection R313-28-350(1), each operator of hand-held x-ray equipment shall complete the training program supplied by the manufacturer prior to using the x-ray unit. Records of training shall be maintained on file for examination by an authorized representative of the Director.

[[6]Z] Procedures and auxiliary equipment designed to minimize patient and personnel exposure commensurate with the needed diagnostic information shall be utilized.

(a) The speed of the screen and film combinations used shall be the fastest speed consistent with the diagnostic objective of the examinations. Film cassettes without intensifying screens shall not be used for routine diagnostic radiological imaging, with the exception of standard film packets for intra-oral use in dental radiography. If the requirements of R313-28-31(6)(a) cannot be met, an exemption may be requested pursuant to R313-12-55.

(b) The radiation exposure to the patient shall be the minimum exposure required to produce images of good diagnostic quality.

(c) X-ray systems, other than fluoroscopic, computed tomography, dental or veterinary units, shall not be utilized in procedures where the source to patient distance is less than 30 centimeters.

KEY: dental, X-rays, mammography, beam limitation

Date of Enactment or Last Substantive Amendment: ~~October 15, 2013~~ 2015

Notice of Continuation: September 23, 2011

Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-3-108

Environmental Quality, Radiation Control **R313-34** Requirements for Irradiators

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39047

FILED: 12/31/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the five-year review process for Rule R313-34, it was noted that the rule's references to 10 CFR 36 and 10 CFR 20 were out of date. The reference of the 2010 edition will be updated to reference the 2014 edition. This is the only substantive change to the rule.

SUMMARY OF THE RULE OR CHANGE: Section R313-34-3 is being revised by replacing the text "2010" with the text "2014". Subsection R313-34-3(3) is also being revised by replacing the text "2010" with the text "2014".

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 10 CFR 20 and 10 CFR 36 and Subsection 19-3-104(4) and Subsection 19-3-104(8)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** No increase in costs or savings to the state budget is anticipated from updating the 10 CFR citation contained in Rule R313-34. The proposed changes do not add or remove requirements that would affect the radiation control program or the Utah Radiation Control Board.

◆ **LOCAL GOVERNMENTS:** No increase in costs or savings to the local government budget is anticipated from updating the 10 CFR citation contained in Rule R313-34. The proposed changes do not add or remove requirements that would affect the radiation control program or the Utah Radiation Control Board.

◆ **SMALL BUSINESSES:** No increase in costs or savings to the budgets of small businesses, businesses, or local government entities is anticipated from updating the 10 CFR citation contained in Rule R313-34. The proposed changes do not add or remove requirements that would affect the radiation control program or the Utah Radiation Control Board.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No increase in costs or savings to the budgets of persons other than small businesses, businesses, or local government entities is anticipated from updating the 10 CFR citation contained in Rule R313-34. The proposed changes do not add or remove requirements that would affect the radiation control program or the Utah Radiation Control Board.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated changes in the compliance costs for persons affected by Rule R313-34. Updating the 10 CFR citation contained in Rule R313-34 is the only substantive change to this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses with radioactive material licenses will not see a fiscal impact due to the proposed changes to Rule R313-34. A review of the rule's references to 10 CFR 36 and 10 CFR 20, showed no differences between the 2010 edition and the current 2014 edition. The proposed changes do not add or remove requirements that would affect businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
RADIATION CONTROL
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Mike Givens by phone at 801-536-0278, by FAX at 801-533-4097, or by Internet E-mail at mgivens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/17/2015

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2015

AUTHORIZED BY: Rusty Lundberg, Director

R313. Environmental Quality, Radiation Control.

R313-34. Requirements for Irradiators.

R313-34-1. Purpose and Authority.

(1) Rule R313-34 prescribes requirements for the issuance of licenses authorizing the use of sealed sources containing radioactive materials in irradiators used to irradiate objects or materials using gamma radiation.

(2) The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(8).

(3) The requirements of Rule R313-34 are in addition to, and not in substitution for, the other requirements of these rules.

R313-34-2. Scope.

(1) Rule R313-34 shall apply to panoramic irradiators that have either dry or wet storage of the radioactive sealed sources; underwater irradiators in which both the source and the product being irradiated are under water; and irradiators whose dose rates exceed 5 grays (500 rads) per hour at 1 meter from the radioactive sealed sources in air or in water, as applicable for the irradiator type.

(2) The requirements of Rule R313-34 shall not apply to self-contained dry-source-storage irradiators in which both the source and the area subject to irradiation are contained within a device and are not accessible by personnel, medical radiology or teletherapy, the irradiation of materials for nondestructive testing purposes, gauging, or open-field agricultural irradiations.

R313-34-3. Clarifications or Exemptions.

For purposes of Rule R313-34, 10 CFR 36, [~~2010~~2014 ed., is incorporated by reference with the following clarifications or exceptions:

(1) The exclusion of the following 10 CFR sections: 36.1, 36.5, 36.8, 36.11, 36.17, 36.19(a), 36.91, and 36.93;

(2) The substitution of the following:

(a) Radiation Control Act for Atomic Energy Act of 1954;

(b) Utah Radiation Control Rules for the reference to NRC regulations and the Commission's regulations;

(c) The Director or the Executive Secretary's for the Commission or the Commission's, and NRC in the following 10 CFR sections: 36.13, 36.13(f), 36.15, 36.19(b), 36.53(c), 36.69, and 36.81(a), 36.81(d) and 36.81(e); and

(d) In 10 CFR 36.51(a)(1), Rule R313-15 for NRC;

(3) Appendix B of 10 CFR Part 20 refers to the [~~2010~~2014 ed. of 10 CFR; and

(4) The substitution of Title R313 references for the following 10 CFR references:

(a) Section R313-12-51 for reference to 10 CFR 30.51;

(b) Rule R313-15 for the reference to 10 CFR 20;

(c) Subsection R313-15-501(3) for the reference to 10 CFR 20.1501(c);

(d) Section R313-15-902 for the reference to 10 CFR 20.1902;

(e) Rule R313-18 for the reference to 10 CFR 19;

(f) Section R313-19-41 for the reference to 10 CFR 30.41;

(g) Section R313-19-50 for the reference to 10 CFR 30.50;

(h) Section R313-22-33 for the reference to 10 CFR 30.33;

(i) Section R313-22-210 for the reference to 10 CFR 32.210;

(j) Section R313-22-35 for the reference to 10 CFR 30.35;

and

(k) Rule R313-70 for the reference to 10 CFR 170.31.

KEY: irradiators, survey, radiation, radiation safety

Date of Enactment or Last Substantive Amendment: [~~April 15, 2010~~2015

Notice of Continuation: February 10, 2010

Authorizing, and Implemented or Interpreted Law: 19-3-104(4); 19-3-104(8)

**Environmental Quality, Radiation
Control
R313-35
Requirements for X-ray Equipment
Used for Non-Medical Applications**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39017

FILED: 12/19/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the change is based on a petition for rulemaking. The petitioner requested that hand-held non-medical X-ray systems be allowed for use by registrants. During a review of the petition, the Utah Radiation Control Board determined that rulemaking proceedings should be initiated to address the petition.

SUMMARY OF THE RULE OR CHANGE: The proposed change to Rule R313-35 adds a definition for "forensics x-ray" and a new Section R313-35-105. This section outlines the requirements that apply to the use of hand-held non-medical x-ray equipment. The rule requires that each operator of hand-held non-medical x-ray equipment complete training supplied by the manufacturer and keep records of the training. The rule also specifies that the provision in Subsection R313-35-110(1)(d) is optional.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-3-108 and Subsection 19-3-104(4)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There is no additional cost to the state budget because a registration and radiation safety inspection program exists for all types of x-ray systems. Allowing the use of hand-held non-medical x-ray systems will generate some additional revenue for the registration and inspection of such systems. Because the number of systems to be purchased by businesses is unknown, the amount of this additional revenue is also unknown.

◆ **LOCAL GOVERNMENTS:** Local government agencies may have a need to acquire a hand-held non-medical x-ray system. The cost for registering the system is \$35 per year and the inspection cost is \$75 per inspection.

◆ **SMALL BUSINESSES:** The Division of Radiation Control is currently regulating many non-medical facilities that are a small business. If the facility acquires a hand-held non-medical x-ray system, the cost for registering the system is \$35 per year and the inspection cost is \$75 per inspection.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Division of Radiation Control is currently regulating many non-medical facilities that fit within the definition of person. The cost to all persons that acquire a hand-held non-medical

x-ray system is \$35 per year for registering the system and \$75 per radiation safety inspection.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is compliance cost for a protective apron. The average cost for a protective apron is \$150.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There exists a regulatory program within the department to register x-ray machines and to perform a radiation safety inspection of x-ray systems. The annual registration fee is \$35 per x-ray tube and the inspection fee is \$75 per inspection. Facilities that own a hand-held non-medical x-ray system will be required to pay these fees. A regulated facility with a hand-held non-medical x-ray system will have to obtain protective aprons to protect the operator of the x-ray system. The cost for a protective apron is minimal and is about \$150 per apron.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
RADIATION CONTROL
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Craig Jones by phone at 801-536-4264, by FAX at 801-533-4097, or by Internet E-mail at cwjones@utah.gov
◆ John Hultquist by phone at 801-536-4263, by FAX at 801-536-4250, or by Internet E-mail at jhultquist@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/17/2015

THIS RULE MAY BECOME EFFECTIVE ON: 03/17/2015

AUTHORIZED BY: Rusty Lundberg, Director

R313. Environmental Quality, Radiation Control.

R313-35. Requirements for X-Ray Equipment Used for Non-Medical Applications.

R313-35-2. Definitions.

As used in R313-35:

"Analytical x-ray system" means a group of components utilizing x-rays to determine the elemental composition or to examine the microstructure of materials by either x-ray fluorescence or diffraction analysis.

"Cabinet x-ray system" means an x-ray system with the x-ray tube installed in an enclosure, hereinafter termed "cabinet," which, independent of existing architectural structure except the floor on which it may be placed, is intended to contain at least that portion of a material being irradiated, provide radiation attenuation, and exclude personnel from its interior during generation of x-radiation. Included

are all x-ray systems designed primarily for the inspection of carry-on baggage at airline, railroad and bus terminals, and similar facilities. An x-ray tube used within a shielded part of a building, or x-ray equipment which may temporarily or occasionally incorporate portable shielding is not considered a cabinet x-ray system.

"Collimator" means a device used to limit the size, shape and direction of the primary radiation beam.

"Direct reading dosimeter" means an ion-chamber pocket dosimeter or an electronic personal dosimeter.

"External surface" means the outside surfaces of cabinet x-ray systems, including the high-voltage generator, doors, access panels, latches, control knobs, and other permanently mounted hardware and including the plane across an aperture or port.

"Fail-safe characteristics" means design features which cause beam port shutters to close, or otherwise prevent emergence of the primary beam, upon the failure of a safety or warning device.

"Forensics x-ray" means the use of x-ray systems in forensic autopsies of deceased humans, police agency use of x-ray systems for evidence identification and testing, or x-ray system use for arson or questionable origin fire investigations.

"Nondestructive testing" means the examination of the macroscopic structure of materials by nondestructive methods utilizing x-ray sources of radiation.

"Non-medical applications" means uses of x-ray systems except those used for providing diagnostic information or therapy on human patients.

"Normal operating procedures" means instructions necessary to accomplish the x-ray procedure being performed. These procedures shall include positioning of the equipment and the object being examined, equipment alignment, routine maintenance by the registrant, and data recording procedures which are related to radiation safety.

"Open-beam configuration" means a mode of operation of an analytical x-ray system in which individuals could accidentally place some part of the body into the primary beam during normal operation if no further safety devices are incorporated.

"Portable package inspection system" means a portable x-ray system designed and used for determining the presence of explosives in a package.

"Primary beam" means ionizing radiation which passes through an aperture of the source housing via a direct path from the x-ray tube located in the radiation source housing.

"Very high radiation area" means an area, accessible to individuals, in which radiation levels could result in individuals receiving an absorbed dose in excess of five Gy (500 rad) in one hour at one meter from a source of radiation or from any surface that the radiation penetrates. At very high doses received at high dose rates, units of absorbed dose, gray and rad, are appropriate, rather than units of dose equivalent, sievert and rem.

"X-ray system" means an assemblage of components for the controlled production of x-rays. It includes, minimally, an x-ray high-voltage generator, an x-ray control, a tube housing assembly, and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system.

R313-35-105. Portable, Hand-Held, Non-Medical X-ray Systems.

(1) In addition to compliance to the provisions of Rule R313-35 the following sections are specific to portable, hand-held, non-medical x-ray systems:

(a) Protective aprons of at least 0.5 millimeter lead equivalence shall be provided for the operator to protect the operator's torso and gonads from backscatter radiation while operating the x-ray source;

(b) Each operator of hand-held x-ray systems shall complete a training program supplied by the manufacturer prior to using the x-ray system. Records of training shall be maintained on file for examination by an authorized representative of the Director; and

(c) For hand-held x-ray systems, the provision in Subsection R313-35-110(1)(d) of the length of electrical cord for the dead-man switch is optional.

KEY: industry, x-rays, veterinarians, surveys

Date of Enactment or Last Substantive Amendment: ~~March 19, 2013~~ 2015

Notice of Continuation: March 2, 2012

Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-3-108

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-1-5
Incorporations by Reference**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39040

FILED: 12/29/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Subsection 26-18-3(2)(a) requires the Medicaid program to implement policy through administrative rules. The Department, in order to draw down federal funds, must have an approved state plan with the Centers for Medicare and Medicaid Services (CMS). The purpose of this change, therefore, is to incorporate the most current Medicaid State Plan by reference and to implement by rule ongoing Medicaid policy described in the Medical Supplies Utah Medicaid Provider Manual; Hospital Services Utah Medicaid Provider Manual with its attachments; Home Health Agencies Utah Medicaid Provider Manual, and the manual's attachment for the Private Duty Nursing Acuity Grid; Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual; Hospice Care Utah Medicaid Provider Manual; Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual with its attachments; Utah Home and Community-Based Waiver Services for Individuals 65 or Older Utah Medicaid Provider Manual; Personal Care Utah Medicaid Provider Manual with its attachments; Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Utah Medicaid Provider Manual; Utah Home and Community-Based Waiver Services for Individuals with Intellectual Disabilities or Other

Related Conditions Utah Medicaid Provider Manual; Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Utah Medicaid Provider Manual; Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual; Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual; Utah Home and Community-Based Waiver Services Autism Waiver Utah Medicaid Provider Manual; Office of Inspector General (OIG) Administrative Hearings Procedures Manual; Pharmacy Services Utah Medicaid Provider Manual with its attachments; Coverage and Reimbursement Code Look-up Tool; CHEC Services Utah Medicaid Provider Manual with its attachments; Chiropractic Medicine Utah Medicaid Provider Manual; Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual; General Attachments for the Utah Medicaid Provider Manual; Indian Health Utah Medicaid Provider Manual; Laboratory Services Utah Medicaid Provider Manual with its attachments; Medical Transportation Utah Medicaid Provider Manual; Non-Traditional Medicaid Health Plan Utah Medicaid Provider Manual with its attachments; Licensed Nurse Practitioner Utah Medicaid Provider Manual; Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual; Physician Services and Anesthesiology Utah Medicaid Provider Manual with its attachments; Podiatric Services Utah Medicaid Provider Manual; Primary Care Network Utah Medicaid Provider Manual with its attachments; Psychology Services Utah Medicaid Provider Manual; Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual; Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual with its attachments; School-Based Skills Development Services Utah Medicaid Provider Manual; Section I: General Information of the Utah Medicaid Provider Manual; Services for Pregnant Women Utah Medicaid Provider Manual; Targeted Case Management for Individuals with Serious Mental Illness Utah Medicaid Provider Manual; Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual; Vision Care Services Utah Medicaid Provider Manual; and Women's Services Utah Medicaid Provider Manual.

SUMMARY OF THE RULE OR CHANGE: Section R414-1-5 is changed to incorporate the Utah Medicaid State Plan and approved State Plan Amendments (SPAs) by reference to 01/01/2015. These SPAs include: SPA 14-032-UT Outpatient Hospital Supplemental Payments, which updates the utilization trend used for the outpatient hospital Upper Payment Limit (UPL); SPA 14-033-UT Primary Care Physician Enhancement Payments, which implements the Medicaid fee schedule increase for certain primary care services furnished by qualifying physicians in calendar years (CYs) 2013 and 2014 up to rates equal to CYs 2013 and 2014 Medicare rates, or the rates that would be derived using the CY 2009 conversion factor; SPA 14-034-UT Long-Term Care Insurance Partnership; which allows a beneficiary under a long-term care insurance policy to receive a resource

disregard equal to insurance benefit payments made to or on behalf of the individual. This SPA also requires training for sellers of partnership policies, and clarifies the responsibility of the Department of Health and the Insurance Department to oversee training and reporting requirements; SPA 14-0035-UT Presumptive Eligibility, which ends a pilot program for presumptive eligibility for children who are under 19 years old due to lack of enrollment. This pilot program was used to help the state qualify for the federal bonus under the Children's Health Insurance Program Reauthorization Act (CHIPRA) in 2012 and 2013; and SPA 14-0036-UT Coverage for Kinship Guardianship, which allows children who leave the foster care system, and are placed permanently with a relative, to continue to qualify for Medicaid. This rule change also incorporates by reference the Medical Supplies Utah Medicaid Provider Manual, effective 01/01/2015; incorporates by reference the Hospital Services Utah Medicaid Provider Manual with its attachments, effective 01/01/2015; incorporates by reference the Home Health Agencies Utah Medicaid Provider Manual, and the manual's attachment for the Private Duty Nursing Acuity Grid, effective 01/01/2015; incorporates by reference the Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual, effective 01/01/2015; incorporates by reference the Hospice Care Utah Medicaid Provider Manual, effective 01/01/2015; incorporates by reference the Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual, with its attachments, effective 01/01/2015; incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals 65 or Older Utah Medicaid Provider Manual, effective 01/01/2015; incorporates by reference the Personal Care Utah Medicaid Provider Manual, with its attachments, effective 01/01/2015; incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Utah Medicaid Provider Manual, effective 01/01/2015; incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual, effective 01/01/2015; incorporates by reference the Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Utah Medicaid Provider Manual, effective 01/01/2015; incorporates by reference the Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual, effective 01/01/2015; incorporates by reference the Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual, effective 01/01/2015; incorporates by reference the Utah Home and Community-Based Waiver Services Autism Waiver Utah Medicaid Provider Manual, effective 01/01/2015; incorporates by reference the Office of Inspector General (OIG) Administrative Hearings Procedures Manual, effective 01/01/2015; incorporates by reference the Pharmacy Services Utah Medicaid Provider Manual with its attachments, effective 01/01/2015; incorporates by reference the Coverage and Reimbursement Code Look-up Tool, effective 01/01/2015; incorporates by reference the CHEC Services Utah Medicaid Provider Manual with its

attachments, effective 01/01/2015; incorporates by reference the Chiropractic Medicine Utah Medicaid Provider Manual, effective 01/01/2015; incorporates by reference the Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual, effective 01/01/2015; incorporates by reference the General Attachments for the Utah Medicaid Provider Manual, effective 01/01/2015; incorporates by reference the Indian Health Utah Medicaid Provider Manual, effective 01/01/2015; incorporates by reference the Laboratory Services Utah Medicaid Provider Manual with its attachments, effective 01/01/2015; incorporates by reference the Medical Transportation Utah Medicaid Provider Manual, effective 01/01/2015; incorporates by reference the Non-Traditional Medicaid Health Plan Utah Medicaid Provider Manual with its attachments, effective 01/01/2015; incorporates by reference the Licensed Nurse Practitioner Utah Medicaid Provider Manual, effective 01/01/2015; incorporates by reference the Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual, effective 01/01/2015; incorporates by reference the Physician Services and Anesthesiology Utah Medicaid Provider Manual with its attachments, effective 01/01/2015; incorporates by reference the Podiatric Services Utah Medicaid Provider Manual, effective 01/01/2015; incorporates by reference the Primary Care Network Utah Medicaid Provider Manual with its attachments, effective 01/01/2015; incorporates by reference the Psychology Services Utah Medicaid Provider Manual, effective 01/01/2015; incorporates by reference the Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual, effective 01/01/2015; incorporates by reference the Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual with its attachments, effective 01/01/2015; incorporates by reference the School-Based Skills Development Services Utah Medicaid Provider Manual, effective 01/01/2015; incorporates by reference Section I: General Information of the Utah Medicaid Provider Manual, effective 01/01/2015; incorporates by reference the Services for Pregnant Women Utah Medicaid Provider Manual, effective 01/01/2015; incorporates by reference the Targeted Case Management for Individuals with Serious Mental Illness Utah Medicaid Provider Manual, effective 01/01/2015; Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual, effective 01/01/2015; Vision Care Services Utah Medicaid Provider Manual, effective 01/01/2015; and Women's Services Utah Medicaid Provider Manual, effective 01/01/2015.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates Hospice Care Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Coverage and Reimbursement Code Look-up Tool, published by Division of Medicaid and Health Financing, 01/01/2015

- ◆ Updates Women's Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual, with its attachments, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Psychology Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Vision Care Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Hospital Services Utah Medicaid Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Indian Health Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Non-Traditional Medicaid Health Plan Utah Medicaid Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Licensed Nurse Practitioner Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Chiropractic Medicine Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Utah Home and Community-Based Waiver Services Autism Waiver Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Podiatric Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Services for Pregnant Women Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Pharmacy Services Utah Medicaid Provider Manual with its attachments, published by

Division of Medicaid and Health Financing,
01/01/2015

- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals 65 or Older Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Medical Transportation Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates School-Based Skills Development Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Utah Medicaid State Plan, published by Centers for Medicare and Medicaid Services, 01/01/2015
- ◆ Updates Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Home Health Agencies Utah Medicaid Provider Manual, and the manual's attachment for the Private Duty Nursing Acuity Grid, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Personal Care Utah Medicaid Provider Manual, with its attachments, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Utah Home and Community-Based Waiver Services for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Primary Care Network Utah Medicaid Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Section I: General Information of the Utah Medicaid Provider Manual, 01/01/2015; Services for Pregnant Women Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual,

published by Division of Medicaid and Health Financing, 01/01/2015

- ◆ Updates CHEC Services Utah Medicaid Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Physician Services and Anesthesiology Utah Medicaid Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Office of Inspector General Administrative Hearings Procedures Manual, published by Office of Inspector General and Medicaid Services, 01/01/2015
- ◆ Updates Medical Supplies Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Targeted Case Management for Individuals with Serious Mental Illness Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates Laboratory Services Utah Medicaid Provider Manual with its attachments, published by Division of Medicaid and Health Financing, 01/01/2015
- ◆ Updates General Attachments for the Utah Medicaid Provider Manual, published by Division of Medicaid and Health Financing, 01/01/2015

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no budget impact because this change only fulfills the requirement to incorporate the state plan by reference. Implementation of the State Plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and in the Look-up Tool, and hearings procedures described in the OIG manual do not create costs or savings to the Department or other state agencies.
- ◆ **LOCAL GOVERNMENTS:** There is no budget impact because this change only fulfills the requirement to incorporate the state plan by reference. Implementation of the state plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and in the Look-up Tool, and hearings procedures described in the OIG manual do not create costs or savings to local governments.
- ◆ **SMALL BUSINESSES:** There is no budget impact because this change only fulfills the requirement to incorporate the state plan by reference. Implementation of the state plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and in the Look-up Tool, and hearings procedures described in the OIG manual do not create costs or savings to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no budget impact because this change only fulfills the requirement to incorporate the state plan by reference. Implementation of the state plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and in the Look-up Tool, and hearings procedures described in the OIG manual do not create costs or savings to Medicaid recipients and to Medicaid providers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this change only fulfills the requirement to incorporate the state plan by reference. Implementation of the state plan is within legislative budget allotments. Further, the rule's incorporation of ongoing Medicaid policy described in the provider manuals and in the Look-up Tool, and hearings procedures described in the OIG manual do not create costs or savings to a single Medicaid recipient or to a Medicaid provider.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no additional impact on businesses because all changes are already in the state plan.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/17/2015

THIS RULE MAY BECOME EFFECTIVE ON: 02/24/2015

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-1. Utah Medicaid Program.

