

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

Promulgated under authority of Title 4, Chapter 5.

**R70-630-2. Purpose.**

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

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

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

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

**R70-630-3. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

operation.

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

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

**R70-630-4. Location and Operation.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) Name and address of the operator.
- (b) Name of the water supply purveyor.
- (c) The method of treatment that is utilized.
- (d) The method of post-disinfection that is utilized.

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

#### **R70-630-5. Construction Requirements.**

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

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

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

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

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

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

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

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

#### **R70-630-6. Operator Requirements.**

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

- (a) Visits for cleaning, sanitizing, and servicing of machines at least every two weeks.
- (b) Written servicing instructions.
- (c) Technical manuals for the machines.
- (d) Technical manuals for the water treatment appurtenances involved.

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

(3) Water vending machine operators shall ensure that

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

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

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

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

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

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

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

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

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

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

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

#### **R70-630-8. Enforcement and Penalties.**

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

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

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

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

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

**KEY: food inspection**

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**R156. Commerce, Occupational and Professional Licensing.**  
**R156-1. General Rules of the Division of Occupational and Professional Licensing.**

**R156-1-101. Title.**

These rules are known as the General Rules of the Division of Occupational and Professional Licensing.

**R156-1-102. Definitions.**

In addition to the definitions in Title 58, as used in Title 58 or these rules:

(1) "Active and in good standing" means a licensure status which allows the licensee full privileges to engage in the practice of the occupation or profession subject to the scope of the licensee's license classification.

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

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

(b) dishonest or selfish motive;

(c) pattern of misconduct;

(d) multiple offenses;

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

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

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

(h) vulnerability of the victim;

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

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

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

(3) "Branching questionnaire", as used in Section R156-1-601, means an adaptive, progressive inquiry used by a physician to determine a health history and assessment, and serves as the basis for a diagnosis.

(4) "Cancel" or "cancellation" means nondisciplinary action by the division to rescind, repeal, annul, or void a license issued in error. Such action includes rescinding a license issued to an applicant whose payment of the required application fee is dishonored when presented for payment, or who has been issued a conditional license pending a criminal background check and fails to complete the process such as having an outstanding warrant.

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

(6) "Denial of licensure" means action by the division refusing to issue a license to an applicant for initial licensure, renewal of licensure, reinstatement of licensure or relicensure.

(7) "Disciplinary action" means adverse licensure action by the division under the authority of Subsections 58-1-401(2)(a) through (2)(b).

(8) "Diversion agreement" means a formal written agreement between a licensee, the division, and a diversion committee, outlining the terms and conditions with which a licensee must comply as a condition of entering in and remaining under the diversion program authorized in Section 58-1-404.

(9) "Diversion committees" mean diversion advisory

committees authorized by Subsection 58-1-404(2)(a)(i) and created under Subsection R156-1-404a.

(10) "Duplicate license" means a license reissued to replace a license which has been lost, stolen, or mutilated.

(11) "Emergency review committees" mean emergency adjudicative proceedings review committees created by the division under the authority of Subsection 58-1-108(2).

(12) "Expire" or "expiration" means the automatic termination of a license which occurs:

(a) at the expiration date shown upon a license if the licensee fails to renew the license before the expiration date; or

(b) prior to the expiration date shown on the license:

(i) upon the death of a licensee who is a natural person;

(ii) upon the dissolution of a licensee who is a partnership, corporation, or other business entity; or

(iii) upon the issuance of a new license which supersedes an old license, including a license which:

(A) replaces a temporary license;

(B) replaces a student or other interim license which is limited to one or more renewals or other renewal limitation; or

(C) is issued to a licensee in an upgraded classification permitting the licensee to engage in a broader scope of practice in the licensed occupation or profession.

(13) "Inactive" or "inactivation" means action by the division to place a license on inactive status in accordance with Sections 58-1-305 and R156-1-305.

(14) "Investigative subpoena authority" means, except as otherwise specified in writing by the director, the division enforcement counsel, or if the division enforcement counsel is unable to so serve for any reason, the assistant director, or if both the division enforcement counsel and the assistant director are unable to so serve for any reason, the department enforcement counsel.

(15) "License" means a right or privilege to engage in the practice of a regulated occupation or profession as a licensee.

(16) "Limit" or "limitation" means nondisciplinary action placing either terms and conditions or restrictions or both upon a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(17) "Mitigating circumstances" means any consideration or factors that may justify a reduction in the severity of an action to be imposed upon an applicant or licensee.

(a) Mitigating circumstances include:

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

(ii) absence of dishonest or selfish motive;

(iii) personal, mental or emotional problems provided such problems have not posed a risk to the health, safety or welfare of the public or clients served such as drug or alcohol abuse while engaged in work situations or similar situations where the licensee or applicant should know that they should refrain from engaging in activities that may pose such a risk;

(iv) timely and good faith effort to make restitution or rectify the consequences of the misconduct involved;

(v) full and free disclosure to the client or Division prior to the discovery of any misconduct;

(vi) inexperience in the practice of the occupation and profession provided such inexperience is not the result of failure to obtain appropriate education or consultation that the applicant or licensee should have known they should obtain prior to beginning work on a particular matter;

(vii) imposition of other penalties or sanctions; and

(viii) remorse.

(b) The following factors should not be considered as mitigating circumstances:

(i) forced or compelled restitution;

(ii) withdrawal of complaint by client or other affected persons;

(iii) resignation prior to disciplinary proceedings;

(iv) failure of injured client to complain; and

(v) complainant's recommendation as to sanction.

(18) "Nondisciplinary action" means adverse licensure by the division under the authority of Subsections 58-1-401(1) or 58-1-401(2)(c) through (2)(d).

(19) "Peer committees" mean advisory peer committees to boards created by the legislature in Title 58 or by the division under the authority of Subsection 58-1-203(1)(f).

(20) "Private reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a private record.

(21) "Probation" means disciplinary action placing terms and conditions upon a license;

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(22) "Public reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a public record.

(23) "Regulatory authority" as used in Subsection 58-1-501(2)(d) means any governmental entity who licenses, certifies, registers, or otherwise regulates persons subject to its jurisdiction, or who grants the right to practice before or otherwise do business with the governmental entity.

(24) "Reinstatement" or "reinstatement" means to activate an expired license or to restore a license which is restricted, as defined in Subsection (26)(b), or is suspended, or placed on probation, to a lesser restrictive license or an active in good standing license.

(25) "Relicense" or "relicensure" means to license an applicant who has previously been revoked or has previously surrendered a license.

(26) "Remove or modify restrictions" means to remove or modify restrictions, as defined in Subsection (26)(a), placed on a license issued to an applicant for licensure.

(27) "Restrict" or "restriction" means disciplinary action qualifying or limiting the scope of a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-304; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(28) "Revoke" or "revocation" means disciplinary action by the division extinguishing a license.

(29) "Suspend" or "suspension" means disciplinary action by the division removing the right to use a license for a period of time or indefinitely as indicated in the disciplinary order, with the possibility of subsequent reinstatement of the right to use the license.

(30) "Surrender" means voluntary action by a licensee giving back or returning to the division in accordance with Section 58-1-306, all rights and privileges associated with a license issued to the licensee.

(31) "Temporary license" or "temporary licensure" means a license issued by the division on a temporary basis to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-303.

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

(33) "Warning or final disposition letters which do not constitute disciplinary action" as used in Subsection 58-1-108(3) mean letters which do not contain findings of fact or conclusions

of law and do not constitute a reprimand, but which may address any or all of the following:

(a) division concerns;

(b) allegations upon which those concerns are based;

(c) potential for administrative or judicial action; and

(d) disposition of division concerns.

#### **R156-1-103. Authority - Purpose.**

These rules are adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58.

#### **R156-1-106. Division - Duties, Functions, and Responsibilities.**

(1) In accordance with Subsection 58-1-106(2), the following responses to requests for lists of licensees may include multiple licensees per request and may include home telephone numbers and home addresses, subject to the restriction that the addresses and telephone numbers shall only be used by a requester for purposes for which the requester is properly authorized and shall not be sold or otherwise redisclosed by the requester:

(a) responses to requests from another governmental entity, government-managed corporation, a political subdivision, the federal government, another state, or a not-for-profit regulatory association to which the division is a member;

(b) responses to requests from an occupational or professional association, private continuing education organizations, trade union, university, or school, for purposes of education programs for licensees;

(c) responses to a party to a prelitigation proceeding convened by the division under Title 78, Chapter 14;

(d) responses to universities, schools, or research facilities for the purposes of research; and

(e) responses to requests from licensed health care facilities or third party credentialing services, for the purpose of verifying licensure status for credentialing or reimbursement purposes.

(2) In accordance with Subsection 58-1-106(3)(a), the division may deny a request for an address or telephone number of a licensee to an individual who provides proper identification and the reason for the request, in writing, to the division, if the reason for the request is deemed by the division to constitute an unwarranted invasion of privacy or a threat to the public health, safety, and welfare.

(3) In accordance with Subsection 58-1-106(3)(c), proper identification of an individual who requests the address or telephone number of a licensee and the reason for the request, in writing, shall consist of the individual's name, mailing address, and daytime number, if available.

#### **R156-1-107. Organization of Rules - Content, Applicability and Relationship of Rules.**

(1) The rules and sections in Title R156 shall, to the extent practicable, follow the numbering and organizational scheme of the chapters in Title 58.

(2) Rule R156-1 shall contain general provisions applicable to the administration and enforcement of all occupations and professions regulated in Title 58.

(3) The provisions of the other rules in Title R156 shall contain specific or unique provisions applicable to particular occupations or professions.

(4) Specific rules in Title R156 may supplement or alter Rule R156-1 unless expressly provided otherwise in Rule R156-1.

#### **R156-1-109. Presiding Officers.**

In accordance with Subsection 63-46b-2(1)(h), Sections 58-1-104, 58-1-106, 58-1-109, 58-1-202, 58-1-203, 58-55-103,

and 58-55-201, except as otherwise specified in writing by the director, or for Title 58, Chapter 55, the Construction Services Commission, the designation of presiding officers is clarified or established as follows:

(1) The division regulatory and compliance officer is designated as the presiding officer for issuance of notices of agency action and for issuance of notices of hearing issued concurrently with a notice of agency action or issued in response to a request for agency action, provided that if the division regulatory and compliance officer is unable to so serve for any reason, the assistant director is designated as the alternate presiding officer.

(2) Subsections 58-1-109(2) and 58-1-109(4) are clarified with regard to defaults as follows. Unless otherwise specified in writing by the director, or with regard to Title 58, Chapter 55, by the Construction Services Commission, the department administrative law judge is designated as the presiding officer for entering an order of default against a party, for conducting any further proceedings necessary to complete the adjudicative proceeding, and for issuing a recommended order to the director or commission, respectively, determining the discipline to be imposed, licensure action to be taken, relief to be granted, etc.

(3) Except as provided in Subsection (4) or otherwise specified in writing by the director, the presiding officer for adjudicative proceedings before the division are as follows:

(a) Director. The director shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(f) through (g), and R156-46b-201(2)(a) through (b), however resolved, including stipulated settlements and hearings; and

(ii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(d), (h), (j), (m), (n), (p), and (q), and R156-46b-202(2)(a) through (d), however resolved, including memorandums of understanding and stipulated settlements.

(b) Bureau managers or program coordinators. Except for Title 58, Chapter 55, the bureau manager or program coordinator over the occupation or profession or program involved shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(a) through (c), provided that any evidentiary hearing requested shall be conducted by the appropriate board who shall be designated as the presiding officer to act as the fact finder at any evidentiary hearing and shall issue a recommended order to the division based upon the record developed at the hearing determining all issues pending before the division to the director for a final order, and R156-46b-201(1)(e). The authority of the presiding officer in formal adjudicative proceedings described in R156-46b-201(1)(e) shall be limited to approval of claims, conditional denial of claims, and final denial of claims based upon jurisdictional defects;

(ii) formal adjudicative proceedings described in Subsection R156-46b-201(1)(h), for purposes of determining whether a request for a board of appeal is properly filed as set forth in Subsections R156-56-105(1) through (4); and

(iii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(a) through (c), (e), (g), (i), (k), and (o).

(iv) At the direction of a bureau manager or program coordinator, a licensing technician or program technician may sign an informal order in the name of the licensing technician or program technician provided the wording of the order has been approved in advance by the bureau manager or program coordinator and provided the caption "FOR THE BUREAU MANAGER" or "FOR THE PROGRAM COORDINATOR" immediately precedes the licensing technician's or program technician's signature.

(c) Contested Citation Hearing Officer. The regulatory

and compliance officer or other contested citation hearing officer designated in writing by the director shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(l).

(d) Uniform Building Code Commission. The Uniform Building Code Commission shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-201(1)(f) for convening a board of appeal under Subsection 58-56-8(3), for serving as fact finder at any evidentiary hearing associated with a board of appeal, and for entering the final order associated with a board of appeal. An administrative law judge shall perform the role specified in Subsection 58-1-109(2).

(e) Residence Lien Recovery Fund Advisory Board. The Residence Lien Recovery Fund Advisory Board shall be the presiding officer for adjudicative proceedings described in Subsection R156-46b-201(1)(e) and R156-46b-202(1)(g) that exceed the authority of the program coordinator, as delegated by the board, or are otherwise referred by the program coordinator to the board for action.

(4) Unless otherwise specified in writing by the Construction Services Commission, the presiding officers and process for adjudicative proceedings under Title 58, Chapter 55, are established or clarified as follows:

(a) Commission.

(i) The commission shall be the presiding officer for all adjudicative proceedings under Title 58, Chapter 55, except as otherwise delegated by the commission in writing or as otherwise provided in these rules; provided, however, that all orders adopted by the commission as a presiding officer shall require the concurrence of the director.

(ii) Unless otherwise specified in writing by the commission, the commission is designated as the presiding officer:

(A) for formal adjudicative proceedings described in Subsections R156-46b-201(1)(g) and R156-46b-201(2)(a) through (b), however resolved, including stipulated settlements and hearings;

(B) informal adjudicative proceedings described in Subsections R156-46b-202(1)(d), (m), (n), (p), and (q), and R156-46b-202(2)(a) and (c), however resolved, including memorandums of understanding and stipulated settlements;

(C) to serve as fact finder and adopt orders in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed under Title 58, Chapter 55; and

(D) to review recommended orders of a board, an administrative law judge, or other designated presiding officer who acted as the fact finder in an evidentiary hearing involving a person licensed or required to be licensed under Title 58, Chapter 55, and to adopt an order of its own. In adopting its order, the commission may accept, modify or reject the recommended order.

(iii) If the commission is unable for any reason to act as the presiding officer as specified, it shall designate another presiding officer in writing to so act.

(iv) Orders of the commission shall address all issues before the commission and shall be based upon the record developed in an adjudicative proceeding conducted by the commission. In cases in which the commission has designated another presiding officer to conduct an adjudicative proceeding and submit a recommended order, the record to be reviewed by the commission shall consist of the findings of fact, conclusions of law, and recommended order submitted to the commission by the presiding officer based upon the evidence presented in the adjudicative proceeding before the presiding officer.

(v) The commission or its designee shall submit adopted orders to the director for the director's concurrence or rejection within 30 days after it receives a recommended order or adopts

an order, whichever is earlier. An adopted order shall be deemed issued and constitute a final order upon the concurrence of the director.

(vi) If the director or his designee refuses to concur in an adopted order of the commission or its designee, the director or his designee shall return the order to the commission or its designee with the reasons set forth in writing for the nonconcurrence therein. The commission or its designee shall reconsider and resubmit an adopted order, whether or not modified, within 30 days of the date of the initial or subsequent return, provided that unless the director or his designee and the commission or its designee agree to an extension, any final order must be issued within 90 days of the date of the initial recommended order, or the adjudicative proceeding shall be dismissed. Provided the time frames in this subsection are followed, this subsection shall not preclude an informal resolution such as an executive session of the commission or its designee and the director or his designee to resolve the reasons for the director's refusal to concur in an adopted order.

(vii) The record of the adjudicative proceeding shall include recommended orders, adopted orders, refusals to concur in adopted orders, and final orders.

(viii) The final order issued by the commission and concurred in by the director may be appealed by filing a request for agency review with the executive director or his designee within the department.

(ix) The content of all orders shall comply with the requirements of Subsection 63-46b-5(1)(i) and Sections 63-46b-10 and 63-46b-11.

(b) Director. Unless otherwise specified in writing by the commission, the director is designated as the presiding officer for conducting informal adjudicative proceedings specified in R156-46b-202(2)(b).

(c) Administrative Law Judge. Unless otherwise specified in writing by the commission, the department administrative law judge is designated as the presiding officer to conduct formal adjudicative proceedings before the commission and its advisory boards, as specified in Subsection 58-1-109(2).

(d) Bureau Manager. Unless otherwise specified in writing by the commission, the responsible bureau manager is designated as the presiding officer for conducting:

(i) formal adjudicative proceedings specified in Subsections R156-46b-201(1)(a) through (c), provided that any evidentiary hearing requested shall be conducted by the appropriate board or commission who shall be designated as the presiding officer to act as the fact finder at any evidentiary hearing and to adopt orders as set forth in these rules; and

(ii) informal adjudicative proceedings specified in Subsections R156-46b-202(1)(a) through (c), (e), (i), and (o).

(iii) At the direction of a bureau manager, a licensing technician may sign an informal order in the name of the licensing technician provided the wording of the order has been approved in advance by the bureau manager and provided the caption "FOR THE BUREAU MANAGER" immediately precedes the licensing technician's signature.

(e) Plumbers Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Plumbers Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as plumbers.

(f) Electricians Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Electricians Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as electricians.

(g) Alarm System Security and Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Alarm System Security and Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as alarm companies or agents.

#### **R156-1-110. Issuance of Investigative Subpoenas.**

(1) All requests for subpoenas in conjunction with a division investigation made pursuant to Subsection 58-1-106(1)(c), shall be made in writing to the investigative subpoena authority and shall be accompanied by an original of the proposed subpoena.

(a) Requests to the investigative subpoena authority shall contain adequate information to enable the subpoena authority to make a finding of sufficient need, including: the factual basis for the request, the relevance and necessity of the particular person, evidence, documents, etc., to the investigation, and an explanation why the subpoena is directed to the particular person upon whom it is to be served.

(b) Approved subpoenas shall be issued under the seal of the division and the signature of the subpoena authority.

(2) The investigative subpoena authority may quash or modify an investigative subpoena if it is shown to be unreasonable or oppressive.

#### **R156-1-205. Peer or Advisory Committees - Executive Director to Appoint - Terms of Office - Vacancies in Office - Removal from Office - Quorum Requirements - Appointment of Chairman - Division to Provide Secretary - Compliance with Open and Public Meetings Act - Compliance with Utah Administrative Procedures Act - No Provision for Per Diem and Expenses.**

(1) The executive director shall appoint the members of peer or advisory committees established under Title 58 or Title R156.

(2) Except for ad hoc committees whose members shall be appointed on a case-by-case basis, the term of office of peer or advisory committee members shall be for four years. The executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the peer or advisory committee is appointed every two years.

(3) No peer or advisory committee member may serve more than two full terms, and no member who ceases to serve may again serve on the peer or advisory committee until after the expiration of two years from the date of cessation of service.

(4) If a vacancy on a peer or advisory committee occurs, the executive director shall appoint a replacement to fill the unexpired term. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(5) If a peer or advisory committee member fails or refuses to fulfill the responsibilities and duties of a peer or advisory committee member, including the attendance at peer committee meetings, the executive director may remove the peer or advisory committee member and replace the member in accordance with this section. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(6) Committee meetings shall only be convened with the approval of the appropriate board and the concurrence of the division.

(7) Unless otherwise approved by the division, peer or advisory committee meetings shall be held in the building occupied by the division.

(8) A majority of the peer or advisory committee members

shall constitute a quorum and may act in behalf of the peer or advisory committee.

(9) Peer or advisory committees shall annually designate one of their members to serve as peer or advisory committee chairman. The division shall provide a division employee to act as committee secretary to take minutes of committee meetings and to prepare committee correspondence.

(10) Peer or advisory committees shall comply with the procedures and requirements of Title 52, Chapter 4, Open and Public Meetings, in their meetings.

