

Southeast Utah Health Department

ADJUDICATIVE HEARING PROCEDURES

**Adopted by the Southeast Utah Board of Health
September 25,
2018**

**Under Authority of Utah Code Ann. §§ 26A-1-109(8), 26-23-6,
26A-1-121(2), and 26A-1-114**

1. PURPOSE & APPLICABILITY OF REGULATION

- 1.1. These rules describe the administrative adjudicative procedures for the Southeast Utah Health Department (“Department”). These rules provide an equitable and uniform method for administering and resolving disputes between the Department and person(s) alleged to have violated laws, ordinances, regulations and orders under the jurisdiction of the Department.

2. DEFINITIONS

For the purposes of these procedures, the following terms, phrases, and words shall have the meanings herein expressed:

- 2.1. “Board” shall mean the Southeast Utah Board of Health.
- 2.2. “Case File” shall mean Department records directly related to a Departmental Notice issued to a person(s) which include but are not limited to permit applications, permits, complaint investigation records, photographs, sample results, business entity information, and correspondence used to support the Departmental Notice.
- 2.3. “Chief Hearing Officer” shall mean an attorney, administrative law judge, Department representative, County official, or a person with prior experience in conducting administrative hearings who is selected by the Department Director to hear departmental appeals and issue an order. A Chief Hearing Officer does not perform prosecutorial or investigative functions in connection with any hearing in which he or she serves as Chief Hearing Officer.
- 2.4. “Days” shall mean calendar days. In computing any period of time prescribed or allowed by these rules, by order of a Chief Hearing Officer, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day.
- 2.5. “Department” shall mean the Southeast Utah Health Department.
- 2.6. “Departmental Notice” shall mean an initial departmental notice concerning legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable person(s), including all determinations to approve, deny, revoke, suspend, modify, impose, annul, withdraw, or amend any requirements, applications, permits, rights, penalties or fines subsequent to an opportunity for a hearing. A departmental notice is issued without conducting any level of review by a chief hearing officer. A departmental notice includes, but is not limited to, immediate compliance orders, notices of violation, inspection reports, and/or written decision.
- 2.4. “Director” shall mean the Director of the Southeast Utah Health Department or his or her designated representative.

- 2.5. "Person" shall mean any individual, public or private corporation and its officers, partnership, association, firm, trustee, executor of an estate, the State or its departments, institutions, bureau or agency thereof, municipal corporation, county, city, or any legal entity recognized by the law.

3. GENERAL PROVISIONS

3.1. Jurisdiction of the Department.

3.1.1. This Regulation is promulgated by the Southeast Utah Board of Health as authorized by Utah Code Ann. § 26A-1-121(1)(a).

3.1.2. The Department is empowered to enforce this Regulation in all incorporated and unincorporated areas served by the Department as authorized by Utah Code Ann. § 26A-1-114(1)(a).

3.2. Nothing in this Regulation affects or modifies in any way the obligations or liability of any person under any other regulation or provision thereof issued by the Department, any ordinance issued by Carbon, Emery and Grand Counties or any municipality located within Carbon, Emery and Grand Counties, or any state or federally issued law, including common law. However, Departmental regulations supersede other existing local and county standards, regulations and ordinances pertaining to similar subject matter that are inconsistent.

3.3. **Severance.** If any section, sentence, clause, or phrase of this Regulation is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Regulation.

4. SUBSTANTIVE PROVISIONS

4.1. Adjudicative Proceedings.

4.1.1. Three types of proceedings are available to resolve a Departmental Notice: a departmental conference, a departmental hearing, and a departmental appeal. The Department should attempt to resolve disputes at the lowest level.

4.1.2. When good cause appears, the Department may permit a deviation from these rules if it finds compliance to be impractical or unnecessary or that such deviation furthers justice or purposes of the Department.

4.1.3. These rules will be liberally construed to secure a just, speedy and economical determination of all issues presented to the Department.