R414-1-5. Incorporations by Reference.

The Department incorporates the [~~October~~January] 1, 201[4]5 versions of the following by reference:

(1) Utah Medicaid State Plan, including any approved amendments, under Title XIX of the Social Security Act Medical Assistance Program;

(2) Medical Supplies Utah Medicaid Provider Manual, Section 2, Medical Supplies, as applied in Rule R414-70;

(3) Hospital Services Utah Medicaid Provider Manual with its attachments;

(4) Home Health Agencies Utah Medicaid Provider Manual, and the manual's attachment for the Private Duty Nursing Acuity Grid;

(5) Speech-Language Pathology and Audiology Services Utah Medicaid Provider Manual;

(6) Hospice Care Utah Medicaid Provider Manual;

(7) Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual with its attachments;

(8) Personal Care Utah Medicaid Provider Manual with its attachments;

(9) Utah Home and Community-Based Waiver Services for Individuals 65 or Older Utah Medicaid Provider Manual;

(10) Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Utah Medicaid Provider Manual;

(11) Utah Home and Community-Based Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual;

(12) Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Utah Medicaid Provider Manual;

(13) Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual;

(14) Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual;

(15) Utah Home and Community-Based Waiver Services Autism Waiver Utah Medicaid Provider Manual;

(16) Office of Inspector General Administrative Hearings Procedures Manual;

(17) Pharmacy Services Utah Medicaid Provider Manual with its attachments;

(18) Coverage and Reimbursement Code Look-up Tool found at <http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php>;

(19) CHEC Services Utah Medicaid Provider Manual with its attachments;

(20) Chiropractic Medicine Utah Medicaid Provider Manual;

(21) Dental, Oral Maxillofacial, and Orthodontia Services Utah Medicaid Provider Manual;

(22) General Attachments for the Utah Medicaid Provider Manual;

(23) Indian Health Utah Medicaid Provider Manual;

(24) Laboratory Services Utah Medicaid Provider Manual with its attachments;

(25) Medical Transportation Utah Medicaid Provider Manual;

(26) Non-Traditional Medicaid Health Plan Utah Medicaid Provider Manual with its attachments;

(27) Licensed Nurse Practitioner Utah Medicaid Provider Manual;

(28) Physical Therapy and Occupational Therapy Services Utah Medicaid Provider Manual;

- (29) Physician Services and Anesthesiology Utah Medicaid Provider Manual with its attachments;
- (30) Podiatric Services Utah Medicaid Provider Manual;
- (31) Primary Care Network Utah Medicaid Provider Manual with its attachments;
- (32) Psychology Services Utah Medicaid Provider Manual;
- (33) Rehabilitative Mental Health and Substance Use Disorder Services Utah Medicaid Provider Manual;
- (34) Rural Health Clinics and Federally Qualified Health Centers Services Utah Medicaid Provider Manual with its attachments;
- (35) School-Based Skills Development Services Utah Medicaid Provider Manual;
- (36) Section I: General Information of the Utah Medicaid Provider Manual;
- (37) Services for Pregnant Women Utah Medicaid Provider Manual;
- (38) Targeted Case Management for Individuals with Serious Mental Illness Utah Medicaid Provider Manual;
- (39) Targeted Case Management for Early Childhood (Ages 0-4) Utah Medicaid Provider Manual;
- (40) Vision Care Services Utah Medicaid Provider Manual; and
- (41) Women's Services Utah Medicaid Provider Manual.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: [~~November 21, 2014~~]**2015**

Notice of Continuation: March 2, 2012

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-34-2

**Natural Resources; Oil, Gas and
Mining; Oil and Gas
R649-3
Drilling and Operating Practices**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39028

FILED: 12/24/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish standards for the drilling and operating of crude oil and natural gas wells, ranging from initial permitting to final reclamation. The reason for the amendment is to provide an alternative method for division approval of directional drilling permit applications, rather than a longer process involving the board for approval.

SUMMARY OF THE RULE OR CHANGE: The proposed rule amendment pertains to a proposed directionally drilled well

with a surface location to occur outside the tolerances established by board rule or board order. If the well operator files a certification that such a well will not be perforated and completed in any zone outside of the noted tolerances, and thus not produced from the zones outside of the tolerances, then the division may approve such an application, and the well would not require exception location approval. The amendment primarily affects Section R649-3-11 and also includes a cross-reference within Section R649-3-3.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 40-6-5(3)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Well operators will have an alternative for a directional well application approval by the division in specific situations rather than approval by the board. Consequently, the directional well application will be allowed to be issued in an improved time frame, but specific cost savings to the division are not able to be specified since the application would be awaiting board approval.

◆ **LOCAL GOVERNMENTS:** Local government is not impacted by this rule amendment because oil and gas well operators in Utah are the parties regulated by this rule.

◆ **SMALL BUSINESSES:** Over 96% of the oil and gas wells permitted in 2012 in Utah pertain to businesses larger than small business. Also, directional wells are more expensive to drill than vertical wells. Small businesses are not expected to be impacted by this rule amendment.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons other than small businesses, businesses, or local government entities are not impacted by this rule, since the rule impacts oil and gas well operators in Utah.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Well operators in Utah would not encounter compliance costs as a result of this rule amendment for directionally drilled well applications. Such well operators would encounter a reduced time to receive approval for their permit application since the board approval is a longer process. Also, such well operators would encounter less attorney and related costs for submittal of a matter for board approval. The Division does not have access to industry expenditures for board hearings so a specific cost savings cannot be calculated at this time.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:

This proposed rule amendment will save time for a well operator to receive approval of specified directional drilling well applications and also reduce their expenditures for attorney and related costs for submittal of a matter for board approval. These future savings are a result of a collaborative effort among the division, industry, and the board with opportunity for additional input from a variety of stakeholders, prior to this formal rulemaking proposal.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
OIL, GAS AND MINING; OIL AND GAS
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/17/2015

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 01/28/2015 09:00 AM, DNR, 1594 W North Temple, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 02/25/2015

AUTHORIZED BY: John Baza, Director

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.

R649-3. Drilling and Operating Practices.

R649-3-3. Exception to Location and Siting of Wells.

1. Subject to the provisions of R649-3-11.1.2. [F]the division shall have the administrative authority to grant an exception to the locating and siting requirements of R649-3-2 or an order of the board establishing oil or gas well drilling units after receipt from the operator of the proposed well of the following items:

1.1. Proper written application for the exception well location.

1.2. Written consent from all owners within a 460 foot radius of the proposed well location when such exception is to the requirements of R649-3-2, or;

1.3. Written consent from all owners of directly or diagonally offsetting drilling units when such exception is to an order of the board establishing oil or gas well drilling units.

2. If for any reason the division shall fail or refuse to approve such an exception, the board may, after notice and hearing, grant an exception.

3. The application for an exception to R649-3-2 or board drilling unit order shall state fully the reasons why such an exception is necessary or desirable and shall be accompanied by a plat showing:

3.1. The location at which an oil or gas well could be drilled in compliance with R649-3-2 or Board drilling unit order.

3.2. The location at which the applicant requests permission to drill.

3.3. The location at which oil or gas wells have been drilled or could be drilled, in accordance with R649-3-2 or board drilling unit order, directly or diagonally offsetting the proposed exception.

3.4. The names of owners of all lands within a 460 foot radius of the proposed well location when such exception is to the requirements of R649-3-2, or

3.5. The names of owners of all directly or diagonally offsetting drilling units when such exception is to an order of the board establishing oil or gas drilling units.

4. No exception shall prevent any owner from drilling an oil or gas well on adjacent lands, directly or diagonally offsetting the exception, at locations permitted by R649-3-2, or any applicable order of the board establishing oil or gas well drilling units for the pool involved.

5. Whenever an exception is granted, the board or the division may take such action as will offset any advantage that the person securing the exception may obtain over other producers by reason of the exception location.

R649-3-11. Directional Drilling.

1. Except for the tolerances allowed under R649-3-10, no well may be intentionally deviated unless the operator shall first file application and obtain approval from the division.

1.1. An application for directional drilling may be approved by the division without notice and hearing when the applicant is the owner of all the oil and gas within a radius of 460 feet from all points along the intended well bore, or the applicant has obtained the written consent of the owner to the proposed directional drilling program.

1.2. An application pertaining to a well with a surface location outside the tolerances allowed by R649-3-2 or the appropriate board order, but with the point of penetration of the targeted productive zone(s) and bottom hole location within said tolerances, may be approved by the division without notice and hearing conditioned upon the operator filing a certification included with the application that it will not perforate and complete the well in any other zone(s) outside of said tolerances without complying with the requirements of R649-3-11.1.1. Under these circumstances, no additional exception location approval under R649-3-3 is required.

1.[2]3. An application for directional drilling may be included as part of the initial APD for a proposed well.

2. An application for directional drilling shall include the following information:

2.1. The name and address of the operator.

2.2. The lease name, well number, field name, reservoir name, and county where the proposed well is located.

2.3. A plat or sketch showing the distance from the surface location to section and lease lines, the target location within the intended producing interval, and any point along the intended well bore outside the 460 foot radius for which the consent of the owner has been obtained.

2.4. The reason for the intentional deviation.

2.5. The signature of designated agent or representative of operator.

3. Within 30 days following completion of a directionally drilled well, a complete angular deviation and directional survey of the well obtained by an approved well survey company shall be filed with the division, together with other regularly required reports.

KEY: oil and gas law

Date of Enactment or Last Substantive Amendment: [January 23, 2013]2015

Notice of Continuation: February 3, 2012

Authorizing, and Implemented or Interpreted Law: 40-6-1 et seq.; 40-6-5; 40-6-20; 40-6-21

**Public Safety, Driver License
R708-51
Mobility Vehicle Permit**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39043

FILED: 12/29/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 130 was passed in the 2014 General Session that made it possible for the Driver License Division to issue a mobility vehicle permit.

SUMMARY OF THE RULE OR CHANGE: A person with a disability, who may not qualify for a regular driver license, can make an application for a mobility vehicle permit to facilitate their transportation needs.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-6a-1118 and Section 53-3-102

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The Driver License Division will receive an applicant's fee to cover the cost associated with issuing a mobility vehicle permit.
- ◆ LOCAL GOVERNMENTS: There is no fiscal impact to local government as local government does not issue mobility vehicle permits.
- ◆ SMALL BUSINESSES: There is no fiscal impact to small businesses as small businesses do not issue mobility vehicle permits.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no fiscal impact to persons other than small businesses, businesses, or local government as these individuals do not issue mobility vehicle permits.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The applicant will be charged \$25 if they are approved for a mobility vehicle permit.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and found no anticipated fiscal impact on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

PUBLIC SAFETY
DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 3RD FL
SALT LAKE CITY, UT 84119-5595
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Debbie Johnson by phone at 801-592-8883, by FAX at 801-965-4608, or by Internet E-mail at debbiejohnson@utah.gov
- ◆ Marge Dalton by phone at 801-965-4456, by FAX at 801-957-8502, or by Internet E-mail at modalton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/17/2015

THIS RULE MAY BECOME EFFECTIVE ON: 02/24/2015

AUTHORIZED BY: Nannette Rolfe, Director

R708. Public Safety, Driver License.

R708-51. Mobility Vehicle Permit.

R708-51-1. Authority.

This rule is authorized by Subsection 41-6a-1118.

R708-51-2. Purpose.

The purpose of the rule is to set forth the provisions for the issuance of a Mobility Vehicle Permit.

R708-51-3. Definitions.

(1) Definitions used in this rule are found in Sections 41-6a-1118 and 53-3-102.

(2) In addition:

(a) A Mobility Vehicle Permit "means" evidence that an individual may operate a vehicle certified by the Division within the restriction listed on the permit.

(b) Mobility Vehicle Permit Statement of Disability "means" a document approved by the Division and signed by a Health Care Professional as defined in Subsection 53-3-302(2) affirming:

(i) the applicant has a physical disability as defined in Section 41-6a-1118; and

(ii) the issuance of a Mobility Vehicle Permit would not constitute a public safety hazard.

R708-51-4. Permit Provisions.

(1) A person who has a physical disability and does not qualify for a motor vehicle operator license may apply for a Mobility Vehicle Permit. To qualify, the applicant shall:

(a) be a U.S. Citizen, Legal Permanent Resident Alien, or U.S. National;

(b) submit an application approved by the Division for a Mobility Vehicle Permit accompanied by the applicants Mobility Vehicle Permit Statement of Disability;

(c) provide acceptable documentation of the individual's identity and citizenship or lawful presence status as established in Utah Admin. Code R708-41;

(d) pay the required application fee;

(e) meet the minimum knowledge test requirement set forth by the Division; and

(f) meet the minimum skills test standards to safely operate an approved Mobility Vehicle.

(3) Upon receiving a Mobility Vehicle Permit, a person may operate an approved Mobility Vehicle on a Highway within the

restrictions stated on the permit and in compliance with all traffic rules under Title 41 Chapter 6a.

(4) The authorization to operate a Mobility Vehicle is subject to Withdrawal, Denial, Suspension, and Revocation of the privilege in accordance with Title 53 Chapter 3 of Utah Code.

(5) Upon annual review, the Division shall determine whether:

(a) the vehicle operated by the permit holder continues to meet the requirements provided in this rule;

(b) the applicant has a physical disability as defined in Section 41-6a-1118; and

(c) the issuance of a Mobility Vehicle Permit would not constitute a public safety hazard.

R708-51-5. Mobility Vehicle Provisions.

(1) An approved Mobility Vehicle shall be equipped with:

(a) two headlamps;

(b) two tail lamps;

(c) two stop lamps on the rear;

(d) amber or red electric turn signals, one on each side of the front and rear;

(e) a braking system, other than a parking brake, that meets the requirements established in Section 41-6a-1623;

(f) a horn or other warning device that meets the requirements of Section 41-6a-1625;

(g) rearview mirrors on the right and left side of the driver in accordance with Section 41-6a-1627;

(h) a rearview mirror mounted centrally on the windshield;

(j) a windshield and windshield wipers;

(k) a speedometer, illuminated for nighttime operation;

(l) a seat designed for passengers, including a footrest and handhold for each passenger;

(m) seat belts for each vehicle occupant in vehicles with side-by-side seating;

(n) tires that have at least 2/32 inches or greater tire tread;

(o) a Mobility Vehicle placard, decal, or emblem displayed on the rear of the vehicle.

(p) four or more wheels, which shall remain in contact with the ground while the vehicle is in operation, and

(q) a cab enclosure or roll over protection system.

(2) An approved Mobility Vehicle may be operated upon a Utah street or highway by a permit holder within the restriction stated on the permit, unless the highway is an interstate freeway or a limited access highway as defined in Section 41-6a-102.

(3) A Mobility Vehicle may not be used to tow any unit while being operated by a Mobility Vehicle Permit holder.

(4) The operation of a Mobility Vehicle is subject to compliance with all traffic rules under Title 41 Chapter 6a.

R708-51-6. Denial.

(1) The Division may deny an individual the authorization to operate a Mobility Vehicle when it is determined by the Division that it is not in the best interest of public safety to issue or continue authorization of a Mobility Vehicle Permit.

R708-51-7. Administrative Proceedings.

All adjudicative proceedings for Mobility Vehicle Permits, including but not limited to, the application for and denial,

suspension or revocation of authorization to operate a Mobility Vehicle, shall be conducted according to applicable rules for administrative proceedings as specified in Rules R708-14 and R708-35.

KEY: disability, mobility vehicles, mobility vehicle permits

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: 41-6a-1118; 53-3-102

Public Safety, Criminal Investigations
and Technical Services, 911 Committee
(Utah)

R720-1

(Changed to R173-1)
Utah 911 Committee

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39022

FILED: 12/22/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: As of 07/01/2014, the Utah 911 Committee was moved from Public Safety (DPS) to the newly created Utah Communications Authority, Title R173. These changes occurred as a result of the enactment of H.B. 155 in the 2014 General Session.

SUMMARY OF THE RULE OR CHANGE: The change moves the rule from Title R720 and creates Title R173. The purpose of this rule is to outline the operation of the 911 committee and procedures whereby the committee shall award funds for the establishment and maintenance of a statewide unified E-911 emergency system.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 63H-7-303(5) and (6)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The rule does not have anticipated cost or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** Committee members representing local governments will not be reimbursed for expenses incurred as a result of serving on the committee and those expenses must be born by their individual sponsoring entities. Local government may benefit through the awarding of grants to their 911 centers.

◆ **SMALL BUSINESSES:** The rule does not impact businesses with less than 50 employees.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The committee is made up of representatives of

telecommunications companies and their individual companies bear all costs associated with their service on the committee.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Expenses incurred by those serving on the Utah 911 Committee are born by their sponsoring entities.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should not have any fiscal impact on businesses because it merely codifies the current practices used by the Utah 911 Committee for the application for and award of grant funding from the Unified Statewide 911 Emergency Service Account established in Sections 63H-7-304 and 63-7-310.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

PUBLIC SAFETY
CRIMINAL INVESTIGATIONS AND TECHNICAL SERVICES,
911 COMMITTEE (UTAH)
3888 W 5400 S
TAYLORSVILLE, UT 84118
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Eric Parry by phone at 801-857-5825, by FAX at 801-965-3859, or by Internet E-mail at eparry@uca911.org

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/17/2015

THIS RULE MAY BECOME EFFECTIVE ON: 03/02/2015

AUTHORIZED BY: Keith Squires, Commissioner

~~[R720. Public Safety, Criminal Investigations and Technical Services, 911 Committee (Utah).]~~ **[R173. Communications Authority (Utah), 911 Committee (Utah).**

~~[R720-1.]~~ **[R173-1. Utah 911 Committee.**

~~[R720-1-1.]~~ **[R173-1-1. Purpose.**

The purpose of this rule is to outline the operation of [procedures whereby the] the committee and procedures whereby the committee shall [will] award funds [grants] for the establishment and maintenance of a statewide [;] unified [wireless and land-based] E-911 emergency system.

~~[R720-1-2.]~~ **[R173-1-2. Authority.**

This rule is authorized by Subsections 63H-7-303(5) and (6) [53-10-602(5)].

~~[R720-1-3.]~~ **[R173-1-3. Definitions.**

(1) Definitions used in the rule are defined [found] in Section 69-2-2.

(2) In addition:

(a) "committee" means the Utah 911 Committee established in Section 63H-7-103 [53-10-601];

(b) "Authority [department]" means the Utah Communications Authority [Department of Public Safety];

(c) "fund" means the Unified Statewide [Unified E-911] 911 Emergency Service Account [Fund] established in Sections 63H-7-304 and 63-7-310 [53-10-603];

(d) "grant" means an appropriation of funds [money] from the restricted Unified Statewide Emergency Service Account or the Computer Aided Dispatch Restricted Account [fund]; and

(e) "PSAP" means a public safety [service] answering point as defined in Subsection 69-2-2(7).