(11) Peer or advisory committees shall comply with the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, in their adjudicative proceedings.

(12) Peer or advisory committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in peer or advisory committees business, except as otherwise provided in Title 58 or Title R156.

**R156-1-206. Emergency Adjudicative Proceeding Review Committees - Appointment - Terms - Vacancies - Removal - Quorum - Chairman and Secretary - Open and Public Meetings Act - Utah Administrative Procedures Act - Per Diem and Expenses.**

(1) The chairman of the board for the profession of the person against whom an action is proposed may appoint the members of emergency review committees on a case-by-case or period-of-time basis.

(2) With the exception of the appointment and removal of members and filling of vacancies by the chairman of a board, emergency review committees, committees shall serve in accordance with Subsections R156-1-205(7), and (9) through (12).

**R156-1-301. Cheating on Examinations.**

(1) Policy.

The passing of an examination, when required as a condition of obtaining or maintaining a license issued by the division, is considered to be a critical indicator that an applicant or licensee meets the minimum qualifications for licensure. Failure to pass an examination is considered to be evidence that an applicant or licensee does not meet the minimum qualifications for licensure. Accordingly, the accuracy of the examination result as a measure of an applicant's or licensee's competency must be assured. Cheating by an applicant or licensee on any examination required as a condition of obtaining a license or maintaining a license shall be considered unprofessional conduct and shall result in imposition of an appropriate penalty against the applicant or licensee.

(2) Cheating Defined.

Cheating is defined as the use of any means or instrumentality by or for the benefit of an examinee to alter the results of an examination in any way to cause the examination results to inaccurately represent the competency of an examinee with respect to the knowledge or skills about which they are examined. Cheating includes:

(a) communication between examinees inside of the examination room or facility during the course of the examination;

(b) communication about the examination with anyone outside of the examination room or facility during the course of the examination;

(c) copying another examinee's answers or looking at another examinee's answers while an examination is in progress;

(d) permitting anyone to copy answers to the examination;

(e) substitution by an applicant or licensee or by others for the benefit of an applicant or licensee of another person as the examinee in place of the applicant or licensee;

(f) use by an applicant or licensee of any written material, audio material, video material or any other mechanism not specifically authorized during the examination for the purpose of assisting an examinee in the examination;

(g) obtaining, using, buying, selling, possession of or having access to a copy of the examination prior to administration of the examination.

(3) Action Upon Detection of Cheating.

(a) The person responsible for administration of an examination, upon evidence that an examinee is or has been cheating on an examination shall notify the division of the circumstances in detail and the identity of the examinees involved with an assessment of the degree of involvement of each examinee;

(b) If cheating is detected prior to commencement of the examination, the examinee may be denied the privilege of taking the examination; or if permitted to take the examination, the examinee shall be notified of the evidence of cheating and shall be informed that the division may consider the examination to have been failed by the applicant or licensee because of the cheating; or

(c) If cheating is detected during the examination, the examinee may be requested to leave the examination facility and in that case the examination results shall be the same as failure of the examination; however, if the person responsible for administration of the examination determines the cheating detected has not yet compromised the integrity of the examination, such steps as are necessary to prevent further cheating shall be taken and the examinee may be permitted to continue with the examination.

(d) If cheating is detected after the examination, the division shall make appropriate inquiry to determine the facts concerning the cheating and shall thereafter take appropriate action.

(e) Upon determination that an applicant has cheated on an examination, the applicant may be denied the privilege of retaking the examination for a reasonable period of time, and the division may deny the applicant a license and may establish conditions the applicant must meet to qualify for a license including the earliest date on which the division will again consider the applicant for licensure.

(4) Notification.

The division shall notify all proctors, test administrators and examinees of the rules concerning cheating.

**R156-1-302. Consideration of Good Moral Character, Unlawful Conduct, Unprofessional Conduct, or Other Mental or Physical Condition.**

Pursuant to the provisions of Subsection 58-1-401(1) and (2), if an applicant or licensee has failed to demonstrate good moral character, has been involved in unlawful conduct, has been involved in unprofessional conduct, or has any other mental or physical condition which conduct or condition, when considered with the duties and responsibilities of the license held or to be held, demonstrates a threat or potential threat to the public health, safety or welfare, the Division may consider various relevant factors in determining what action to take regarding licensure including the following:

(1) aggravating circumstances, as defined in Subsection R156-1-102(2);

(2) mitigating circumstances, as defined in Subsection R156-1-102(16);

(3) the degree of risk to the public health, safety or welfare;

(4) the degree of risk that a conduct will be repeated;

(5) the degree of risk that a condition will continue;

(6) the magnitude of the conduct or condition as it relates to the harm or potential harm;

(7) the length of time since the last conduct or condition



has occurred;

(8) the current criminal probationary or parole status of the applicant or licensee;

(9) the current administrative status of the applicant or licensee;

(10) results of previously submitted applications, for any regulated profession or occupation;

(11) results from any action, taken by any professional licensing agency, criminal or administrative agency, employer, practice monitoring group, entity or association;

(12) evidence presented indicating that restricting or monitoring an individual's practice, conditions or conduct can protect the public health, safety or welfare;

(13) psychological evaluations; or

(14) any other information the Division or the board reasonably believes may assist in evaluating the degree of threat or potential threat to the public health, safety or welfare.

**R156-1-305. Inactive Licensure.**

(1) In accordance with Section 58-1-305, except as provided in Subsection (2), a licensee may not apply for inactive licensure status.

(2) The following licenses issued under Title 58 that are active in good standing may be placed on inactive licensure status:

- (a) advanced practice registered nurse;
- (b) audiologist;
- (c) certified nurse midwife;
- (d) certified public accountant emeritus;
- (e) certified registered nurse anesthetist;
- (f) certified court reporter;
- (g) certified social worker;
- (h) chiropractic physician;
- (i) clinical social worker;
- (j) contractor;
- (k) deception detection examiner;
- (l) deception detection intern;
- (m) dental hygienist;
- (n) dentist;
- (o) genetic counselor;
- (p) health facility administrator;
- (q) hearing instrument specialist;
- (r) licensed substance abuse counselor;
- (s) marriage and family therapist;
- (t) naturopath/naturopathic physician;
- (u) optometrist;
- (v) osteopathic physician and surgeon;
- (w) pharmacist;
- (x) pharmacy technician;
- (y) physician assistant;
- (z) physician and surgeon;
- (aa) podiatric physician;
- (bb) private probation provider;
- (cc) professional counselor;
- (dd) psychologist;
- (ee) radiology practical technician;
- (ff) radiology technologist;
- (gg) security personnel;
- (hh) speech-language pathologist; and
- (ii) veterinarian.

(3) Applicants for inactive licensure shall apply to the division in writing upon forms available from the division. Each completed application shall contain documentation of requirements for inactive licensure, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(4) If all requirements are met for inactive licensure, the division shall place the license on inactive status.

(5) A license may remain on inactive status indefinitely except as otherwise provided in Title 58 or rules which

implement Title 58.

(6) An inactive license may be activated by requesting activation in writing upon forms available from the division. Unless otherwise provided in Title 58 or rules which implement Title 58, each reactivation application shall contain documentation that the applicant meets current renewal requirements, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

**R156-1-308a. Renewal Dates.**

(1) The following standard two-year renewal cycle renewal dates are established by license classification in accordance with the Subsection 58-1-308(1):

TABLE  
RENEWAL DATES

(1)	Acupuncturist	May 31	even years
(2)	Advanced Practice Registered Nurse	January 31	even years
(3)	Animal Euthanasia Agency	May 31	odd years
(4)	Alternate Dispute Resolution Provdr	September 30	even years
(5)	Architect	May 31	even years
(6)	Athlete Agent	September 30	even years
(7)	Audiologist	May 31	odd years
(8)	Building Inspector	July 31	odd years
(9)	Burglar Alarm Security	July 31	even years
(10)	C.P.A. Firm	September 30	even years
(11)	Certified Court Reporter	May 31	even years
(12)	Certified Dietitian	September 30	even years
(13)	Certified Nurse Midwife	January 31	even years
(14)	Certified Public Accountant	September 30	even years
(15)	Certified Registered Nurse Anesthetist	January 31	even years
(16)	Certified Social Worker	September 30	even years
(17)	Chiropractic Physician	May 31	even years
(18)	Clinical Social Worker	September 30	even years
(19)	Construction Trades Instructor	July 31	odd years
(20)	Contractor	July 31	odd years
(21)	Controlled Substance Precursor Distributor	May 31	odd years
(22)	Controlled Substance Precursor Purchaser	May 31	odd years
(23)	Controlled Substance Handler	May 31	odd years
(24)	Cosmetologist/Barber	September 30	odd years
(25)	Cosmetology/Barber School	September 30	odd years
(26)	Deception Detection	July 31	even years
(27)	Dental Hygienist	May 31	even years
(28)	Dentist	May 31	even years
(29)	Electrician Apprentice, Journeyman, Master, Residential Journeyman, Residential Master	July 31	even years
(30)	Electrologist	September 30	odd years
(31)	Electrology School	September 30	odd years
(32)	Environmental Health Scientist	May 31	odd years
(33)	Esthetician	September 30	odd years
(34)	Esthetics School	September 30	odd years
(35)	Factory Built Housing Dealer	September 30	even years
(36)	Funeral Service Director	May 31	even years
(37)	Funeral Service Establishment	May 31	even years
(38)	Genetic Counselor	September 30	even years
(39)	Health Care Assistant	May 31	odd years
(40)	Health Facility Administrator	May 31	odd years
(41)	Hearing Instrument Specialist	September 30	even years
(42)	Landscape Architect	May 31	even years
(43)	Licensed Practical Nurse	January 31	even years
(44)	Licensed Substance Abuse Counselor	May 31	odd years
(45)	Marriage and Family Therapist	September 30	even years
(46)	Massage Apprentice, Therapist	May 31	odd years
(47)	Master Esthetician	September 30	odd years
(48)	Nail Technologist	September 30	odd years
(49)	Nail Technology School	September 30	odd years
(50)	Naturopath/Naturopathic Physician	May 31	even years
(51)	Occupational Therapist	May 31	odd years
(52)	Occupational Therapy Assistant	May 31	odd years
(53)	Optometrist	September 30	even years
(54)	Osteopathic Physician and	May 31	even years

	Surgeon		
(55)	Pharmacy (Class A-B-C-D-E)	May 31	odd years
(56)	Pharmacist	May 31	odd years
(57)	Pharmacy Technician	May 31	odd years
(58)	Physical Therapist	May 31	odd years
(59)	Physician Assistant	May 31	even years
(60)	Physician and Surgeon	January 31	even years
(61)	Plumber		
	Apprentice, Journeyman, Residential Apprentice, Residential Journeyman	July 31	even years
(62)	Podiatric Physician	September 30	even years
(63)	Pre Need Funeral Arrangement Provider	May 31	even years
(64)	Pre Need Funeral Arrangement Sales Agent	May 31	even years
(65)	Private Probation Provider	May 31	odd years
(66)	Professional Counselor	September 30	even years
(67)	Professional Engineer	December 31	even years
(68)	Professional Geologist	December 31	even years
(69)	Professional Land Surveyor	December 31	even years
(70)	Professional Structural Engineer	December 31	even years
(71)	Psychologist	September 30	even years
(72)	Radiology Practical Technician	May 31	odd years
(73)	Radiology Technologist	May 31	odd years
(74)	Recreational Therapy Technician, Specialist, Master Specialist	May 31	odd years
(75)	Registered Nurse	January 31	odd years
(76)	Respiratory Care Practitioner	September 30	even years
(77)	Retail Pharmacy	May 31	odd years
(78)	Security Personnel	July 31	even years
(79)	Social Service Worker	September 30	even years
(80)	Speech-Language Pathologist	May 31	odd years
(81)	Veterinarian	September 30	even years

(2) The following non-standard renewal terms and renewal or extension cycles are established by license classification in accordance with Subsection 58-1-308(1) and in accordance with specific requirements of the license:

(a) Certified Marriage and Family Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(b) Certified Professional Counselor Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(c) Certified Social Worker Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first. An intern license may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(d) Funeral Service Apprentice licenses shall be issued for a two year term and may be extended for an additional two year term if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(e) Professional Employer Organization registrations expire every year on September 30.

(f) Psychology Resident licenses shall be issued for a two year term and may be extended if the licensee presents

satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(g) Hearing Instrument Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examination, but a circumstance arose beyond the control of the licensee, to prevent the completion of the examination process.

**R156-1-308b. Renewal Periods - Adjustment of Renewal Fees for an Extended or Shortened Renewal Period.**

(1) Except as otherwise provided by statute or as required to establish or reestablish a renewal period, each renewal period shall be for a period of two years.

(2) The renewal fee for a renewal period which is extended or shortened by more than one month to establish or reestablish a renewal period shall increased or decreased proportionately.

**R156-1-308c. Renewal of Licensure Procedures.**

The procedures for renewal of licensure shall be as follows:

(1) The division shall mail a renewal notice to each licensee at least 60 days prior to the expiration date shown on the licensee's license. The notice shall include directions for the licensee to renew the license via the Division's website.

(2) Renewal notices shall be sent by letter deposited in the post office with postage prepaid, addressed to the last address shown on the division's automated license system. Such mailing shall constitute legal notice. It shall be the duty and responsibility of each licensee to maintain a current address with the division.

(3) Renewal notices shall specify the renewal requirements and require that each licensee document or certify that the licensee meets the renewal requirements.

(4) Renewal notices shall advise each licensee that a license that is not renewed prior to the expiration date shown on the license automatically expires and that any continued practice without a license constitutes a criminal offense under Subsection 58-1-501(1)(a).

(5) Licensees licensed during the last four months of a renewal cycle shall be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their license.

**R156-1-308d. Waiver of Continuing Education Requirements - Renewal Requirements.**

(1)(a) In accordance with Subsection 58-1-203(1)(g), a licensee may request a waiver of any continuing education requirement established under this title or an extension of time to complete any requirement on the basis that the licensee was unable to complete the requirement due to a medical or related condition, humanitarian or ecclesiastical services, extended presence in a geographical area where continuing education is not available, etc.

(b) A request must be submitted no later than the deadline for completing any continuing education requirement.

(c) A licensee submitting a request has the burden of proof and must document the reason for the request to the satisfaction of the Division.

(d) A request shall include the beginning and ending dates during which the licensee was unable to complete the continuing education requirement and a detailed explanation of the reason why. The explanation shall include the extent and duration of the impediment, extent to which the licensee continued to be engaged in practice of his profession, the nature of the medical condition, the location and nature of the

humanitarian services, the geographical area where continuing education is not available, etc.

(e) The Division may require that a specified number of continuing education hours, courses, or both, be obtained prior to reentering the practice of the profession or within a specified period of time after reentering the practice of the profession, as recommended by the appropriate board, in order to assure competent practice.

(f) While a licensee may receive a waiver from meeting the minimum continuing education requirements, the licensee shall not be exempted from the requirements of Subsection 58-1-501(2)(i), which requires that the licensee provide services within the competency, abilities and education of the licensee. If a licensee cannot competently provide services, the waiver of meeting the continuing education requirements may be conditioned upon the licensee restricting practice to areas in which the licensee has the required competency, abilities and education.

**R156-1-308e. Automatic Expiration of Licensure Upon Dissolution of Licensee.**

(1) A license that automatically expires prior to the expiration date shown on the license due to the dissolution of the licensee's registration with the Division of Corporations, with the registration thereafter being retroactively reinstated pursuant to Section 16-10a-1422, shall:

(a) upon written application for reinstatement of licensure submitted prior to the expiration date shown on the license, be retroactively reinstated to the date of expiration of licensure; and

(b) upon written application for reinstatement submitted after the expiration date shown on the current license, be reinstated on the effective date of the approval of the application for reinstatement, rather than relating back retroactively to the date of expiration of licensure.

**R156-1-308f. Denial of Renewal of Licensure - Classification of Proceedings - Conditional Renewal or Reinstatement During Pendency of Adjudicative Proceedings, Audit or Investigation.**

(1) Denial of renewal of licensure shall be classified as a formal adjudicative proceeding under Rule R156-46b.

(2) When a renewal application is denied and the applicant concerned requests a hearing to challenge the division's action as permitted by Subsection 63-46b-3(3)(d)(ii), unless the requested hearing is convened and a final order is issued prior to the expiration date shown on the applicant's current license, the division shall conditionally renew the applicant's license during the pendency of the adjudicative proceeding as permitted by Subsection 58-1-106(1)(h).

(3)(a) When a renewal applicant or a reinstatement applicant under Subsections 58-1-308(5) or (6)(b) is selected for audit or is under investigation, the division may conditionally renew or reinstate the applicant pending the completion of the audit or investigation.

(b) The undetermined completion of a referenced audit or investigation rather than the established expiration date shall be indicated as the expiration date of a conditionally renewed or reinstated license.

(c) A conditional renewal or reinstatement shall not constitute an adverse licensure action.

(d) Upon completion of the audit or investigation, the division shall notify the renewal or reinstatement applicant whether the applicant's license is unconditionally renewed, reinstated, denied, or partially denied or reinstated.

(e) A notice of unconditional denial or partial denial of licensure to a licensee who the division determines may be conditionally renewed or reinstated shall include the following:

(i) that the licensee's unconditional renewal or reinstatement of licensure is denied or partially denied and the

basis for such action;

(ii) the division's file or other reference number of the audit or investigation;

(iii) that the denial or partial denial of unconditional renewal or reinstatement of licensure is subject to review and a description of how and when such review may be requested;

(iv) that the licensee's license automatically will or did expire on the expiration date shown on the license, and that the license will not be renewed or reinstated unless or until the applicant timely requests review; and

(v) that if the licensee timely requests review, the licensee's conditionally renewed or reinstated license does not expire until an order is issued unconditionally renewing, reinstating, denying, or partially denying the renewal or reinstatement of the licensee's license.

**R156-1-308g. Reinstatement of Licensure which was Active and in Good Standing at the Time of Expiration of Licensure - Requirements.**

The following requirements shall apply to reinstatement of licensure which was active and in good standing at the time of expiration of licensure:

(1) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the division between the date of the expiration of the license and 31 days after the date of the expiration of the license, the applicant shall:

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

(b) pay the established license renewal fee and a late fee.

(2) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the division between 31 days after the expiration of the license and two years after the date of the expiration of the license, the applicant shall:

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

(b) pay the established license renewal fee and reinstatement fee.

(3) In accordance with Subsection 58-1-308(6)(a), if an application for reinstatement is received by the division more than two years after the date the license expired and the applicant has not been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States during the time the license was expired, the applicant shall:

(a) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for licensure demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;

(b) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to engage in the occupation or profession for which reinstatement of licensure is requested;

(c) if the applicant has not been engaged in unauthorized practice of the applicant's occupation or profession following the expiration of the applicant's license, pay the established license fee for a new applicant for licensure and the reinstatement fee; and

(d) if the applicant has been engaged in unauthorized practice of the applicant's occupation or profession following the expiration of the applicant's license, pay the current license renewal fee multiplied by the number of renewal periods for which the license renewal fee has not been paid since the time of expiration of license, plus a reinstatement fee.

(4) In accordance with Subsection 58-1-308(6)(b), if an application for reinstatement is received by the division more

than two years after the date the license expired but the applicant has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States shall:

- (a) provide documentation of prior licensure in the State of Utah;
- (b) provide documentation that the applicant has continuously, since the expiration of the applicant's license in Utah, been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States;
- (c) provide documentation that the applicant has completed or is in compliance with any renewal qualifications;
- (d) provide documentation that the applicant's application was submitted within six months after reestablishing domicile within Utah or terminating full-time government service; and
- (e) pay the established license renewal fee and the reinstatement fee.

**R156-1-308h. Reinstatement of Restricted, Suspended, or Probationary Licensure During Term of Restriction, Suspension, or Probation - Requirements.**

- (1) Reinstatement of restricted, suspended, or probationary licensure during the term of limitation, suspension, or probation shall be in accordance with the disciplinary order which imposed the discipline.
- (2) Unless otherwise specified in a disciplinary order imposing restriction, suspension, or probation of licensure, the disciplined licensee may, at reasonable intervals during the term of the disciplinary order, petition for reinstatement of licensure.
- (3) Petitions for reinstatement of licensure during the term of a disciplinary order imposing restriction, suspension, or probation, shall be treated as a request to modify the terms of the disciplinary order, not as an application for licensure.