- 4.1.4. Departmental appeals constitute formal proceedings for purposes of judicial review; departmental conferences and departmental hearings shall constitute informal proceedings.
- 4.1.5. To the extent that the Utah Administrative Procedures Act (“UAPA”) governs the proceedings by statute or other specific requirement and these provisions conflict, the UAPA prevails.
- 4.1.6. The Department’s burden of proof during the departmental hearing, or if there is no departmental hearing, during the departmental appeal, is by the preponderance of the evidence for the elements of the violation. The burden of proving affirmative defenses and other assertions is on the person(s) asserting it by a preponderance of evidence, or as otherwise provided by law.
- 4.1.7. Person(s) may participate in a departmental conference, departmental hearing, and a departmental appeal by telephone if the person(s) agree, or upon an order, based on good cause, of a Chief Hearing Officer. The person(s), and the Chief Hearing Officer shall provide for the orderly exchange of any documents that will or may be sued during the participation by telephone.
- 4.1.8. If the person(s) reach an agreement at any time after the departmental notice is issued and before any appeal to a District Court as to the issues, requirements and penalties (if any), the Department representative shall prepare, in consultation with the District Attorney’s Office, a binding stipulation and settlement agreement and order, and shall submit the agreement and order to the person(s) for approval and signature. After signing a settlement agreement and order, and the Department or Board’s entry of the order, the person(s) waive all rights to further departmental conferences, hearings, or appeals.

4.2. Filing a Request for a Departmental Conference, Departmental Hearing, or Appeal and Consequences of Failure to File Such a Request.

- 4.2.1. A person(s) aggrieved by a Departmental Notice may request a Departmental Conference, Department Hearing, or Departmental Appeal with the Department. Such a request must be in writing and must be received by the Department within ten (10) days after the Departmental Notice is received by the person(s).
- 4.2.2. If a person(s) aggrieved by a Departmental Notice fails to file a written request for a departmental conference, departmental hearing, or departmental appeal with the Department within ten (10) days after the Departmental Notice is received by the person(s), the Departmental Notice is a final order of the Department and may not be challenged in further administrative or judicial appeals. The written request for a departmental conference, departmental hearing, or departmental appeal must be received by the Department within ten (10) days after the Departmental Notice is received by the person(s). If no written request for a departmental conference, departmental hearing, or departmental appeal is received within ten (10) days after the Departmental Notice is received, the

Departmental Notice is a final order of the Department and may not be challenged in further administrative or judicial appeals.

4.3. Departmental Conference.

- 4.3.1. The purpose of a departmental conference is to resolve matters raised quickly and inexpensively through informal discussions in which the person(s) are allowed to review and evaluate evidence presented.
- 4.3.2. If a person(s) is aggrieved by a departmental notice, the person(s) may file with the Department a written request for a departmental conference. The written request for a departmental conference must be received by the Department within ten (10) days. The Department must notify the person(s) of the date of the departmental conference within twenty (20) days of receipt of the request for a departmental conference. The scheduled date shall be within thirty (30) days from the date of the request for a departmental conference unless the Department and person(s) agree otherwise. The Department may deny the request for a departmental conference if the aggrieved person(s) is not a real party in interest to the departmental notice.
- 4.3.3. In a departmental conference, the person(s) shall be permitted to present witnesses and evidence and comment on the issues. Discovery is prohibited. Intervention by a third person(s) is prohibited. No recording shall be made of the conference. The conference shall not be open to the public.
- 4.3.4. If the Department and person(s) fail to reach an agreement during the departmental conference, the person(s) aggrieved by the departmental notice may request a departmental hearing within ten (10) days after the date of the departmental conference. The written request for a departmental hearing must be received by the Department within ten (10) days after the date of the departmental conference.
- 4.3.5. If a person(s) aggrieved by a departmental notice fails to file a written request for a departmental hearing with the Department within ten (10) days after the date of the departmental conference, the departmental notice is a final order of the Department and may not be challenged in further administrative or judicial appeals.

4.4. Default in Departmental Conference.

- 4.4.1. The Department may enter an Order of Default (final order) against a person(s) if the person(s) fails to appear and participate in a scheduled departmental conference. The Order of Default shall include a statement of the grounds for default and shall be mailed to the person(s). An Order of Default may find that the Departmental Notice is final and unappealable or dismiss the Departmental Notice with or without prejudice.