~~[R720-1-4.]~~ **[R173-1-4. Operation of the Committee.**

(1)(a) A chairperson shall [will] be elected as provided in Subsection 63H-7-302(3)(a) [53-10-601(3)(a)] at the first meeting of each calendar year.

(b) The committee shall [may] also elect a vice-chairperson at that time to assist the chairperson with administrative duties.

(2)(a) The committee shall [will] meet monthly [once a month], unless circumstances otherwise dictate.

~~[(b) Committee meetings will be held at 1:00 p.m. on the third Thursday of each month at the Cal Rampton Building, 4501 South 2700 West, in Salt Lake City, Utah, unless changed by a majority vote of the committee.~~

~~] (c) Members of the committee may participate in the meeting by a phone bridge.~~

~~[R720-1-5.]~~ **[R173-1-5. Grant Process [Applications].**

(1)(a) A PSAP seeking a grant shall [must] make application to the committee using the Utah 911 Committee Grant Application form [which can be found on-line at http://e911.utah.gov/documents.html].

(b) The application shall [must] include:

(i) a description of all equipment or services that may [will] be purchased with the grant;

(ii) a list of vendors and contractors who may [will] be used to provide equipment or services;

(iii) a complete narrative justifying the need for the grant;

(iv) a description of any other funding sources that may [will] be used to pay for the acquisition of equipment, construction of facilities or services; [and]

(v) additional information as requested by the committee; and

~~(vi) the signature of the authorized [governmental-] agency official.~~

(2)(a) Any PSAP intending to apply for a grant shall submit a notice of intent to Agency staff prior to the beginning of the calendar year for consideration in the next budget cycle.

~~(b) PSAPs that submit a notice of intent may receive priority over PSAPs that do not submit a notice of intent prior to making a grant application. [Completed applications must be submitted to department staff no later than noon on the Monday before a scheduled meeting in order to be submitted to the committee for their consideration at that meeting.]~~

(3)(a) The committee requires a 30-day review period to consider grant application submissions.

(i) In cases of extenuating circumstances, a PSAP may request that the committee shorten the 30-day review period and consider the application at its next regularly scheduled meeting.

(ii) The request for a shorter review period shall be made in writing, and explain the extenuating circumstances that justify the expedited consideration of the grant application.

(b) Following the 30-day review period, a representative from the PSAP making the application shall be present, in person or by electronic means, at the next regularly scheduled committee meeting to present the grant application. [A representative from the PSAP making application must be present at the committee meeting to speak about the grant application.]

(4) PSAPs in the third through sixth class counties may apply for grants that enhance 911 emergency services. The committee shall consider these applications on a case-by-case basis.

[R720-1-6.]R173-1-6. Criteria for Determining Grant Eligibility [Expenditures from the Fund].

(1) In order to be eligible ~~for [to receive]~~ a grant, a PSAP shall ~~must~~ comply with all of the requirements found in Title 63H Chapter 7 Part 3; Title 53, Chapter 10, Part 6; and Title 69, Chapter 2.

(2)(a) When determining which PSAPS ~~may [with]~~ receive grants, the committee shall give priority to 911 projects ~~that [which]~~:

~~(b) [to] enhance public safety by providing a statewide [unified 911 emergency system] [wireless and land-based E-911 service];~~

~~[(b) are limited to costs that are directly attributable to implementing and maintaining wireless E-911 service;~~

(c) include a maintenance package that ~~[will]~~ extends the life of the 911 system;

(d) increase the value of the 911 system by ensuring compatibility with emerging technology;

(e) ~~[are necessary to]~~ replace equipment ~~that [which]~~ is no longer reliable or functioning; and

(f) include a local share of funding according to the following formula:

(i) PSAPS in a county of the first class that pay at least 30% of the total cost of the project;

(ii) PSAPS in a county of the second class that pay at least 20% of the total cost of the project; and

(iii) PSAPS in a county of the third through sixth class that pay up to 10% of the total cost of the project.

(3) If a grant application includes equipment ~~that [which]~~ utilizes geographical information systems or geo-positioning systems, the PSAP shall ~~must~~ consult with the State Automated Geographic Reference Center (AGRC) in the Division of Integrated Technology of the Department of Technology Services.

(4) When economically feasible and advantageous to the individual PSAPs, the committee may negotiate with vendors on behalf of the PSAPs as a group.

(5) Where applicable, PSAPs shall provide evidence from the Bureau of Emergency Medical Services (BEMS) that they are a Designated Emergency Medical Dispatch Center.

[R720-1-7.]R173-1-7. Awarding a Grant.

(1) The decision to award a grant shall be made by a majority vote of the committee.

(2) The committee ~~may [with]~~ only award grants for the purchase of equipment or the delivery of services in an amount ~~that [which]~~ is equal to, or less than, the amount that would be paid to a State vendor or contractor.

(3)(a) All grant awards shall be memorialized in a contract between the committee and the ~~[PSAP receiving the]~~ grant recipient.

(b) Each contract shall include the following conditions:

(i) the state or local entity shall ~~must~~ agree to participate in the statewide 911 data management system sponsored by the committee;

(ii) the grant ~~may [must]~~ be used only for the purposes specified in the application; and

(iii) the grant shall be de-obligated ~~[must revert back to the committee]~~ if the state or local entity breaches the terms of the contract.

(4)(a) Unspent grant funds shall be automatically de-obligated within one year from the approval of the original grant.

(b) A PSAP may request a time extension to spend grant funds in extenuating circumstances.

(i) The request shall be made in writing and explain the extenuating circumstances that justify additional time to spend the grant funds.

(ii) The committee shall approve or deny the request by majority vote.

KEY: Utah 911 Committee

Date of Enactment or Last Substantive Amendment: 2015 [May 11, 2011]

Authorizing, and Implemented or Interpreted Law: 63H-7-302 [53-10-602]

**Public Safety, Criminal Investigations
and Technical Services, Criminal
Identification
R722-370
Firearm Safety Program**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39019

FILED: 12/22/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is established to manage the Firearm Safety Program as required in H.B. 134 of the 2014 General Session.

SUMMARY OF THE RULE OR CHANGE: This rule is established to manage the Firearm Safety Program as required in H.B. 134 of the 2014 General Session.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53-10-202(18)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There will be a cost each year for four years to the state budget as appropriated by the state legislature: \$70,000 in the first year and \$60,000 for each of the next three years, for a total of \$250,000 from the general fund budget of the Utah Bureau of Criminal Identification, Department of Public Safety. There will be no aggregate anticipated savings to the state budget.

◆ LOCAL GOVERNMENTS: No aggregate anticipated cost or savings to local government. This rule addresses the management of the firearm safety program. The rule will not affect local government nor are there any anticipated costs or savings.

◆ SMALL BUSINESSES: No aggregate anticipated cost or savings to small businesses. This rule addresses the management of the firearm safety program. The rule will not affect small businesses nor are there any anticipated costs or savings.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities. This rule addresses the management of the firearm safety program. The rule will not affect persons other than small businesses, businesses, or local government entities nor are there any anticipated costs or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs for the Bureau of Criminal Identification, Department of Public Safety will be \$250,000 over 4 years: \$70,000 the first year and \$60,000 for each of the next 3 years.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This should not have any particular effect on business as the costs of the program are to state government for the management of the firearm safety program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

PUBLIC SAFETY
CRIMINAL INVESTIGATIONS AND TECHNICAL SERVICES,
CRIMINAL IDENTIFICATION
3888 W 5400 S
TAYLORSVILLE, UT 84118
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Alice Moffat by phone at 801-965-4939, by FAX at 801-965-4944, or by Internet E-mail at aerickso@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/17/2015

THIS RULE MAY BECOME EFFECTIVE ON: 02/24/2015

AUTHORIZED BY: Alice Moffat, Bureau Chief

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.

R722-370. Firearm Safety Program.

R722-370-1. Authority.

This rule is authorized by Subsection 53-10-202(18).

R722-370-2. Definitions.

(1) "Bureau" means the Utah Bureau of Criminal Identification within the Department of Public Safety established by Section 53-10-201.

(2) "Firearm dealer" means a firearms dealer who is licensed as defined in Subsection 76-10-501(7).

R722-370-3. Firearm Safety Packet.

(1)(a) The bureau shall produce a firearm safety brochure as described in Subsection 53-10-202(18)(a).

(b) The bureau shall make the firearm safety brochure available to all firearm dealers within the State of Utah.

(c) At the end of each fiscal year, the bureau shall review the firearm safety brochure described in Subsection 53-10-202(18)(a), verify the information is correct and current, and update any incorrect information.

(2)(a) At the end of each fiscal year, the bureau shall assess the funds appropriated by the Legislature for the management of the firearm safety program and determine the amount of cable-style gun locks that may be purchased for the next fiscal year.

(b) After determining the amount of cable-style gun locks that may be purchased, the bureau shall purchase such locks through the state purchasing process.

(3) The bureau shall distribute firearm safety packets as described in Subsection 53-10-202(18)(a)(iii) to persons described in Subsection 53-10-202(18)(b) upon request, subject to the availability of such packets.

R722-370-4. Redeemable Coupon Program.

(1)(a) Subject to funding appropriated by the Legislature for the management of the redeemable coupon program, the bureau shall implement and administer the Redeemable Coupon Program as described in Subsections 53-10-202(18)(c) and 76-10-526(15).

KEY: firearm safety, gun locks, redeemable coupon program

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: 53-10-202; 53-10-201; 76-10-501(7); 76-10-526(15)

Regents (Board of), Administration
R765-611
Veterans Tuition Gap Program

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 39023

FILED: 12/23/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish the guidelines for administration of the Veterans Tuition Gap Program which was enacted by the 2014 Utah State Legislature in S.B. 16.

SUMMARY OF THE RULE OR CHANGE: The Veterans Tuition Gap Program is a state supplement grant to provide tuition assistance for veterans who are recipients of federal Post-9/11 Veterans Educational Assistance Act benefits who are attending institutions of higher education in Utah and whose benefits under the federal program have been exhausted. This program is only available to higher education institutions that grant baccalaureate degrees.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Pub. Law No. 110-252 and Section 53B-8-102 and Section 53B-8-106 and Title 53B, Chapter 13b

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The 2014 legislature allocated \$125,000 from the General Fund and a one-time appropriation from the General Fund for the initial year's awards (2014-2015 school award year) for the Veterans Tuition Gap Program funding. Ongoing annual allocations are \$125,000 from the General Fund.

◆ **LOCAL GOVERNMENTS:** There are no costs or associated savings to local government from the enactment of this rule since it only pertains to tuition benefits for veterans attending institutions of higher education.

◆ **SMALL BUSINESSES:** There are no costs or associated savings to small businesses from the enactment of this rule since it only pertains to tuition benefits for veterans attending institutions of higher education.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no costs or associated savings to any person from the enactment of this rule since it only pertains to tuition benefits for veterans attending institutions of higher education.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any affected person in relation to this rule and program. This program provides tuition benefits to veterans in order to complete their educational program resulting in the award of a bachelor's degree.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department head has no comment on the fiscal impact to businesses since no business is affected by this program or rule. This only pertains to veterans who are students

completing a bachelor degree and whose Post 9/11 educational benefits have been exhausted.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

REGENTS (BOARD OF)
ADMINISTRATION
BOARD OF REGENTS BUILDING, THE GATEWAY
60 SOUTH 400 WEST
SALT LAKE CITY, UT 84101-1284
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Courtney White by phone at 801-321-7241, by FAX at 801-321-7199, or by Internet E-mail at cwhite@utahsbr.edu
- ◆ Ronell Crossley by phone at 801-321-7291, by FAX at 801-321-7299, or by Internet E-mail at rcrossley@utahsbr.edu

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/17/2015

THIS RULE MAY BECOME EFFECTIVE ON: 02/25/2015

AUTHORIZED BY: Dave Buhler, Commissioner of Higher Education

R765. Regents (Board of), Administration.**R765-611. Veterans Tuition Gap Program.****R765-611-1. Purpose.**

To provide Board of Regents ("the Board") policy and procedures for implementing the Veterans Tuition Gap Program, Utah Code Title 53B, Chapter 13b, enacted in S.B. 16 by the 2014 General Session of the Utah Legislature.

R765-611-2. References.

2.1. Post 9/11 Veterans Educational Assistance Act of 2008, Pub. L. No. 110-252.

2.2. Utah Code Section 53B-8-106 (Resident tuition - Requirements - Rules)

2.3. Utah Code Section 53B-8-102 (Definition of Resident Student)

2.4. Utah Code Section 53B-13b-101 to 104 (Veterans Tuition Gap Program Act)

2.5. Policy and Procedures R512, Determination of Resident Status

R765-611-3. Effective Date.

These policies and procedures are effective July 1, 2014.

R765-611-4. Policy.

4.1. Program Description: The Veterans Tuition Gap Program (VeT Gap) is a State supplement grant to provide tuition assistance for veterans who are recipients of Federal Post-9/11 Veterans Educational Assistance Act (Federal program) benefits who are attending institutions of higher education in Utah and whose benefits under the Federal program have been exhausted.

This program is only available to higher education institutions that grant baccalaureate degrees.

4.2. Award Year: The award year for VeT Gap is the twelve-month period coinciding with the State fiscal year beginning July 1 and ending June 30.

4.3. Institutions Eligible to Participate: Eligible institutions include those located within the State of Utah which are accredited by a regional or national accrediting organization recognized by the Board.

4.4. Students Eligible to Participate: To be eligible for assistance from VeT Gap funds, a student must:

4.4.1. be a resident student of the State of Utah under Utah Code Section 53B-8-102 and Board Policy R512 or exempt from paying the nonresident portion of total tuition under Utah Code Section 53B-8-106; and

4.4.2. be a veteran using the post 9/11 Veterans Assistance Program funds; and

4.4.3. be unconditionally admitted and currently enrolled in an eligible program leading to a bachelor's degree at an eligible institution on at least a half-time basis as defined by the institution; and

4.4.4. be maintaining satisfactory academic progress, as defined by the institution, toward the degree in which enrolled; and

4.4.5. has exhausted the Federal benefit under the post 9/11 Veterans Assistance Program; and

4.4.6. has not completed a bachelor's degree; and

4.4.7. be in the final year of his or her academic baccalaureate program.

4.5. Program Administrator: The program administrator for the VeT Gap is the Associate Commissioner for Student Financial Aid, or a person designated in a formal delegation of authority by the Associate Commissioner, under executive direction of the Commissioner of Higher Education.

4.6. Availability of Funds for the Program: Funds available for VeT Gap allocations to institutions may come from specifically earmarked State appropriations, or from other sources such as private contributions. Amounts available for allocations each year shall be allocated as follows:

4.7. Allocation of Program Funds to Institutions

4.7.1. Annually, the participating institution will provide the following required data, for the most recently completed academic year, by March 1st. The director of financial aid of an eligible institution, in consultation with the institution's veterans affairs officer, will demonstrate intention to continue participation in VeT Gap by submitting to the program administrator a certification, subject to audit, of (a) the total number of veterans using Post 9/11 Veterans Assistance Program funds attending the institution who were resident students of the State of Utah under Utah Code Section 53B-8-102 and Board Policy R512 and (b) the total number of such students who have graduated from the institution with a baccalaureate degree in the most recently completed academic year.

4.7.2. Failure to submit the certification required in 4.7.1 by the requested date constitutes an automatic decision by an eligible institution not to participate in the program for the next fiscal year.

4.7.3. Allocation of program funds to participating institutions will be based on the total number of an institution's Utah resident students who graduated with a baccalaureate degree in the

most recently completed academic year and used their Post 9/11 Veterans Assistance Program funds in the State of Utah and the proportion of each participating institution's number of those students to the total population of such students. For example:

4.7.3.1. A participating institution's number of Utah resident students who graduated with a baccalaureate degree during the most recently completed academic year using Post 9/11 Veterans Assistance Program funds / Total number of Utah resident students who graduated from all participating institutions with a baccalaureate degree during the most recently completed academic year using Post 9/11 Veterans Assistance Program funds = % of VeT Gap funds allocated to the participating institution

4.7.4. The program administrator will send official notification of each participating institution's allocation to the director of financial aid each fiscal year.

4.7.5. The program administrator will send a blank copy of the format for the institutional VeT Gap performance report, to be submitted within 30 days of the end of the applicable fiscal year, to the director of financial aid of each participating institution each fiscal year.

4.8. Institutional Participation Agreement: Each participating institution will enter into a written agreement with the program administrator or assigned designee agreeing to abide by the program policies, accept and disburse funds per program rules, provide the required report each year and retain documentation for the program to support the awards and actions taken. By accepting the funds, the participating institution agrees to the following terms and conditions:

4.8.1. Use of Program Funds Received by the Institution

4.8.1.1. The institution may at its discretion place up to, but in no case more than, 3.0% of the total amount of program funds allocated to it for the award year in a budget for student financial aid administrative expenses of the institution.

4.8.1.2. The institution may not carry forward or carry back from one fiscal year to another any of its VeT Gap allocation for a fiscal year. Any unused funds will be returned to the program administrator as directed. Returned funds will be re-distributed to eligible institutions as regular VeT Gap allocations for disbursement the next award year.

4.8.1.3. The institution may establish processes to determine the distribution of funds to students so long as it does so in accordance with provisions established in this policy.

4.8.2. Determination of Awards to Eligible Students

4.8.2.1. Student cost of attendance budgets will be established by the institution, in accordance with Federal regulations applicable to student financial aid programs under Title IV of the Higher Education Act as amended, for specific student categories authorized in the Federal regulations, and providing for the total of costs payable to the institution plus other direct educational expenses, transportation and living expenses.

4.8.2.2. The total amount of any VeT Gap funds awarded to an eligible student in an academic year will not exceed the amount of tuition (not fees) for that academic year and may be impacted by the following:

(a) An eligible student whose period of enrollment is less than the normally-expected period of enrollment within the award year (such as two semesters, three quarters, nine months, or 900 clock hours) will be awarded an amount in proportion to the

normally-expected period of enrollment represented by the term, or terms, e.g. semester or quarter) for which the student is enrolled; or

(b) The minimum student award amount may be the balance of funds remaining in the institution's allocation for the award year in the case that the previous eligible student receiving a VeT Gap award for the year reduced the total available funds to an amount less than that for which an individual qualified.

4.8.2.3. VeT Gap funds will be awarded and packaged on an annual award year basis unless the remaining period of enrollment until completion of the academic program is less than one award year. Funds will be paid one quarter or semester at a time (or in thirds, if applicable to some other enrollment basis such as total months or total clock hours), contingent upon the student's maintaining satisfactory progress as defined by the institution in published policies or rules.

4.8.2.4. All awards under the program will be made in accordance with current Federal Title IV non-discrimination requirements.

4.8.2.5. Students receiving financial aid under the program will be required to agree in writing to use the funds received for expenses covered in the student's cost of attendance budget.

(a) The student's signature on the Free Application for Federal Student Aid satisfies this requirement.

(b) If the institution determines, after opportunity for a hearing on appeal according to established institutional procedures, that a student used VeT Gap funds for other purposes, the institution will disqualify the student from VeT Gap eligibility beginning with the quarter, semester or other defined enrollment period after the one in which the determination is made.

4.8.2.6. In no case will the institution initially award program funds in amounts which, with Federal Direct, Federal Direct PLUS and/or Perkins Loans and other financial aid from any source, both need and merit-based, and with expected family contributions, exceed the cost of attendance for the student at the institution for the award year.

4.8.2.7. If, after the student's aid has been packaged and awarded, the student later receives other financial assistance (for example, merit or program-based scholarship aid) or the student's cost of attendance budget changes, resulting in a later over-award of more than \$300, the institution will appropriately reduce the amount of financial aid disbursed to the student so that the total does not exceed the cost of attendance.

4.8.3. Reports: The institution will submit an annual report within 30 days after completion of the award year, providing information on individual awards and such other program-relevant information as the Board may reasonably require.

4.8.4. Records Retention and Cooperation in Program Reviews: The institution will cooperate with the program administrator in providing records and information requested for any scheduled audits or program reviews, and will maintain records substantiating its compliance with all terms of the participation agreement for three years after the end of the award year, or until a program review has been completed and any exceptions raised in the review have been resolved, whichever occurs first. If at the end of the three-year retention period, an audit or program review exception is pending resolution, the institution will retain records for the award year involved until the exception has been resolved.

KEY: financial aid, higher education, veterans benefits

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: 53B-13b; 53B-8-102; 53B-8-106; Pub. L. No. 110-252

Technology Services, Administration R895-6 IT Plan Submission Rule for Agencies

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 39026

FILED: 12/23/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: State agencies are required by statute to submit information technology (IT) plans for review and approval by the Chief Information Officer (CIO). This rule provides the format and content requirements for IT plan submission. The reason for the change is to clarify the updated process for agencies to provide IT plan submission.