**R156-1-308i. Reinstatement of Restricted, Suspended, or Probationary Licensure After the Specified Term of Suspension of the License or After the Expiration of Licensure in a Restricted or Probationary Status - Requirements.**

Unless otherwise provided by a disciplinary order, an applicant who applies for reinstatement of a license after the specified term of suspension of the license or after the expiration of the license in a restricted or probationary status shall:

- (1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and conditions of license reinstatement;
- (2) pay the established license renewal fee and the reinstatement fee;
- (3) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to be reinstated to engage in the occupation or profession for which the applicant was suspended, restricted, or placed on probation; and
- (4) pay any fines or citations owed to the Division prior to the expiration of license.

**R156-1-308j. Relicensure Following Revocation of Licensure - Requirements.**

An applicant for relicensure following revocation of licensure shall:

- (1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with

requirements and/or conditions of license reinstatement;

(2) pay the established license fee for a new applicant for licensure; and

(3) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was revoked.

**R156-1-308k. Relicensure Following Surrender of Licensure - Requirements.**

The following requirements shall apply to relicensure applications following the surrender of licensure:

(1) An applicant who surrendered a license that was active and in good standing at the time it was surrendered shall meet the requirements for licensure listed in Section R156-1-308.

(2) An applicant who surrendered a license while the license was active but not in good standing as evidenced by the written agreement supporting the surrender of license shall:

- (a) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;
- (b) pay the established license fee for a new applicant for licensure;
- (c) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was surrendered;
- (d) pay any fines or citations owed to the Division prior to the surrender of license.

**R156-1-404a. Diversion Advisory Committees Created.**

(1) There are created diversion advisory committees of at least three members for the professions regulated under Title 58. The diversion committees are not required to be impaneled by the director until the need for the diversion committee arises. Diversion committees may be appointed with representatives from like professions providing a multi-disciplinary committee.

(2) Committee members are appointed by and serve at the pleasure of the director.

(3) A majority of the diversion committee members shall constitute a quorum and may act on behalf of the diversion committee.

(4) Diversion committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in diversion committees business.

**R156-1-404b. Diversion Committees Duties.**

The duties of diversion committees shall include:

(1) reviewing the details of the information regarding licensees referred to the diversion committee for possible diversion, interviewing the licensees, and recommending to the director whether the licensees meet the qualifications for diversion and if so whether the licensees should be considered for diversion;

(2) recommending to the director terms and conditions to be included in diversion agreements;

(3) supervising compliance with all terms and conditions of diversion agreements;

(4) advising the director at the conclusion of a licensee's diversion program whether the licensee has completed the terms of the licensee's diversion agreement; and

(5) establishing and maintaining continuing quality review of the programs of professional associations and/or private organizations to which licensees approved for diversion may enroll for the purpose of education, rehabilitation or any other purpose agreed to in the terms of a diversion agreement.

**R156-1-404c. Diversion - Eligible Offenses.**

In accordance with Subsection 58-1-404(4), the unprofessional conduct which may be subject to diversion is set forth in Subsections 58-1-501(2)(e) and (f).

**R156-1-404d. Diversion - Procedures.**

(1) Diversion committees shall complete the duties described in Subsections R156-1-404b(1) and (2) no later than 60 days following the referral of a licensee to the diversion committee for possible diversion.

(2) The director shall accept or reject the diversion committee's recommendation no later than 30 days following receipt of the recommendation.

(3) If the director finds that a licensee meets the qualifications for diversion and should be diverted, the division shall prepare and serve upon the licensee a proposed diversion agreement. The licensee shall have a period of time determined by the diversion committee not to exceed 30 days from the service of the proposed diversion agreement to negotiate a final diversion agreement with the director. The final diversion agreement shall comply with Subsections 58-1-404.

(4) If a final diversion agreement is not reached with the director within 30 days from service of the proposed diversion agreement, the division shall pursue appropriate disciplinary action against the licensee in accordance with Section 58-1-108.

(5) In accordance with Subsection 58-1-404(5), a licensee may be represented, at the licensee's discretion and expense, by legal counsel during negotiations for diversion, at the time of execution of the diversion agreement and at any hearing before the director relating to a diversion program.

**R156-1-404e. Diversion - Agreements for Rehabilitation, Education or Other Similar Services or Coordination of Services.**

(1) The division may enter into agreements with professional or occupational organizations or associations, education institutions or organizations, testing agencies, health care facilities, health care practitioners, government agencies or other persons or organizations for the purpose of providing rehabilitation, education or any other services necessary to facilitate an effective completion of a diversion program for a licensee.

(2) The division may enter into agreements with impaired person programs to coordinate efforts in rehabilitating and educating impaired professionals.

(3) Agreements shall be in writing and shall set forth terms and conditions necessary to permit each party to properly fulfill its duties and obligations thereunder. Agreements shall address the circumstances and conditions under which information concerning the impaired licensee will be shared with the division.

(4) The cost of administering agreements and providing the services thereunder shall be borne by the licensee benefiting from the services. Fees paid by the licensee shall be reasonable and shall be in proportion to the value of the service provided. Payments of fees shall be a condition of completing the program of diversion.

(5) In selecting parties with whom the division shall enter agreements under this section, the division shall ensure the parties are competent to provide the required services. The division may limit the number of parties providing a particular service within the limits or demands for the service to permit the responsible diversion committee to conduct quality review of the programs given the committee's limited resources.

**R156-1-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or

applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct;

(2) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company;

(3) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd." in the commercial use of the name of the limited partnership;

(4) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation;

(5) using a DBA (doing business as name) which has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing;

(6) failing to conform to the Privacy Rules of the federal Health Insurance Portability and Accountability Act (HIPAA) as a licensed health care provider; or

(7) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", 2004, established by the Federation of State Medical Boards, which is hereby adopted and incorporated by reference.

**R156-1-503. Reporting Disciplinary Action.**

The division may report disciplinary action to other state or federal governmental entities, state and federal data banks, the media, or any other person who is entitled to such information under the Government Records Access and Management Act.

**R156-1-601. Online Assessment, Diagnosis and Prescribing Protocols.**

(1) In accordance with Subsection 58-1-501(4), a person licensed to prescribe under this title may prescribe legend drugs to a person located in this state following an online assessment and diagnosis in accordance with the following conditions:

(a) the prescribing practitioner is licensed in good standing in this state;

(b) an assessment and diagnosis is based upon a comprehensive health history and an assessment tool that requires the patient to provide answers to all the required questions and does not rely upon default answers, such as a branching questionnaire;

(c) only includes legend drugs and may not include controlled substances;

(d) the practice is authorized in a consent agreement signed by the Division and the practitioner and approved by a panel comprised of three board members from the Physicians Licensing Board or the Osteopathic Physician and Surgeon's Licensing Board and three members from the Utah State Board of Pharmacy. The consent agreement shall include:

(i) the specific name of the drug or drugs approved to be prescribed;

(ii) the policies and procedures that address patient confidentiality;

(iii) a method for electronic communication by the physician and patient;

(iv) a mechanism for the Division to be able to conduct audits of the website and records to ensure an assessment and diagnosis has been made prior to prescribing any medications;



**R156. Commerce, Occupational and Professional Licensing.**  
**R156-55d. Utah Construction Trades Licensing Act Burglar Alarm Licensing Rules.**

**R156-55d-101. Title.**

These rules are known as the "Utah Construction Trades Licensing Act Burglar Alarm Licensing Rules".

**R156-55d-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapters 1 and 55, or these rules:

(1) "Individual employed" as used in Subsection 58-55-102(2), means an individual who has an agreement with an alarm business or company to perform alarm systems business activities under the direct supervision or control of the alarm business or company and for whose alarm system business activities the alarm company is legally liable and who has or could have access to knowledge of specific applications.

(2) "Knowledge of specific applications" as used in Subsection R156-55d-102(1), means obtaining specific information about any premises which is protected or is to be protected by an alarm system. This knowledge is gained through access to records, on-site visits or otherwise gathered through working for an alarm business or company.

(3) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 55, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-55-502.

**R156-55d-103. Authority - Purpose.**

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the Division to administer Title 58, Chapter 55.

**R156-55d-104. Organization - Relationship to Rule R156-1.**

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

**R156-55d-302a. Qualifications for Licensure - Application Requirements.**

(1) An application for licensure as an alarm company shall include:

(a) a record of criminal history or certification of no record of criminal history with respect to the applicant's qualifying agent, issued by the Bureau of Criminal Identification, Utah Department of Public Safety;

(b) two fingerprint cards containing:

(i) the fingerprints of the applicant's qualifying agent;

(ii) the fingerprints of each of the applicant's officers, directors, shareholders owning more than 5% of the stock of the company, partners, and proprietors; and

(iii) the fingerprints of each of the applicant's management personnel who will have responsibility for any of the company's operations as an alarm company within the state;

(c) a fee established in accordance with Section 63-38-3.2 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and the Bureau of Criminal Identification, Utah Department of Public Safety, for each individual for whom fingerprints are required under Subsection (1)(b); and

(d) a copy of the driver license or Utah identification card for each individual for whom fingerprints are required under Subsection (1)(b).

(2) An application for license as an alarm company agent shall include:

(a) a record of criminal history or certification of no record of criminal history with respect to the applicant, issued by the Bureau of Criminal Identification, Utah Department of Public Safety;

(b) two fingerprint cards containing the fingerprints of the applicant;

(c) a fee established in accordance with Section 63-38-3.2 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and the Bureau of Criminal Identification, Utah Department of Public Safety, regarding the applicant; and

(d) a copy of the driver license or Utah identification card for the applicant.

**R156-55d-302c. Qualifications for Licensure - Experience Requirements.**

In accordance with Subsections 58-1-203(2) and 58-1-301(3) the experience requirements for an alarm company applicant's qualifying agent in Subsection 58-55-302(3)(h)(i) are defined, clarified, or established in that an individual to be approved as a qualifying agent of an alarm company shall:

(1) have not less than 6,000 hours of experience in the alarm company business of which not less than 2,000 hours shall have been in a management, supervisory, or administration position; or

(2) have not less than 6,000 hours of experience in the alarm company business combined with not less than 2,000 hours of management, supervisory, or administrative experience in a lawfully and competently operated construction company.

**R156-55d-302d. Qualifications for Licensure - Examination Requirements.**

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the examination requirements for an alarm company applicant's qualifying agent in Subsection 58-55-302(3)(h)(i)(C) are defined, clarified, or established in that an individual to be approved as a qualifying agent of an alarm company shall:

(1) pass the Utah Burglar Alarm Law and Rules Examination with a score of not less than 75%; and

(2) pass the Burglar Alarm Qualifier Examination with a score of not less than 75%.

**R156-55d-302e. Qualifications for Licensure - Insurance Requirements.**

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the insurance requirements for licensure as an alarm company in Section 58-55-302(3)(h)(ix)(A) are defined, clarified, or established as follows:

(1) an applicant for an alarm company license shall file with the Division a "certificate of insurance" issued by an insurance company or agent licensed in the state demonstrating the applicant is covered by comprehensive public liability coverage in an amount of not less than \$300,000 for each incident, and not less than \$1,000,000 in total;

(2) the terms and conditions of the policy of insurance coverage shall provide that the Division shall be notified if the insurance coverage terminates for any reason; and

(3) all licensed alarm companies shall have available on file and shall present to the Division upon demand, evidence of insurance coverage meeting the requirements of this section for all periods of time in which the alarm company is licensed in this state as an alarm company.

**R156-55d-302f. Qualifications for Licensure - Good Moral Character - Disqualifying Convictions.**

(1) In addition to those criminal convictions prohibiting licensure as set forth in Subsections 58-55-302(3)(h)(vi) and (3)(i), the following is a list of criminal convictions which may disqualify a person from obtaining or holding a burglar alarm company or a burglar alarm company agent's license:

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

(b) theft/larceny, including retail theft, as defined in Title 76, Chapter 6;

(c) sex offenses as defined in Title 76, Chapter 5, Part 4;

- (d) any offense involving controlled substances;
- (e) fraud;
- (f) forgery;
- (g) perjury, obstructing justice and tampering with evidence;
- (h) conspiracy to commit any of the offenses listed herein;
- (i) burglary
- (j) escape from jail, prison or custody;
- (k) false or bogus checks;
- (l) pornography;
- (m) any attempt to commit any of the above offenses; or
- (n) two or more convictions for driving under the influence of alcohol within the last three years.

(2) Applications for licensure or renewal of licensure shall be considered on a case by case basis taking into consideration the following:

- (a) the conduct involved;
- (b) the potential or actual injury caused by the applicant's conduct; and
- (c) the existence of aggravating or mitigating factors.

**R156-55d-303. Renewal Cycle - Procedure.**

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licensees under Title 58, Chapter 55, is established by rule in Section R156-1-308.

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

**R156-55d-304. Renewal Requirement - Demonstration of Clear Criminal History.**

(1) In accordance with Subsections 58-1-203(7), 58-1-308(3)(b), and 58-55-302(4), there is created as a requirement for renewal or reinstatement of any license of an alarm company or alarm company agent a demonstration of clear criminal history for each alarm company qualifying agent and for each alarm company agent.

(2) Each application for renewal or reinstatement of a license of an alarm company shall be accompanied by a record of criminal history or certification of no record of criminal history with respect to the alarm company's qualifying agent, issued by the Bureau of Criminal Identification, Utah Department of Public Safety within 120 days prior to submission of the application for renewal or reinstatement to the Division.

(3) Each application for renewal or reinstatement of a license of an alarm company agent shall be accompanied by a record of criminal history or certification of no record of criminal history with respect to the alarm company agent, issued by the Bureau of Criminal Identification, Utah Department of Public Safety within 120 days prior to submission of the application for renewal or reinstatement to the Division.

**R156-55d-306. Change of Qualifying Agent.**

In accordance with Subsection 58-55-304(6), an alarm company whose qualifier has ceased association or employment shall file with the Division an application for change of qualifier on forms provided by the Division accompanied by a record of criminal history or certification of no record of criminal history, fee, fingerprint cards, and copy of an identification as required under Subsection R156-55d-302a(1).

**R156-55d-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) failing as an alarm company to notify the Division of the cessation of performance of its qualifying agent or failing to replace its qualifying agent as required under Section R156-55d-306;

(2) failing as an alarm company agent to carry or display

a copy of the licensee's license as required under Section R156-55d-601;

(3) failing as an alarm agent to carry or display a copy of his National Burglar and Fire Alarm Association (NBFAA) level one certification or equivalent training as required under Section R156-55d-603;

(4) employing as an alarm company a qualifying agent or alarm company agent knowing that individual has engaged in conduct inconsistent with the duties and responsibilities of an alarm company agent.

(5) failing to comply with operating standards established by rule;

(6) a judgment on, or a judicial or prosecutorial agreement concerning a felony, or a misdemeanor involving moral turpitude, entered against an individual by a federal, state or local court, regardless of whether the court has made a finding of guilt, accepted a plea of guilty or nolo contendere by an individual, or a settlement or agreement whereby an individual has entered into participation as a first offender, or an action of deferred adjudication, or other program or arrangement where judgment or conviction is withheld;

(7) making false, misleading, deceptive, fraudulent, or exaggerated claims with respect to the need for an alarm system, the benefits of the alarm system, the installation of the alarm system or the response to the alarm system by law enforcement agencies; and

(8) an alarm business or company having a residential or commercial false alarm rate 100% above the average of the residential or commercial false alarm rate of the municipality or county jurisdiction in which the alarm business or company's alarm systems are located.

**R156-55d-601. Display of License.**

An alarm company agent shall carry on his person at all times while acting as an alarm company agent a copy of his license and shall display that license upon the request of any person to whom the agent is representing himself as an alarm company agent, and upon the request of any law enforcement officer or representative of the Division.

**R156-55d-602. Operating Standards - Alarm Equipment.**

In accordance with Subsection 58-55-308(1), the following standards shall apply with respect to equipment and devices assembled as an alarm system:

(1) An alarm system installed in a business or public building shall utilize equipment equivalent to or exceeding minimum Underwriters Laboratories, or the National Electrical Code standards for alarm system equipment.

(2) An alarm system installed in a residence shall utilize equipment equivalent to or exceeding minimum Underwriters Laboratories, or the National Electrical Code standards for residence alarm systems.

**R156-55d-603. Operating Standards - Alarm Installer.**

In accordance with Subsection 58-55-308(1), the operating standards for the installer of an alarm system include the following:

(1) An alarm agent must be fully trained in the installation of an alarm system in accordance with the National Burglar and Fire Alarm Association (NBFAA) level one certification or equivalent training requirements prior to the alarm agent installing any alarm system in any residence, business, or public building within the state.

(2) An alarm agent upon receiving initial licensure may work under the direct supervision of an alarm agent who has level one certification for a period of six months from the time of initial licensure without being required to hold a level one certificate.

(3) An alarm agent shall carry evidence of the NBFAA



level one certification or equivalent training with him at all times.

(4) An alarm agent holding licensure under Title 58, Chapter 55 shall have until June 30, 2001 to comply with the NBFAA level one certification or equivalent training requirement.

**R156-55d-604. Operating Standards - Alarm System User Training.**

In accordance with Subsection 58-55-308(1), the operating standards for the installation of an alarm system including the following:

(1) Upon completion of the installation of an alarm system by an alarm business or company, the installing alarm agent shall review with the alarm user, or in the case of a company, its employees, the operation of the alarm system to ensure that the user understands the function of the alarm system.

(2) The alarm business or company shall maintain training records, including installer and user false alarm prevention checklists, the dates of the training and the location of the training on each alarm system installed. These records shall be maintained in the files of the alarm business or company for at least three years from the date of the training.

**KEY: licensing, alarm company, burglar alarms**

**October 5, 2004**

**58-55-101  
58-1-106(1)(a)  
58-1-202(1)(a)  
58-55-302(3)(h)  
58-55-302(3)(i)  
58-55-302(4)  
58-55-308**

**R156. Commerce, Occupational and Professional Licensing.**  
**R156-60. Mental Health Professional Practice Act Rules.**  
**R156-60-101. Title.**

These rules are known as the "Mental Health Professional Practice Act Rules."

**R156-60-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or these rules:

(1) "Approved diagnostic and statistical manual for mental disorders" means the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, or the ICD-10-CM published by Medicode, the American Psychiatric Association, or Practice Management Information Corporation in conjunction with the World Health Organization.

(2) "Client or patient" means an individual who, when competent requests, or when not competent to request is lawfully provided professional services by a mental health therapist when the mental health therapist agrees verbally or in writing to provide professional services to that individual, or without an overt agreement does in fact provide professional services to that individual.

(3) "Employee" means an individual who is working or providing services for compensation paid in the form of wages or salary from which there is withheld or should be withheld income taxes or social security taxes under applicable law; or who meets any other definition of an employee established by the Industrial Commission of the State of Utah or the Internal Revenue Service of the United States Government.

(4) "General supervision" means that the supervisor is available for consultation with the supervisee by personal face to face contact, or direct voice contact by telephone, radio, or some other means within a reasonable time consistent with the acts and practices in which the supervisee is engaged.

**R156-60-103. Authority - Purpose.**

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 60.

**R156-60-104. Organization - Relationship to Rule R156-1.**

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

**R156-60-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) to engage with a client/patient in any romantic, any sexual, or any intimate personal relationship, or in a business relationship in which the licensee receives any unilateral benefit or disproportionate benefit; or to engage in any such activity or relationship with a former client/patient during a two year period following the formal and properly documented termination of the professional relationship between the client/patient and the mental health therapist; except under no circumstances shall a licensee at any time engage in any such activity or relationship with a client/patient or former client/patient who is especially vulnerable or susceptible to being disadvantaged because of the client's/patient's personal history, the client's/patient's current mental status, or any condition which could reasonably be expected to place the client/patient at a disadvantage recognizing the power imbalance which exists or may exist between the mental health therapist and the client/patient; and

(2) to engage with a former client/patient in any romantic, any sexual, or any intimate personal relationship, which is not unprofessional conduct under the provision of Subsection (1) without first obtaining professionally documented counseling from another competent mental health therapist with respect to that relationship, and without exercising all reasonable effort to

ensure that the relationship is not adverse to the former client's/patient's best interests.