- 4.4.2. A defaulting person(s) may seek to have the Department set aside the default order and subsequent proceedings on the grounds set out in the Utah Rules of Civil Procedure for relief from a judgment or order. A written request to set aside a default order must be filed and received by the Department within ten (10) days of the receipt of the Order of Default. The Department shall issue a decision on the request within twenty (20) days from the receipt of the request.
- 4.4.3. After issuing the Order of Default, the Department may conduct any further proceedings necessary to complete the hearing departmental conference without the participation of the person(s) in default and may determine all issues, including those affecting the defaulting person(s). Alternatively, the Order of Default may dismiss the request for a departmental conference if the person(s) aggrieved by the Departmental Notice fails to appear. An Order of Default may find that the Departmental Notice is final and unappealable or may dismiss the Departmental Notice with or without prejudice.
- 4.4.4. If a person(s) aggrieved by the Department's Order of Default or Order fails to file a written request to the Department to set aside the order with the Department within ten (10) days after receipt of the order as set out above, the Department's Order of Default is a final order of the Department and may not be challenged in further administrative or judicial appeals.

4.5. Departmental Hearing.

- 4.5.1. The purpose of a departmental hearing is to resolve matters in dispute quickly and inexpensively through informal proceedings in which the parties are allowed to present witnesses and evidence and to have a Chief Hearing Officer determine if the Department acted in accordance with laws, rules, ordinances, regulations and orders under the jurisdiction and authority of the Department.
- 4.5.2. If the Department and person(s) fail to reach an agreement during the departmental conference, the person(s) may file with the Department a written request for a departmental hearing within ten (10) days after the date of the departmental conference.
- 4.5.3. The person(s) request for departmental hearing shall be in writing, signed by the person(s), and include:
 - (i) a statement of the person's interest in the departmental notice, a statement of any disputed facts, and a statement of reasons forming the basis for relief or action, including a statement of the relief or action sought from the Department;
 - (ii) the names and addresses of all person(s) to whom a copy of the request for departmental hearing is being sent; and
 - (iii) the Department's file number or other reference number.

- 4.5.4. The Department shall notify the person(s) of the date of the departmental hearing by issuing a Notice of Hearing within ten (10) days of receipt of the request for a departmental hearing. The scheduled date shall be within thirty (30) days from the date of the request for a departmental hearing unless the person(s) agree otherwise.
- 4.5.5. The Department may, but is not required to, file an answer or other responsive pleading prior to the departmental hearing within ten (10) days of receipt of the written request.

4.6. Procedures for Departmental Hearing.

- 4.6.1. The person(s) named in the Notice of Hearing shall be permitted to testify, present evidence, call witnesses, and comment on the issues. The Chief Hearing Officer is not bound by the rules of evidence, but shall decide the facts based on the testimony and the evidence submitted from the Department's files and facts presented.
- 4.6.2. Discovery is prohibited, but the person(s) may issue subpoenas or other orders as authorized by state law to compel production of necessary evidence.
- 4.6.3. To the extent permitted by law, the person(s) aggrieved by a Departmental Notice shall receive the Department's case file within ten (10) days of the hearing.
- 4.6.4. Intervention by a third person(s) is prohibited, except where required by state or federal law.
- 4.6.5. The Chief Hearing Officer shall record the hearing. Any person(s), at his or her own expense, may have a transcript prepared from the Department's record of the hearing subject to any restrictions that the Department is permitted by statute to impose to protect confidential information.
- 4.6.6. The Chief Hearing Officer may take appropriate measures to preserve the integrity of the hearing, exclude witnesses if requested by a person(s), and protect non-public records or other information protected by law. Hearings are open to the public.
- 4.6.7. All person(s) to the departmental hearing are responsible for assuring the appearance of witnesses, costs of the appearance of witnesses, and all other incidental costs.
- 4.6.8. Any person(s) may, at its own expense, be represented by counsel in a departmental hearing. The Department will not provide counsel to person(s) aggrieved by a Departmental Notice. If a person(s) will be represented by Counsel, written notice must be given to the other person(s) no later than ten (10) days after receipt of the Notice of Hearing and no later than three (3) Days prior to the departmental hearing. When both person(s) are represented by counsel, the

Chief Hearing Officer may convert the hearing to a departmental appeal upon the request of either person(s).

4.6.9. The burden of proof in a departmental hearing shall be on the Department by a preponderance of the evidence for any disputed determination or action issued in its initial Departmental Notice. The burden of proving affirmative defenses and other assertions is on the person(s) asserting it by a preponderance of evidence or as otherwise provided by law.

4.6.10. All person(s) may stipulate to a continuance of the departmental hearing for the purposes of settlement discussions.

4.6.11. At the conclusion of the departmental hearing the Chief Hearing Officer shall inform the person(s) of:

- (i) the decision;
- (ii) the reasons for the decisions; and
- (iii) a notice of the right to appeal.