SUMMARY OF THE RULE OR CHANGE: State agencies are required by statute to submit IT plans for review and approval by the Chief Information Officer (CIO). This rule provides the format and content requirements for IT plan submission. The reason for the change is to clarify the updated process for agencies to provide IT plan submission.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63F-1-204 and Section 63F-1-206

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to state budget. The changes to the rule are simplifying the process for state agencies only.
- ◆ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to local government. The changes to the rule are simplifying the process for state agencies only, and do not affect local government.
- ◆ **SMALL BUSINESSES:** There is no aggregate anticipated cost or savings to small businesses. The changes to the rule are simplifying the process for state agencies only, and do not affect small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no aggregate anticipated cost or savings to persons other than small businesses, businesses, or local government entities. The changes to the rule are simplifying the process for state agencies only, and do not affect other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The changes to the rule are simplifying the process for state agencies only.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule causes no fiscal impact to businesses. The changes to the rule are simplifying the process for state agencies only.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 TECHNOLOGY SERVICES
 ADMINISTRATION
 ROOM 6000 STATE OFFICE BUILDING
 450 N STATE ST
 SALT LAKE CITY, UT 84114
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Stephanie Weiss by phone at 801-538-3284, by FAX at 801-538-3622, or by Internet E-mail at stweiss@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 02/17/2015

THIS RULE MAY BECOME EFFECTIVE ON: 02/24/2015

AUTHORIZED BY: Mark VanOrden, Executive Director and CIO

R895. Technology Services, Administration.
R895-6. IT Plan Submission Rule for Agencies.
R895-6-1. Purpose.

State agencies are required by statute to submit IT plans for review and approval by the Chief Information Officer (CIO) office. This rule provides the format and content requirements for IT Plan submission.

R895-6-2. Authority.

This rule is issued by the Chief Information Officer under the authority of Section 63F-1-206 of the Technology Governance Act, in accordance with Section 63G-3-201 of the Utah Rulemaking Act, Utah Code Annotated, and section 63F-1-204 of the Utah code, Agency Information Technology Plans.

R895-6-3. Scope of Application.

All state agencies of the executive branch of the State of Utah government shall comply with this rule, which provides a consistent technology planning method for the State of Utah.

[R895-6-4. Definitions:

- ~~(1) "Project" Investment in development of a new application/system or to upgrade or enhance an existing information system.~~
- ~~(2) Plan Timeframe: One fiscal year into the future.~~
- ~~(3) Severity level: Severity level is rated on four categories: impact on citizens, visibility to the public and Legislature, impact on state operations, and the consequences of doing nothing. The severity rating reflects the impact on external stakeholders.~~

~~(4) Risk level: The risk criteria measure the impact of the project on the organization, the effort needed to complete the project, the stability of the proposed technology, and the agency preparedness. The risk rating reflects the impact on the internal stakeholders.~~

]R895-6-[5]4. Compliance and Responsibilities.

The following are the compliance issues and the responsibilities for state agencies:

- (1) Any state executive branch agency that develops, hosts, or funds information technology projects or infrastructure shall submit a plan following the format outlined in R895-6-[6]5 below.
- (2) The CIO office shall provide education and instruction to the agencies to enable consistent response.
- (3) Finalized and approved Agency IT Plans shall be delivered to the CIO office, in electronic format, by July 1 of each year.
- (4) Agency IT Plans shall use document formatting methods as defined in CIO instruction.
- (5) Agency IT Plans at a division level, shall be combined for submission to the CIO office at the Agency/Department level.
- (6) Amendments to the IT Plan shall be submitted throughout the fiscal year for any [significant] change in a project, any new project, or any removal of a project [or if an IT supplemental appropriation is requested during the budget process.]

R895-6-[6]5. Agency IT Plan Format.

The following is the IT plan format:

- (1) SUBMIT AN EXECUTIVE SUMMARY.
 - (a) [Department/Agency Mission Statement.]The information technology objectives of the Agency.
 - (b) [Department/Agency Business Objectives that have IT projects supporting them.]Any performance measures used by the Agency for implementing the Agency's technology objectives.
 - (c) [Statement of IT Vision/Mission.]Any planned expenditure related to information technology.
 - (d) [Description of accomplishments of past calendar year.]The agency need for appropriations for information technology.
 - (e) [IT Budget Summary for Department/Agency:]How the agency's development of information technology coordinates with other state and local governmental entities.
 - (f) [Verification of compliance procedures for information technology policies, administrative rules, and statutes.]Any efforts the agency has taken to develop public and private partnerships to accomplish information technology objectives of the agency.
 - (g) [Describe performance measures used by the agency for implementing the agency's information technology objectives.]The efforts the agency has taken to conduct transactions electronically in compliance with Utah Code Section 46-4-503.
 - (h) The agency's plan for the timing and method of verifying the department's security standards, if an agency intends to verify the department's security standards for the data that the agency maintains or transmits through the department's servers.
- (2) IT PLAN DETAILS.
 - (a) Complete a project description for each information technology project, utilizing the document formatting methods as defined by CIO instruction. [Security Plan Documentation.

~~(b) Disaster Recovery/Business Resumption Plan Documentation.~~
~~(c) If a supplemental IT appropriation is anticipated, describe.~~
~~(d) Describe anticipated changes in objectives, projects or initiatives.~~
~~(e) If a building block request for an IT appropriation is anticipated, describe.~~
~~(3) PROPOSED PROJECT DESCRIPTION~~
~~Complete a project description for each IT project including the following information:~~
~~(a) Project organizational impact:~~
~~(i) Division (or other dept. sub-unit) project; identify:~~
~~(ii) Department project.~~
~~(iii) Cross-department project.~~
~~(b) Project Name.~~
~~(c) Project Manager.~~
~~(d) Project Purpose (check all that apply):~~
~~(i) Maintain/enhance existing infrastructure.~~
~~(ii) New infrastructure.~~
~~(iii) Maintain/enhance existing application/product.~~
~~(iv) Develop new application/product.~~
~~(v) Support of UCA 46-4-503.~~
~~(vi) Pilot project.~~
~~(vii) Implement/enhance GIS.~~
~~(viii) Collaboration with local government.~~
~~(ix) Public/private partnership.~~
~~(x) Other, please specify:~~
~~(4) DOCUMENT SUPPORT OF EXECUTIVE BRANCH STRATEGIC GOALS.~~
~~(5) DESCRIBE PROPOSED PROJECT AND ITS ANTICIPATED BENEFITS.~~

~~(6) IDENTIFY THE IMPACT ON DTS SERVICES THAT MAY RESULT WITH THE DEVELOPMENT OF THIS PROJECT.~~
~~(7) LIST ESTIMATED START AND END DATE FOR PROJECT.~~
~~(8) ESTIMATE PROJECT COSTS INCLUDING LABOR, HARDWARE, SOFTWARE, CONTRACT SERVICES AND OTHER.~~
~~(9) ESTIMATE ANNUAL OPERATION/MAINTENANCE COSTS.~~
~~(10) DESCRIBE RISK LEVEL OF PROJECT FOLLOWING CIO INSTRUCTION FOR FORMAT.~~
~~(11) DESCRIBE SEVERITY LEVEL OF PROJECT FOLLOWING CIO INSTRUCTION FOR FORMAT.~~
~~(12) DESCRIPTION OF IT ALIGNMENT WITH BUSINESS OBJECTIVES.]~~

R895-6-[7]6. Exceptions.

Any variance to format or content as established in this rule shall be approved by the CIO office.

R895-6-[8]7. Rule Compliance Management.

The CIO may enforce this rule by non-approval of the IT Plan as defined in Utah Code, Section 63F-1-204.

KEY: IT planning

Date of Enactment or Last Substantive Amendment: [September 16, 2009]2015

Notice of Continuation: March 27, 2014

Authorizing, and Implemented or Interpreted Law: 63F-1-206; 63F-1-204; 63G-3-201

End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive comment that requires the **PROPOSED RULE** to be altered before it goes into effect. A **CHANGE IN PROPOSED RULE** allows an agency to respond to comments it receives.

As with a **PROPOSED RULE**, a **CHANGE IN PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **CHANGE IN PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends February 17, 2015.

Following the **RULE ANALYSIS**, the text of the **CHANGE IN PROPOSED RULE** is usually printed. The text shows only those changes made since the **PROPOSED RULE** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (example). Deletions made to the rule appear struck out with brackets surrounding them (~~example~~). A row of dots in the text between paragraphs (.) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **CHANGE IN PROPOSED RULE** is too long to print, the Division of Administrative Rules may include only the **RULE ANALYSIS**. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

From the end of the 30-day waiting period through May 15, 2015, an agency may notify the Division of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses.

CHANGES IN PROPOSED RULES are governed by Section 63G-3-303, Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5b, R15-4-7, R15-4-9, and R15-4-10.

The Changes in Proposed Rules Begin on the Following Page

Environmental Quality, Administration
R305-7-607
Matters Governed by the Radiation
Control Act, Title 19, Chapter 3, but not
including Section 19-3-109

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 38753
 FILED: 12/17/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for filing this change in proposed rule is to address a comment that was submitted about the original filing (DAR No. 38753). An additional clarification has been made about the relationship between this rule and another.

SUMMARY OF THE RULE OR CHANGE: A missing section number has been added, and a reference has been added to a provision in another rule, Subsection R313-17-4(6), to better clarify the relationship between the two provisions. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the September 1, 2014, issue of the Utah State Bulletin, on page 59. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-1-301.5(6)(d)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There will be no change in state budget; the changes are clarifications only.
- ◆ LOCAL GOVERNMENTS: There will be no change for local government budgets; the changes are clarifications only.
- ◆ SMALL BUSINESSES: There will be no change to small business; the changes are clarifications only.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be no change in cost for any other person; the changes are clarifications only.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no additional costs; the changes simply add a missing section number, and add a reference to a provision in another rule, Subsection R313-17-4(6), to better clarify the relationship between the two provisions.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes are clarifications only and will have no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 ADMINISTRATION
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Laura Lockhart by phone at 801-536-0283, by FAX at 801-366-0292, or by Internet E-mail at llockhart@utah.gov

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2015

AUTHORIZED BY: Amanda Smith, Executive Director

R305. Environmental Quality, Administration.

R305-7. Administrative Procedures.

R305-7-607. Matters Governed by the Radiation Control Act, Title 19, Chapter 3, but not including Section 19-3-109.

(1) Paragraph (2) of this subsection R305-7-607 applies to all matters governed by the Radiation Control Act, Title 19, Chapter 3, but not including Section 19-3-109.

(2) Definitions.

"Director" means the Director of the Division of Radiation Control.

(3) This paragraph (3) applies to proceedings under R313-17-4(6).

(a) A hearing shall be conducted by the ALJ for the limited purposes of:

(i) allowing the petitioner to ask questions; and

(ii) allowing follow-up questions of the witnesses or other witnesses, including those representing the petitioner, by any party.

(b) Questioning under this paragraph shall be consistent with the standards specified R313-17-4(5)(f) and (h) and the limitations in paragraph R313-17-4(6).

(c) The ALJ shall determine whether the petitioner's questions shall be answered by the division staff, by the applicant, or by both.

(d) The procedures in R305-7, Part 3 shall govern the hearing as appropriate for the limited scope of the hearing.

(e) The transcript of the hearing will be part of the record on appeal, as authorized in 19-1-301.5(8)(c)(vi).

KEY: administrative procedures, adjudicative procedures, hearings

Date of Enactment or Last Substantive Amendment: 2015

Authorizing, and Implemented or Interpreted Law: 19-1-301; 19-1-301.5; 63G-4-102; 63G-4-201; 63G-4-202; 63G-4-203; 63G-4-205; 63G-4-503

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **120-DAY RULE** is printed. New text is underlined (example) and text to be deleted is struck out with brackets surrounding the deleted text ([example]). An emergency rule that is new is entirely underlined. Likewise, an emergency rule that repeals an existing rule shows the text completely struck out. A row of dots in the text (.) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective when filed with the Division of Administrative Rules, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule. Because of its temporary nature, a **120-DAY RULE** is not codified as part of the *Utah Administrative Code*.

The law does not require a public comment period for **120-DAY RULES**. However, when an agency files a **120-DAY RULE**, it may file a **PROPOSED RULE** at the same time, to make the requirements permanent.

Emergency or **120-DAY RULES** are governed by Section 63G-3-304, and Section R15-4-8.

Capitol Preservation Board (State), Administration

R131-2

Capitol Hill Complex Facility Use

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 39024

FILED: 12/23/2014

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to establish more specific rules in which the Capitol Complex Facility may be used in a way that protects the safety of the people and maintains the integrity of the Complex and delicate artwork.

SUMMARY OF THE RULE OR CHANGE: The inclusion of additional prohibited items in order to protect the safety of the people and maintain the integrity of the Complex and delicate artwork. (DAR NOTE: A corresponding proposed amendment is under DAR No. 39025 in this issue, January 15, 2015, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63C-9-301

EMERGENCY RULE REASON AND JUSTIFICATION:

REGULAR RULEMAKING PROCEDURES WOULD cause an imminent peril to the public health, safety, or welfare.

JUSTIFICATION: The emergency rule filing is necessary in order to protect the Capitol property including but not limited to delicate art work and Capitol grounds, as well as allow for proper food provisions during the legislative session.

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** No anticipated costs or savings are expected. This change simply describes the prohibited items for the use of the Capitol Hill Complex Facility.

◆ **LOCAL GOVERNMENTS:** No anticipated costs or savings are expected. This change simply describes the prohibited items for the use of the Capitol Hill Complex Facility.

◆ **SMALL BUSINESSES:** No anticipated costs or savings are expected. This change simply describes the prohibited items for the use of the Capitol Hill Complex Facility.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No anticipated costs or savings are expected. This change simply describes the prohibited items for the use of the Capitol Hill Complex Facility.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs because the rule only describes the prohibited items for the use of the Capitol Hill Complex Facility.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated affects that the rule will have on businesses specifically, with the exception that there are certain prohibitions on items during events held at the Capitol Hill Complex Facility that businesses will need to abide by.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

CAPITOL PRESERVATION BOARD (STATE)
ADMINISTRATION
ROOM E110 EAST BUILDING
420 N STATE ST
SALT LAKE CITY, UT 84114-2110
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
◆ Allyson Gamble by phone at 801-537-9156, by FAX at 801-538-3221, or by Internet E-mail at agamble@utah.gov
◆ Nicole Alder by phone at 801-538-3240, or by Internet E-mail at nicolealder@utah.gov

EFFECTIVE: 12/23/2014

AUTHORIZED BY: Allyson Gamble, Executive Director

R131. Capitol Preservation Board (State), Administration.

R131-2. Capitol Hill Complex Facility Use.

R131-2-1. Purpose and Application.

(1) The purpose of this rule is to define conditions for public access and use of the Capitol Hill Complex and to establish procedures for receiving and deciding complaints regarding the access or use of the Capitol Hill Complex.

(2) Except as expressly stated herein, or in rule R131-11, this rule R131-2 does not apply to free speech activities. Free speech activities conducted at the Capitol Hill Complex are governed by rule R131-11.

R131-2-2. Authority.

(1) The State Capitol Preservation Board adopts this Capitol Hill Complex Facility Use Rule pursuant to Section 63C-9-301.

R131-2-3. Definitions.

As used in this rule R131-2:

(1) "Board" means the State Capitol Preservation Board created by Section 63C-9-201.

(2) "Capitol Hill Complex" means all grounds, monuments, parking areas, buildings, including the Capitol, and other man-made and natural objects within the area bounded by 300 North Street, Columbus Street, 500 North Street, and East Capitol Boulevard. Capitol Hill Complex also includes:

(a) the White Community Memorial Chapel and the Council Hall Travel Information Center building and their grounds and parking areas;

(b) the Daughters of the Utah Pioneers museum and buildings, grounds and parking areas, and other state-owned property

included within the area bounded by Columbus Street, North Main Street, and Apricot Avenue;

(c) state owned property included within the area bounded by Columbus Street, Wall Street, and 400 North Street; and

(d) state owned property included within the area bounded by Columbus Street, West Capitol Street, and 500 North Street, and any other facilities and grounds owned by the state of Utah that are located within the immediate vicinity.

(3) "Capitol Hill Facilities" means all buildings on the Capitol Hill Complex, including the Capitol, exterior steps, entrances, streets, parking areas and other paved areas of the Capitol Hill Complex.

(4) "Capitol Hill Grounds" means landscaped and unpaved public areas of the Capitol Hill Complex. Maintenance and utility structures and areas are not considered Capitol Hill Grounds for the purpose of any public use.

(5) "Catering Service(s)" means the serving of food and/or beverages on Capitol Hill.

(6) "Commercial Activities" means events that sponsored or conducted for the promotion of commercial products or services, and include advertising, private parties, private company or organization meetings, and any other non-public organization event. Commercial activities do not include private, community service, state sponsored, or free speech activities.

(7) "Community Service Activities" means events sponsored by governmental, quasi-governmental and charitable organizations, city and county government departments and agencies, public schools, and charitable organizations held to support or recognize the public or charitable functions of such sponsoring group. To the extent the event is sponsored by a private charitable organization, the organization must have an Internal Revenue Code Section 501(c)(3) active status and the event must be related to such status.

(8) "Event" or "Events" are commercial, community service, private, and state sponsored activities involving one or more persons. Events may include banquets, receptions, award ceremonies, weddings, colloquia, concerts, dances, and seminars. A free speech activity is not an event for purposes of rule R131-2 and R131-10. The term "activity" or "activities" may be substituted in this rule for the term "event" or "events."

(9) "Executive Director" means the executive director appointed by the Board under Section 63C-9-102, or a designee supervised by the executive director.

(10) "Facility Use Application" ("Application") means a form approved by the executive director used to apply to reserve Capitol Hill Facilities or Capitol Hill Grounds for an event.

(11) "Facility Use Permit" ("Permit") means a written permit issued by the executive director authorizing the use of an area of the Capitol Hill Complex for an event in accordance with this rule.

(12) "Free Speech Activity" is as defined in rule R131-11.

(13) "Cafe Operator" means the Capitol Hill cafe operator located on the first floor of the East Senate Building who is under contract with the Board to provide food/beverages in the State Room and may be allowed to cater in other areas on the Capitol Hill Complex.

(14) "Private Activity" means an event sponsored by private individuals, businesses or organizations that is not a commercial or community service activity.

(15) "Authorized Caterer" means a person or entity authorized to provide catering services on the Capitol Hill Complex, and is not the Cafe Operator.

(16) "Solicitation" is as defined in rule R131-10.

(17) "State" means the state of Utah and any of its agencies, departments, divisions, officers, legislators, members of the judiciary, persons serving on state boards or commissions, and employees of the above entities and persons.

(18) "State Sponsored Activity" means any event sponsored by the state that is related to official state business. Official state business does not include award ceremonies, lobbying activities, retirement parties, or similar social parties, social activities or social events. Management retreats may be considered a State Sponsored Activity if it has a supporting agenda and documentation establishing that the primary purpose of the retreat is to conduct official state business. In order to be considered a State Sponsored Activity, such activity must obtain written approval from the Executive Director and/or the Board's Budget Development and Board Operations Subcommittee.

(19) "User(s)" means any person that uses the facilities or grounds as well as any applicant for a facility use permit.

R131-2-4. Facility Use Permit - Application.

(1) Each person or group seeking to hold an event or solicitation at the Capitol Hill Complex shall submit a completed Facility Use Application at least fourteen calendar days prior to the anticipated date of the event. Applications may not be submitted, and facilities will not be scheduled, more than 365 calendar days before the date of the event. An applicant may only make one application for one continuous event at a time. For State Sponsored Activities that involve a reoccurring meeting schedule, one application may be used for all the reoccurring meetings. For all events, other than State Sponsored Activities or Free Speech Activities, there shall be a non-waivable and non-refundable application processing fee, which shall be paid at the time of submission of the application.

(2) The executive director shall provide a Facility Use Permit Application form. The form shall request and applicants shall provide all necessary information, including all material aspects of the proposed event or solicitation. This necessary information is required even if the Applicant requests a waiver. The application shall include the following information:

(a) the applicant's organization's name, address, telephone and facsimile number;

(b) the names and addresses of the person(s) responsible for supervising the event during set up, take down, clean up and the duration of the event;

(c) the nature of the applicant; i.e. individual, business entity, governmental department or other;

(d) the name and address of the legally recognized agent for service of process;

(e) a specific description of the area of the facility and/or grounds being requested for use;

(f) the type of proposed activity and the number of anticipated participants;

(g) the dates and times of the proposed activity and a description of the schedule and agenda of the event;

(h) a complete description of equipment and apparatus to be used for the event;

(i) any other special considerations or accommodations being requested; and

(j) whether the applicant requests exemption or waiver of any requirement of this rule or provision of the Facility Use Application.

(3) In addition, the applicant shall submit with the Facility Use Application:

(a) documentation supporting any requested exemption or waiver;

(b) proof of liability insurance covering the applicant and the event in the amount as identified in the Schedule of Costs and Fees as referred to in rule R131-2-7(1)(a);

(c) a deposit and down payment in the amounts as identified in the Schedule of Costs and Fees as described in rule R131-2-7(1)(a) for the type of event proposed; and

(d) other information as requested by the executive director.

(4) Applications shall be reviewed by the executive director for completeness, activity classification, costs and fees.

(5) Priority for use of the Capitol Hill Complex will be given to applications for state sponsored activities. During the actual hours of legislative sessions, priority will be given to free speech activities over commercial, community service and private activities. Otherwise, applications will be approved, and requested facilities reserved, on a first-come, first-serve basis.

R131-2-5. Facility Use Permit - Denial - Appeal - Cancellation - Revocation - Transfer.

(1) Within ten working days of receipt of a completed application, the executive director shall issue a Facility Use Permit or notice of denial of the application.