**KEY: licensing, mental health, therapists**  
**1994**

**Notice of Continuation October 21, 2004**

**58-1-106(1)**

**58-1-202(1)**

**58-60-101**

**R156. Commerce, Occupational and Professional Licensing.**  
**R156-60a. Social Worker Licensing Act Rules.**  
**R156-60a-101. Title.**

These rules are known as the "Social Worker Licensing Act Rules".

**R156-60a-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or these rules:

- (1) "ASWB" means the Association of Social Work Boards.
- (2) "CSW" means a licensed certified social worker.
- (3) "Clinical social work concentration and practicum", "clinical concentration and practicum" "case work", "group work", or "family treatment course sequence with a clinical practicum", "clinical practicum" or "practicum", as used in Subsections 58-60-205(1)(g) and (2)(d)(ii), means a track of professional education which is specifically established to prepare an individual to practice or engage in mental health therapy.
- (4) "LCSW" means a licensed clinical social worker.
- (5) "SSW" means a licensed social service worker.
- (6) "Supervised practice of mental health therapy by a clinical social worker", as used in Subsection 58-60-202(3)(a), means that the CSW is supervised by a LCSW meeting the requirements of Sections R156-60a-302e and R156-60a-601.

**R156-60a-103. Authority - Purpose.**

These rules are adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 60.

**R156-60a-104. Organization - Relationship to Rule R156-1.**

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

**R156-60a-302a. Education Requirements for Licensure as a SSW.**

In accordance with Subsection 58-60-205(3)(d)(ii), a master's degree qualifying an applicant for licensure as a SSW shall be in a field of social work, psychology, marriage and family therapy, or professional counseling.

**R156-60a-302b. Experience Requirements for Licensure as a SSW.**

In accordance with Subsection 58-60-205(3)(d)(iii) and (iv), the 2000 hours of supervised social work activity or the one year of qualifying experience for licensure as a SSW shall:

- (1) be performed as an employee of an agency providing social work services and activities; and
- (2) be performed according to a written social work job description approved by the LCSW or CSW supervisor.

**R156-60a-302c. Training Requirements for Licensure as a LCSW.**

In accordance with Subsections 58-60-205(1)(d),(e),(f) and (g), and 58-60-202(3)(a), the 4000 hours of clinical social work and mental health therapy training qualifying an applicant for licensure as a LCSW shall:

- (1) be obtained after completion of the education requirement set forth in Subsections 58-60-205(d) and (g) and shall not include any clinical practicum hours obtained as part of the education program;
- (2) be completed over a duration of not less than two years;
- (3) be completed while the CSW is an employee of a public or private agency engaged in mental health therapy;
- (4) be completed under a program of supervision by a LCSW meeting the requirements of Sections R156-60a-302e

and R156-60a-601; and

- (5) include the following training requirements:
  - (a) individual, family, and group therapy;
  - (b) crisis intervention;
  - (c) intermediate treatment; and
  - (d) long term treatment.

**R156-60a-302d. Examination Requirements.**

(1) In accordance with Subsection 58-60-205(1)(h), the examination requirements for licensure as a LCSW include passing the Clinical Examination of the ASWB or the Clinical Social Workers Examination of the State of California.

(2) In accordance with Subsection 58-60-205(2)(e), the examination requirements for licensure as a SSW shall include passing the Masters, Advanced Generalist, or Clinical Examination of the ASWB.

(3) In accordance with Subsection 58-60-205(3)(e), the examination requirements for licensure as a SSW shall include passing the Bachelors Examination of the ASWB.

**R156-60a-302e. Requirements to Become a LCSW Supervisor.**

In accordance with Subsections 58-60-202(2)(c), 58-60-202(3)(a) and 58-60-205(1)(e) and (f), in order for an LCSW to supervise a CSW, the LCSW shall:

- (1) be currently licensed in good standing as a LCSW; and
- (2) have engaged in active practice as a LCSW, including mental health therapy, for a period of not less than two years prior to supervising a CSW.

**R156-60a-303. Renewal Cycle - Procedures.**

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 60, is established by rule in Section R156-1-308.

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

**R156-60a-304. Continuing Education Requirements for LCSW.**

In accordance with Subsection 58-60-105(1), the continuing education requirements for LCSWs are defined, clarified and established as follows:

(1) During each two year period commencing January 1st of each even numbered year, a LCSW shall be required to complete not less than 40 hours of continuing education.

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

(3) Continuing education under this section shall:
 

- (a) be relevant to the licensee's professional practice;
- (b) be prepared and presented by individuals who are qualified by education, training, and experience to provide social work continuing education; and
- (c) have a method of verification of attendance.

(4) Credit for continuing education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than 50 minutes in formally established classroom courses, seminars, lectures, conferences, or training sessions which meet the criteria listed in Subsection (3) above, and which are approved by, conducted by or under sponsorship of:

- (i) the National Association of Social Workers;
- (ii) community mental health agencies or entities providing mental health services under the auspices of the State of Utah;

(iii) recognized universities and colleges; and  
 (iv) professional associations, societies and organizations representing a licensed profession whose program objectives relate to the practice of social work; and

(b) a maximum of ten hours per two year period may be recognized for teaching continuing education relevant to clinical social work or mental health therapy; and

(c) a maximum of ten hours per two year period may be recognized for continuing education that is provided via Internet or through home study which meets the criteria listed in Subsection (3) above.

(5) A licensee is responsible to complete relevant continuing education, to document completion of the continuing education, and to maintain the records of the continuing education completed for a period of four years after close of the two year period to which the records pertain.

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

(7) If more than 40 hours of continuing education is completed during the two year period specified in Subsection (1), up to ten hours of the excess over 40 hours may be carried over to the next two year period. No education received prior to a license being granted may be carried forward to apply towards the continuing education required after the license is granted.

#### **R156-60a-308. Reinstatement of a LCSW License which has Expired Beyond Two Years.**

In accordance with Subsection 58-1-308(6) and Section R156-1-308e, an applicant for reinstatement for licensure as a LCSW, whose license expired after two years following the expiration of that license, shall:

(1) upon request, meet with the board to evaluate the applicant's ability to safely and competently practice clinical social work and mental health therapy;

(2) upon recommendation of the board, establish a plan of supervision under an approved supervisor which may include up to 4000 hours of clinical social work and mental health therapy training as a CSW before qualifying for reinstatement of the LCSW license;

(3) pass the Clinical Examination of the ASWB if it is determined by the board that examination or reexamination is necessary to demonstrate the applicant's ability to safely and competently practice clinical social work and mental health therapy; and

(4) complete a minimum of 40 hours of continuing education in subjects determined by the board as necessary to ensure the applicant's ability to safely and competently practice clinical social work and mental health therapy.

#### **R156-60a-309. Exemption from Licensure Clarified.**

The exemption specified in Subsection 58-60-107(5) does not permit an individual to engage in the 4000 hours of clinical social work and mental health therapy training without first becoming licensed as a CSW.

#### **R156-60a-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) using the abbreviated title of LCSW unless licensed as a LCSW;

(2) using the abbreviated title of CSW unless licensed as a CSW;

(3) using the abbreviated title of SSW unless licensed as a SSW;

(4) acting as a supervisor or accepting supervision of a

supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60a-302d and R156-60a-601.

(5) engaging in the supervised practice of mental health therapy as a licensed CSW unless:

(a) the licensee has completed a clinical practicum as part of the Council on Social Work Education (CSWE) accredited master's degree program; and

(b) the scope of practice is otherwise within the licensee's competency, abilities and education;

(6) engaging in the supervised practice of mental health therapy when not in compliance with Subsections R156-60a-302c(4) and R156-60a-601(7);

(7) engaging in or aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(8) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(9) failing to establish and maintain professional boundaries with a client or former client;

(10) engaging in dual or multiple relationships with a client or former client in which there is a risk of or potential harm to the client;

(11) engaging in sexual activities or sexual contact with a client with or without client consent;

(12) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services when there is no risk of exploitation or potential harm to the client;

(13) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a personal relationship when there is a risk of exploitation or potential harm to the client;

(14) embracing, massaging, cuddling, caressing, or performing any other act of physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(15) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(16) failing to exercise professional discretion and impartial judgement required for the performance of professional activities, duties and functions;

(17) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(18) exploiting a client or former client for personal gain;

(19) exploiting a person who has a personal relationship with a client for personal gain;

(20) failing to maintain client records including records of assessment, treatment, progress notes and billing information for a period of not less than ten years from the documented termination of services to the client;

(21) failing to provide client records in a reasonable time upon written request of the client, or legal guardian;

(22) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client activities or records;

(23) failing to protect the confidences of other persons named or contained in the client records; and

(24) failing to abide by the provisions of the Code of Ethics of the National Association of Social Workers (NASW) as approved by the NASW 1996 Delegate Assembly and revised by the 1999 NASW Delegate Assembly, which is adopted and incorporated by reference.

#### **R156-60a-601. Duties and Responsibilities of a LCSW**

**Supervisor.**

The duties and responsibilities of a LCSW supervisor, are further defined, clarified or established as follows:

- (1) be professionally responsible for the acts and practices of the supervisee;
- (2) be engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee or is not compromised;
- (3) be available for advice, consultation, and direction consistent with the standards and ethics of the profession;
- (4) provide periodic review of the client records assigned to the supervisee;
- (5) comply with the confidentiality requirements of Section 58-60-114;
- (6) monitor the performance of the supervisee for compliance with laws, rules, standards and ethics applicable to the practice of social work;
- (7) supervise only a supervisee who is an employee of a public or private mental health agency;
- (8) supervise not more than three individuals who are lawfully engaged in mental health therapy training, unless otherwise approved by the board;
- (9) not begin supervision of a CSW until having met the requirements of Section R156-60a-302e; and
- (10) in accordance with Subsections 58-60-205(1)(e) and (f), submit to the division on forms made available by the division:
  - (a) documentation of the training hours completed by the CSW; and
  - (b) an evaluation of the CSW, with respect to the quality of the work performed and the competency of the CSW to practice clinical social work and mental health therapy.

**R156-60a-602. Supervision - Scope of Practice - SSW.**

In accordance with Subsections 58-60-202(4) and (5), supervision and scope of practice of a SSW is further defined, clarified and established as follows:

- (1) supervision of an SSW by a licensed mental health therapist is only required where mental health therapy services are provided; and
- (2) the scope of practice of the SSW shall be in accordance with a written social work job description approved by the licensed mental health therapy supervisor, except that the SSW may not engage in the supervised or unsupervised practice of mental health therapy.

**KEY: licensing, social workers****September 1, 2004****Notice of Continuation October 21, 2004****58-60-201****58-1-106(1)(a)****58-1-202(1)(a)**

**R156. Commerce, Occupational and Professional Licensing.  
R156-60b. Marriage and Family Therapist Licensing Act Rules.**

**R156-60b-101. Title.**

These rules are known as the "Marriage and Family Therapist Licensing Act Rules".

**R156-60b-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or these rules:

(1) "AAMFT" means the American Association for Marriage and Family Therapy.

(2) "Face to face supervision" means one to one supervision between the supervisor and the supervisee or group supervision between the supervisor and up to two supervisees. During group supervision, one and a half hours is equivalent to one clock hour of supervision.

(3) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 60, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-60b-502.

**R156-60b-103. Authority - Purpose.**

These rules are adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 60, Part 3.

**R156-60b-104. Organization - Relationship to R156-1.**

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

**R156-60b-302a. Qualifications for Licensure - Education Requirements.**

(1) Pursuant to Subsection 58-60-305(1)(d), an applicant applying for licensure as a marriage and family therapist after July 1, 2002 shall:

(a) produce certified transcripts evidencing completion of a master's or doctorate degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy at the time the applicant obtained the education; or

(b) produce certified transcripts evidencing completion of a master's degree in marriage and family therapy from a program accredited by a professional accrediting body approved by the Council for Higher Education Accreditation of the American Council on Education at the time the applicant obtained the education which includes courses in the following areas:

(i) six semester hours/nine quarter hours of course work in theoretical foundations of marital and family therapy;

(ii) nine semester hours/12 quarter hours of course work in assessment and treatment in marriage and family therapy;

(iii) six semester hours/nine quarter hours of course work in human development and family studies which include ethnic minority issues, and gender issues including sexuality, sexual functioning, and sexual identity;

(iv) three semester hours/three quarter hours in professional ethics;

(v) three semester hours/three quarter hours in research methodology and data analysis;

(vi) three semester hours/three quarter hours in electives in marriage and family therapy; and

(vii) a clinical practicum of not less than 600 hours which includes not less than 100 hours of face to face supervision and not less than 500 hours of supervised clinical practice of which not less than 250 hours shall be with couples or families who are physically present in the therapy room.

(2) Pursuant to Subsection 58-60-305.5(2), an applicant applying for licensure as a marriage and family therapist before July 1, 2002 shall meet the following requirements:

(a) produce certified transcripts evidencing completion of

a master's or doctorate degree in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy; or

(b) produce certified transcripts evidencing an earned doctorate or master's degree in a field of education emphasizing human behavioral studies and skill in therapy or counseling which shall:

(i) be from an institution which is accredited by a professional accrediting body approved by the Council for Higher Education Accreditation of the American Council on Education at the time the applicant obtained the education; and

(ii) include successful completion of the following graduate level course work and a clinical practicum:

(A) six semester hours/nine quarter hours of course work in theoretical foundations of marital and family therapy;

(B) nine semester hours/12 quarter hours of course work in assessment and treatment in marriage and family therapy;

(C) six semester hours/nine quarter hours of course work in human development and family studies which include ethnic minority issues, and gender issues including sexuality, sexual functioning, and sexual identity;

(D) three semester hours/three quarter hours in professional ethics;

(E) three semester hours/three quarter hours in research methodology and data analysis;

(F) three semester hours/three quarter hours in electives in marriage and family therapy; and

(G) a clinical practicum of not less than 600 hours which includes not less than 100 hours of face to face supervision and not less than 500 hours of supervised clinical practice of which not less than 250 hours shall be with couples or families who are physically present in the therapy room; or

(c) produce certified transcripts evidencing an earned doctorate or master's degree in a field of religious study with a documented emphasis in marriage and family therapy and which meets the requirements set forth under Subsections (2)(b)(ii)(A) through (G).

**R156-60b-302b. Qualifications for Licensure - Experience Requirements.**

(1) Pursuant to Subsections 58-60-305(1)(e) and (f), an applicant shall complete marriage and family therapy and mental health therapy training consisting of a minimum of 4,000 hours of supervised training which shall:

(a) be completed in not less than two years;

(b) be completed while the applicant is an employee of a public or private agency engaged in mental health therapy;

(c) be completed under the supervision of a marriage and family therapist supervisor meeting the requirements under Section 58-60-307;

(d) include at least 200 hours of face to face supervision of which at least 100 hours must be individual supervision;

(e) in accordance with Subsection 58-60-305(1)(f), include a minimum of 1000 hours of mental health therapy of which at least 500 hours in conjoint, couple or family therapy sessions; and

(f) hours completed in a group therapy session may count only if the supervisee functions as the primary therapist.

(2) An applicant for licensure as a marriage and family therapist, who is not seeking licensure by endorsement based upon licensure in another jurisdiction, who has completed all or part of the marriage and family therapy training requirements outside the state, may receive credit for that training completed outside of the state if it is demonstrated by the applicant that the training completed outside the state is equivalent to and in all respects meets the requirements for training under Subsections 58-60-305(1)(e) and (f), and Subsection R156-60b-302b(1). The applicant shall have the burden of demonstrating by evidence satisfactory to the division and board that the training

completed outside the state is equivalent to and in all respects meets the requirements under this subsection.

**R156-60b-302c. Qualifications for Licensure - Examination Requirements.**

Pursuant to the provisions of Subsection 58-60-305(1)(g), an applicant for licensure as a marriage and family therapist must pass the Examination of Marital and Family Therapy written for the Association of Marital and Family Therapy Regulatory Boards.

**R156-60b-302d. Qualifications to be a Marriage and Family Therapist Training Supervisor and Mental Health Therapist Training Supervisor.**

Pursuant to the provisions of Subsection 58-60-307(1), to be qualified as a marriage and family therapist supervisor for training required under Subsections 58-60-305(1)(e) and (f), an individual shall:

- (1) be currently approved by AAMFT as a marriage and family therapist supervisor; or
- (2) be currently licensed or certified in good standing as a marriage and family therapist in the state in which the supervised training is being performed; and meet the following requirements:
  - (a) have lawfully engaged in the practice of mental health therapy for not less than two years;
  - (b) have successfully completed 30 clock hours of instruction approved by the division in collaboration with the board in the theory, practice, and process of supervision; and
  - (c) have successfully completed 36 clock hours of training related to the practice of supervision under the direction of a qualified marriage and family therapist training supervisor.

**R156-60b-302e. Duties and Responsibilities of a Supervisor of Marriage and Family Therapist and Mental Health Therapy Training.**

The duties and responsibilities of a marriage and family therapist supervisor are further defined, clarified or established to provide the supervisor shall:

- (1) be professionally responsible for the acts and practices of the supervisee which are a part of the required supervised training;
- (2) be engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;
- (3) be available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training, diagnosis of patients, and other factors known to the supervisee and supervisor;
- (4) provide periodic review of the client records assigned to the supervisee;
- (5) comply with the confidentiality requirements of Section 58-60-114;
- (6) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of marriage and family therapy and report violations to the division;
- (7) supervise only a supervisee who is an employee of a public or private mental health agency;
- (8) submit appropriate documentation to the division with respect to all work completed by the supervisee evidencing the performance of the supervisee during the period of supervised marriage and family therapist training and mental health therapist training, including the supervisor's evaluation of the supervisee's competence in the practice of marriage and family therapy and mental health therapy;
- (9) complete four hours of the required 40 hours of

continuing professional education directly related to marriage and family therapy supervisor training in each two year continuing professional education period established;

- (10) supervise not more than three supervisees at any given time unless approved by the board and division;
- (11) provide at least one hour of face to face supervision for each ten hours of client contact by the supervisee.

**R156-60b-303. Renewal Cycle - Procedures.**

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 60, is established by rule in Section R156-1-308.

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

**R156-60b-304. Continuing Education.**

(1) There is hereby established a continuing professional education requirement for all individuals licensed under Title 58, Chapter 60, Part 3, as a marriage and family therapist and as a certified marriage and family therapist intern.

(2) During each two year period commencing September 30th of each even numbered year, a marriage and family therapist and as a certified marriage and family therapist intern shall be required to complete not less than 40 hours of qualified professional education directly related to the licensee's professional practice with at least 15 hours thereof being directly related to marriage and family therapy.

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

(4) Qualified professional education under this section shall:

- (a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a mental health therapist;
- (b) be relevant to the licensee's professional practice;
- (c) be presented in a competent, well organized, and sequential manner consistent with the stated purpose and objective of the program;
- (d) be prepared and presented by individuals who are qualified by education, training, and experience; and
- (e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration and completion are available for review.

(5) Credit for professional education shall be recognized in accordance with the following:

- (a) unlimited hours shall be recognized for professional education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences;
- (b) a maximum of 14 hours per two year period may be recognized for teaching in a college or university, teaching qualified continuing professional education courses in the field of mental health therapy, or supervision of an individual completing his experience requirement for licensure in a mental health therapist license classification;
- (c) a maximum of six hours per two year period may be recognized for clinical readings directly related to practice as a mental health therapist;

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

requirements under this section.

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

#### **R156-60b-306. License Reinstatement - Requirements.**

An applicant for reinstatement of his license after two years following expiration of that license shall be required to meet the following reinstatement requirements:

(1) upon request, meet with the board for the purpose of evaluating the applicant's current ability to engage safely and competently in practice as a marriage and family therapist and to make a determination of any additional education, experience or examination requirements which will be required before reinstatement;

(2) upon the recommendation of the board, establish a plan of supervision under an approved supervisor which may include up to 4000 hours of marriage and family therapy and mental health therapy training as a marriage and family therapist-temporary;

(3) pass the Examination of Marital and Family Therapy of the American Association for Marriage and Family Therapists if it is determined by the board that current taking and passing of the examination is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a marriage and family therapist; and

(4) complete a minimum of 40 hours of professional education in subjects determined by the board as necessary to ensure the applicant's ability to engage safely and competently in practice as a marriage and family therapist.