4.6.12. The Chief Hearing Officer may also take the matter under advisement and issue a written, signed order containing the above stated information within thirty (30) days of the departmental hearing.

4.6.13. The Chief Hearing Officer shall, upon issuance, serve a copy of the final order on the person(s) by mail, by personal delivery, or through other reasonable notice if mail or personal delivery is not possible.

4.6.14. A person(s) aggrieved by the Chief Hearing Officer's order on a Departmental Notice may file a written appeal that is received by with the Department within thirty (30) days after receipt of the Hearing Officer's order. If a timely Request for Departmental Appeal is filed by any person(s), any other person(s) may file an Additional or Cross-Request for Departmental Appeal within fourteen (14) days after the first Request for Departmental Appeal was filed.

4.6.15. If a person(s) aggrieved by a Chief Hearing Officer's order fails to file a written request for a departmental appeal with the Department within thirty (30) days after receipt of the order as set out above, the Hearing Officer's order is a final order of the Department and may not be challenged in further administrative or judicial appeals.

4.7. Default in Departmental Hearing.

4.7.1. The Chief Hearing Officer may enter an Order of Default against a person(s) if the person(s) fails to appear and participate in the hearing. The Order of Default shall include a statement of the grounds for default and shall be mailed to all

person(s). An Order of Default may find that the Departmental Notice is final and unappealable or dismiss the Departmental Notice with or without prejudice.

- 4.7.2. A defaulting person(s) may seek to have the Chief Hearing Officer set aside the default order and subsequent proceedings on the grounds set out in the Utah Rules of Civil Procedure for relief from a judgment or order. A written request to set aside a default order must be filed and received by the Department within ten (10) days of the receipt of the Order of Default. The Hearing Officer shall issue a decision on the request within twenty (20) days from the receipt of the request.
- 4.7.3. After issuing the Order of Default, the Chief Hearing Officer may conduct any further proceedings necessary to complete the hearing without the participation of the person(s) in default and may determine all issues, including those affecting the defaulting person(s). Alternatively, the Order of Default may dismiss the request for a departmental hearing if the person(s) aggrieved by the Departmental Notice fails to appear. The Order of Default may dismiss the Departmental Notice if representatives of the Department fail to appear. An Order of Default may find that the Departmental Notice is final and unappealable or may dismiss the Departmental Notice with or without prejudice.
- 4.7.4. If a person(s) aggrieved by a Chief Hearing Officer's Order of Default fails to file a written request to the Chief Hearing Officer to set aside the order with the Department within ten (10) days after receipt of the order as set out above, the Chief Hearing Officer's Order of Default is a final unappealable order of the Department and Board and may not be challenged on the basis of mistake, inadvertence, surprise, excusable neglect, newly discovered evidence which by due diligence could not have been discovered in time to move for the default to be set aside, or fraud, misrepresentation, or other misconduct of an adverse person(s). However, the ten (10) day time limit does not apply to motions to set aside the Order of Default on the grounds that the order is void, the judgement has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application, or any other reason justifying relief from the operation of the order not listed above.

4.8. Departmental Appeal.

- 4.8.1 A person(s) may file with the Department a Request for Departmental Appeal within thirty (30) days of receipt of a Departmental Hearing Order. The written request for a departmental appeal must be received by the Department within thirty (30) days after receipt of the Departmental Hearing Order.
- 4.8.2. The Request for Departmental Appeal shall include:
 - (i) a statement of the person's interest in the departmental notice, a statement of any disputed facts, and a statement of reasons forming

the basis for relief or action, including a statement of the relief or action sought from the Department;

- (ii) the names and addresses of all person(s) to whom a copy of the request for departmental hearing is being sent; and
- (iii) the Department's file number or other reference number.

4.8.3 Within thirty (30) days of receipt of the Request for Departmental Appeal, the Department or the Chief Hearing Officer shall mail a Notice of Hearing to the person(s) setting forth the date scheduled for hearing the appeal. The Notice of Hearing may be combined with the Department's response, and shall include:

- (i) the Department's file number or other reference number;
- (ii) a statement of the time and place of the hearing;
- (iii) a statement that a person(s) failing to attend may be held in default; and
- (iv) the names and address of all person(s) to whom a Notice of Hearing is being sent.