(2) The executive director may deny an application if:

(a) the application does not comply with the applicable rules;

(b) the event would conflict or interfere with a state sponsored activity, a time or place reserved for free speech activities, the operation of state business, or a legislative session; and/or

(c) the event poses a safety or security risk to persons or property.

(3) The executive director may place conditions on the approval that alleviates such concerns.

(4)(a) If the applicant disagrees with a denial of the application or conditions placed on the approval, the applicant may appeal the executive director's determination by delivering the written appeal and reasons for the disagreement to the executive director within five working days of the issuance of the notice of denial or approval with conditions.

(b) Within ten working days after the executive director receives the written appeal, the executive director may modify or affirm the determination.

(c) If the matter is still unresolved after the issuance of the executive director's reconsideration determination, the applicant may appeal the matter, in writing, within ten working days to the Board's Budget Development and Board Operations Subcommittee chair who will determine the process of the appeal.

(d) The applicant may appeal the Subcommittee Chair's determination in writing within ten working days of receipt of the written determination, by submitting a written appeal at the Board's office. The Board shall consider the appeal at its next regularly scheduled meeting.

(5) Facility Use Permits are non-transferable. The purpose, time, place and other conditions of the Facility Use Permit may not be changed without the advance written consent of the executive director. At least thirty calendar days advance written notice is required for the applicant to request a change in the date, time and/or place of the event or solicitation. If there is no conflict with another scheduled event or solicitation, the executive director may adjust the Facility Use Permit in regard to the date, time and/or place based upon the request.

(6) An event may be re-scheduled if the executive director determines that an event will conflict with a governmental function, free speech activity or state sponsored activity.

(a) The executive director may revoke any issued permit if this rule R131-2, any applicable law, or any provision of the permit is being violated. The permit may also be revoked if the safety or health of any person is threatened.

(b) The applicant may cancel the permit and receive a full refund of fees and any deposits if written notice of cancellation is received by the executive director at least 30 calendar days prior to the scheduled event. Failure to timely cancel the event will result in the forfeiture of any deposit and fees.

R131-2-6. General Requirements for Use of the Capitol Hill Complex.

(1) General Requirements.

(a) These are the requirements for use of the Capitol Hill Complex. This rule R131-2-6 shall apply to free speech activities, all other activities, groups and individuals using the Capitol Hill Complex.

(b) Except for state holidays, the Capitol building will be open to the general public Monday through Saturday from 8:00 a.m. to 8:00 p.m. and on Sunday from 8:00 a.m. to 6:00 p.m. Free speech activities may be conducted beyond the times identified in this subsection, as specified in rule R131-11. Unless otherwise authorized, Capitol Hill Facilities and Capitol Hill Grounds, including the Capitol Rotunda, are available for permitted use, activities or events from 8:00 a.m. to 11:00 p.m.

(c) Activities, except free speech activities, may be specifically denied during legislative sessions.

(d) No event may disrupt or interfere with any legislative session, legislative meeting, or the conduct of any state or governmental business, meeting or proceeding on the Capitol Hill Complex. No person shall unlawfully intimidate or interfere with persons seeking to enter or exit any facility, or use of the Capitol Hill Complex.

(e) Levels of audible sound generated by any individual or group, indoors or on the plaza between the House and Senate Buildings, whether amplified or not, shall not exceed 85 decibels or a more restrictive limit established by applicable laws or ordinances. All outdoor events shall not exceed noise limits established by applicable laws or ordinances.

(f) Fire exits, staircases, doorways, roads, sidewalks, hallways and pathways shall not be blocked, and the efficient flow of pedestrian traffic shall not be obstructed at any time.

(g) Alteration and damage to the Capitol Hill Grounds including grass, plants, shrubs, trees, paving or concrete is prohibited.

(h) No object or substance of any kind shall be placed on or in the Capitol Plaza fountain. Standing on or in the fountain is prohibited.

(i) All costs to repair any damage or replace any destruction, regardless of the amount or cost of restoration or refurbishing, shall be

at the expense of the person(s) responsible for such damage or destruction.

(j) The consumption, distribution, or open storage of alcoholic beverages is prohibited.

(k) Service animals are permitted, but the presence of other animals is allowed only with advance written permission of the executive director. Owners/caretakers are responsible for the safety to the animal, persons, grounds and facilities.

(l) Camping is prohibited on the Capitol Hill Complex.

(m) Littering is prohibited.

(n) Commercial solicitation as defined in rule R131-10 is prohibited except as provided in rule R131-10.

(o) The use of a personal space heater is prohibited, except as provided in Subsection (i).

(i) Any person with a medical related condition may obtain approval by the Executive Director to use a personal space heater provided the person submits a signed statement by a Utah licensed physician verifying that the medical related condition requires a change in the standard room temperature and the use of the space heater meets the specifications in Subsection (ii).

(ii) If a space heater is approved by the Executive Director, the space heater shall not exceed 900 watts at its highest setting, be equipped with a self-limiting element temperature setting for the ceramic elements, have a tip-over safety device, be equipped with a built-in timer not to exceed eight hours per setting, be equipped with a programmable thermostat, and be equipped with an overheat protection feature.

(p) Tables, chairs, furniture, art and other objects in the Capitol Building shall only be moved by the Board's staff. No outside furniture, including tables or chairs, shall be allowed in the Capitol Building or any other facility on the Capitol Hill Complex without the advance written approval of the Executive Director.

(2) Decorations.

(a) All cords must be taped down with 3M #471 tape or equivalent as determined by the executive director.

(b) There shall be no posting or affixing of placards, banners, or signs to any part of any building or on the grounds. All signs or placards used at the Capitol Hill Complex shall be hand held.

(c) No adhesive material, wire, nails, or fasteners of any kind may be used on the buildings or grounds.

(d) Nothing may be used as a decoration, or be used in the process of decorating, that marks or damages structure(s).

(e) All decorations and supporting structures shall be temporary.

(f) Any writing or use of ink, paint or sprays applied to any area of any building is prohibited.

(g) Users may not decorate the inside or outside of any facility or any portion of the grounds without the advance written approval of the Executive Director. Users must submit any decoration requests in writing to the Executive Director at least ten working days in advance.

(h) Signs, posters, decorations, displays, or other media shall be in compliance with the state law regarding Pornographic and Harmful Materials and Performance, Section 76-10-1201 et seq.

(i) Leaving any item(s) against the exterior or interior walls, pillars, busts, statues, portraits or staircases of the Capitol building is prohibited.

(j) Balloons are not allowed inside the Capitol building.

(3) Set up/Clean up.

(a) All deliveries and loading/unloading of materials shall be limited to routes and elevators as specified by the executive director.

(b) All decorations, displays and exhibits shall be taken down by the designated end time of the event in a manner that is least disruptive to state business.

(c) Users shall leave all facilities and grounds in its original condition and appearance.

(4) Parking.

(a) Parking is limited. All posted parking restrictions on the Capitol Hill Complex, including reserved parking stalls, shall be observed.

(b) Parking for large vehicles or trailers shall require the prior approval of the executive director, which approval may be withheld if the large vehicle or trailer may interfere with the access or use of the Capitol Hill Complex.

(c) Except as expressly allowed by the executive director, overnight parking is prohibited.

(5) Compliance with Laws.

(a) Users shall conform to all applicable and constitutional laws and requirements, including health, safety, fire, building and other codes and similar requirements. Occupancy limits as posted in or applicable to any public area will dictate, unless otherwise limited for public safety, the number of persons who can assemble in the public areas. Under no circumstance will occupancy limits be exceeded. State Capitol security personnel shall use reasonable efforts to ensure compliance with occupancy, safety, and health requirements.

(b) Safety requirements as used in this rule include safety and security requirements made known to the executive director by the Utah Department of Public Safety or the federal government for the safety and security of special events and/or persons on the Capitol Hill Complex.

(c) "No Smoking" statutes, rules and policies, including the Utah Indoor Clean Air Act, Title 26, Chapter 38, Utah Code shall be observed.

(d) The following are all prohibited: Open flames[;]; flammable fluids[;]; candles[;] with flames; burning incense; smoke; fog machines; disseminating dust, powder, glitter or confetti; and explosives; [are prohibited.] except that a gelled alcohol food warming fuel used for food preparation or warming, whether catered or not, is allowed provided that it is in:

(i) a one ounce capacity container (29.6 ml) on a noncombustible surface; or

(ii) a container on a noncombustible surface, not exceeding one quart (946 g ml) capacity with a controlled pouring device that will limit the flow to a one ounce (29.6 ml) serving.

(e) All persons must obey all applicable firearm laws, rules, and regulations.

(6) Security and Supervision.

(a) The Facility Use Application shall be reviewed by the senior ranking officer in charge of security for the Capitol Hill Complex, who shall determine the total number of uniformed security officers required for the proposed event based upon the nature of the event and the risk factors that are reasonably anticipated. Such determination by the senior ranking officer may increase the minimum number of required officers stated in this subsection. At a minimum: one uniformed security officer shall be required for any event consisting of 1-399 participants; two uniformed security officers shall be required for any event consisting of 400 or more participants. The

applicant shall pay, in addition to all other required fees, the cost of the providing of all required security officers. These security fees may not be waived. This subparagraph shall not apply to free speech activities or state sponsored activities.

(b) At least one representative of the applicant identified in the application and permit shall be present during the entire activity;

(c) The activity sponsor (permit holder) is responsible for restricting the area of use by participants to the specified room and rest room areas of the reserved facilities.

(d) The activity sponsor (permit holder) shall control entrances to allow only authorized persons to enter any permitted facility or grounds.

(7) Photography, Portraits and Video/Filming.

(a) Any photography, videotaping or filming, shall require advance notice to, and permission from the executive director for scheduling.

(b) Any photography, videotaping or filming, which includes wedding participants and family portraits, and which may take place anywhere in the facilities or grounds of the Capitol Hill Complex, will be required to comply with this Rule.

(i) Such photography, videotaping or filming, may be scheduled by the executive director on Tuesday from 3 p.m. to 6 p.m., Friday from 12 p.m. to 6 p.m., and Saturday from 8 a.m. to 4 p.m. The executive director may allow a different time than specified herein upon written request and if the executive director determines that such other time can be accommodated by any necessary state personnel and does not conflict with state business and any other scheduled events. The executive director may reschedule as needed to accommodate events and state business whether scheduled or not.

(ii) In regard to inside the Capitol building, such photography, videotaping or filming may occur in the following areas: the East grand stairs, the West grand stairs, and the center of the Rotunda or other areas as approved by the executive director.

(iii) A processing fee shall be required for such photography, videotaping or filming. Additionally, a deposit may be required to cover the costs of any anticipated cleanup by the state after the session. These fees shall be described in the Fee Schedule approved by the Board.

(c) Any photography, videotaping or filming that is for the purpose of promoting any private business purposes, including television commercials, movies and photography for business advertising, shall be required to submit a Facility Use Application, pay the required fee from the Fee Schedule approved by the Board, and the time and location must be approved by the Executive Director.

(d) Unless specifically endorsed by an authorized official of the State of Utah, any photography, videotaping or filming shall not expressly or impliedly indicate any State of Utah endorsement of any product, service or any other aspect of the depiction.

(e) This subsection (7) shall not apply to tourists and does not apply to the extent it is the exercise of a free speech activity.

(8) Liability.

(a) The state, Board, executive director and their designees, employees and agents shall not be deemed in default of any issued permit, or liable for any damages if the performance of any or all of their obligations under the permit are delayed or become impossible because of any act of God, terrorism, war, riot or civil disobedience, epidemic, strike, lock-out or labor dispute, fire, or any other cause beyond their reasonable control.

(b) Except as required by law, the state shall not be responsible for any property damage or loss, nor any personal injury sustained during, or as a result of, any use, activity or event.

(c) Users/applicants shall be responsible for any personal injury, vandalism, damage, loss, or other destruction of property caused by the user or an attendee at the applicant's event.

(9) Indemnification. Individuals and organizations using the Capitol Hill Complex do so at their own risk and shall indemnify and hold harmless the state from and against any and all suits, damages, claims or other liabilities due to personal injury or death, and from damage to or loss of property arising out of or resulting from the conduct of such use or activities on the Capitol Hill Complex.

(10) Food Services, Cafe Operator and Authorized Caterer Requirements.

(a) In General. Catering services on the Capitol Hill Complex shall be exclusively provided by the Cafe Operator and Authorized Caterer for those areas of the Capitol Hill Complex under the jurisdiction of the Board and to the extent expanded by the Legislative Management Committee or the Governor's Office, whichever is applicable. Multiple Authorized Caterers may be approved by the Executive Director. The Cafe Operator shall be responsible for all activities in the kitchen, servery, dining and conference rooms associated with the dining room, known as the "State Room," and located on the first floor of the East Senate Building. The Cafe Operator shall have the exclusive right to provide food and beverages in the State Room, but may give permission for an Authorized Caterer to provide food and beverages in the State Room.

(b) Authorized Caterer Requirements. In order to qualify as an Authorized Caterer, an application must be approved by the Executive Director based on meeting the following requirements:

(i) Quality Control Policies. The Authorized Caterer must have quality control policies that are consistent with those set forth in the contract between the Board and the Cafe Operator. The Executive Director shall provide a form describing the minimum standards.

(ii) Application Form. A person or entity seeking to be an Authorized Caterer shall complete an application form approved by the Executive Director.

(iii) Insurance. A Certificate of Insurance shall be provided to the Executive Director for all of the following insurance and such insurance shall be maintained throughout the term of the catering event and for at least one year thereafter:

(A) The Authorized Caterer shall maintain Commercial General Liability insurance with per occurrence limits of at least \$1,000,000 and general aggregate limits of at least \$2,000,000. The selected Authorized Caterer shall also maintain, if applicable to the Authorized Caterer's operations or the specific activity, Business Automobile Liability insurance covering Caterer's owned, non-owned, and hired motor vehicles and/or Professional Liability (errors and omissions) insurance with liability limits of at least \$1,000,000 per occurrence. Such insurance policies shall be endorsed to be primary and not contributing to any other insurance maintained by the Board or the State of Utah.

(B) The Budget Development and Board Operations Subcommittee reserves the right at any time to require additional coverage from that required in this Rule, at the Authorized Caterer's expense for the additional coverage, based upon the specific risks presented by any proposed event and as recommended by the State's Risk Manager.

(C) The Authorized Caterer shall maintain all employee related insurances, in the statutory amounts, such as unemployment compensation, worker's compensation, and employer's liability, for its employees or volunteers involved in performing services pursuant to the Event. Such worker's compensation and employer's liability insurance shall be endorsed to include a waiver of subrogation against the State of Utah, the Board, its agents, officers, directors and employees. Authorized Caterer shall also maintain "all risk" property insurance at replacement cost applicable to the Authorized Caterer's property and/or its equipment.

(D) The Authorized Caterer's insurance carriers and policy provisions must be acceptable to the State of Utah's Risk Manager and remain in effect for the duration of the catering event and for at least one-year thereafter. The Board shall be named as an additional insured on the Commercial General Liability, the Professional Liability Insurance and all other required insurance policies. The Authorized Caterer will cause any of its subcontractors, who provide materials or perform services related to the catering service(s), to also maintain the insurance coverages and provisions listed above.

(E) The Authorized Caterer shall submit certificates of insurance as evidence of the above required coverage to the Executive Director prior to any entering into a contract related to the catering event. Such certificates shall provide the Board with thirty (30) calendar days written notice prior to the cancellation or material change of the applicable coverage, as evidenced by return receipt or certified mail, sent to the office of the Executive Director.

(iv) Indemnification: The Authorized Caterer shall hold harmless, defend and indemnify the State of Utah, the Board and its officers, employees, and agents from and against any and all acts, errors or omissions which may cause damage to property or person(s), claims, losses, damages to the facilities or grounds of the Capitol Hill Complex, causes of action, judgments, damages and expenses including, but not limited to attorney's fees because of bodily injury, sickness, disease or death, or injury to or destruction of tangible property or any other injury or damage resulting from or arising out of the negligent acts or omissions or willful misconduct of the Authorized Caterer, or its agents, employees subcontractors or anyone for whom the Authorized Caterer may be liable, except where such claims, losses, causes of action, judgments, damages and expenses result solely from the negligent acts or omissions or willful misconduct of the Board, its officers, employees or agents.

(v) Record Keeping and Audit Rights: The Authorized Caterer shall maintain accurate accounting records for all goods and services provided, and shall retain all such records for a period of at least three (3) years from the date of the catering service. Upon reasonable notice and during normal business hours, the Board, or any of its duly authorized representatives, shall have access to and the right to audit any records or other documents pertaining to the Authorized Caterer. The Board's audit rights shall extend for a period of at least three (3) years from the date of the catering service.

(vi) Equal Opportunity: The Authorized Caterer shall not unlawfully discriminate against any employee, applicant for employment, or recipient of services.

(vii) Taxes: The Authorized Caterer shall be responsible for and pay all taxes which may be levied or incurred against the Authorized Caterer, including taxes levied or incurred against Authorized Caterer's income, inventory, property, sales, or other taxes.

(viii) Taxes: Board is Exempt: The Board is exempt from State of Utah sales and excise taxes. Exemption certification information appears on all purchase orders issued by the Board and such taxes will not apply to the Board.

(ix) Suspension/Debarment. The Authorized Caterer must notify the Executive Director within 10 calendar days if debarred or suspended by any governmental entity.

(x) Comply with Facility Use Rules. The Authorized Caterer shall comply with all of the Facility Use Rules enacted by the Board. Upon submission of any evidence to the Budget Development and Board Operations Subcommittee that the Authorized Caterer has not complied with a rule enacted by the Board, the Authorized Caterer shall be removed from eligibility for providing any catering service on the Capitol Hill Complex for a period of time as determined by the Subcommittee and consistent with the Board's rules on suspension and debarment.

(xi) Inspection. The Board or the Executive Director reserves the right to inspect the Authorized Caterer's facilities and operations with respect to use, safety, sanitation and the maintenance of premises which shall be maintained at a level satisfactory to the Board.

(xii) Energy. The Authorized Caterer shall exercise due care to keep utility services at a minimum, conserve the use of energies, and control the resulting costs.

(xiii) Food Handlers Permits. All of the Authorized Caterer's employees must have a current Food Handlers Permit. Documentation shall be promptly provided upon request of the Executive Director that established that all employees and temporary employees have valid Food Handlers Permits.

(xiv) The Authorized Caterer must have a locally grown food quality assurance program similar to that required of the Cafe Operator, which covers the food or products that are not provided by nationally recognized vendors.

(xv) Fees and costs associated with catering services, including the Cafe Operator or the Authorized Caterer, shall be the responsibility of the Applicant and cannot be waived.

(xvi) Security.

(A) An Authorized Caterer shall provide to the Executive Director at least 24 hours in advance of any catered event, a list of all full-time and part-time employees that will be involved with the catering service on the Capitol Hill Complex.

(B) The Applicant shall be assessed a fee to provide for the presence of at least one Board employee to be present and to assist with ingress and egress from the Capitol Hill Complex, set-up, coordination and assurance of appropriate performance under this Rule as well as timely and appropriate clean-up after the event. This fee cannot be waived.

(11) Public Notices, Employee Postings, Required Use of Bulletin Boards.

(a) Notices of Capitol Hill Complex meetings, information or announcements related to state of other governmental business shall be posted at executive director approved locations. If any posting is to be done by a person not officed in the Capitol Hill Complex, the executive director shall be notified prior to the posting for approval of the location(s) and duration of the posting. Such persons are also responsible to remove the notices after the related meeting or activity within 24-48 hours.

(b) Posting of handbills, leaflets, circulars, advertising or other printed materials by state employees officed in the Capitol Hill Complex shall be on executive director approved bulletin boards.

(12) Enforcement of Rules.

(a) If any person or group is found to be in violation of any of the applicable laws and rules, a law enforcement officer or state capitol security officer may issue a warning to cease and desist from any non-complying acts. If the law enforcement or security officer observes a non-compliant act after a warning, the officer may take disciplinary action including citations, fines, cancellations of event or activity, or removal from the Capitol Hill Complex.

(13) Waivers.

The ~~Executive Director~~[~~Budget Development and Board Operations Subcommittee~~] may waive the requirements of any provision of R131-2-6 provided that the provision of Rule R131-2-6 does not specifically indicate that it is non-waivable, upon being presented with compelling reasons that the waiver will substantially benefit the public of the state of Utah and that the facilities, grounds and persons will be appropriately protected. Any approved waiver must still require compliance with all other provisions of this Rule. The waiver request must be submitted in writing to the Executive Director[~~for consideration by the Subcommittee at its next regularly scheduled meeting,~~] and must accompany any required Facility Use Application. Conditions may be placed on any approved waiver by the ~~Executive Director~~[~~Subcommittee~~] to assure the appropriate protection of facilities, grounds and persons. An appeal [~~to the Board~~] of a denial or the conditions of such waiver may be filed and processed similarly to the denial of a Facility Use Application as described in R131-2-5.

R131-2-7. Fees and Charges.

(1) Fees.

(a) Application Fee. There shall be an application fee for a Facility Use Permit to cover the cost of processing the application, as specified on the Board's fee schedule. This fee is separate from rental and other fees.

(b) Rental of Space Fee. Persons using the Capitol Hill Complex pursuant to a Facility Use Permit shall be charged a rental of the space fee as specified on the Board's fee schedule.

(c) Security Fee. A security fee shall also be assessed as provided in this Rule, as specified on the Board's fee schedule.

(d) Rental of Equipment fee. A rental of equipment fee shall be assessed as specified on the Board's fee schedule.