#### **R156-60b-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60b-302d and R156-60b-302e;

(2) engaging in the supervised practice of mental health therapy when not in compliance with Subsections R156-60b-302b;

(3) engaging in and aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(4) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(5) failing to establish and maintain appropriate professional boundaries with a client or former client;

(6) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client;

(7) engaging in sexual activities or sexual contact with a client with or without client consent;

(8) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;

(9) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition which could reasonably be expected to place the client at a disadvantage recognizing the power imbalance which exists or may exist between the marriage and family therapist and the client;

(10) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially

vulnerable or susceptible to being disadvantaged because of his personal history, current mental status, or any condition which could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance which exists or may exist between the marriage and family therapist and that individual;

(11) physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(12) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(13) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(14) exploiting a client for personal gain;

(15) use of a professional client relationship to exploit a person that is known to have a personal relationship with a client for personal gain;

(16) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;

(17) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;

(18) failure to cooperate with the Division during an investigation; and

(19) failure to abide by provisions 1 to 8.7 of the Code of Ethics of the American Association for Marriage and Family Therapy (AAMFT) as adopted by the AAMFT effective July 1, 1998, which is adopted and incorporated by reference.

**KEY: licensing, therapists, marriage and family therapist\*  
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**58-1-106(1)**

**58-1-202(1)**

**58-60-301**



**R156. Commerce, Occupational and Professional Licensing.**  
**R156-73. Chiropractic Physician Practice Act Rules.**  
**R156-73-101. Title.**

These rules are known as the "Chiropractic Physician Practice Act Rules".

**R156-73-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 73, as used in Title 58, Chapters 1 and 73, or these rules:

(1) "Clinical acupuncture" means the application of mechanical, thermal, manual, and/or electrical stimulation of acupuncture points and meridians, including the insertion of needles, by a chiropractic physician that has demonstrated competency and training by completing a recognized course that is sponsored by an institution or organization approved to sponsor continuing education, as defined in Section R156-73-303b.

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

(3) "FCLB" means the Federation of Chiropractic Licensing Boards.

(4) "Indirect supervision" means the supervising licensed chiropractic physician shall be available for immediate voice contact by telephone, radio, or other means and shall provide daily face to face consultation and review of cases at the chiropractic facility for the chiropractic intern, temporarily licensed or unlicensed person being supervised.

(5) "NBCE" means the National Board of Chiropractic Examiners.

(6) "PACE" means Providers of Approved Continuing Education sponsored by the Federation of Chiropractic Licensing Boards.

(7) "Preceptor" means a licensed chiropractic physician who is a supervisor of interns and externs in the professional practice of chiropractic.

(8) "Preceptorship" means a supervised training program established by a written contract between a chiropractic college or university whose program or institution is accredited by the Council on Chiropractic Education, Inc., and a licensee for the purpose of providing chiropractic training to a student enrolled in the chiropractic college or university while under the supervision of a licensee.

(9) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 73, is further defined in accordance with Subsection 58-1-203(5), in Section R156-73-501.

**R156-73-103. Authority - Purpose.**

These rules are adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 73.

**R156-73-104. Organization - Relationship to Rule R156-1.**

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

**R156-73-302a. Qualifications for Licensure - Education Requirements.**

In accordance with Subsection 58-73-302(1)(d), graduation from a chiropractic college or university whose program or institution is accredited by the Council on Chiropractic Education, Inc., is evidence of having satisfactorily completed at least two years of general study in a college or university.

**R156-73-302b. Qualifications for Licensure - Examination Requirements.**

(1) In accordance with Subsection 58-73-302(1)(f)(i), the

approved written clinical competency examination is the National Chiropractic Board Part 3 or the Special Purposes Examination for Chiropractic (SPEC) administered by the National Board of Chiropractic Examiners. The passing score shall be established by the National Board of Chiropractic Examiners.

(2) In accordance with Subsection 58-73-302(1)(f)(iii), the approved practical examination is the National Chiropractic Board Part 4 (practical examination) administered by the National Board of Chiropractic Examiners. The passing score shall be established by the National Board of Chiropractic Examiners.

**R156-73-303. Temporary License.**

In accordance with Subsections 58-1-303(1)(a) and 58-73-302(2), an endorsement applicant may be issued a temporary license under the following conditions:

(1) The licensee shall work under the indirect supervision of a chiropractic physician approved by the division.

(2) The supervising chiropractic physician shall:

(a) be available at all times to provide advice, instruction and consultation;

(b) assume responsibility for all chiropractic activities and services performed by the temporary licensee; and

(c) supervise no more than two persons at any given time.

(3) The temporary license may not be renewed or extended for any purpose.

(4) Any change in supervising chiropractic physician shall be preapproved by the division.

**R156-73-303a. Continuing Education - Renewal Requirement.**

(1) In accordance with Subsection 58-73-303(2), each licensee shall complete 40 hours of continuing education in each preceding two year period of licensure.

(2) The required number of hours of continuing education for an individual who first becomes licensed during the two year period shall be prorated to the part of that two year period during which the person is licensed.

**R156-73-303b. Continuing Education - Standards.**

(1) The standards for continuing education are as follows:

(a) the content must be relevant to chiropractic practice and consistent with the laws and rules of this state;

(b) the course must be under the sponsorship of or approved by:

(i) a chiropractic college or university whose doctor of chiropractic program is accredited by the Council on Chiropractic Education, Inc.;

(ii) a professional association or nonprofit organization representing a licensed profession whose program objectives relate to the practice of chiropractic;

(iii) the licensing agency of another state; or

(iv) PACE;

(c) learning objectives must be reasonably and clearly stated;

(d) teaching methods must be clearly stated and appropriate;

(e) faculty must be qualified, both in experience and in teaching expertise;

(f) documentation of attendance must be provided;

(g) there shall be no more than four clock hours related to chiropractic practice marketing or practice building;

(h) no more than 10 hours of continuing education, in each two year period of licensure, may be by distance learning.

(2) A licensee shall be responsible for maintaining competent records of completed continuing education for a period of two years after close of the two year period to which the records pertain.

(3) The board may, after review, waive the continuing education requirements for a licensee presenting sufficient evidence of hardship or illness or other reason making it impossible or highly impractical for the licensee to attend or have attended a sufficient number of continuing education classes.

(4) As part of the 40 continuing education hours required every two years, a chiropractic physician, who provides acupuncture services as a part of their practice, shall complete 10 hours of acupuncture related continuing education.

**R156-73-304. Preceptorship - Approved Form of Supervision.**

In accordance with Subsection 58-73-304(2), the approved form of supervision is defined, clarified or established as follows:

(1) The supervising preceptor shall:

(a) be licensed in good standing in Utah and have practiced as a licensed chiropractic physician for the past five years;

(b) have entered into a written contract with an approved college or university to provide chiropractic training to a preceptee; and

(c) provide direct supervision on the premises, either personally or by delegating to another chiropractic physician who is licensed in good standing in Utah and who has practiced as a licensed chiropractic physician for the past five years.

(2) The preceptor or his designee must remain on the premises at all times while the preceptee is performing the following procedures:

(a) adjusting of the articulation of the spinal column;

(b) diagnosis of the articulation of the spinal column;

(c) manipulation of the articulation of the spinal column;

and

(d) therapeutic positioning of the articulation of the spinal column.

**R156-73-308. Renewal Cycle - Procedures.**

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 73, is established by rule in Section R156-1-308.

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

**R156-73-501. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) keeping the office, instruments, laboratory, equipment, appliances or supplies in an unsafe or unsanitary condition;

(2) engaging in advertising which is misleading because of omission of necessary material information, which contains false or misleading statements, or which otherwise operates to deceive;

(3) engaging in or abetting deceptive or fraudulent billing practices;

(4) engaging in sexual contact with a patient, with or without patient consent, within 12 months of last treatment;

(5) engaging in sexual activities or contact with a former patient, with or without consent, after 12 months of last treatment if there is a risk of exploitation or potential harm to the former patient;

(6) engaging in behaviors in a patient/doctor relationship, including verbal, intended to sexually arouse any person or encourage sexual activity;

(7) failing to keep the division informed of a current address and telephone number;

(8) advertising acupuncture services or practicing clinical acupuncture techniques beyond the scope of the certification held; and

(9) advertising as an "acupuncturist" either verbally or in print.

**R156-73-502. Chiropractic Assistant.**

In accordance with Subsection 58-73-102(3), a chiropractic assistant may perform activities related to the practice of chiropractic in accordance with the following:

(1) The supervising chiropractic physician shall:

(a) be currently licensed in Utah;

(b) be responsible for the chiropractic activities and services performed by the assistant; and

(c) always be available to provide advice, instruction and consultation.

(2) The supervising chiropractic physician shall never delegate the following to a chiropractic assistant:

(a) adjustment of the articulation of the spinal column;

(b) diagnosis of the articulation of the spinal column;

(c) manipulation of the articulation of the spinal column; and

(d) therapeutic positioning of the articulation of the spinal column.

**R156-73-601. Scope of Practice.**

The requirements to demonstrate competency and training to perform clinical acupuncture include:

(1) Licensees who provided acupuncture services as a part of their practice prior to January 1, 2002 are not required to meet the requirements of Subsections (2) or (3), but are required to complete a recognized clinical acupuncture course sponsored by an institution or organization approved to sponsor continuing education, as defined in Section R156-73-303b, consisting of at least 100 classroom hours of instruction and passing a certifying examination in order to continue to provide clinical acupuncture as a part of their practice after January 1, 2002.

(2) Licensees who begin providing clinical acupuncture as a part of their practice on or after January 1, 2002 and prior to January 1, 2005 shall:

(a) complete a recognized clinical acupuncture course sponsored by an institution or organization approved to sponsor continuing education, as defined in Section R156-73-303b, consisting of at least 200 classroom hours of instruction and passing a certifying examination; or

(b) complete a recognized clinical acupuncture course sponsored by an institution or organization approved to sponsor continuing education, as defined in Section R156-73-303b, consisting of at least 100 classroom hours of instruction, passing a certifying examination, and completing 100 hours of clinical experience under the indirect supervision of a licensed health care provider who has met the requirements in Subsection (1) or (2)(a), and has practiced clinical acupuncture for at least two years.

(3) Licensees who begin providing clinical acupuncture as a part of their practice on or after January 1, 2005 shall:

(a) meet the requirements to take and receive a passing score on the NBCE Acupuncture Examination; or

(b) meet the requirements to take and receive a passing score on the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) Examination.

**R156-73-602. Advisory Peer Committee Created - Membership - Duties.**

In accordance with Subsection 58-73-602(3), there is created the Quality and Standards Committee as an advisory peer committee to the Chiropractic Physician Licensing Board consisting of five chiropractic physicians licensed and in good standing in Utah who are qualified by education, training and experience to competently act in quality care review.

**R156-73-603. Standards for Practice of Animal**

**Chiropractic.**

In accordance with Subsection 58-28-8(12)(a), a chiropractic physician practicing animal chiropractic shall have completed an animal chiropractic course approved by the American Chiropractic Veterinary Association (ACVA) or another course that is substantially equivalent to the ACVA course.

**KEY: chiropractors, licensing, chiropractic physician**

<b>October 18, 2004</b>	<b>58-73-101</b>
<b>Notice of Continuation July 5, 2001</b>	<b>58-1-106(1)(a)</b>
	<b>58-1-202(1)(a)</b>

**R162. Commerce, Real Estate.****R162-8. Prelicensing Education.****R162-8-1. Definitions.**

8.1.1 For the purposes of this rule, "school" includes:

8.1.1.1 Any college or university accredited by a regional accrediting agency which is recognized by the United States Department of Education;

8.1.1.2 Any community college, vocational-technical school, state or federal agency or commission;

8.1.1.3 Any nationally recognized real estate organization, any Utah real estate organization, or any local real estate organization which has been approved by the Real Estate Commission;

8.1.1.4 Any proprietary real estate school.

8.1.2 For the purposes of this rule, "applicant" shall include school directors, school owners and pending instructors.

**R162-8-2. Determining Fitness for School Certification.**

8.2 In order to be certified as a real estate school, the school directors and owners of the school must have integrity and be honest, truthful, reputable and competent. The determination of whether an applicant possesses these qualifications will be made by the Division, with the concurrence of the Commission.

8.2.1 In determining fitness for certification, the Division and Commission will consider information which shall include the following:

(a) whether the applicant has had a license to practice in the real estate profession, or any other regulated profession or occupation, denied, restricted, suspended, or revoked or subjected to any other disciplinary action by this or another jurisdiction.

(b) whether the applicant has been permitted to resign or surrender a real estate license or any other professional license or has ever allowed a license to expire while the applicant was under investigation by, or while action was pending against the applicant by a real estate licensing or any other regulatory agency.

(c) whether any action is pending against the applicant by any real estate licensing or other regulatory agency.

(d) whether the applicant is currently under investigation for, or charged with, or has ever been convicted of or pled guilty or no contest to, or entered a plea in abeyance to, a misdemeanor or felony.

(e) whether the applicant has ever been placed on probation or ordered to pay a fine or restitution in connection with any criminal offense or a licensing action.

(f) whether a civil judgment has ever been entered against the applicant based on fraud, misrepresentation or deceit, and whether the judgment has been fully satisfied.

(g) whether restitution ordered by a court in a criminal conviction has been fully satisfied;

(h) whether the probation in a criminal conviction or a licensing action has been completed and fully served; and

(i) whether there has been subsequent good conduct on the part of the applicant. If, because of lapse of time and subsequent good conduct and reputation or other reason deemed sufficient, it shall appear to the Commission and the Division that the interest of the public will not likely be in danger by the granting of a certification, the Commission and the Division may approve the applicant relating to honesty, integrity, truthfulness, reputation and competency.

**R162-8-3. School Application for Certification.**

8.3 A school offering prelicensing education must be certified by the Division of Real Estate before providing any education. Each school requesting approval of an educational program designed to meet the prelicensing education requirements must make application for approval on the form

prescribed by the Division. The application must include the application fee, as authorized by Section 61-2-9(5)(d), and the following information which will be used in determining the school's eligibility for approval:

8.3.1 Name, phone number and address of the school, school director, and all owners of the school;

8.3.2 A description of the type of school and a description of the school's physical facilities;

8.3.2.1 All courses must be taught in an appropriate classroom facility and not in any private residence, except for courses approved for specific home-study purposes.

8.3.3 A comprehensive course outline including a description of the course, the length of time to be spent on each subject area broken into class periods, and a minimum of three to five learning objectives for every three hours of classroom time, and applicable application fee;

8.3.3.1 All courses of study will meet the minimum standards set forth in the State of Utah Standard Course Outline provided for each approved course. The school may alter the sequence of presentation of the required topics.

8.3.3.2 All courses of study will meet the minimum hourly requirement of that contact. A credit hour is defined as 50 minutes of supervised contact by a certified instructor within a 60 minute time period. A 10 minute break will be given for each 50 minutes in class. Education credit will be limited to a maximum of eight credit hours per day. The limitation applies only to the credit a student may receive and is not intended to limit the number of classroom hours offered.

8.3.4 A list of each certified instructor and adjunct instructor the school intends to use and the instructor certification number which has been issued by the Division.

8.3.4.1 A college or university may use any faculty member to teach an approved course provided the instructor demonstrates to the satisfaction of the Division academic training or experience qualifying him to teach the course.

8.3.4.2 The school shall submit the name of any guest lecturer and a resume which defines the knowledge and expertise of the guest. Names shall be submitted prior to the guest being used by the school.

8.3.5 An itemization of methods of instruction, including lecture method, slide presentation, cassette, videotape, movie, or other method. Absent special approval from the Division:

8.3.5.1 Non-lecture methods of instruction will be limited to a total of 50% of the allotted credit hours.

8.3.5.2 Non-lecture methods of instruction will have an accompanying workbook for the student to complete during the viewing time. The schools shall submit copies of the workbooks to the Division.

8.3.5.3 Non-lecture methods of instruction will have a certified instructor available to answer questions within at least 24 hours after the presentation.

8.3.6 A copy of at least two final examinations of the course and the answer keys which are used to determine if the student has passed the exam, accompanied by an explanation of what the procedure is if the student fails the final examination and thereby fails the course.

8.3.6.1 A maximum of 10% of the required class time may be spent in testing, including practice tests and the final examination. A student cannot challenge a course or any part of a course of study in lieu of attendance.

8.3.7 A list of the titles, authors and publishers of all required textbooks;

8.3.7.1 All texts, workbooks, supplement pamphlets and any other materials must be appropriate and current in their application to the required course outline.

8.3.8 Days, times and locations of classes;

8.3.8.1 A college or a university may schedule its courses within the criteria of its regular schedule, for example, quarter, semester, or other. A college quarter hour credit is the

equivalent of 10 classroom hours, and a college semester hour credit is the equivalent of 15 classroom hours.

8.3.9 A copy of the statement which shall be provided for each student outlining the days, times and locations of classes; the number of quizzes and examinations; the grading system, including methods of testing and standards of grading; the requirements for attendance; the school's evidence of notification to candidates of the qualifying questionnaire; and the school's refund policy.

8.3.9.1 The statement to the student shall state in capital letters no smaller than 1/4 inch the following language: "Any student attending the (school name) is under no obligation to affiliate with any of the real estate brokerages that may be soliciting for agents at this school."

8.3.10 Any other information as the Division may require.

#### **R162-8-4. School Certification.**

8.4 When a school has met all conditions of certification, and upon approval by the Division, a school will be issued certification. Until January 1, 2005, all certifications will be issued by the calendar year and will expire on December 31. Beginning on January 1, 2005, school certifications will be issued for a two-year period and will expire twenty-four months from the date of issuance. School certifications may be renewed by submitting a properly completed application for renewal prior to the expiration of the school's current certification, using the form required by the Division. Until January 1, 2005, the term of a renewed school certification shall be one calendar year. Beginning on January 1, 2005, the term of a renewed school certification shall be twenty-four months. Conditions of certification include the following:

8.4.1 A school shall teach the approved course of study as outlined in the State Approved Course Outline.

8.4.2 A school shall require each student to attend the required number of hours and pass a final examination. A school shall maintain a record of each student's attendance for a minimum of five years after enrollment.

8.4.3 A school shall not accept a student for a reduced number of hours without first having a written statement from the Division which defines the exact number of hours the student needs.

8.4.4 A school shall not make any misrepresentation in its advertising about any course of instruction, and shall be able to provide substantiation of any claims made. All advertising and public notices shall be free of statements or implications which do not enhance the dignity and integrity of the real estate profession. A school shall not make disparaging remarks about a competitor's services or methods of operation.

8.4.5 A school shall limit approved guest lecturers who are experts in related fields to a total of 20% of the instructional hours per approved course. A guest lecturer shall provide evidence of professional qualifications to the Division prior to being used as a guest lecturer.

8.4.6 Within 15 calendar days after the occurrence of any material change in the school which would affect its approval, the school shall give the Division written notice of that change.

8.4.7 A school shall not attempt by any means to obtain or use the questions on the preclicensing examinations unless the questions have been dropped from the current exam bank.

8.4.8 A school shall not give any valuable consideration to a real estate brokerage for having referred students to the school. A school shall not accept valuable consideration from a brokerage for having referred students to the brokerage.

8.4.8.1 If the school agrees, real estate brokerages may be allowed to solicit for agents at the school. No solicitation may be made during the class time nor during the student break time. Solicitation may be made only after the regularly scheduled class so that no student will be obligated to stay for the solicitation.

8.4.9. A school shall use only certified instructors or guest lecturers who have been registered with the Division.

8.4.10 A school's owners and director shall be solely responsible for the quality of instruction in the school and for adherence to the state laws and regulations regarding school and instructor certification.

8.4.10.1 A school director shall provide the instructor with the approved content outline for each course and shall assure the content has been taught.

#### **R162-8-5. Determining Fitness for Instructor Certification.**

8.5. In order to be certified as a real estate instructor, the instructor applicant must have integrity and be honest, truthful, reputable and competent. The determination of whether an applicant possesses these qualifications will be made by the Division, with the concurrence of the Commission.