4.8.4 Within thirty (30) days of receipt of the Request for Departmental Appeal, the Department shall file and mail to the aggrieved person(s) and the Chief Hearing Officer a response signed by the Department. The response shall include:

- (i) the Department's file number or other reference number;
- (ii) a statement of the legal authority and jurisdiction under which the Department's action was taken;
- (iii) a statement of the facts and reasons forming the basis for relief or action; and
- (iv) a statement of the relief or action sought by the Department.

4.9 Procedures for Departmental Appeal Hearing.

4.9.1 If a departmental hearing has been conducted, the appeal hearing shall be a review of the hearing record. Otherwise an evidentiary hearing will be conducted on appeal.

- 4.9.2 In a review of the record, the Chief Hearing Officer and, upon request, the person(s) shall be provided with an audio copy or, at the discretion of the Department, a transcript, if one is made, of the departmental hearing.
- 4.9.3 The Chief Hearing Officer may provide the person(s) with the opportunity to make oral argument before making a decision.
- 4.9.4 The burden of proof in an evidentiary hearing shall be on the Department by a preponderance of the evidence for any disputed determination or action issued in its initial Departmental Notice. The burden of proving affirmative defenses and other assertions is on the person(s) asserting it by a preponderance of evidence or as otherwise provided by law. If a departmental hearing has been conducted, the appeal hearing shall be a review of the record. The Chief Hearing Officer shall determine if the factual findings are supported by substantial evidence. The Chief Hearing Officer shall review legal conclusions de novo and mixed questions of law and fact will be reviewed for reasonableness and rationality.
- 4.9.5 Discovery may be conducted according to the Utah Rules of Civil Procedure.
- 4.9.6 The Chief Hearing Officer is not bound by the Utah Rules of Civil Procedure but may use them as a guide so long as such rules are not inconsistent with these rules.
- 4.9.7 As authorized under the Local Health Department Act, subpoenas and other orders to secure the attendance of a witness or the production of evidence for formal hearing may be issued by: (a) the Department; (b) the Chief Hearing Officer when requested by any person(s); or (c) may be issued by the Chief Hearing Officer on his or her own motion.
- 4.9.8 All hearings before the Chief Hearing Officer will be open to the public, unless otherwise ordered by the Chief Hearing Officer for good cause shown.
- 4.9.9 The Chief Hearing Officer shall regulate the course of the hearing to obtain full disclosure of relevant facts and to afford all the parties person(s) reasonable opportunity to present their positions and protect the confidentiality of records or other information protected by law.
- 4.9.10 The Chief Hearing Officer is not bound by rules of evidence but shall use them as appropriate guides although not in a manner inconsistent with these rules. The Chief Hearing Officer, on his or her own motion or upon objection or request, may:
- (i) exclude evidence that is irrelevant, immaterial, or unduly repetitious;

- (ii) receive documentary evidence in the form of a copy of except if the copy or excerpt contains all pertinent portions of the original document;
- (iii) exclude evidence privileged in the courts of Utah;
- (iv) take official notice of:
 - a. any facts that could be judicially noticed under the Utah Rules of Evidence;
 - b. the record or other proceedings before the Chief Hearing Officer; and
 - c. technical or scientific facts within the Chief Hearing Officer's specialized knowledge;
- (v) not exclude evidence solely because it is hearsay; and
- (vi) allow all person(s) an opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence.

4.9.11 Testimony presented to the Chief Hearing Officer will be sworn testimony under oath or affirmation.

4.9.12 The Chief Hearing Officer shall record the appeal at the expense of the Department. Recordings and exhibits shall be retained by the Department. Any person(s), at his or her own expense, may prepare a transcript from a copy of the appeal recording subject to any restrictions that the Department is permitted by law to impose to protect confidential information.

4.9.13 Upon written request, all person(s) shall have access to information contained in the Department's files and to all materials and information gathered by investigation, to the extent permitted by law.

4.9.14 Any person(s) has the right to be represented by counsel. The Department will not provide counsel for other parties and all costs for counsel will be the sole responsibility of the person(s).

4.9.15 All person(s) to the appeal are responsible to assure the appearance of their witness.

4.9.16 Any person(s) not a part to the appeal may file with the Department a signed written petition to intervene in a formal appeal.