(e) Room Setup Fees. The Board's fee schedule shall provide for room setup fees.

(f) Additional Board Staff fee. If an Applicant requests that additional Board staff be present for an event, then an additional fee shall be assessed.

(g) Authorized Caterer Fee. Any fee or costs of an Authorized Caterer are the responsibility of the Applicant. The State of Utah, the Capitol Preservation Board, State Officials, employees and anyone for whom the State may be liable, shall have no liable whatsoever for such fee or costs owed to the Authorized Caterer.

(h) A "Schedule of Costs and Fees" is available during regular working hours at the executive director's office. This Schedule of Costs and Fees shall include all the fees referred to in this Rule R131-2-7. Additionally, fees may be assessed for technology assistance, recording, insurance coverage, cleaning and repairs. The

Schedule of Costs and Fees may have special fees for community service activities, state employee events, including state employee recognition events, state retirement events, or state employee holiday/social events. There are no fees for free speech activities, except costs for requested use of state equipment or supplies shall be assessed in accordance with the Schedule of Costs and Fees. State Sponsored Activities shall not be required to pay any fees under this Rule.

R131-2-8. Specific Facilities.

(1) The following applies to all events and solicitations, except for free speech activities.

(a) Use of caucus rooms, committee rooms, the House of Representatives or Senate Chambers will be separately administered by the legislative branch. Requests for all other rooms must be submitted in writing to the executive director for scheduling and staffing. If the requested room is under the control of the Governor, the judiciary, or other elected officials, the executive director shall forward the request to the appropriate representative of such branch of government or elected official. The executive director will notify the applicant of the approval or denial of the requested space by the approving organization.

(b) The State Office Building auditorium shall be available to all state entities on a first-come, first-serve basis for governmental functions. All state entities shall reserve this facility in advance with the executive director.

(c) After-hours access to the State Office Building shall be through the first floor south doors.

(d) During legislative sessions, legislative meetings or other legislative activities, use of the legislative space will be subject to the applicable legislative rules.

(e) The Gold Room and all other areas controlled by the Governor in the Capitol building shall be available in accordance with Section 67-1-16.

R131-2-9. Use of White Community Memorial Chapel.

(1) In addition to the provisions above, the following rules for the White Community Memorial Chapel shall be observed:

(a) Fire Marshal occupancy limits shall not be exceeded.

(b) The kitchen is for the exclusive use of the Preferred Caterer. No Private Caterer shall be allowed to use the White Community Memorial Chapel and its grounds. Users may use the full rest room facilities.

(c) The White Community Memorial Chapel will be available from 7:00 a.m. until 12:00 midnight, seven days a week, 365 days a year unless otherwise specified by the Board's Budget Development and Board Operations Subcommittee.

(d) If no wedding or event is scheduled the day before the scheduled wedding or event, the applicant may be allowed to use the Chapel the day before from noon to midnight for rehearsal or decorative purposes for an additional fee as identified on the Board's fee schedule.

(e) All users must complete the Facility Use Permit Application and comply with all the permit requirements listed under rules R131-2 and R131-10.

R131-2-10. Procedure for Receiving and Deciding Complaints Regarding the Access or Use of the Capitol Hill Complex.

(1) Any person that has a complaint regarding the access or use of the Capitol Hill Complex may file such complaint in writing to the executive director.

(2) The executive director will issue a written determination within thirty calendar days of the filing of the complaint or such longer time period as agreed to by the complainant.

(3) If the executive director does not issue a determination within the time period for such determination, then the complainant may file a written appeal no later than ten calendar days after the expiration of such time period. The written appeal shall be delivered to the office of the executive director and shall be considered by the Board's Budget Development and Board Operations Subcommittee chair in a manner determined appropriate by the chair.

(4) The chair will issue a written determination within thirty calendar days of the filing of the appeal or such longer time period as agreed to by the complainant.

(5) If the chair does not issue a determination within the time period for the chair's determination, the complainant may file a written appeal to the Board no later than ten calendar days after the expiration of such time period. The written appeal to the Board shall be delivered to the office of the executive director.

(6) Upon the filing of a timely appeal to the Board, the appeal shall be scheduled at the next regularly scheduled meeting of the Board.

(7) This is considered to be an administrative remedy for complaints regarding the access or use of the Capitol Hill Complex, and to the extent allowed by law, shall be considered an administrative remedy that must be pursued prior to any legal action.

R131-2-11. Fees and Charges During Legislative Session.

During the regular Utah Legislative Session, from the hours of 7:00 a.m. to 5:30 p.m., Monday through Friday, the facility use fees for specific rooms and spaces shall be reduced as follows:

(1) Facilities on Capitol Hill are available on a first come first serve basis as defined in this Rule R131-2, subject to preemption for State Sponsored Activities and any need to reserve or close off spaces for security reasons as advised by the Department of Public Safety.

(a) Subject to all the other provisions of this Rule R131-2-11, the following rooms may be reserved with no room rental being assessed:

- (i) Kletting Room located in the Senate Building;
- (ii) Olmstead Room located in the Senate Building;
- (iii) Spruce Room located in the Senate Building;
- (iv) Beehive Room located in the Senate Building;
- (v) Seagull Room located in the Senate Building;
- (vi) Copper Room located in the Senate Building;
- (vii) Rooms B110 and 1112 in the State Office Building;
- (viii) Room 130, the Multipurpose/Public Lounge located in the Capitol;
- (ix) Room 170 located in the Capitol; and
- (x) Room 210 located in the Capitol.

(b) These rooms identified in R131-2-11(2) may be reserved when the Utah Legislature is meeting in regular session in 4 hour blocks/day for a maximum of 8 total hours per week, and not concurrent.

(c) The use of the State Room in the East Senate Building is to be for public use except for certain hours established by the Executive Director when the public does not ordinarily use the State Room.

(2) The State Office Building Auditorium may be reserved during the time the Utah Legislature is meeting in regular session in two hour blocks one day a week, but is subject to the same rental fees that would apply at other times of the year and priority shall be provided to those events that are related to the regular session of the Utah Legislature.

(3) The Capitol Rotunda or Hall of Governors facilities may be reserved during the hours the Utah Legislature is meeting in regular session with no fee for the space rental itself being assessed subject to the following:

(a) The reservation shall be for a maximum of two hours which must be in one block of hours; and

(b) Priority shall be given to those events that are related to the regular session of the Utah Legislature.

(4) This Rule R131-2-11 does not prohibit the rental of these rooms for the standard fees when rental is beyond the time restrictions set forth in this Rule R131-2-11.

(a) Notwithstanding any other provision of this Rule R131-2-11, Registration (Application), Janitorial and all other associated set up and security fees that would apply if the rental was not during the Utah Legislature's regular session, shall be assessed.

(b) Those persons or entities reserving or using the facilities shall leave the space as they found it in a clean and orderly manner and comply with all other provisions of the Facility Use Rules, R131-2.

(c) The janitorial fee will only be assessed if, in the opinion of the Executive Director, that the work required to prepare the room for the next user is beyond that what is expected and reasonable. Charges for any such required janitorial services shall be assessed in half hour increments of \$50/hour per janitorial worker.

(d) The Registration (Application) fee shall be assessed at the rate of one rental even if the Registration (Application) includes more than one reservation. Multiple reservations on one application form for reservations during the Utah Legislature's regular session are encouraged in order to best coordinate all the reservations.

KEY: public buildings, facilities use

Date of Enactment or Last Substantive Amendment: December 23, 2014

Notice of Continuation: December 19, 2014

Authorizing, and Implemented or Interpreted Law: 63C-9-101 et seq.

End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <http://www.rules.utah.gov/publicat/code.htm>. The rule text may also be inspected at the agency or the Division of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

Administrative Services, Facilities Construction and Management

R23-26

Dispute Resolution

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 39013
FILED: 12/16/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 63A-5-208(6)(a) establishes that the "director shall, in consultation with the State Building Board, prepare draft rules establishing a process for resolving disputes involved with contracts under the division's procurement authority."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: State statute requires that the rule exist. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT

ROOM 4110 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
- ◆ Cecilia Niederhauser by phone at 801-538-3261, by FAX at 801-538-9694, or by Internet E-mail at cniederhauser@utah.gov
- ◆ Nicole Alder by phone at 801-538-3240, or by Internet E-mail at nicolealder@utah.gov

AUTHORIZED BY: Bruce Whittington, Acting Director

EFFECTIVE: 12/16/2014

Agriculture and Food, Plant Industry

R68-20

Utah Organic Standards

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 39045
FILED: 12/30/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 4-2-21(i) authorizes the department to adopt rules and standards necessary for the effective administration of the agricultural laws of the state. The standard sets forth the requirements for

certification of organic food products under the USDA National Organic Program (NOP). The following citations reflect areas the department regulates that require standards for USDA NOP under 7 CFR 205: Section 4-3-2 (dairy), Section 4-4-2 (eggs), Subsection 4-5-17(1) (wholesome foods), Section 4-11-3 (honey), Section 4-12-3 (feed), Subsection 4-14-6(5) (pesticides), Section 4-16-3 (seed), Subsection 4-32-7(7)(a)(ii) (meat and poultry), Subsection 4-37-109(2) (aquaculture). The standard is necessary for the department to administer the USDA NOP program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received opposing or supporting this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Utah Organic Standards are needed to ensure the Department's continued ability to conduct audits of organic producers and business pursuant to USDA NOP Standards CFR 205. UDAF is accredited by the USDA to conduct these inspections in Utah. Therefore, this rule should be continued. There have been no comments received in favor or opposition to this rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 AGRICULTURE AND FOOD
 PLANT INDUSTRY
 350 N REDWOOD RD
 SALT LAKE CITY, UT 84116-3034
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Clark Burgess by phone at 801-538-7188, by FAX at 801-538-7189, or by Internet E-mail at cburgess@utah.gov
 ♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
 ♦ Robert Hougaard by phone at 801-538-7187, by FAX at 801-538-7189, or by Internet E-mail at rhougaard@utah.gov
 ♦ Scott Ericson by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at sericson@utah.gov

AUTHORIZED BY: LuAnn Adams, Commissioner

EFFECTIVE: 12/30/2014

Capitol Preservation Board (State),
 Administration
R131-1
 Procurement of Architectural and
 Engineering Services

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 39035
 FILED: 12/29/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: As provided by Subsections 63C-9-301(3) and 63C-9-301(4), this rule establishes procedures for the procurement of architectural and engineering services by the State Capitol Preservation Board. The Board's authority to adopt rules is provided according to Subsection 63C-9-301(3).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The legislative direction for the rule still exists and so the rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 CAPITOL PRESERVATION BOARD (STATE)
 ADMINISTRATION
 ROOM E110 EAST BUILDING
 420 N STATE ST
 SALT LAKE CITY, UT 84114-2110
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
 ♦ Nicole Alder by phone at 801-538-3240, or by Internet E-mail at nicolealder@utah.gov

AUTHORIZED BY: Allyson Gamble, Executive Director

EFFECTIVE: 12/29/2014

Capitol Preservation Board (State),
 Administration
R131-2
 Capitol Hill Complex Facility Use

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**DAR FILE NO.: 39041
FILED: 12/29/2014**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 63C-9-301 establishes that the Capitol Preservation Board shall preserve and maintain the Capitol Hill Complex, Capitol Hill facilities, Capitol Hill grounds, and their contents. This rule establishes regulations that allow for such maintenance and preservation to occur.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The legislative direction for the rule still exists and so the rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

CAPITOL PRESERVATION BOARD (STATE)
ADMINISTRATION
ROOM E110 EAST BUILDING
420 N STATE ST
SALT LAKE CITY, UT 84114-2110
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
♦ Nicole Alder by phone at 801-538-3240, or by Internet E-mail at nicolealder@utah.gov

AUTHORIZED BY: Allyson Gamble, Executive Director

EFFECTIVE: 12/29/2014

Capitol Preservation Board (State),
Administration
R131-7
State Capitol Preservation Board
Master Planning Policy

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**DAR FILE NO.: 39036
FILED: 12/29/2014**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 63C-9-402(1), which directs the executive director to develop, for board approval, a master plan for the state capitol facilities and grounds.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The legislative direction for the rule still exists and so the rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

CAPITOL PRESERVATION BOARD (STATE)
ADMINISTRATION
ROOM E110 EAST BUILDING
420 N STATE ST
SALT LAKE CITY, UT 84114-2110
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
♦ Nicole Alder by phone at 801-538-3240, or by Internet E-mail at nicolealder@utah.gov

AUTHORIZED BY: Allyson Gamble, Executive Director

EFFECTIVE: 12/29/2014

Capitol Preservation Board (State),
Administration
R131-8
CPB Facilities and Grounds:
Maintenance of Aesthetics

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 39037
 FILED: 12/29/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Subsection 63C-9-402(1), which directs the executive director to develop a master plan for the Board's approval to maintain, preserve, restore, and modify the Capitol Hill facilities and Capitol Hill grounds.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The legislative direction for the rule still exists and so the rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 CAPITOL PRESERVATION BOARD (STATE)
 ADMINISTRATION
 ROOM E110 EAST BUILDING
 420 N STATE ST
 SALT LAKE CITY, UT 84114-2110
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
 ♦ Nicole Alder by phone at 801-538-3240, or by Internet E-mail at nicolealder@utah.gov

AUTHORIZED BY: Allyson Gamble, Executive Director

EFFECTIVE: 12/29/2014

Capitol Preservation Board (State),
 Administration
R131-14
 Parking on Capitol Hill

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 39039
 FILED: 12/29/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The purpose of this rule is to define and implement Board policy regarding parking at the Utah State Capitol Hill Complex. This rule is promulgated pursuant to Section 63C-9-301.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The legislative direction for the rule still exists and so the rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 CAPITOL PRESERVATION BOARD (STATE)
 ADMINISTRATION
 ROOM E110 EAST BUILDING
 420 N STATE ST
 SALT LAKE CITY, UT 84114-2110
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
 ♦ Nicole Alder by phone at 801-538-3240, or by Internet E-mail at nicolealder@utah.gov

AUTHORIZED BY: Allyson Gamble, Executive Director

EFFECTIVE: 12/29/2014

Commerce, Occupational and
 Professional Licensing
R156-38b
 State Construction Registry Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 39012
 FILED: 12/16/2014

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 38, Chapter 1a, Part 2, creates the State Construction Registry. Title 38, Chapter 1a, Part 2, provides that the State Construction Registry is to be overseen by the Division of Occupational and Professional Licensing. Subsection 38-1a-202(3)(a) provides that the Division shall establish procedures by rule with respect to the State Construction Registry. This rule was enacted to clarify the provisions of Title 38, Chapters 1a, and 1b, with respect to the State Construction Registry.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in February 2010, it has been amended three times. The Division did receive a September 2011 email from Robert Rees in which he notified the Division of a typographical error contained in a September 2011 proposed rule filing affecting Section R156-38b-502. In response to Mr. Rees's email, the Division filed a nonsubstantive rule change with the Division of Administrative Rules on 09/26/2011.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform persons and companies who utilize the State Construction Registry of requirements as allowed under statutory authority provided in Title 38, Chapters 1a, and 1b.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE
OCCUPATIONAL AND PROFESSIONAL
LICENSING
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Tom Harper by phone at 801-530-6288, by FAX at 801-530-6511, or by Internet E-mail at tharper@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 12/16/2014

Environmental Quality, Radiation
Control
R313-34
Requirements for Irradiators

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 39046
FILED: 12/31/2014

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-1-106(1) created the Radiation Control Board within the Department of Environmental Quality. Subsection 19-3-104(4) provides that the Board may make rules necessary for controlling exposures to sources of radiation that constitute a significant health hazard and to meet the requirements of federal law relating to radiation control.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This has not been a controversial rule. The Radiation Control Board recommends the continuation of the rule. No written comments have been received from the public.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule must be continued because it establishes the requirements for the possession and use of sealed sources containing radioactive materials in irradiators. These devices use high levels of gamma radiation to sterilize various products, primarily medical devices and pharmaceutical chemicals. The rule provides for protection of public health and safety by controlling the use of panoramic irradiators that have either dry or wet storage of the radioactive sealed sources; underwater irradiators in which both the source and object being irradiated are under water; and irradiators whose dose rate exceeds 55 rad per hour at one meter from the radioactive source in air or in water. A licensed facility currently operates a panoramic dry-exposure irradiator in Salt Lake County. The facility has been operating safely since January of 1990.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
RADIATION CONTROL

THIRD FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Mike Givens by phone at 801-536-0278, by FAX at 801-533-4097, or by Internet E-mail at mgivens@utah.gov

AUTHORIZED BY: Rusty Lundberg, Director

EFFECTIVE: 12/31/2014

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 INSURANCE
 ADMINISTRATION
 ROOM 3110 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

AUTHORIZED BY: Todd Kiser, Commissioner

EFFECTIVE: 12/30/2014

Insurance, Administration
R590-88

**Prohibited Transactions Between
 Producers and Unauthorized Multiple
 Employer Trusts**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 39044
 FILED: 12/30/2014

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-2-201 authorizes the commissioner to write rules to implement the code. Specific rulemaking authority comes from Section 31A-23a-402. It authorizes the commissioner to set guidelines for determining what is unfair discrimination and allows the commissioner to make rules defining unfair marketing acts or practices. The rule identifies prohibited transactions of unauthorized multiple employer trusts and sets sanctions to be applied against those participating in these prohibited transactions.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has received no written comments regarding this rule in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule protects customers from agents and organizations selling insurance for unauthorized multiple employer trusts. This insurance is not backed by a licensed insurer. The rule also provides sanctions against producers transacting this type of business.

Insurance, Administration
R590-128

**Unfair Discrimination Based on the
 Failure to Maintain Automobile
 Insurance. (Revised.)**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 39027
 FILED: 12/23/2014

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is written pursuant to Subsection 31A-23a-402(3), which provides guidelines for determining what is unfair discrimination, and Subsection 31A-23a-402(8), which allows the commissioner to make rules defining unfair marketing acts or practices.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has not received any written comments regarding this rule in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is still needed to prevent auto insurers from discriminating against an applicant of automobile insurance based solely upon the fact that they failed to maintain auto insurance for a period of time. An

insurer must demonstrate that there are other reasons for denying coverage or increasing their premium, such as poor driving record, or loss history. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Todd Kiser, Commissioner

EFFECTIVE: 12/23/2014

Insurance, Administration **R590-132**

Insurance Treatment of Human Immunodeficiency Virus (HIV) Infection

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 39021
FILED: 12/22/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3)(4) authorizes the commissioner to write rules to implement the code and to issue orders to secure compliance with the title. The rule identifies and restricts certain underwriting, classification or declination practices that have been used to discriminate against individuals with HIV infection. The rule also provides guidelines regarding confidentiality of AIDS related testing.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has not received any written comments in the past five years regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule makes certain that persons with HIV infection will not be singled out for either unfair discrimination or preferential treatment for insurance purposes. The rule also sets guidelines for HIV testing and the use of test results to protect consumers and their information. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Steve Gooch by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at sgooch@utah.gov

AUTHORIZED BY: Todd Kiser, Commissioner

EFFECTIVE: 12/22/2014

School and Institutional Trust Lands, Administration **R850-10** Expedited Rulemaking

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 39014
FILED: 12/18/2014

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53C-1-201(3)(c) specifically authorizes an expedited rulemaking process, outside of the traditional rulemaking process or the emergency rulemaking process established under Title 63G, Chapter 3. The statutory authorization for expedited rules instructs the director to establish a procedure to enact expedited rules. Rule R850-10 sets forth the procedure used for promulgating expedited rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The agency has not received any written comments concerning this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Statute requires that the agency establish procedures for promulgating expedited rules in order that the agency be able to react quickly to time-sensitive business opportunities in an ever changing market place. This rule sets forth the guidelines by which the agency may fulfill its fiduciary responsibilities in a timely manner. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION
ROOM 500
675 E 500 S
SALT LAKE CITY, UT 84102-2818
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ John Andrews by phone at 801-538-5180, by FAX at 801-538-5118, or by Internet E-mail at jandrews@utah.gov

AUTHORIZED BY: Kevin Carter, Director

EFFECTIVE: 12/18/2014

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their administrative rules effective and enforceable after publication in the *Utah State Bulletin*. In the case of **PROPOSED RULES** or **CHANGES IN PROPOSED RULES** with a designated comment period, the law permits an agency to make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the publication date. If an agency fails to file a **NOTICE OF EFFECTIVE DATE** within 120 days from the publication of a **PROPOSED RULE** or a related **CHANGE IN PROPOSED RULE** the rule lapses.