8.5.1. In determining fitness for certification, the Division and Commission will consider information which shall include the following:

(a) whether the applicant has had a license to practice in the real estate profession, or any other regulated profession or occupation, denied, restricted, suspended, or revoked or subjected to any other disciplinary action by this or another jurisdiction.

(b) whether the applicant has been permitted to resign or surrender a real estate license or any other professional license or has ever allowed a license to expire while the applicant was under investigation by, or while action was pending against the applicant by a real estate licensing or any other regulatory agency.

(c) whether any action is pending against the applicant by any real estate licensing or other regulatory agency.

(d) whether the applicant is currently under investigation for, or charged with, or has ever been convicted of or pled guilty or no contest to, or entered a plea in abeyance to, a misdemeanor or felony.

(e) whether the applicant has ever been placed on probation or ordered to pay a fine or restitution in connection with any criminal offense or a licensing action.

(f) whether a civil judgment has ever been entered against the applicant based on fraud, misrepresentation or deceit and whether the judgment has been fully satisfied.

(g) whether restitution ordered by a court in a criminal conviction has been fully satisfied;

(h) whether the probation in a criminal conviction or a licensing action has been complete and fully served; and

(i) whether there has been subsequent good conduct on the part of the applicant. If, because of lapse of time and subsequent good conduct and reputation or other reason deemed sufficient, it shall appear to the Commission and the Division that the interest of the public will not likely be in danger by the granting of a certification, the Commission and the Division may approve the applicant relating to honesty, integrity, truthfulness, reputation and competency.

#### **R162-8-6. Instructor Application for Certification.**

8.6 An instructor shall not teach a preclicensing course by himself without having been certified by the Division prior to teaching. Each instructor and each adjunct instructor requesting approval to be certified to teach the education requirements of real estate licensing must make application for approval on a form prescribed by the Division.

8.6.1 The instructor and the adjunct instructor applicant will demonstrate the initial ability to teach by either meeting the minimum point requirement outlined on the application form or by receiving a conditional approval granted by the division. The application form shall be received by the Division before the instructor applicant can begin to teach in the classroom.

8.6.1.1 In the event an instructor candidate fails to meet

the minimum point requirement outlined on the application form, and upon written recommendation from the certified school, the division may issue a conditional approval for the candidate to proceed into the instructor apprentice program.

8.6.1.2 The applicant receiving a conditional approval from the division will complete the apprentice teaching as outlined in 8.6.2.2 and 8.6.2.3 or as outlined in 8.6.4.1 and 8.6.4.2. and will be audited during the apprentice teaching by the education director of the division using the same evaluation form being used by the students.

8.6.1.3 The applicant receiving a conditional approval will need to receive the same satisfactory recommendation as outlined in 8.6.2.4 or 8.6.4.3 in addition to approval from the education director of the division before becoming certified.

8.6.2 The instructor applicant for the 90 hour salesagent prelicensing course will complete an instructor apprentice program, the requirements of which are the following:

8.6.2.1 The instructor applicant will either audit each course to be taught by him and prepare teaching notes on the course of study; or

8.6.2.2 The instructor applicant will co-teach the course with a fully certified instructor; and thereafter

8.6.2.3 The instructor applicant will teach the course under the direction of a fully certified instructor. The instructor will teach the curriculum as provided by the school.

8.6.2.4 The school will provide to the division evidence of a satisfactory recommendation made by the certified instructor and the school director. The school will also provide to the division satisfactory evaluations of the apprentice instructor made by the students attending the class the instructor taught as an apprentice. The evaluations will be graded on a 5-point scale, and the apprentice instructor must have received a minimum of a 3.5 point average on the evaluations.

8.6.2.5 The instructor applicant shall pass an examination designed to test the knowledge of the subject matter proposed to be taught.

8.6.2.6 This instructor, once certified, shall have the authority to teach all segments of the sales agent curriculum and any classes certified for continuing education regarding real estate principles and practices.

8.6.3 The instructor applicant for a broker prelicensing subcourse will be a principal broker, an associate broker or a branch broker and will meet the following criteria:

8.6.3.1 Brokerage Management. The instructor applicant must be a licensed broker and have managed a real estate office, or hold a CRB or equivalent designation in real estate brokerage management. The instructor applicant must have at least two years practical experience as an active real estate principal broker.

8.6.3.2 Advanced Real Estate Law. The instructor applicant must be a current member of the Utah Bar Association or have graduated from an American Bar Association law school. The instructor applicant must have at least two years practical experience in the field of real estate law.

8.6.3.3 Advanced Appraisal. The instructor applicant must be a state certified appraiser and hold a MAI or equivalent designation. The instructor applicant must have at least two years practical experience in appraising.

8.6.3.4 Advanced Finance. The instructor applicant must have been associated with a lending institution as a loan officer or have a degree in finance. The instructor applicant must have at least two years practical experience in real estate finance.

8.6.3.5 Advanced Property Management. The instructor applicant must be a real estate licensee. The instructor applicant must hold a CPM or equivalent designation. The instructor applicant must have at least two years full-time experience as a property manager.

8.6.3.6 Equivalent Qualifications. The instructor applicant must have other experience, education, or credentials which are

equivalent to any of the above as determined by the Division and the Commission.

8.6.4 The adjunct instructor applicant may be certified to teach a portion of the sales agent prelicensing course or a portion of a broker subcourse with certification limited to teaching a specific subject. The applicant will complete an instructor apprentice program, the requirements of which are the following:

8.6.4.1. The instructor applicant will either audit each course to be taught by him and prepare teaching notes on the course of study; or

8.6.4.2 The instructor applicant will co-teach the specific subject with a fully certified instructor; and thereafter

8.6.4.3 The instructor applicant will teach the specific subject under the direction of a fully certified instructor. The instructor will teach the curriculum as provided by the school.

8.6.4.4 The school will provide to the division evidence of a satisfactory recommendation made by the certified instructor and the school director. The school will also provide to the division satisfactory evaluations of the apprentice instructor made by the students attending the class the instructor taught as an apprentice. The evaluations will be graded on a 5-point scale, and the apprentice instructor must have received a minimum of a 3.5 point average on the evaluations.

#### **R162-8-7. Instructor Certification Renewal.**

8.7 Upon approval by the Division, an instructor applicant will be issued certification. All original instructor certifications expire twenty-four months after issuance.

8.7.1 Instructor certifications may be renewed by submitting a properly completed application for renewal prior to the expiration date of the instructor's current certification, using the form required by the Division. Renewed instructor certifications will be issued for a twenty-four month period. Conditions of renewal of certification include providing proof of the following:

8.7.1.1 Must have taught at least 20 hours of in-class instruction in a certified real estate course during the preceding two years;

8.7.1.2 Must have attended a real estate instructor development workshop sponsored by the Division during the preceding two years; and

8.7.1.3 Must have completed 12 hours of live education taken in a real estate related subject in addition to the 12 hours of continuing education required for license renewal, and will provide a written evaluation of the course(s) and instructor(s) to the Division at time of renewal on a specific instructor evaluation form provided by the Division.

8.7.2 If the instructor does not submit a properly completed renewal form, the renewal fee, and any required documentation prior to the expiration date of the instructor's current certification, the certification shall expire.

8.7.2.1 When a certification expires, the certification may be reinstated for a period of thirty days after the expiration date upon payment of a non-refundable late fee in addition to the requirements of Section R162-8.7.1.1 through R162-8.7.1.3.

8.7.2.2 After this thirty day period, and until three months after the expiration date, an instructor certification may be reinstated upon payment of a non-refundable fee and completion of 6 classroom hours of education related to real estate or teaching techniques in addition to the requirement of Sections R162-8.7.1.1 through R162-8.7.1.3.

8.7.2.3 After the three month period, those instructors and adjunct instructors not meeting the conditions for renewal of certification must apply as an original applicant.

#### **R162-8-8. Administrative Proceedings.**

8.8 The Division may deny certification or renewal of certification to any school or instructor that does not meet the

standards required by this chapter.

8.8.1 Formal adjudicative proceedings. Any adjudicative proceedings as to the following matters shall be conducted on a formal basis:

8.8.1.1 The revocation or suspension of certification of real estate schools or instructors.

8.8.2 Informal adjudicative proceedings. Any adjudicative proceedings as to the following matters shall be conducted on an informal basis:

8.8.2.1 The issuance or renewal of certification of real estate schools or instructors.

**R162-8-9. Disclosure Requirements.**

8.9 Criminal History. For the purposes of this rule, criminal history is defined as any felony or misdemeanor convictions, any pleas in abeyance or diversion agreements, or any pending any criminal charges.

8.9.1 Prior to accepting payment from a prospective student for a pre-licensing education course, a certified school shall provide a written disclosure to the prospective student stating that: a) a student with a criminal history may possibly not qualify for a license; b) an applicant with a criminal history may be required to appear at a hearing before the Utah Real Estate Commission and the Director of the Division of Real Estate to seek approval to license, and there is no guarantee that such an applicant will be approved; and c) all applicants for a sales agent license will be required to submit to the division with their applications fingerprint cards that will be used in criminal background checks.

8.9.2 The school shall be required to obtain the student's signature on the written disclosure required by Section 8.9 acknowledging receipt of the disclosure. The disclosure form and acknowledgement shall be retained in the school's records and made available for inspection by the division for a minimum of two years following the date upon which the student completes the pre-licensing course.

**KEY: real estate business**

**October 21, 2004**

**61-2-5.5**

**Notice of Continuation June 3, 2002**

**R162. Commerce, Real Estate.****R162-9. Continuing Education.****R162-9-1. Objective and Specific Hour Requirements.**

9.1.1 Objective. Through education, the licensee shall be reasonably current in real estate knowledge and shall have improved ability to provide greater protection and service to the real estate consumer, thereby meeting the Real Estate Commission's primary objective of protection of and service to the public.

9.1.2 Specific Hour Requirements. A minimum of three of the 12 hours of continuing education required by Section 61-2-9(2)(a) must be taken in a "core" course, the subject of which will be designated by the Division to keep a licensee current in changing practices and laws.

**9.1.2.1 Definitions.**

9.1.2.1.1 For the purposes of this rule, "live" continuing education is defined as: a) live, in-class instruction; or b) videotapes, computer courses, or other education in which the instructor and the student are separated by distance and sometimes by time, so long as the education takes place in a school or industry association office with a Division-certified prelicensing instructor present to answer questions.

9.1.2.1.2 For the purposes of this rule, "passive" continuing education is defined as videotapes, computer courses, or other education in which the instructor and student are separated by distance and sometimes by time if viewed in a location where no Division-certified prelicensing instructor is present.

9.1.2.2 A minimum of 6 hours of the 12 hours of continuing education required to renew must be live continuing education. The balance of up to 6 hours may be passive continuing education.

**R162-9-2. Education Providers.**

9.2. Continuing education providers are required to apply to the Division for certification of their courses prior to the courses being taught to students.

9.2.1 Approved providers may include accredited colleges and universities, public or private vocational schools, national and state real estate related professional societies and organizations, real estate boards, and proprietary schools.

9.2.2 Those real estate education providers who have been certified for continuing education courses in a minimum of three other states and have specific standards in place for development of their courses and approval of their instructors, and who will provide that criteria to the division of real estate for a one-time approval, may be granted certification of their courses with no further application being necessary.

9.2.3 Licensees may apply to the division for continuing education credit for a non-certified real estate course taken from a national provider that the licensee believes will improve his ability to better protect or serve the public.

9.2.3.1 A licensee may request approval of the course from the division and, for an appropriate fee, the division will review the merits of the non-certified course and determine whether the course meets the criteria for Utah real estate continuing education.

9.2.4. Provided the subject matter of the course taken is not exclusive to the other state, a course approved for continuing education in another state/jurisdiction may be granted Utah credit on a case by case basis.

**R162-9-3. Course Certification Criteria.**

9.3 Courses submitted for certification shall have significant intellectual or practical content and shall serve to increase the professional competence of the licensee, thereby meeting the objective of the protection of and service to the public.

9.3.1 Three hours shall be comprised of "core course"

curricula, the subjects of which will be determined by the division and the Real Estate Commission. The subject matter of these courses will be for the purpose of keeping a licensee current in changing practices and laws. These courses may be provided by the division or by private education providers but, in all cases, will have prior certification by the division.

9.3.1.1 Principal brokers and associate brokers may use the Division's Trust Account Seminar to satisfy the "core" course requirement once every three renewal cycles.

9.3.2 The remaining nine hours shall be in substantive areas dealing with the practice of real estate. Acceptable course criteria shall include the following:

9.3.2.1 Real estate financing, including mortgages and other financing techniques; real estate investments; accounting and taxation as applied to real property; estate building and portfolio management; closing statements; real estate mathematics;

9.3.2.2 Real estate law; contract law; agency and subagency; real estate securities and syndications; regulation and management of timeshares, condominiums and cooperatives; real property exchanging; real estate legislative issues; real estate license law and administrative rules;

9.3.2.3 Land development; land use, planning and zoning; construction; energy conservation;

9.3.2.4 Property management; leasing agreements; accounting procedures; management contracts; landlord/tenant relationships;

9.3.2.5 Fair housing; affirmative marketing; Americans with Disabilities Act;

9.3.2.6 Real estate ethics.

9.3.2.7 Using the computer, the Internet, business calculators, and other technologies to enhance the licensee's service to the public.

9.3.2.8 Offerings concerning sales promotion, including salesmanship, negotiation, sales psychology, marketing techniques, servicing your clients, or similar offerings.

9.3.2.9 Offerings in personal and property protection for the licensee and his clients.

9.3.3 Non-acceptable course criteria shall include courses similar to the following:

9.3.3.1 Offerings in mechanical office and business skills, such as typing, speed reading, memory improvement, language report writing, advertising, or similar offerings;

9.3.3.2 Offerings concerning physical well-being or personal development, such as personal motivation, stress management, time management, dress-for-success, or similar offerings;

9.3.3.3 Meetings held in conjunction with the general business of the licensee and his broker or employer, such as sales meetings, in-house staff or licensee training meetings;

9.3.4 The minimum length of a course shall be one credit hour or its equivalency. A credit hour is defined as 50 minutes within a 60-minute time period.

**R162-9-4. Instructor Certification Criteria.**

9.4 Instructors for continuing education purposes will be evaluated and approved separately from the continuing education courses. All instructors must apply for certification from the Division not less than 60 days prior to the anticipated date of the first class that they intend to teach.

9.4.1 The instructor applicant must meet the same requirements as a certified prelicensing instructor as defined in R162-8.4.1; and

9.4.2 The instructor applicant must demonstrate knowledge of the subject matter by submission of proof of the following:

9.4.2.1 At least five years experience in a profession, trade or technical occupation in a field directly related to the course which the applicant intends to instruct; or



9.4.2.2 A bachelors or postgraduate degree in the field of real estate, business, law, finance, or other academic area directly related to the course which applicant intends to instruct; or

9.4.2.3 Any combination of at least five years of full-time experience and college-level education in a field directly related to the course which the applicant intends to instruct, or

9.4.3 The instructor applicant must demonstrate evidence of the ability to communicate the subject matter by the submission of proof of the following:

9.4.3.1 A state teaching certificate or showing successful completion of appropriate college courses in the field of education; or

9.4.3.2 A professional teaching designation from the National Association of Realtors or the Real Estate Educators Association; or

9.4.3.3 Evidence, such as instructor evaluation forms or letters of reference, of the ability to teach in schools, seminars, or in an equivalent setting.

9.4.4 An original continuing education instructor certification shall expire twenty-four months after issuance. Instructor certifications may be renewed by submitting a properly completed application for renewal prior to the expiration of the instructor's current certification, using the form required by the Division. The term of a renewed instructor certification is twenty-four months.

9.4.4.1 If the instructor does not submit a properly completed renewal prior to the expiration date of the instructor's current certification, the certification shall expire. For a period of thirty days after the expiration of an instructor certification, the instructor may apply for reinstatement of the certification by complying with all of the requirements for a timely renewal and, in addition, paying a non-refundable late fee.

9.4.4.2 After this thirty day period, and until three months after the expiration date, an instructor certification may be reinstated upon payment of a non-refundable late fee and completion of 6 classroom hours of education related to real estate or teaching techniques in addition to complying with all of the requirements for a timely renewal.

9.4.4.3 After the certification has been expired for three months, an instructor may not reinstate an expired certification and must apply for a new certification following the same procedure as an original applicant for certification.

#### **R162-9-5. Submission of Course for Certification.**

9.5 An applicant shall apply for consideration of certification of a course to the Division of Real Estate not less than 60 days prior to the anticipated date of the first class.

9.5.1 Until January 1, 2005, the application shall include a non-refundable filing fee of \$35.00 and an instructor certification fee of \$15.00 per course per instructor. Beginning January 1, 2005, the application shall include a non-refundable course certification fee of \$70.00 and a non-refundable instructor certification fee of \$30.00 per course per instructor. Both fees shall be made payable to the Division of Real Estate.

9.5.2 The application shall be made on the form approved by the Division which shall include the following information:

9.5.2.1 Name, phone number and address of the sponsor of the course, including owners and the coordinator or director responsible for the offering;

9.5.2.2 The title of the course offering including a description of the type of training; for example, seminar, conference, correspondence course, or similar offering;

9.5.2.3 A copy of the course curriculum including a course outline of the comprehensive subject matter. Except for courses approved for specific distance education delivery, the course outline shall include the length of time to be spent on each subject area broken into segments of no more than 15 minutes each, the instructor for each segment, and the teaching technique

used in each segment;

9.5.2.4 Three to five learning objectives for every three hours or its equivalency of the course and the means to be used in assessing whether the learning objectives have been reached;

9.5.2.5 A complete description of all materials to be distributed to the participants;

9.5.2.6 The date, time and locations of each course;

9.5.2.7 The procedure for pre-registration, the tuition or registration fee and a copy of the cancellation and refund policy;

9.5.2.8 Except for courses approved for specific distance education delivery, the procedure for taking and maintaining control of attendance during class time, which procedure shall be more extensive than having the student sign a class roll;

9.5.2.9 The difficulty level of the course categorized by beginning, intermediate or advanced;

9.5.2.10 A sample of the proposed advertising to be used, if any;

9.5.2.11 An instructor application on a form approved by the Division including the information as defined in R162-9-4;

9.5.2.12 A signed statement agreeing to allow the course to be randomly audited on an unannounced basis by the Division or its representative;

9.5.2.13 A statement defining how the course will meet the objectives of continuing education by providing education of a current nature and how it will improve the licensee's ability to provide greater protection of and service to the public;

9.5.2.14 A signed statement agreeing not to market personal sales product.

9.5.2.15 A sample of the completion certificate, or the completion certificate required by the division, if any, that will be issued which shall bear the following information:

(a) Space for the licensee's name, type of license and license number, date of course

(b) The name of the course provider, course title, hours of credit, certification number, and certification expiration date;

(c) Space for signature of the course sponsor and a space for the licensee's signature.

9.5.2.16 Signature of the course coordinator or director.

9.5.3 Continuing education courses in which the instruction does not take place in a traditional classroom setting, but rather through other media where teacher and student are separated by distance and sometimes by time, may be certified by the Division provided the delivery method of the course has been certified by either the Commission or the Association of Real Estate Licensing Law Officials (ARELLO).

9.5.3.1 If a course is certified by ARELLO, only the delivery method will be certified by ARELLO. The subject matter of the course will be certified by the Division.

9.5.3.2. Education providers making application for Distance Education Certification based on ARELLO certification shall provide appropriate documentation that the ARELLO certification is in effect and that the course meets the content requirements of R162-9-3.2 along with other applicable requirements of this rule.

9.5.3.2.1. Approval under this paragraph will cease immediately should ARELLO certification be discontinued for any reason.

9.5.3.3. Courses approved for distance education delivery shall justify the classroom hour equivalency as is required by ARELLO standards.

9.5.4. The Real Estate Commission reserves the right to consider alternative certification methods and/or procedures for non-ARELLO certified Distance Education Courses.

#### **R162-9-6. Conditions to Certification.**

9.6.1 Upon completion of the educational program the course sponsor shall provide a certificate of completion in the form required by the Division.