- (i) Any person(s) who wishes to intervene shall mail a copy of the petition to each person(s) that is a part to the appeal. The petition shall include:

- a. the name of the proceeding;
 - b. a statement of the facts demonstrating that the Petitioner’s legal rights or interests are substantially affected by the appeal; or, that the Petitioner qualifies as an intervener under another provision of law; and
 - c. a statement of the relief Petitioner seeks from the Department.
- (ii) The Chief Hearing Officer shall grant a Petition for Intervention if the Chief Hearing Officer determines that the Petitioner’s legal interests may be substantially affected by the adjudicative proceedings and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.
 - (iii) Any order granting or denying intervention may impose conditions on the intervener’s participation in the appeal that are necessary for a just, orderly, and prompt resolution of the proceedings. Such conditions may be imposed at any time after the intervention.

4.9.17 All person(s) may stipulate to a continuance of the departmental appeal for the purposes of settlement discussions.

4.10 Default in Departmental Appeal.

- 4.10.1 The Chief Hearing Officer may enter an Order of Default against a person(s) if the person(s) fails to appear and participate in the hearing, fails to respond to discovery, or comply with the Chief Hearing Officer’s orders. The Order of Default shall include a statement of the grounds for default and shall be mailed to all person(s). An Order of Default may find that the Departmental Notice is final and unappealable or dismiss the Departmental Notice with or without prejudice.
- 4.10.2 A defaulting person(s) may seek to have the Chief Hearing Officer set aside the default order and subsequent proceedings on the grounds set out in the Utah Rules of Civil Procedure for relief from a judgment or order. A written request to set aside a default order must be filed and received by the Department within ten (10) days of the receipt of the Order of Default. The Chief Hearing Officer shall issue a decision on the request within twenty (20) days from the receipt of the request.
- 4.10.3 After issuing the Order of Default, the Chief Hearing Officer may conduct any further proceedings necessary to complete the hearing without the participation of the person(s) in default and may determine all issues, including those affecting the defaulting person(s). Alternatively, the Order of Default may dismiss the request for a departmental appeal if the person(s) aggrieved by the Departmental Notice fails to appear. The Order of Default

may dismiss the Departmental Notice if representatives of the Department fail to appear. An Order of Default may find that the Departmental Notice is final and unappealable or may dismiss the Departmental Notice with or without prejudice.

4.10.4 If a person(s) aggrieved by a Chief Hearing Officer's Order of Default fails to file a written request to the Chief Hearing Officer to set aside the order with the Department within ten (10) days after receipt of the order as set out above, the Chief Hearing Officer's Order of Default is a final order of the Department and may not be challenged on the basis of mistake, inadvertence, surprise, excusable neglect, newly discovered evidence which by due diligence could not have been discovered in time to move for the default to be set aside, or fraud, misrepresentation, or other misconduct of an adverse person(s). However, the ten (10) day time limit does not apply to motions to set aside the Order of Default on the grounds that the order is void, the judgement has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application, or any other reason justifying relief from the operation of the order not listed above.

4.11 **Final Order of Chief Hearing Officer.**

4.11.1 Within a reasonable time after the close of the departmental appeal hearing, the Chief Hearing Officer shall issue a written, signed final order which shall include the following:

- (i) a statement of the Chief Hearing Officer's findings of fact, conclusion of law and order;
 - a. The Chief Hearing Officer may adopt a Hearing Officer's findings of fact, if any, if such findings are supported by substantial evidence or make other findings of fact if necessary and supported by substantial evidence in the record; and
 - b. The Chief Hearing Officer may adopt the Hearing Officer's conclusions concerning mixed questions of law and fact if reasonable and rational or make other conclusions if reasonable and rational; and
 - c. The Chief Hearing Officer may adopt the Hearing Officer's conclusions of law or make his or her own;
- (ii) the order and reasons for the order;
- (iii) a notice of the right to appeal; and

(iv) the time limits for filing a written request for review by the Board as provided in Utah Code Ann. § 26A-1-121(2). A person(s) aggrieved by the Chief Hearing Officer's order may file a written request for appeal with the Department for consideration by the Board within thirty (30) days after receipt of the Chief Hearing Officer's order. The written request for Board review must be received by the Department within thirty (30) days after the Chief Hearing Officer's Order is received by the person(s). If a timely written request for Board review is filed by any person(s), any other person(s) may file an additional or cross-request for Board review within fourteen (14) days after the first written request for Board review was filed.

4.11.2 The Chief Hearing Officer's experience, technical competence, and specialized knowledge may be used to evaluate the evidence.