Agencies have notified the Division of Administrative Rules that the rules listed below have been made effective.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal & Reenact
REP = Repeal

Commerce

Occupational and Professional Licensing
No. 38928 (AMD): R156-11a. Barber, Cosmetologist/Barber, Esthetician, Electrologist and Nail Technician Licensing Act Rule
Published: 11/15/2014
Effective: 12/22/2014

No. 38921 (AMD): R156-31c-201. Issuing a License
Published: 11/15/2014
Effective: 12/22/2014

No. 38916 (NEW): R156-84. State Certification of Music Therapists Act Rule
Published: 11/15/2014
Effective: 12/22/2014

Real Estate

No. 38894 (AMD): R162-2g. Real Estate Appraiser Licensing and Certification Administrative Rules
Published: 10/15/2014
Effective: 01/01/2015

Environmental Quality

Water Quality
No. 38530 (AMD): R317-1-3. Requirements for Waste Discharges
Published: 06/01/2014
Effective: 01/01/2015

No. 38530 (First CPR): R317-1-3. Requirements for Waste Discharges
Published: 09/15/2014
Effective: 01/01/2015

No. 38530 (Second CPR): R317-1-3. Requirements for Waste Discharges
Published: 10/15/2014
Effective: 01/01/2015

Health

Health Care Financing, Coverage and Reimbursement Policy
No. 38922 (AMD): R414-310. Medicaid Primary Care Network Demonstration Waiver
Published: 11/15/2014
Effective: 12/24/2014

No. 38929 (AMD): R414-320. Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver
Published: 11/15/2014
Effective: 12/24/2014

Human Services

Administration, Administrative Services, Licensing
No. 38911 (NEW): R501-18. Recovery Residence Services
Published: 11/01/2014
Effective: 12/22/2014

Labor Commission

Antidiscrimination and Labor, Antidiscrimination
No. 38744 (AMD): R606-1. Antidiscrimination
Published: 09/01/2014
Effective: 12/31/2014

No. 38744 (CPR): R606-1. Antidiscrimination
Published: 12/01/2014
Effective: 12/31/2014

NOTICES OF RULE EFFECTIVE DATES

Industrial Accidents

No. 38920 (AMD): R612-400-5. Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund

Published: 11/15/2014

Effective: 12/22/2014

Public Safety

Peace Officer Standards and Training

No. 38925 (AMD): R728-409. Suspension or Revocation of Peace Officer Certification

Published: 11/15/2014

Effective: 12/22/2014

End of the Notices of Rule Effective Dates Section

**2014 COMPLETE RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)**

This Rules Index is a complete index that reflects all effective changes to Utah's administrative rules for 2014. The Index lists changes made effective from January 2, 2014 through January 1, 2015. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to the Division of Administrative Rules (801-538-3764).

A copy of the **RULES INDEX** is available for public inspection at the Division of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Administration</u>					
R13-2	Access to Records	38570	5YR	06/02/2014	2014-12/53
R13-2	Access to Records	38569	AMD	07/22/2014	2014-12/6
<u>Child Welfare Parental Defense (Office of)</u>					
R19-1	Parental Defense Counsel Training	38547	5YR	05/21/2014	2014-12/53
<u>Debt Collection</u>					
R21-2	Office of State Debt Collection Administrative Procedures	38497	NSC	05/29/2014	Not Printed
R21-3	Debt Collection Through Administrative Offset	38496	NSC	05/29/2014	Not Printed
<u>Facilities Construction and Management</u>					
R23-2	Procurement of Architect-Engineer Services	38870	5YR	09/16/2014	2014-20/73
R23-3	Planning and Programming for Capital Projects	38405	5YR	04/03/2014	2014-9/49
R23-19	Facility Use Rules	38617	AMD	08/07/2014	2014-13/8
R23-22	General Procedures for Acquisition and Selling of Real Property	38618	R&R	08/07/2014	2014-13/13
R23-22	General Procedures for Acquisition and Selling of Real Property	38890	AMD	11/21/2014	2014-20/6
R23-23	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	38587	5YR	06/10/2014	2014-13/133
R23-23	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	38615	AMD	08/07/2014	2014-13/18
R23-26	Dispute Resolution	39013	5YR	12/16/2014	Not Printed
R23-29	Across the Board Delegation	38404	5YR	04/03/2014	2014-9/49
R23-29	Across the Board Delegation	38425	R&R	06/09/2014	2014-9/4
R23-33	Rules for the Prioritization and Scoring of Capital Improvements by the Utah State Building Board	38247	NEW	03/10/2014	2014-3/2
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	38175	AMD	02/07/2014	2014-1/4
R25-7	Travel-Related Reimbursements for State Employees	38471	AMD	06/23/2014	2014-10/4
R25-7-8	Reimbursement for Lodging	38742	AMD	10/08/2014	2014-17/12
R25-10	State Entities' Posting of Financial Information to the Utah Public Notice Website	38653	5YR	06/25/2014	2014-14/79
R25-11	Utah Transparency Advisory Board, Procedures for Electronic Meetings	38634	NEW	08/21/2014	2014-14/4
<u>Fleet Operations</u>					
R27-4-13	Disposal of State Vehicles	38312	AMD	04/22/2014	2014-6/4

R27-7-3	Driver Eligibility to Operate a State Vehicle	38073	AMD	03/11/2014	2013-22/14
<u>Purchasing and General Services</u>					
R33-1	Utah State Procurement Rules Definitions	38500	R&R	07/08/2014	2014-11/4
R33-1	Utah Procurement Rules, "General Procurement Provisions," Definitions	38689	5YR	07/08/2014	2014-15/61
R33-2	Procurement Organization	38501	R&R	07/08/2014	2014-11/6
R33-2	Rules of Procedure for Procurement Policy Board	38690	5YR	07/08/2014	2014-15/61
R33-3	Source Selection and Contract Formation	38502	R&R	07/08/2014	2014-11/9
R33-3	Procurement Organization	38691	5YR	07/08/2014	2014-15/62
R33-4	Specifications	38503	R&R	07/08/2014	2014-11/28
R33-4	General Procurement Provisions, Prequalifications, Specifications, and Small Purchases	38692	5YR	07/08/2014	2014-15/62
R33-5	Construction and Architect-Engineer Selection	38504	R&R	07/08/2014	2014-11/32
R33-5	Request for Information	38693	5YR	07/08/2014	2014-15/63
R33-6	Modification and Termination of Contracts for Supplies, Services, Construction, and Technology	38218	EXT	01/02/2014	2014-3/57
R33-6	Modification and Termination of Contracts for Supplies, Services, Construction, and Technology	38446	5YR	04/17/2014	2014-10/111
R33-6	Modification and Termination of Contracts for Supplies, Services, Construction, and Technology	38505	R&R	07/08/2014	2014-11/43
R33-6	Bidding	38694	5YR	07/08/2014	2014-15/64
R33-6-103	Pre-Bid Conferences/Site Visits	38756	AMD	10/08/2014	2014-17/13
R33-7	Cost Principles	38219	EXT	01/02/2014	2014-3/57
R33-7	Cost Principles	38447	5YR	04/17/2014	2014-10/111
R33-7	Cost Principles	38506	R&R	07/08/2014	2014-11/49
R33-7	Request for Proposals	38695	5YR	07/08/2014	2014-15/64
R33-7-201	Pre-proposal Conferences/Site Visits	38759	AMD	10/08/2014	2014-17/15
R33-7-601	Best and Final Offers	38757	AMD	10/08/2014	2014-17/16
R33-8	Property Management	38507	R&R	07/08/2014	2014-11/56
R33-8	Exceptions to Procurement Requirements	38696	5YR	07/08/2014	2014-15/65
R33-9	Insurance Procurement	38220	EXT	01/02/2014	2014-3/57
R33-9	Insurance Procurement	38448	5YR	04/17/2014	2014-10/112
R33-9	Insurance Procurement	38508	R&R	07/08/2014	2014-11/59
R33-9	Cancellations, Rejections, and Debarment	38697	5YR	07/08/2014	2014-15/65
R33-10	State Construction Contracts and Drug and Alcohol Testing	38509	R&R	07/08/2014	2014-11/62
R33-10	Preferences	38698	5YR	07/08/2014	2014-15/66
R33-11	Surplus Property	38524	R&R	07/08/2014	2014-11/64
R33-11	Form of Bonds	38699	5YR	07/08/2014	2014-15/66
R33-12	Rules of Procedure for Procurement Policy Board and Procurement Appeals Panel	38510	R&R	07/08/2014	2014-11/71
R33-12	Terms and Conditions, Contracts, Change Orders and Costs	38700	5YR	07/08/2014	2014-15/67
R33-13	General Construction Provisions	38511	NEW	07/08/2014	2014-11/79
R33-14	Procurement of Design-Build Transportation Project Contracts	38512	NEW	07/08/2014	2014-11/83
R33-15	Architect-Engineer Services	38513	NEW	07/08/2014	2014-11/84
R33-16	Controversies and Protests	38514	NEW	07/08/2014	2014-11/86
R33-17	Procurement Appeals Board	38515	NEW	07/08/2014	2014-11/87
R33-18	Appeal to the Utah Court of Appeals	38516	NEW	07/08/2014	2014-11/89
R33-19	General Provisions Related to Protest or Appeal	38518	NEW	07/08/2014	2014-11/90
R33-20	Records	38519	NEW	07/08/2014	2014-11/91
R33-21	Interaction Between Procurement Units	38520	NEW	07/08/2014	2014-11/92
R33-22	Reserved	38526	NEW	07/08/2014	2014-11/94
R33-23	Reserved	38527	NEW	07/08/2014	2014-11/95
R33-24	Unlawful Conduct	38521	NEW	07/08/2014	2014-11/95
R33-24	Unlawful Conduct	38758	AMD	10/08/2014	2014-17/18
R33-25	Executive Branch Insurance Procurement	38522	NEW	07/08/2014	2014-11/97
R33-26	State Surplus Property	38523	NEW	07/08/2014	2014-11/98

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R35-1	State Records Committee Appeal Hearing Procedures	38572	5YR	06/03/2014	2014-13/133
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R35-1a	State Records Committee Definitions	38573	5YR	06/03/2014	2014-13/134
R35-1a	State Records Committee Definitions	38641	AMD	09/09/2014	2014-14/7
R35-2	Declining Appeal Hearings	38574	5YR	06/03/2014	2014-13/135
R35-2	Declining Appeal Hearings	38642	AMD	09/16/2014	2014-14/8
R35-3	Prehearing Conferences	38575	5YR	06/03/2014	2014-13/135
R35-3	Prehearing Conferences	38647	REP	09/16/2014	2014-14/10
R35-4	Compliance with State Records Committee Decisions and Orders	38576	5YR	06/03/2014	2014-13/136
R35-4	Compliance with State Records Committee Decisions and Orders	38643	AMD	09/16/2014	2014-14/11
R35-5	Subpoenas Issued by the Records Committee	38577	5YR	06/03/2014	2014-13/136
R35-5	Subpoenas Issued by the State Records Committee	38645	AMD	09/16/2014	2014-14/12
R35-6	Expedited Hearing	38578	5YR	06/03/2014	2014-13/137
R35-6	Expedited Hearing	38646	AMD	09/16/2014	2014-14/13

Risk Management

R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	38250	AMD	04/30/2014	2014-4/4
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AGRICULTURE AND FOOD

Animal Industry

R58-3	Brucellosis Vaccination Requirements	38294	AMD	04/16/2014	2014-5/4
R58-20	Domesticated Elk Hunting Parks	38251	5YR	01/17/2014	2014-4/67

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R64-1	Agriculture Resource and Development Loans (ARDL)	38712	5YR	07/23/2014	2014-16/59
R64-1	Agriculture Resource and Development Loans (ARDL)	38747	AMD	10/08/2014	2014-17/20
R64-3	Utah Environmental Stewardship Certification Program (UESCP), a.k.a. Agriculture Certificate of Environmental Stewardship (ACES)	38071	NEW	05/08/2014	2013-22/15
R64-3	Utah Environmental Stewardship Certification Program (UESCP), a.k.a. Agriculture Certificate of Environmental Stewardship (ACES)	38071	CPR	05/08/2014	2014-7/82

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R65-1	Utah Apple Marketing Order	38843	5YR	09/08/2014	2014-19/77
R65-3	Utah Turkey Marketing Order	38844	5YR	09/08/2014	2014-19/77
R65-4	Utah Egg Marketing Order	38845	5YR	09/08/2014	2014-19/78
R65-12	Utah Small Grains and Oilseeds Marketing Order	38287	NEW	04/16/2014	2014-5/5

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R68-3	Utah Fertilizer Act Governing Fertilizers and Soil Amendments	38937	5YR	11/06/2014	2014-23/55
R68-20	Utah Organic Standards	39045	5YR	12/30/2014	Not Printed

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R70-310	Grade A Pasteurized Milk	38467	NSC	05/16/2014	Not Printed
R70-310	Grade A Pasteurized Milk	38636	EXT	06/18/2014	2014-14/87
R70-310	Grade A Pasteurized Milk	38651	5YR	06/24/2014	2014-14/79
R70-310	Grade A Pasteurized Milk	38652	NSC	07/11/2014	Not Printed
R70-410	Grading and Inspection of Shell Eggs with Standard Grade and Weight Classes	38315	AMD	05/08/2014	2014-6/5
R70-440	Egg Products Inspection	38872	5YR	09/16/2014	2014-20/73
R70-530	Food Protection	38262	R&R	03/27/2014	2014-4/5
R70-540	Food Establishment Registration	38871	5YR	09/16/2014	2014-20/74

R70-960 Weights and Measures Fee Registration 38846 5YR 09/08/2014 2014-19/79

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Administration

R81-1-16 Disqualification Based Upon Conviction of Crime 38274 AMD 03/25/2014 2014-4/10
 R81-1-32 Further Application 38323 AMD 04/29/2014 2014-6/7
 R81-7 Single Event Permits 38275 AMD 03/25/2014 2014-4/11
 R81-10b Temporary Beer Event Permits 38276 AMD 03/25/2014 2014-4/14

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Administration

R105-2 Records Access and Management 38245 NSC 01/30/2014 Not Printed
 R105-2 Records Access and Management 38749 NSC 08/28/2014 Not Printed

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Administration

R123-6 Allocation of Money in the Property Tax Valuation Agency Fund 38721 NEW 11/28/2014 2014-16/4

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R131-1 Procurement of Architectural and Engineering Services 39035 5YR 12/29/2014 Not Printed
 R131-2 Capitol Hill Complex Facility Use 39024 EMR 12/23/2014 Not Printed
 R131-2 Capitol Hill Complex Facility Use 39041 5YR 12/29/2014 Not Printed
 R131-4 Capitol Preservation Board General Procurement Rule 38546 EMR 05/21/2014 2014-12/49
 R131-4 Capitol Preservation Board General Procurement Rule 38557 AMD 07/22/2014 2014-12/8
 R131-7 State Capitol Preservation Board Master Planning Policy 39036 5YR 12/29/2014 Not Printed
 R131-8 CPB Facilities and Grounds: Maintenance of Aesthetics 39037 5YR 12/29/2014 Not Printed
 R131-13 Health Reform - Health Insurance Coverage in State Contracts - Implementation 38476 5YR 05/01/2014 2014-10/113
 R131-13 Health Reform - Health Insurance Coverage in State Contracts - Implementation 38479 AMD 07/08/2014 2014-11/103
 R131-14 Parking on Capitol Hill 39039 5YR 12/29/2014 Not Printed
 R131-16 Electronic Meetings 38887 NEW 11/21/2014 2014-20/9

COMMERCE

Administration

R151-1 Department of Commerce General Provisions 39009 5YR 12/12/2014 2015-1/53

Consumer Protection

R152-21 Credit Services Organizations Act Rules 38266 5YR 01/29/2014 2014-4/67
 R152-23 Utah Health Spa Services 38748 AMD 10/16/2014 2014-17/22
 R152-26 Telephone Fraud Prevention Act 38125 AMD 01/07/2014 2013-23/4
 R152-32a-2 Exempt Businesses 38763 AMD 10/16/2014 2014-17/23
 R152-34 Postsecondary Proprietary School Act Rules 38880 AMD 11/24/2014 2014-20/10
 R152-34a Utah Postsecondary School State Authorization Act Rules 38869 NEW 11/24/2014 2014-20/12

Corporations and Commercial Code

R154-2 Utah Uniform Commercial Code, Revised Article 9 Rules 38320 R&R 04/21/2014 2014-6/9

Occupational and Professional Licensing

R156-1 General Rule of the Division of Occupational and Professional Licensing 38659 AMD 08/21/2014 2014-14/14
 R156-1-501 Unprofessional Conduct 38157 AMD 01/21/2014 2013-24/6

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R156-11a	Barber, Cosmetologist/Barber, Esthetician, Electrologist and Nail Technician Licensing Act Rule	38928	AMD	12/22/2014	2014-22/10
R156-15	Health Facility Administrator Act Rule	38337	AMD	05/08/2014	2014-7/5
R156-15A	State Construction Code Administration and Adoption of Approved State Construction Code Rule	38733	AMD	10/09/2014	2014-17/26
R156-15A-231	Administration of Building Code Training Fund and Factory Built Housing Fees Account	38549	AMD	07/22/2014	2014-12/10
R156-15A-231	Administration of Building Code Training Fund and Factory Built Housing Fees Account	38792	AMD	10/23/2014	2014-18/5
R156-17b	Pharmacy Practice Act Rule	38638	AMD	08/21/2014	2014-14/21
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rule	38279	AMD	04/08/2014	2014-5/7
R156-24b	Physical Therapy Practice Act Rule	38473	AMD	06/23/2014	2014-10/9
R156-24b-505	Trigger Point Dry Needling - Education and Experience Required - Registration	38657	AMD	08/21/2014	2014-14/41
R156-31b	Nurse Practice Act Rule	38475	R&R	06/23/2014	2014-10/11
R156-31c	Nurse Licensure Compact Rule	38801	5YR	08/21/2014	2014-18/89
R156-31c-201	Issuing a License	38921	AMD	12/22/2014	2014-22/15
R156-38a	Residence Lien Restriction and Lien Recovery Fund Rule	38885	NSC	11/03/2014	Not Printed
R156-38a	Residence Lien Restriction and Lien Recovery Fund Rule	39001	5YR	12/09/2014	2015-1/54
R156-38a-301a	Contractor Registration as a Qualified Beneficiary - All License Classifications Required to Register Unless Specifically Exempted - Exempted Classifications	38732	NSC	08/28/2014	Not Printed
R156-38a-401	Requirements for a Letter of Credit and/or Evidence of a Cash Deposit as Alternate Security for Mechanics' Lien	38533	NSC	05/29/2014	Not Printed
R156-38b	State Construction Registry Rule	39012	5YR	12/16/2014	Not Printed
R156-40	Recreational Therapy Practice Act Rule	38517	AMD	07/08/2014	2014-11/105
R156-40a-302a	Qualifications for Licensure	38548	AMD	07/22/2014	2014-12/13
R156-42a	Occupational Therapy Practice Act Rule	38254	5YR	01/21/2014	2014-4/68
R156-42a	Occupational Therapy Practice Act Rule	38313	AMD	04/21/2014	2014-6/24
R156-44a	Nurse Midwife Practice Act Rule	38249	5YR	01/16/2014	2014-4/69
R156-46a	Hearing Instrument Specialist Licensing Act Rule	38155	AMD	01/21/2014	2013-24/7
R156-46a	Hearing Instrument Specialist Licensing Act Rule	38257	5YR	01/27/2014	2014-4/69
R156-53	Landscape Architects Licensing Act Rule	38639	AMD	08/21/2014	2014-14/43
R156-55a	Utah Construction Trades Licensing Act Rule	38151	AMD	01/21/2014	2013-24/10
R156-55a	Utah Construction Trades Licensing Act Rule	38736	AMD	10/09/2014	2014-17/28
R156-55a-102	Definitions	38902	NSC	10/31/2014	Not Printed
R156-55a-301	License Classifications - Scope of Practice	38380	NSC	04/14/2014	Not Printed
R156-55a-302f	Pre-licensure Education - Standards	38760	AMD	10/09/2014	2014-17/31
R156-55b	Electricians Licensing Act Rule	38648	AMD	08/21/2014	2014-14/44
R156-55c	Plumber Licensing Act Rule	38731	AMD	10/09/2014	2014-17/33
R156-55d	Burglar Alarm Licensing Rule	38825	AMD	10/23/2014	2014-18/8
R156-60	Mental Health Professional Practice Act Rule	38421	5YR	04/08/2014	2014-9/50
R156-60-102	Definitions	38390	AMD	05/22/2014	2014-8/6
R156-60a	Social Worker Licensing Act Rule	38730	5YR	08/04/2014	2014-17/135
R156-60b	Marriage and Family Therapist Licensing Act Rule	38734	5YR	08/05/2014	2014-17/136
R156-60c	Clinical Mental Health Counselor Licensing Act Rule	39002	5YR	12/09/2014	2015-1/54
R156-61	Psychologist Licensing Act Rule	38233	5YR	01/13/2014	2014-3/49
R156-63a	Security Personnel Licensing Act Contract Security Rule	38450	AMD	06/23/2014	2014-10/45
R156-63a	Security Personnel Licensing Act Contract Security Rule	38886	AMD	11/24/2014	2014-20/14
R156-63b	Security Personnel Licensing Act Armored Car Rule	38474	AMD	06/23/2014	2014-10/48

R156-63b	Security Personnel Licensing Act Armored Car Rule	38898	AMD	12/08/2014	2014-21/6
R156-64	Deception Detection Examiners Licensing Act Rule	38814	AMD	10/23/2014	2014-18/10
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ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