9.6.1.1 Certificates of completion will be given only to

those students who attend a minimum of 90% of the required class time of a live lecture. Within 10 days of the end of the course, the sponsor shall provide to the Division a roster of students and their license numbers for whom certificates were issued.

9.6.2 A course sponsor shall maintain for three years a record of registration of each person completing an offering and any other prescribed information regarding the offering, including exam results, if any.

9.6.2.1 Students registered for a distance education course shall complete the course within one year of the registration date.

9.6.3 Whenever there is a material change in a certified course, for example, curriculum, course length, instructor, refund policy, the sponsor shall promptly notify the Division in writing.

9.6.4 Until January 1, 2005, all course certifications shall be valid for one year after date of approval by the Division. Beginning January 1, 2005, all original course certifications and all renewed course certifications shall be issued with an expiration date of twenty-four months after approval by the Division.

9.6.4.1 If a course is not renewed within three months after its expiration date, the course provider will be required to apply for a new certification for the course.

9.6.4.2 After a course has been renewed for three times, the course provider will be required to make application as for a new certification.

9.6.5 Until January 1, 2005, instructor certifications shall expire December 31 of each year. Until January 1, 2005, instructors who certify for the first time by September 30 shall renew December 31 of that same year. Until January 1, 2005, instructors who certify for the first time after October 1 shall renew December 31 of the following year. Beginning January 1, 2005, renewed instructor certifications shall be issued for a term of twenty-four months.

9.6.5.1 To renew instructor certification an instructor must teach, during the year prior to renewal, a minimum of one class in each course for which certification is sought.

9.6.5.2 If the instructor has not taught during the year and wishes to renew certification, written explanation shall be submitted outlining the reason for not instructing the course, including documentation satisfactory to the Division as to the present level of expertise in the subject matter of the course.

#### **R162-9-7. Course and Instructor Evaluations.**

9.7 The Division shall cause the course to be evaluated for adherence to course content and other prescribed criteria, and for the effectiveness of the instructor.

9.7.1 At the end of each course each student shall complete a standard evaluation form provided by the Division. The forms shall be collected at the end of the sealed class in an envelope and the course provider will mail the sealed envelope to the Division within 10 days of the last class.

9.7.2 On a random basis the Division will assign monitors to attend a course for the purpose of evaluating the course and the instructor. The monitors will complete a standard evaluation form provided by the Division which will be returned to the Division within 10 days of the last class.

**KEY: continuing education**  
**October 21, 2004**  
**Notice of Continuation June 26, 2002**

**61-2-5.5**

**R162. Commerce, Real Estate.****R162-103. Appraisal Education Requirements.****R162-103-1. Definitions.**

103.1.1 For the purposes of this rule, "school" includes:

- (a) An accredited college, university, junior college or community college;
- (b) Any state or federal agency or commission;
- (c) A nationally or state recognized real estate appraisal or real estate related organization, society, institute, or association;
- (d) Any other school or organization as approved by the Board.

103.1.2 "School director" means an authorized individual in charge of the educational program at a school.

**R162-103-2. School Certification.**

103.2.1 Each school requesting certification shall make application for approval on the form prescribed by the Division, and shall submit the applicable fees. The application shall include, and the Board may consider, the following information in determining the school's eligibility for certification:

103.2.1.1 Name, phone number, and address of the school, school director and all owners of the school.

103.2.1.2 Attestation to upstanding moral character by individuals who are school directors or owners of the school, and whether any individual:

- (a) has had a license or certification to practice in the appraisal profession, or any other profession or occupation, denied, restricted, suspended, or revoked.
- (b) has been permitted to resign or surrender an appraiser license or certification, or has ever allowed an appraiser license or certification to expire while the individual was under investigation, or while action was pending against the individual by an appraiser licensing or any other agency.
- (c) has any action now pending by any appraiser licensing or other agency.
- (d) is currently under investigation for, or charged with, or has ever pled guilty or no contest to, or been convicted of, a misdemeanor or felony, excluding minor traffic offenses.
- (e) has ever been placed on probation in connection with any criminal offense or a licensing action.

103.2.1.3 A description of the type of school and a description of the school's physical facilities. All courses shall be taught in an appropriate classroom facility and not in any private residence, except for courses approved for specific home-study purposes;

103.2.1.4 A copy of the statement which shall be provided for each student outlining the days, times and locations of classes; the number of quizzes and examinations; the grading system, including methods of testing and standards of grading; the requirements for attendance; and the school's refund policy.

103.2.2 A public school may schedule its courses within the criteria of its regular schedule, for example, quarter, semester, or similar schedule. A quarter hour of college credit is the equivalent of 10 classroom hours, and a semester hour of college credit is the equivalent of 15 classroom hours.

103.2.3 Upon approval by the Board, a school will be issued certification. All certifications expire January 1. Conditions of certification include the following:

- (a) A school shall teach the approved course of study as outlined in the State Approved Course Outline;
- (b) A school shall require each student to attend the required number of hours and pass a final examination;
- (c) A school shall maintain a record of each student's attendance for a minimum of five years after his enrollment;
- (d) A school shall not make any misrepresentation in its advertising about any course of instruction, and shall be able to provide substantiation of any claims made. All advertising and public notices shall be free of statements or implications which do not enhance the dignity and integrity of the appraisal

profession. A school shall refrain from disparaging a competitor's services or methods of operation;

(e) Within 15 calendar days after the occurrence of any material change in the school which could affect its approval, including the events listed in R162-103.2.1.2, the school shall give the Division written notice of that change; and

(f) A school will not attempt by any means to obtain or use the questions on the state licensure or certification exam unless those questions have been dropped from the current exam bank.

(g) A school shall provide to all students at the time of registration a copy of the qualifying questionnaire the student will be required by the Division to answer as part of the prelicensing or precertification examination.

**R162-103-3. Course Certification.**

103.3.1 Each school requesting approval of a course designed to meet the education requirements of licensure or certification shall make application for approval on a form prescribed by the Division and shall pay the applicable fee. The application shall include, and the Board may consider, the following information in determining eligibility for approval:

(a) A course outline including a description of the course, the length of time to be spent on each subject area broken into segments of no more than 30 minutes each, and three to five learning objectives for every three hours;

(b) Indication of any method of instruction other than lecture method including: a slide presentation, cassette, video tape, movie, home study, or other.

(c) A copy of the three final examinations of the course and the answer keys which are used to determine if the student has passed the course;

(d) An explanation of what the school procedure is for maintaining the security of the final exams and the answer keys;

(e) A list of the titles, authors and publishers of all required textbooks;

(f) A list of the instructors and evidence of their certification by the Division, and a list of any guest lecturers to be used and evidence of their qualifications as an instructor for a specific course; and

(g) Days, times, and location of classes.

103.3.2 Upon approval by the Board, a course will be issued certification. All certifications expire January 1.

103.3.3 Each course of study will meet the minimum standards set forth in the State Approved Course Outline provided for each approved course. The school may alter the sequence of presentation of the required topics. Specific nonappraisal courses being used to satisfy the educational requirements shall have prior approval as to their applicability.

103.3.4 All courses of study will meet the minimum hourly requirement of that course. A credit hour is defined as 50 minutes of supervised contact by a certified instructor within a 60-minute time period. A 10-minute break will be given for each 50 minutes in class. Registration or certification credit will be limited to a maximum of eight credit hours per day. The limitation applies only to the credit a student may receive and is not intended to limit the number of classroom hours offered.

103.3.5 A public school or institution may use any faculty member to teach an approved course provided the individual demonstrates to the satisfaction of the Division and the Board academic training or appraisal experience qualifying him to teach the course.

103.3.6 Distance education is defined as any educational process based on the geographical separation of instructor and student (e.g., CD ROM, On-line learning, correspondence courses, video conferencing, etc.). Distance education courses must provide interaction between the learner and instructor and must include testing. A distance education course may be acceptable to meet the classroom hour requirement or its equivalent providing each course meets the following

conditions:

103.3.6.1 The course (a) has been presented by an accredited college or university which offers distance education programs in other disciplines and where accreditation has been made by the Commission on Colleges or a regional accreditation association; or (b) has received approval for college credit by the International Distance Education Certification Center, also known as IDECC; or (c) has been approved under the AQB Course Approval Program.

(a) The learner must successfully complete a written examination personally proctored by an official approved by the college or university or by the presenting entity; and

(b) The course must meet the requirements established by the AQB and be equivalent to the minimum of 15 classroom hours.

103.3.7 A maximum of 10% of the required class time may be spent in testing, including review test and final examination. A student cannot challenge a course or any part of a course of study by taking an exam in lieu of attendance.

103.3.7.1 If a student fails a school final examination, he will not be allowed to retest for a minimum of three days. The student will not be allowed to retake the same final exam, but will be given a new exam with different questions.

103.3.7.2 If the student fails the final exam a second time, he will not be allowed to retest for a minimum of two weeks at which time he will be given an entirely new exam with completely new questions. If the student fails this third exam, he will fail the course.

103.3.8 All texts, workbooks, supplement pamphlets and any other materials shall be appropriate and current in their application to the required course outline.

103.3.9 Within 15 calendar days after the occurrence of any material change in a course which could affect approval, the school shall give the Division written notice of the change.

#### **103.4. Education Credit for Noncertified Courses.**

103.4.1 Education credit will be granted towards licensure or certification for an appraisal education course which has been taken and which has not been previously certified in Utah for prelicensing education credit, and has been provided by a school which meets the criteria as outlined in 103.1.

103.4.1.1 The course content shall have met the minimum standards set forth in the Utah State Approved Course Outline.

103.4.1.2 A course must be at least 15 hours in duration, including the examination. An hour is defined as 50 minutes of supervised contact by a certified instructor within a 60-minute time period.

103.4.1.3 A final examination will be administered at the end of each course pertinent to that education offering.

103.4.2 Credit will not be granted for a course taken in which the applicant obtained credit from the course provider by challenge examination without having attended the course.

103.4.3 Credit will not be given for duplicate or highly comparable classes. Each course must represent a progression in which the appraiser's knowledge is increased.

103.4.4 There is no time limit regarding when education credit must have been obtained.

103.4.5 Hourly credit for a course taken from a professional appraisal organization will be granted based upon the Division approved list which verifies hours for these courses.

103.4.6 Credit will only be granted for a course that has been successfully completed. Successful completion of a course means that the applicant has attended a minimum of 90% of the scheduled class hours, has completed all required exercises and assignments, and has achieved a passing score on a course final examination. The final examination shall not be an open book examination.

103.4.7 Submission for Education Approval.

103.4.7.1 Courses that have not been previously certified for prelicensing credit will be reviewed by the Education Review Committee. It is the responsibility of the applicant to establish that a particular education offering will qualify to meet the education requirement for licensing or certification.

103.4.7.2 The applicant shall submit on a form provided by the Division a list of the courses that documents the course title, the name of the sponsoring organization, the number of classroom hours, and the date the course was completed.

103.4.7.3 The applicant will attest on a notarized affidavit that the courses have been completed as documented.

103.4.7.4 The applicant will support the claim for education credit if requested by the Division by providing proof of completion of the courses in the form of certificates, transcripts, report cards, letters of verification, or similar proof.

103.4.7.5 Applicants having appraisal education in categories other than those in the State Approved Course Outline may petition the Board on an individual basis for evaluation and approval of their education as being substantially equivalent to that required for licensing or certification.

#### **103.5. Instructor Application for Certification.**

103.5.1 Each instructor requesting approval to be certified as an instructor to teach the education requirements of appraisal licensure or certification shall make application for approval on a form prescribed by the Division and shall submit the applicable fees. The application shall include, and the Board may consider, the following information in determining the instructor's eligibility for approval:

103.5.1.1 Attestation to upstanding moral character, including whether the individual:

(a) has had a license or certification to practice in the appraisal profession, or any other profession or occupation, denied, restricted, suspended, or revoked.

(b) has been permitted to resign or surrender an appraiser license or certification, or has ever allowed an appraiser license or certification to expire while the individual was under investigation, or while action was pending against the individual by an appraiser licensing or any other agency.

(c) has any action now pending by any appraiser licensing or other agency.

(d) is currently under investigation for, or charged with, or has ever pled guilty or no contest to, or been convicted of, a misdemeanor or felony, excluding minor traffic offenses.

(e) has ever been placed on probation in connection with any criminal offense or a licensing action.

103.5.2 The instructor will demonstrate evidence of knowledge of the subject matter by the following:

103.5.2.1 A minimum of five years active experience in appraising, or

103.5.2.2 Evidence of having completed college or other appropriate courses specific to the topic he proposes to teach, or

103.5.2.3 Evidence of other qualifications of experience, education, or credentials which are acceptable to the Board; and

103.5.2.4 Evidence of having passed an examination designed to test knowledge of the subject matter he proposes to teach.

103.5.3 An applicant to teach the course on USPAP shall conform to all of the above criteria and in addition shall have been certified by the Appraisal Qualifications Board (AQB) of the Appraisal Foundation as an AQB Certified USPAP instructor.

103.5.4 Upon approval by the Board, an applicant will be issued certification. All certifications expire January 1 of each even numbered year. Conditions of renewal of certification include providing proof of the following:

103.5.4.1 Must have taught at least 20 hours of in-class instruction in a certified course during the preceding two years; and

103.5.4.2 Must have attended a real estate instructor development workshop sponsored or approved by the Division during the preceding two years.

103.5.5 Within 15 calendar days after the occurrence of any of the events listed in Section 103.5.1, an applicant or instructor shall give written notice to the Division of that event.

**R162-103-6. Education Review Committee.**

103.6 A committee may be appointed by the Board to review submissions for education credit for license or certification applicants and also to review submissions for certification of appraiser courses and instructors.

103.6.1 The Education Review Committee shall:

103.6.1.1 Review all applications for adherence to the education credit required for licensure or certification and make recommendations to the Division and the Board for approval or disapproval of the education claimed.

103.6.1.2 Review all submissions requesting certification of appraiser courses and instructors for preclicensing education purposes and make recommendations to the Division and the Board for approval or disapproval.

103.6.2 The Committee shall be composed of appraisers from the following categories: residential appraisers; commercial appraisers; farm and ranch appraisers; right-of-way appraisers; and ad valorem appraisers.

103.6.2.1 The chairperson of the committee shall be appointed by the Board.

103.6.2.2 Meetings may be called upon the request of the chairperson or upon the written request of a quorum of committee members.

103.6.3 If the review of an application has been performed by the Education Review Committee, and the Board has denied the application based on insufficient education or an inability to meet the certification of education requirements, the applicant may request that the Board review the issue again by making a request in writing to the Board within thirty days after the denial stating specific grounds upon which relief is requested. The Board shall thereafter consider the request and issue a written decision.

**R162-103-7. Continuing Education Course Certification.**

103.7 As a condition of renewal, all appraisers will complete the equivalent of 28 classroom hours of appraisal education during the two-year term preceding renewal. The continuing education requirement is for the purpose of maintaining and increasing the appraiser's skill, knowledge and competency in real estate appraising.

103.7.1 Continuing education credit may be granted for courses that meet the following criteria:

(a) the course has been obtained from any of the course providers designated in 103.1.

(b) the course covers appraisal topics as suggested by the AQB.

(c) the length of the educational offering is at least two classroom hours, each classroom hour is defined as 50 minutes out of each 60-minute segment, and the continuing education credit is limited to eight hours per day.

(d) the course meets the requirements for distance learning as outlined in R162-103.3.7.

103.7.2 Real estate appraisal related field trips are acceptable for continuing education credit; however, transit time to or from the field trip location should not be included when awarding credit if instruction does not occur.

103.7.3 Preclicensing education credit awarded to individuals seeking a different classification than that held, can also be used to satisfy a continuing education requirement.

103.7.4 Alternative Continuing Education Credit - continuing education credit may be granted for participation, other than as a student, in appraisal educational processes and

programs.

103.7.4.1 Credit may be granted on a case by case basis for teaching, program development, authorship of textbooks, or similar activities which are determined by the Board to be equivalent to obtaining continuing education.

103.7.4.2 The Education Review Committee will review claims of equivalent education and also alternative continuing education proposed to be used for continuing education purposes.

103.7.4.3 The Board may award continuing education credit to members of the Education Review Committee, the Experience Review Committee, and the Technical Advisory Panel.

**R162-103-8. Administrative Proceedings.**

The Division may deny certification or renewal of certification to any course, school or instructor that does not meet the standards required by this chapter.

**KEY: real estate appraisal, education  
October 7, 2004**

**Notice of Continuation June 3, 2002**

61-2b-8

**R162. Commerce, Real Estate.****R162-205. Residential Mortgage Unprofessional Conduct.****R162-205-1. Residential Mortgage Unprofessional Conduct.**

Unprofessional conduct includes the following acts:

(a) conducting the business of residential mortgage lending under any name other than a name under which the entity or individual conducting such business is licensed with the Division;

(b) failing to remit to the appropriate third parties appraisal fees, inspection fees, credit reporting fees, insurance premiums, or similar fees which have been collected from a borrower;

(c) charging for services not actually performed;

(d) charging a borrower more for third party services than the actual cost of those services;

(e) filling out or altering any Real Estate Purchase Contract or other contract for the sale of real property, or any addenda thereto; and

(f) making any alteration to any appraisal of real property.

**KEY: residential mortgage loan origination**

**October 7, 2004**

**61-2c-301(1)(i)**

**R277. Education, Administration.**

**R277-471. Oversight of School Inspections.**

**R277-471-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "School District Building Official" (SDBO) means the officer or authority designated by the school district who has direct administrative and operational control of school district construction and renovation and directs compliance with the state adopted building code in the school district.
- C. "Superintendent" means the State Superintendent of Public Instruction.
- D. "State adopted building code (Code)" means the statutes and administrative rules which control the construction and renovation of buildings in Utah.
- E. "School Building Construction and Inspection Resource Manual (Resource Manual)" means a manual which identifies the processes and procedures a school district must follow when constructing a new building or renovating existing buildings. The Resource Manual was developed by the USOE in response to legislative direction and is available in all school district offices and in the School Finance and Statistics Section of the USOE.
- F. "USOE" means the Utah State Office of Education.

**R277-471-2. Authority and Purpose.**

- A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.
- B. The purpose of this rule is to provide specific provisions for the oversight of school construction/renovation inspections.

**R277-471-3. School District Building Official.**

- A. Section 58-56-4 provides for adoption of a building code authority which provides for a code enforcement agency. School districts are designated as code enforcement agencies for school construction within the district's jurisdiction.
- B. As a code enforcement agency, school districts shall appoint a School District Building Official (SDBO) who has direct administrative and operational control of all construction and renovation of school facilities in the school district.
- C. The SDBO shall monitor school district building construction to require compliance with the provisions of the Code.
- D. The SDBO shall render interpretations of the Code for the school district. Such interpretations shall be in conformance with the intent and purpose of the Code, insofar as they are expressed in the Code or in legislative intent.
- E. The SDBO may adopt and enforce supplemental district policies under appropriate district policies to clarify the application of the provisions of the Code for district personnel.
- F. The SDBO shall send monthly construction inspection summary reports to the USOE and to appropriate local governmental entity building officials on each project that has a USOE project number and exceeds \$99,999 in cost. The school district shall retain copies of all individual inspection reports at an identified location in the district for monitoring, auditing and potential review purposes by the USOE.
- G. The SDBO shall send final inspection certification to the USOE and to the appropriate local governmental entity upon completion of each project. The district, through the SDBO, shall identify the monthly total number of inspections as well as the name, state license number and discipline(s) of the state licensed/certified inspectors performing the building inspections. The SDBO shall sign a final inspection certification form, certifying that all inspections were completed in accordance with the Code.

**R277-471-4. School Building Construction and Inspection Resource Manual.**

- A. The USOE shall develop and distribute to each school district a Resource Manual.
- B. The Resource Manual shall include process, legal requirements and resource information on school building construction and inspections.
- C. The USOE shall review and, if necessary, update the Resource Manual annually.
- D. The Board, local school boards, and school district personnel shall act consistent with the Resource Manual.

**R277-471-5. Annual Construction and Inspection Conference.**

- A. The USOE shall sponsor an annual school construction conference for representative(s) from each school district and interested persons involved in the school building construction industry. The conference shall:
  - (1) provide current information on the design, construction, and inspection process of school buildings;
  - (2) provide training on school construction and inspection matters as determined by the USOE; and
  - (3) offer and discuss information to improve the existing school building inspection program.