4.11.3 The Chief Hearing Officer's authority is limited to the specific subject matter presented. The Chief Hearing Officer may submit separate policy recommendations to the Board of Health but may not legislate policy

4.11.4 No finding of fact that was contested may be based solely on hearsay evidence if the evidence was admitted as part of an evidentiary hearing in a departmental appeal.

4.11.5 This section does not preclude the Chief Hearing Officer from issuing interim orders to:

- (i) notify the person(s) of further hearings;
- (ii) notify the parties person(s) of provisional rulings on a portion of the issues presented; or
- (iii) otherwise provide for the fair and efficient conduct of the adjudicative hearing.

4.11.6 If no material facts are in dispute or are agreed to by stipulation between the person(s), the Chief Hearing Officer, upon receiving written or oral argument, may summarily decide the case by issuing a final order, accompanied by written findings and conclusions.

4.11.7 The Chief Hearing Officer shall, upon issuance, serve a copy of the final order on the person(s) by mail, by personal delivery, or through other reasonable notice if mail or personal delivery is not possible.

4.11.8 If a person(s) aggrieved by a Chief Hearing Officer's order fails to file a written request for review by the Board with the Department within thirty (30) days after receipt of the order as set out above, the Chief Hearing

Officer's order is a final order of the Department and may not be challenged in further administrative or judicial appeals.

4.12 **Board Review.**

- 4.12.1 Pursuant to a timely request as set forth in section 4.11 above, a person(s) may request that the Board review a Chief Hearing Officer's final order pursuant to Utah Code Ann. § 26A-1-121(2).
- 4.12.2 A person(s) request for review shall include the following:
- (i) a statement of the person's interest in the departmental notice, a statement of any disputed facts, and a statement of reasons forming the basis for relief or action, including a statement of the relief or action sought from the Department;
 - (ii) the names and addresses of all person(s) to whom a copy of the request for departmental hearing is being sent; and
 - (iii) the Department's file number or other reference number.
- 4.12.3 The review for matters subject to these rules shall be a review of the record of any departmental hearing and/or departmental appeal. The Board shall determine if the factual findings are supported by substantial evidence. The Board shall review legal conclusions de novo and mixed questions of law and fact will be reviewed for reasonableness and rationality.
- 4.12.4 The Board may designate one or more members to coordinate the person(s) submission of materials and to prepare a recommended order for the Board's review.
- 4.12.5 The Board or its designee[s] may set a schedule for the orderly submission of memoranda concerning the appeal by the person(s), normally to include an initial memorandum from the person(s) seeking the review, a response memorandum from the person(s) opposing the appeal and setting forth any matters for cross-appeal, and a reply memorandum from the person(s) seeking review. The Board, in reviewing the record before it, may also determine that additional memoranda are unnecessary, and may exercise discretion to not order any new or additional memoranda.
- 4.12.6 Within a reasonable time after the request for review and the person(s) submission of materials for the review, the Board shall issue a written final order signed by the Board Chair and approved by a majority vote of the Board which shall include the following:
- (i) a statement of the Board's findings of fact, conclusions of law and order;

- a. The Board may adopt a Chief Hearing Officer’s findings of fact if such findings are supported by substantial evidence, or make other findings of fact if necessary and supported by substantial evidence in the record;
 - b. The Board may adopt a Chief Hearing Officer’s conclusions concerning mixed questions of law and fact if reasonable and rational or make other conclusions if reasonable and rational; and
 - c. The Board may adopt a Chief Hearing Officer’s conclusions of law or make its own;
- (ii) a notice of the right to appeal; and
 - (iii) the time limits for filing a written request for judicial review as provided in Utah Code Ann. § 26A-1-121(2)(c). A person(s) aggrieved by the Board’s Order may file a written petition with the district court within thirty (30) days after receipt of notice of the Board’s final determination. The petition must be received by the district court within thirty (30) days after the Chief Hearing Officer’s Order is received by the person(s). If a timely written request for judicial review is filed by any person(s), any other person(s) may file an additional or cross-request for judicial review with its answer.

4.12.7 The Board shall, upon issuance, serve a copy of the final order on the person(s) by mail, by personal delivery, or through other reasonable notice if mail or personal delivery is not possible.

4.12.8 If a person(s) aggrieved by the Board’s Order fails to file a written petition for review in the district court within thirty (30) days after receipt of the order as set out above, the Board’s order is a final order of the Board and may not be challenged in further administrative or judicial appeals.