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<u>charities</u>						
Tax Commission, Auditing	38237	R865-19S-30	NSC	01/30/2014	Not Printed	
	38596	R865-19S-54	AMD	08/28/2014	2014-13/124	
	38597	R865-19S-83	AMD	08/28/2014	2014-13/125	
<u>charter schools</u>						
Education, Administration	38623	R277-470	AMD	08/07/2014	2014-13/25	
	38186	R277-470-6	AMD	02/07/2014	2014-1/14	
	38589	R277-472	5YR	06/10/2014	2014-13/138	
	38624	R277-472	AMD	08/07/2014	2014-13/28	
	38588	R277-480	5YR	06/10/2014	2014-13/139	
	38625	R277-480-4	AMD	08/07/2014	2014-13/30	
	38187	R277-481	AMD	02/07/2014	2014-1/15	
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Agriculture and Food, Regulatory Services	38315	R70-410	AMD	05/08/2014	2014-6/5	
<u>chief procurement officer</u>						
Administrative Services, Purchasing and General Services	38502	R33-3	R&R	07/08/2014	2014-11/9	
	38691	R33-3	5YR	07/08/2014	2014-15/62	
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Health, Family Health and Preparedness, Child Care Licensing	38543	R430-70	5YR	05/19/2014	2014-12/55	
Workforce Services, Employment Development	38159	R986-700	AMD	03/01/2014	2013-24/38	
	38269	R986-700	AMD	04/15/2014	2014-4/46	
	38664	R986-700	AMD	10/01/2014	2014-14/70	
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	38453	R430-8	5YR	04/25/2014	2014-10/113
	38543	R430-70	5YR	05/19/2014	2014-12/55

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Human Services, Recovery Services	38728	R527-10	5YR	08/04/2014	2014-17/138
	38277	R527-38	5YR	02/05/2014	2014-5/61
	38836	R527-40	5YR	09/03/2014	2014-19/81
	38336	R527-275	5YR	03/06/2014	2014-7/93
	38550	R527-332	5YR	05/22/2014	2014-12/55
	38551	R527-394	5YR	05/22/2014	2014-12/56
	38729	R527-450	5YR	08/04/2014	2014-17/138
	38924	R527-450	NSC	11/07/2014	Not Printed

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Administrative Services, Child Welfare Parental Defense (Office of)	38547	R19-1	5YR	05/21/2014	2014-12/53
Human Services, Child and Family Services	38263	R512-41	5YR	01/28/2014	2014-4/72
	38217	R512-43	AMD	03/10/2014	2014-3/15
	38743	R512-310	NEW	10/08/2014	2014-17/112

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Health, Children's Health Insurance Program	38102	R382-3	NEW	01/13/2014	2013-23/23
	38400	R382-10	AMD	06/01/2014	2014-8/18
	38817	R382-10	AMD	11/01/2014	2014-18/13

CHIP

Health, Health Care Financing, Coverage and Reimbursement Policy	38322	R414-320	AMD	04/21/2014	2014-6/42
	38816	R414-320	EMR	09/01/2014	2014-18/85
	38819	R414-320	AMD	11/01/2014	2014-18/18
	38929	R414-320	AMD	12/24/2014	2014-22/30

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Health, Health Care Financing, Coverage and Reimbursement Policy	38529	R414-99	AMD	07/11/2014	2014-11/151
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	38568	R428-15	AMD	08/05/2014	2014-12/38
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Environmental Quality, Air Quality	38260	R307-405	5YR	01/28/2014	2014-4/70
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	38622	R277-463	AMD	08/07/2014	2014-13/24

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Workforce Services, Administration	38714	R982-401	AMD	10/01/2014	2014-16/32
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Health, Administration	38256	R380-70	5YR	01/24/2014	2014-4/71
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Commerce, Occupational and Professional Licensing	39002	R156-60c	5YR	12/09/2014	2015-1/54
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CMV

Health, Family Health and Preparedness, Children with Special Health Care Needs	38139	R398-4	NEW	01/17/2014	2013-23/25
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Natural Resources, Oil, Gas and Mining; Coal	38738	R645-105	5YR	08/05/2014	2014-17/140
	38739	R645-400	5YR	08/05/2014	2014-17/141

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Natural Resources, Oil, Gas and Mining; Coal	38740	R645-106	5YR	08/05/2014	2014-17/141
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	38682	R307-349	AMD	12/01/2014	2014-15/30
	38682	R307-349	CPR	12/01/2014	2014-21/67
	38683	R307-350	AMD	12/01/2014	2014-15/32
	38683	R307-350	CPR	12/01/2014	2014-21/69
	38685	R307-353	AMD	12/01/2014	2014-15/39
	38685	R307-353	CPR	12/01/2014	2014-21/75
	38686	R307-354	AMD	12/01/2014	2014-15/40
	38686	R307-354	CPR	12/01/2014	2014-21/78
	38687	R307-355	AMD	12/01/2014	2014-15/45
<u>coil coatings</u>					
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	38684	R307-352	CPR	12/01/2014	2014-21/73
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	38778	R277-607	AMD	10/09/2014	2014-17/50
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	38464	R477-101	AMD	07/01/2014	2014-10/92
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	38299	R277-117	AMD	04/07/2014	2014-5/16
	38955	R277-487	5YR	11/14/2014	2014-23/55
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	38869	R152-34a	NEW	11/24/2014	2014-20/12	
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	38792	R156-15A-231	AMD	10/23/2014	2014-18/5	
	38885	R156-38a	NSC	11/03/2014	Not Printed	
	39001	R156-38a	5YR	12/09/2014	2015-1/54	
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	38533	R156-38a-401	NSC	05/29/2014	Not Printed	
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	38736	R156-55a	AMD	10/09/2014	2014-17/28	
	38902	R156-55a-102	NSC	10/31/2014	Not Printed	
	38380	R156-55a-301	NSC	04/14/2014	Not Printed	
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	38557	R131-4	AMD	07/22/2014	2014-12/8	
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	38700	R33-12	5YR	07/08/2014	2014-15/67	
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	38623	R277-470	AMD	08/07/2014	2014-13/25
	38186	R277-470-6	AMD	02/07/2014	2014-1/14
	38116	R277-709	AMD	01/14/2014	2013-23/13
	38834	R277-709-1	NSC	09/19/2014	Not Printed
	38359	R277-709-11	AMD	05/08/2014	2014-7/10
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	38867	R277-506	AMD	11/10/2014	2014-19/26
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	38776	R277-531	AMD	10/09/2014	2014-17/46
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	38601	R657-54	AMD	08/11/2014	2014-13/111
	38790	R657-54	5YR	08/18/2014	2014-18/97
	38172	R657-67	NEW	02/10/2014	2014-1/70
	38484	R657-67	AMD	07/08/2014	2014-11/165
	38602	R657-68	NEW	08/11/2014	2014-13/120
	38950	R657-68	NSC	11/28/2014	Not Printed

gas

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	38579	R307-501	CPR	12/01/2014	2014-21/84
	38580	R307-502	NEW	12/01/2014	2014-13/40
	38580	R307-502	CPR	12/01/2014	2014-21/86
	38581	R307-503	NEW	12/01/2014	2014-13/42
	38581	R307-503	CPR	12/01/2014	2014-21/87
	38986	R307-503-5	NSC	12/31/2014	Not Printed
	38582	R307-504	NEW	10/07/2014	2014-13/43

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Administrative Services, Purchasing and General Services	38511	R33-13	NEW	07/08/2014	2014-11/79
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	38503	R33-4	R&R	07/08/2014	2014-11/28
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	38519	R33-20	NEW	07/08/2014	2014-11/91

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	38176	R392-303	AMD	02/24/2014	2014-1/25

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Health, Disease Control and Prevention, Environmental Services	38285	R392-303	5YR	02/11/2014	2014-5/60
	38176	R392-303	AMD	02/24/2014	2014-1/25

geothermal spas

Health, Disease Control and Prevention, Environmental Services	38285	R392-303	5YR	02/11/2014	2014-5/60
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	38642	R35-2	AMD	09/16/2014	2014-14/8

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	38576	R35-4	5YR	06/03/2014	2014-13/136
	38643	R35-4	AMD	09/16/2014	2014-14/11
	38577	R35-5	5YR	06/03/2014	2014-13/136
	38645	R35-5	AMD	09/16/2014	2014-14/12
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Health, Health Care Financing, Coverage and Reimbursement Policy	38724	R414-304	AMD	10/01/2014	2014-16/17
	38958	R414-304	NSC	12/15/2014	Not Printed
	38317	R414-304-5	AMD	04/21/2014	2014-6/30
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Workforce Services, Administration	38716	R982-403	AMD	10/01/2014	2014-16/37
<u>individual open enrollment period</u>					
Insurance, Administration	38088	R590-269	NEW	01/13/2014	2013-22/144
	38376	R590-269-4	AMD	06/02/2014	2014-8/29

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	38402	R317-1-7	AMD	08/01/2014	2014-8/13
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Technology Services, Administration	38428	R895-7	5YR	04/15/2014	2014-9/60
	38470	R895-7	AMD	09/11/2014	2014-10/100
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	38360	R277-735	AMD	05/08/2014	2014-7/11
Pardons (Board Of), Administration	38877	R671-103	5YR	09/22/2014	2014-20/76
	38325	R671-201	AMD	05/08/2014	2014-7/78
	38878	R671-201	5YR	09/22/2014	2014-20/77
	38314	R671-201-1	EMR	03/01/2014	2014-6/73
	38896	R671-309	5YR	10/02/2014	2014-21/92
	38629	R671-309-1	AMD	09/29/2014	2014-13/122
	38876	R671-309-2	AMD	11/24/2014	2014-20/61
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	38846	R70-960	5YR	09/08/2014	2014-19/79
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Commerce, Real Estate	38270	R162-2g	AMD	03/31/2014	2014-4/16
	38389	R162-2g	AMD	05/22/2014	2014-8/8
	38894	R162-2g	AMD	01/01/2015	2014-20/16
Public Safety, Peace Officer Standards and Training	38377	R728-502	5YR	03/19/2014	2014-8/50
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Human Resource Management, Administration	38469	R477-6	AMD	07/01/2014	2014-10/67
	38092	R477-6-9	AMD	01/14/2014	2013-22/125
Insurance, Administration	38417	R590-166	5YR	04/07/2014	2014-9/57
	38283	R590-170	5YR	02/11/2014	2014-5/62
	38823	R590-170-4	AMD	10/30/2014	2014-18/29
	38555	R590-171	5YR	05/27/2014	2014-12/56
	38273	R590-186-8	AMD	03/26/2014	2014-4/43
	38966	R590-196	5YR	11/21/2014	2014-24/44
	38090	R590-229	AMD	03/11/2014	2013-22/139
	38090	R590-229	CPR	03/11/2014	2014-3/44
	38797	R590-229	5YR	08/20/2014	2014-18/96
	38342	R590-229-9	AMD	05/27/2014	2014-7/72
	38559	R590-230	5YR	05/30/2014	2014-12/57
	38534	R590-270	NEW	09/22/2014	2014-11/158
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	38804	R612-400-2	AMD	10/22/2014	2014-18/56
	38808	R612-400-3	AMD	10/22/2014	2014-18/58
	38807	R612-400-4	AMD	10/22/2014	2014-18/63
	38920	R612-400-5	AMD	12/22/2014	2014-22/35
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	39027	R590-128	5YR	12/23/2014	Not Printed
	38794	R590-129	5YR	08/20/2014	2014-18/95
	38968	R590-198	5YR	11/21/2014	2014-24/45

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Insurance, Administration	38284	R590-258-1	NSC	02/27/2014	Not Printed
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Insurance, Administration	38726	R590-263	REP	10/10/2014	2014-16/25
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	38795	R590-79	5YR	08/20/2014	2014-18/93
	38793	R590-83	5YR	08/20/2014	2014-18/94
	39044	R590-88	5YR	12/30/2014	Not Printed
	38069	R590-96	AMD	01/21/2014	2013-22/137
	38414	R590-98	5YR	04/07/2014	2014-9/56
	39021	R590-132	5YR	12/22/2014	Not Printed
	38416	R590-190	5YR	04/07/2014	2014-9/57
	38415	R590-191	5YR	04/07/2014	2014-9/58
	38635	R590-192	5YR	06/17/2014	2014-14/83
	38796	R590-194	5YR	08/20/2014	2014-18/96
	38967	R590-197	5YR	11/21/2014	2014-24/45
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	38737	R156-9	AMD	10/09/2014	2014-17/25
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38368	R414-90	5YR	03/18/2014	2014-8/40	
38529	R414-99	AMD	07/11/2014	2014-11/151	
38791	R414-140	5YR	08/19/2014	2014-18/92	
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38959	R414-305	NSC	12/15/2014	Not Printed	
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38321	R414-310	AMD	04/21/2014	2014-6/32	
38815	R414-310	EMR	09/01/2014	2014-18/83	
38922	R414-310	AMD	12/24/2014	2014-22/28	
38322	R414-320	AMD	04/21/2014	2014-6/42	
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38660	R414-503	5YR	07/01/2014	2014-14/83	
38584	R414-503-2	NSC	06/18/2014	Not Printed	
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	38465	R414-303	AMD	07/01/2014	2014-10/51	
	38888	R414-303-9	AMD	12/01/2014	2014-20/56	
	38818	R414-303-11	AMD	11/01/2014	2014-18/16	
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	38815	R414-310	EMR	09/01/2014	2014-18/83	
	38922	R414-310	AMD	12/24/2014	2014-22/28	
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	38675	R307-342	CPR	12/01/2014	2014-21/50	
	38583	R307-342-3	AMD	09/04/2014	2014-13/37	
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	38886	R156-63a	AMD	11/24/2014	2014-20/14	
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	38890	R23-22	AMD	11/21/2014	2014-20/6	
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Public Service Commission, Administration	38363	R746-340	AMD	05/27/2014	2014-8/32	
	38556	R746-340-2	NSC	06/05/2014	Not Printed	
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	38405	R23-3	5YR	04/03/2014	2014-9/49	
Administrative Services, Purchasing and General Services	38504	R33-5	R&R	07/08/2014	2014-11/32	
	38693	R33-5	5YR	07/08/2014	2014-15/63	
	38512	R33-14	NEW	07/08/2014	2014-11/83	
Capitol Preservation Board (State), Administration	39035	R131-1	5YR	12/29/2014	Not Printed	
	38546	R131-4	EMR	05/21/2014	2014-12/49	
	38557	R131-4	AMD	07/22/2014	2014-12/8	
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Administrative Services, Purchasing and General Services	38518	R33-19	NEW	07/08/2014	2014-11/90	
	38519	R33-20	NEW	07/08/2014	2014-11/91	
	38521	R33-24	NEW	07/08/2014	2014-11/95	
	38758	R33-24	AMD	10/08/2014	2014-17/18	

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	38699	R33-11	5YR	07/08/2014	2014-15/66	
	38523	R33-26	NEW	07/08/2014	2014-11/98	
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	38758	R33-24	AMD	10/08/2014	2014-17/18	
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	38775	R277-502-5	AMD	10/09/2014	2014-17/45	
	38867	R277-506	AMD	11/10/2014	2014-19/26	
	38951	R277-506	5YR	11/13/2014	2014-23/56	
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	38287	R65-12	NEW	04/16/2014	2014-5/5	
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	38822	R884-24P-33	AMD	10/23/2014	2014-18/69	
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	38516	R33-18	NEW	07/08/2014	2014-11/89	
	38518	R33-19	NEW	07/08/2014	2014-11/90	
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	38750	R986-900-902	AMD	11/06/2014	2014-17/125	
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	38590	R277-463	5YR	06/10/2014	2014-13/138
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	38780	R277-620	AMD	10/09/2014	2014-17/53
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	38625	R277-480-4	AMD	08/07/2014	2014-13/30
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Human Services, Services for People with Disabilities	38746	R539-3	5YR	08/07/2014	2014-17/139
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	38539	R280-150	AMD	07/08/2014	2014-11/117
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Human Resource Management, Administration	38456	R477-1	AMD	07/01/2014	2014-10/57
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	38545	R746-341	AMD	08/06/2014	2014-12/44
	38826	R746-341	AMD	11/05/2014	2014-18/65
	38985	R746-401	5YR	12/03/2014	2015-1/58
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	38690	R33-2	5YR	07/08/2014	2014-15/61
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Governor, Economic Development	38860	R357-2	NEW	11/08/2014	2014-19/46

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	38773	R277-400	AMD	10/09/2014	2014-17/41	
	38426	R277-400-5	NSC	04/29/2014	Not Printed	
Labor Commission, Boiler and Elevator Safety	38226	R616-2-3	AMD	03/10/2014	2014-3/22	
	38378	R616-3-3	AMD	05/22/2014	2014-8/31	
Transportation, Motor Carrier	38215	R909-3	5YR	01/02/2014	2014-3/55	
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	38773	R277-400	AMD	10/09/2014	2014-17/41	
	38426	R277-400-5	NSC	04/29/2014	Not Printed	
<u>safety regulations</u>						
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	38449	R909-19	AMD	07/08/2014	2014-10/102	
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Tax Commission, Auditing	38237	R865-19S-30	NSC	01/30/2014	Not Printed	
	38596	R865-19S-54	AMD	08/28/2014	2014-13/124	
	38597	R865-19S-83	AMD	08/28/2014	2014-13/125	
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	38626	R277-602-3	AMD	08/07/2014	2014-13/32	
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	38389	R162-2g	AMD	05/22/2014	2014-8/8	
	38894	R162-2g	AMD	01/01/2015	2014-20/16	
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	38913	R277-419-9	AMD	12/08/2014	2014-21/8	
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Education, Administration	38410	R277-601	5YR	04/04/2014	2014-9/52	
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	38326	R277-477-3	NSC	04/01/2014	Not Printed	
	38628	R277-719	AMD	08/07/2014	2014-13/35	
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Administrative Services, Facilities Construction and Management	38247	R23-33	NEW	03/10/2014	2014-3/2	
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	38675	R307-342	CPR	12/01/2014	2014-21/50	
	38583	R307-342-3	AMD	09/04/2014	2014-13/37	
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	38886	R156-63a	AMD	11/24/2014	2014-20/14	
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	38898	R156-63b	AMD	12/08/2014	2014-21/6	
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Administrative Services, Purchasing and General Services	38511	R33-13	NEW	07/08/2014	2014-11/79	
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	38071	R64-3	CPR	05/08/2014	2014-7/82	
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Public Service Commission, Administration	38363	R746-340	AMD	05/27/2014	2014-8/32	
	38556	R746-340-2	NSC	06/05/2014	Not Printed	
<u>telephones</u>						
Commerce, Consumer Protection	38125	R152-26	AMD	01/07/2014	2013-23/4	
Public Service Commission, Administration	38198	R746-341	AMD	02/24/2014	2014-2/9	
	38545	R746-341	AMD	08/06/2014	2014-12/44	
	38826	R746-341	AMD	11/05/2014	2014-18/65	
<u>temporary beer event permits</u>						
Alcoholic Beverage Control, Administration	38276	R81-10b	AMD	03/25/2014	2014-4/14	
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Administrative Services, Purchasing and General Services	38510	R33-12	R&R	07/08/2014	2014-11/71	
	38700	R33-12	5YR	07/08/2014	2014-15/67	
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Commerce, Occupational and Professional Licensing	38421	R156-60	5YR	04/08/2014	2014-9/50	
	38390	R156-60-102	AMD	05/22/2014	2014-8/6	
	38734	R156-60b	5YR	08/05/2014	2014-17/136	
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Administrative Services, Fleet Operations	38073	R27-7-3	AMD	03/11/2014	2013-22/14	
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	38744	R606-1	CPR	12/31/2014	2014-23/50	
Labor Commission, Industrial Accidents	38806	R612-200	AMD	10/22/2014	2014-18/38	
	38553	R612-200-8	AMD	07/22/2014	2014-12/43	
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	38603	R657-46	AMD	08/11/2014	2014-13/109

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	38624	R277-472	AMD	08/07/2014	2014-13/28

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	38536	R309-550	CPR	11/10/2014	2014-16/52

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Health, Center for Health Data, Health Care Statistics	38144	R428-15	AMD	01/07/2014	2013-23/43
	38568	R428-15	AMD	08/05/2014	2014-12/38
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	38742	R25-7-8	AMD	10/08/2014	2014-17/12

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Regents (Board Of), University of Utah, Administration	38918	R805-4	5YR	10/16/2014	2014-22/42
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	38778	R277-607	AMD	10/09/2014	2014-17/50

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Commerce, Real Estate	38213	R162-2f	AMD	02/25/2014	2014-2/4
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	38326	R277-477-3	NSC	04/01/2014	Not Printed

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Natural Resources, Wildlife Resources	38847	R657-69	NEW	11/07/2014	2014-19/73
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Governor, Economic Development, Pete Suazo Utah Athletic Commission	38033	R359-1-604	AMD	01/24/2014	2013-20/25
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	38765	R311-204-3	AMD	10/10/2014	2014-17/79

	38766	R311-206-11	AMD	10/10/2014	2014-17/80
	38767	R311-209-4	AMD	10/10/2014	2014-17/82
	38768	R311-212	AMD	10/10/2014	2014-17/84
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	38665	R994-309	5YR	07/01/2014	2014-14/84
	38666	R994-310	5YR	07/01/2014	2014-14/85
	38667	R994-311	5YR	07/01/2014	2014-14/85
	38668	R994-312	5YR	07/01/2014	2014-14/86
	38248	R994-312-102	AMD	04/15/2014	2014-3/41
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	38758	R33-24	AMD	10/08/2014	2014-17/18
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	38816	R414-320	EMR	09/01/2014	2014-18/85
	38819	R414-320	AMD	11/01/2014	2014-18/18
	38929	R414-320	AMD	12/24/2014	2014-22/30
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	38611	R315-15	CPR	10/03/2014	2014-17/130
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	38689	R33-1	5YR	07/08/2014	2014-15/61
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	38530	R317-1-3	CPR	01/01/2015	2014-20/70
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	38147	R313-38-3	CPR	04/07/2014	2014-5/56
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