4.13 Default.

4.13.1 The Board may enter an Order of Default against a person(s) if the person(s) fails to participate in the Board review or comply with the Board’s orders. The Order of Default shall include a statement of the grounds for default and shall be mailed to all person(s). An Order of Default may find that the Departmental Notice or Chief Hearing Officer’s Order is final and unappealable or dismiss the Departmental Notice or Chief Hearing Officer’s Order with or without prejudice.

4.13.2 A defaulting person(s) may seek to have the Board set aside the default order and subsequent proceedings on the grounds set out in the Utah Rules of Civil Procedure for relief from a judgment or order. A written request to set aside a default order must be filed and received within ten (10) days of the receipt of the Order of Default.

4.13.3 After issuing the Order of Default, the Board may conduct any further proceedings necessary to complete the review without the participation of the person(s) in default and may determine all issues, including those affecting the defaulting person(s). Alternatively, the Order of Default may dismiss the request for review if the person(s) aggrieved by the Departmental Notice or Chief Hearing Officer's Order fails to appear or dismiss the Departmental Notice or Chief Hearing Officer's Order if representatives of the Department fail to appear. An Order of Default may find that the Departmental Notice or Chief Hearing Officer's Order is final and unappealable or may dismiss the Departmental Notice or Chief Hearing Officer's Order with or without prejudice.

4.13.4 If a person(s) aggrieved by the Board's Order of Default fails to file a written request for the Board to set aside the order with the Department within ten (10) days after receipt of the order as set out above, the Board's Order of Default is a final order of the Board and may not be challenged or appealed on the basis of mistake, inadvertence, surprise, excusable neglect, newly discovered evidence which by due diligence could not have been discovered in time to move for the default to be set aside, or fraud, misrepresentation, or other misconduct of an adverse person(s). However, the ten (10) day time limit does not apply to motions to set aside the Order of Default on the grounds that the order is void, the judgement has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application, or any other reason justifying relief from the operation of the order not listed above.

4.14 **Judicial Review.** Judicial review of a final determination by the Board on review is governed by Utah Code Ann. 26A-1-121(2).

5. CIVIL PENALTIES

5.1 Pursuant to the authority contained in Utah Code Ann. § 26-23-6 (2)(b), the Department may assess penalties for violations of Title 26 of the Utah Code, duly-enacted Southeast Utah Health Regulations, and/or Departmental Notices issued pursuant to these Adjudicative Hearing Procedures.

5.2 Unless otherwise established by statute, rule, ordinance, regulation, or the Department's fee schedule penalties for violation of any Health Regulation shall be a \$25.00 fine per violation, per day. Each day a violation is continued shall give rise to a separate penalty.

5.2.1 If a violation reoccurs within one year, the Department may enhance the penalties to a \$50.00 fine per violation, per day.

5.3 Penalties levied by the Department pursuant to this section are appealable under the applicable provisions of section 4.3 of these Adjudicative Hearing Procedures.

- 5.4 The Department may establish and collect penalties from one or more responsible persons as set out in these Adjudicative Hearing Procedures. The Department shall bill the responsible person(s) any accrued penalties at such time that the violation(s) have been abated or at the discretion of the Department.
- 5.5 Penalties may be adjusted by the Department according to the following factors:
 - 5.5.1 the violator’s history of compliance or non-compliance;
 - 5.5.2 the violator’s economic benefit of non-compliance;
 - 5.5.3 the documented costs associated with environmental or health damage;
 - 5.5.4 the violator’s degree of willfulness or negligence; or
 - 5.5.5 the violator’s good faith efforts to comply and cooperate.
- 5.6 Reduced penalties may be set out in a signed Stipulation and Settlement Agreement or Order as negotiated and agreed upon by the Department and responsible person(s).
- 5.7 The Department may record a judgment lien on a violator’s property to recover its expenses, costs, and penalties.
- 5.8 The Department may request that the District Attorney bring a civil action to collect any unpaid penalties.

6. EFFECTIVE DATE

- 6.1. These Procedures shall become effective upon its adoption by the Southeast Utah Board of Health.

APPROVED AND ADOPTED this 25th day of September, 2018.

SOUTHEAST UTAH BOARD OF HEALTH

By: _____
Mary Ann Cunningham

ATTEST:

By: _____
Bradon Bradford
Executive Director
Southeast Utah Health Department