**KEY: educational facilities**

**November 2, 1999**

**Notice of Continuation November 1, 2004**

**Art X Sec 3**

**53A-1-401(3)**

**53A-20-104**

**53A-20-104.5**

**10-9-106**

**17-27-105**

**R307. Environmental Quality, Air Quality.****R307-110. General Requirements: State Implementation Plan.****R307-110-1. Incorporation by Reference.**

To meet requirements of the Federal Clean Air Act, the Utah State Implementation Plan must be incorporated by reference into these rules. Copies of the Utah State Implementation Plan are available at the Utah Department of Environmental Quality, Division of Air Quality.

**R307-110-2. Section I, Legal Authority.**

The Utah State Implementation Plan, Section I, Legal Authority, as most recently amended by the Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-3. Section II, Review of New and Modified Air Pollution Sources.**

The Utah State Implementation Plan, Section II, Review of New and Modified Air Pollution Sources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-4. Section III, Source Surveillance.**

The Utah State Implementation Plan, Section III, Source Surveillance, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-5. Section IV, Ambient Air Monitoring Program.**

The Utah State Implementation Plan, Section IV, Ambient Air Monitoring Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-6. Section V, Resources.**

The Utah State Implementation Plan, Section V, Resources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-7. Section VI, Intergovernmental Cooperation.**

The Utah State Implementation Plan, Section VI, Intergovernmental Cooperation, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-8. Section VII, Prevention of Air Pollution Emergency Episodes.**

The Utah State Implementation Plan, Section VII, Prevention of Air Pollution Emergency Episodes, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-9. Section VIII, Prevention of Significant Deterioration.**

The Utah State Implementation Plan, Section VIII, Prevention of Significant Deterioration, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-10. Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter.**

The Utah State Implementation Plan, Section IX, Control

Measures for Area and Point Sources, Part A, Fine Particulate Matter, as most recently amended by the Utah Air Quality Board on July 3, 2002, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-11. Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide.**

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-12. Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide.**

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide, as most recently amended by the Utah Air Quality Board on March 31, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-13. Section IX, Control Measures for Area and Point Sources, Part D, Ozone.**

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part D, Ozone, as most recently amended by the Utah Air Quality Board on September 9, 1998, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-14. Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide.**

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-15. Section IX, Control Measures for Area and Point Sources, Part F, Lead.**

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part F, Lead, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-16. (Reserved.)**

Reserved.

**R307-110-17. Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits.**

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emissions Limits, as most recently amended by the Utah Air Quality Board on June 5, 2002, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-18. Reserved.**

Reserved.

**R307-110-19. Section XI, Other Control Measures for Mobile Sources.**

The Utah State Implementation Plan, Section XI, Other Control Measures for Mobile Sources, as most recently amended by the Utah Air Quality Board on February 9, 2000, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-20. Section XII, Involvement.**

The Utah State Implementation Plan, Section XII,



Involvement, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-21. Section XIII, Analysis of Plan Impact.**

The Utah State Implementation Plan, Section XIII, Analysis of Plan Impact, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-22. Section XIV, Comprehensive Emission Inventory.**

The Utah State Implementation Plan, Section XIV, Comprehensive Emission Inventory, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-23. Section XV, Utah Code Title 19, Chapter 2, Air Conservation Act.**

Section XV of the Utah State Implementation Plan contains Utah Code Title 19, Chapter 2, Air Conservation Act.

**R307-110-24. Section XVI, Public Notification.**

The Utah State Implementation Plan, Section XVI, Public Notification, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-25. Section XVII, Visibility Protection.**

The Utah State Implementation Plan, Section XVII, Visibility Protection, as most recently amended by the Utah Air Quality Board on March 26, 1993, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-26. R307-110-26 Section XVIII, Demonstration of GEP Stack Height.**

The Utah State Implementation Plan, Section XVIII, Demonstration of GEP Stack Height, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-27. Section XIX, Small Business Assistance Program.**

The Utah State Implementation Plan, Section XIX, Small Business Assistance Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-28. Regional Haze.**

The Utah State Implementation Plan, Section XX, Regional Haze, as most recently amended by the Utah Air Quality Board on May 5, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-29. Section XXI, Diesel Inspection and Maintenance Program.**

The Utah State Implementation Plan, Section XXI, Diesel Inspection and Maintenance Program, as most recently amended by the Utah Air Quality Board on July 12, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-30. Section XXII, General Conformity.**

The Utah State Implementation Plan, Section XXII,

General Conformity, as adopted by the Utah Air Quality Board on October 4, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-31. Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability.**

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability, as most recently amended by the Utah Air Quality Board on March 31, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-32. Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County.**

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County, as most recently amended by the Utah Air Quality Board on February 5, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-33. Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County.**

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County, as most recently amended by the Utah Air Quality Board on October 6, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-34. Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County.**

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County, as most recently amended by the Utah Air Quality Board on March 31, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**R307-110-35. Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County.**

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County, as most recently amended by the Utah Air Quality Board on February 5, 1997, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

**KEY: air pollution, particulate matter, ozone  
October 7, 2004 19-2-104(3)(e)  
Notice of Continuation March 27, 2002**

**R307. Environmental Quality, Air Quality.****R307-214. National Emission Standards for Hazardous Air Pollutants.****R307-214-1. Part 61 Sources.**

The provisions of 40 Code of Federal Regulations (CFR) Part 61, National Emission Standards for Hazardous Air Pollutants, effective as of October 20, 1994, are incorporated into these rules by reference. For source categories delegated to the State, references in 40 CFR Part 61 to "the Administrator" shall refer to the Executive Secretary.

**R307-214-2. Part 63 Sources.**

The provisions listed below of 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories, effective as of July 1, 2003, or later for those whose subsequent publication citation is included below, are incorporated into these rules by reference. References in 40 CFR Part 63 to "the Administrator" shall refer to the executive secretary, unless by federal law the authority is specific to the Administrator and cannot be delegated.

- (1) 40 CFR Part 63, Subpart A, General Provisions.
- (2) 40 CFR Part 63, Subpart B, Requirements for Control Technology Determinations for Major Sources in Accordance with 42 U.S.C. 7412(g) and (j).
- (3) 40 CFR Part 63, Subpart F, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.
- (4) 40 CFR Part 63, Subpart G, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.
- (5) 40 CFR Part 63, Subpart H, National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.
- (6) 40 CFR Part 63, Subpart I, National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.
- (7) 40 CFR Part 63, Subpart J, National Emission Standards for Polyvinyl Chloride and Copolymers Production.
- (8) 40 CFR Part 63, Subpart L, National Emission Standards for Coke Oven Batteries.
- (9) 40 CFR Part 63, Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.
- (10) 40 CFR Part 63, Subpart N, National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.
- (11) 40 CFR Part 63, Subpart O, National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations.
- (12) 40 CFR Part 63, Subpart Q, National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.
- (13) 40 CFR Part 63, Subpart R, National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).
- (14) 40 CFR Part 63, Subpart T, National Emission Standards for Halogenated Solvent Cleaning.
- (15) 40 CFR Part 63, Subpart U, National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.
- (16) 40 CFR Part 63, Subpart AA, National Emission Standards for Hazardous Air Pollutants for Phosphoric Acid Manufacturing.
- (17) 40 CFR Part 63, Subpart BB, National Emission Standards for Hazardous Air Pollutants for Phosphate Fertilizer Production.
- (18) 40 CFR Part 63, Subpart CC, National Emission

Standards for Hazardous Air Pollutants from Petroleum Refineries.

(19) 40 CFR Part 63, Subpart DD, National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

(20) 40 CFR Part 63, Subpart EE, National Emission Standards for Magnetic Tape Manufacturing Operations.

(21) 40 CFR Part 63, Subpart GG, National Emission Standards for Aerospace Manufacturing and Rework Facilities.

(22) 40 CFR Part 63, Subpart HH, National Emission Standards for Hazardous Air Pollutants for Oil and Natural Gas Production.

(23) 40 CFR Part 63, Subpart JJ, National Emission Standards for Wood Furniture Manufacturing Operations.

(24) 40 CFR Part 63, Subpart KK, National Emission Standards for the Printing and Publishing Industry.

(25) 40 CFR Part 63, Subpart MM, National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semicheical Pulp Mills.

(26) 40 CFR Part 63, Subpart OO, National Emission Standards for Tanks - Level 1.

(27) 40 CFR Part 63, Subpart PP, National Emission Standards for Containers.

(28) 40 CFR Part 63, Subpart QQ, National Emission Standards for Surface Impoundments.

(29) 40 CFR Part 63, Subpart RR, National Emission Standards for Individual Drain Systems.

(30) 40 CFR Part 63, Subpart SS, National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process (Generic MACT).

(31) 40 CFR Part 63, Subpart TT, National Emission Standards for Equipment Leaks- Control Level 1 (Generic MACT).

(32) 40 CFR Part 63, Subpart UU, National Emission Standards for Equipment Leaks-Control Level 2 Standards (Generic MACT).

(33) 40 CFR Part 63, Subpart VV, National Emission Standards for Oil-Water Separators and Organic-Water Separators.

(34) 40 CFR Part 63, Subpart WW, National Emission Standards for Storage Vessels (Tanks)-Control Level 2 (Generic MACT).

(35) 40 CFR Part 63, Subpart XX, National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.

(36) 40 CFR Part 63, Subpart YY, National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic MACT.

(37) 40 CFR Part 63, Subpart CCC, National Emission Standards for Hazardous Air Pollutants for Steel Pickling-HCl Process Facilities and Hydrochloric Acid Regeneration Plants.

(38) 40 CFR Part 63, Subpart DDD, National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production.

(39) 40 CFR Part 63, Subpart EEE, National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors.

(40) 40 CFR Part 63, Subpart GGG, National Emission Standards for Hazardous Air Pollutants for Pharmaceuticals Production.

(41) 40 CFR Part 63, Subpart HHH, National Emission Standards for Hazardous Air Pollutants for Natural Gas Transmission and Storage.

(42) 40 CFR Part 63, Subpart III, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production.

(43) 40 CFR Part 63, Subpart JJJ, National Emission

Standards for Hazardous Air Pollutants for Group IV Polymers and Resins.

(44) 40 CFR Part 63, Subpart LLL, National Emission Standards for Hazardous Air Pollutants for Portland Cement Manufacturing Industry.

(45) 40 CFR Part 63, Subpart MMM, National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.

(46) 40 CFR Part 63, Subpart NNN, National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing.

(47) 40 CFR Part 63, Subpart OOO, National Emission Standards for Hazardous Air Pollutants for Amino/Phenolic Resins Production (Resin III).

(48) 40 CFR Part 63, Subpart PPP, National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production.

(49) 40 CFR Part 63, Subpart QQQ, National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelters.

(50) 40 CFR Part 63, Subpart RRR, National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.

(51) 40 CFR Part 63, Subpart TTT, National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting.

(52) 40 CFR Part 63, Subpart UUU, National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.

(53) 40 CFR Part 63, Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works.

(54) 40 CFR Part 63, Subpart AAAA, National Emission Standards for Hazardous Air Pollutants for Municipal Solid Waste Landfills.

(55) 40 CFR Part 63, Subpart CCCC, National Emission Standards for Manufacturing of Nutritional Yeast.

(56) 40 CFR Part 63, Subpart EEEE, National Emission Standards for Hazardous Air Pollutants for Organic Liquids Distribution (non-gasoline), published on February 3, 2004 at 69 FR 5038.

(57) 40 CFR Part 63, Subpart FFFF, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Organic Chemical Manufacturing, published on November 10, 2003 at 68 FR 63852.

(58) 40 CFR Part 63, Subpart GGGG, National Emission Standards for Vegetable Oil Production: Solvent Extraction.

(59) 40 CFR Part 63, Subpart HHHH - National Emission Standards for Wet-Formed Fiberglass Mat Production.

(60) 40 CFR Part 63, Subpart IIII, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Automobiles and Light-Duty Trucks, published on April 26, 2004 at 69 FR 22602.

(61) 40 CFR Part 63, Subpart JJJJ, National Emission Standards for Hazardous Air Pollutants for Paper and Other Web Surface Coating Operations.

(62) 40 CFR Part 63, Subpart KKKK, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Metal Cans, published on November 13, 2003 at 68 FR 64432.

(63) 40 CFR Part 63, Subpart MMMM, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products, published on January 2, 2004 at 69 FR 130.

(64) 40 CFR Part 63, Subpart NNNN - National Emission Standards for Large Appliances Surface Coating Operations.

(65) 40 CFR Part 63, Subpart OOOO, National Emission Standards for Hazardous Air Pollutants for Fabric Printing, Coating and Dyeing Surface Coating Operations.

(66) 40 CFR Part 63, Subpart PPPP, National Emissions Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products, published on April 19, 2004 at 69 FR 20968.

(67) 40 CFR Part 63, Subpart QQQQ, National Emission Standards for Hazardous Air Pollutants for Surface Coating of Wood Building Products.

(68) 40 CFR Part 63, Subpart RRRR, National Emission Standards for Hazardous Air Pollutants for Metal Furniture Surface Coating Operations.

(69) 40 CFR Part 63, Subpart SSSS - National Emission Standards for Metal Coil Surface Coating Operations.

(70) 40 CFR Part 63, Subpart TTTT - National Emission Standards for Leather Tanning and Finishing Operations.

(71) 40 CFR Part 63, Subpart UUUU - National Emission Standards for Cellulose Product Manufacturing.

(72) 40 CFR Part 63, Subpart VVVV - National Emission Standards for Boat Manufacturing.

(73) 40 CFR Part 63, Subpart WWWW, National Emissions Standards for Hazardous Air Pollutants for Reinforced Plastic Composites Production.

(74) 40 CFR Part 63, Subpart XXXX - National Emission Standards for Tire Manufacturing.

(75) 40 CFR Part 63, Subpart YYYY, National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines, published on March 5, 2004 at 69 FR 10512.

(76) 40 CFR Part 63, Subpart ZZZZ, National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines, published on June 15, 2004 at 69 FR 33474.

(77) 40 CFR Part 63, Subpart AAAAA, National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants, published on January 5, 2004 at 69 FR 394.

(78) 40 CFR Part 63, Subpart BBBB, National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing.

(79) 40 CFR Part 63, Subpart CCCCC, National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks.

(80) 40 CFR Part 63, Subpart EEEEE, National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries, published on April 22, 2004 at 69 FR 21906.

(81) 40 CFR Part 63, Subpart FFFFF, National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing.

(82) 40 CFR Part 63, Subpart GGGGG, National Emission Standards for Hazardous Air Pollutants for Site Remediation, published on October 8, 2003 at 68 FR 58172.

(83) 40 CFR Part 63, Subpart HHHHH, National Emission Standards for Hazardous Air Pollutants for Miscellaneous Coating Manufacturing, published on December 11, 2003 at 68 FR 69164.

(84) 40 CFR Part 63, Subpart IIIII, National Emission Standards for Hazardous Air Pollutants for Mercury Emissions from Mercury Cell Chlor-Alkali Plants, published on December 19, 2003 at 68 FR 70904.

(85) 40 CFR Part 63, Subpart JJJJJ, National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing.

(86) 40 CFR Part 63, Subpart KKKKK, National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing.

(87) 40 CFR Part 63, Subpart LLLLL, National Emission Standards for Hazardous Air Pollutants for Asphalt Processing and Asphalt Roofing Manufacturing.

(88) 40 CFR Part 63, Subpart MMMMM, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Fabrication Operations.

(89) 40 CFR Part 63, Subpart NNNNN, National Emission Standards for Hazardous Air Pollutants for Hydrochloric Acid Production.

(90) 40 CFR Part 63, Subpart PTTTT, National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Standards.

(91) 40 CFR Part 63, Subpart QQQQQ - National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities.

(92) 40 CFR Part 63, Subpart RRRRR, National Emission Standards for Hazardous Air Pollutants for Taconite Iron Ore Processing, published on October 30, 2003 at 68 FR 61868.

(93) 40 CFR Part 63, Subpart SSSSS, National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing.

(94) 40 CFR Part 63, Subpart TTTTT, National Emission Standards for Hazardous Air Pollutants for Primary Magnesium Refining, published on October 10, 2003 at 68 FR 58615.

**KEY: air pollution, hazardous air pollutant, MACT  
October 7, 2004 19-2-104(1)(a)  
Notice of Continuation February 9, 2004**

**R309. Environmental Quality, Drinking Water.****R309-305. Certification Rules for Backflow Technicians.****R309-305-1. Purpose.**

These rules are established:

- (1) in order to promote the use of trained, experienced professional personnel in protecting the public's health; and
- (2) To establish standards for training, examination, and certification of those personnel involved with cross connection control program administration, testing, maintenance, and repair of backflow prevention assemblies. In addition to establishing standards for the instruction of Backflow Technicians.

**R309-305-2. Authority.**

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(4)(a) of the Utah Code and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act.

**R309-305-3. Extent of Coverage.**

These rules shall apply to all personnel who will be:

- (1) directly involved with the administration or enforcement of any cross connection control program being administered by a drinking water system; or
- (2) testing, maintaining and/or repairing any backflow prevention assembly; or
- (3) instructors within the certification program, regardless of institution or program.

**R309-305-4. Definitions.**

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

(1) Backflow Technician - An individual who has met the requirements and successfully completed the course of instruction and certification requirements for Class I, II or III backflow technician certification as outlined herein.

(a) Class I Backflow Technician is a Cross Connection Control Program Administrator.

(b) Class II Backflow Technician is a Backflow Assembly Tester.

(c) Class III Backflow Technician is a Backflow Instructor Trainer.

(2) Class - means the level of certification of a Backflow Technician (Class I, II or III).

(3) Performance Examination - means a closed book hands on demonstration of an individual's ability to conduct a field test on backflow prevention assemblies.

(4) Proctor - means a Class III Technician authorized to administer the written or the performance examination.

(5) Renewal Course - means a course of instruction, approved by the Commission, which is a prerequisite to the renewal of a Backflow Technician's Certificate.

(6) Secretary to the Commission - means that individual appointed by the Executive Secretary to conduct the business of the Commission and to make recommendations to the Executive Secretary regarding backflow technician certification.

(7) Written Examination - means the examination for record used to determine the competency and ability of applicants in understanding of the required course of instruction.

**R309-305-5. General Policies.**

(1) Certification Application: Any individual may apply for certification.

(2) Certification Classes: The classes of certificates shall be: Class I, Class II, and Class III.

(a) Class I Backflow Technician - Cross Connection Control Program Administrator: This certificate shall be issued to those individuals who are directly involved in administering a cross connection control program, who have demonstrated

their knowledge and ability by passing the certification examination.

(i) These individuals may NOT test, maintain or repair any backflow prevention assembly for record (except to insure proper testing techniques are being utilized within their jurisdiction).

(ii) These individuals may conduct plan/design reviews, hazard assessment investigations, compliance inspections, and enforce local laws, codes, rules and regulations and policies within their jurisdictions, and offer technical assistance as needed.

(b) Class II Backflow Technician - Backflow Assembly Tester: This certificate shall be issued to those individuals who have demonstrated their knowledge and ability by passing the written and performance certification examinations and in addition having proven qualified and competent to test, maintain, and/or repair (see R309-305-5(3)(b)) backflow prevention assemblies (commercially as well as within their jurisdiction) by passing the practical examination.

(c) Class III Backflow Technician - Backflow Instructor Trainer: This certificate shall be issued to those individuals who have successfully completed a 3 year renewal cycle as a Class II Technician and in addition have proven qualified and competent to instruct approved Backflow Technician Certification classes by participating in and passing an approved Class III certification course.

(3) Certification Requirements: Those individuals seeking certification as a Backflow Technician must participate in an approved Technician's course of instruction and pass the examination required per class of certification.

(a) All individuals who instruct Backflow Technician training courses must hold a current Class III - Backflow Technician certificate.

(b) The issuance of a Backflow Technician certificate (Class I, II or III) does NOT authorize that individual to install or replace any backflow prevention assembly. The installation replacement or repair of assemblies must be made by a tester having appropriate licensure from the Department of Commerce, Division of Occupational and Professional Licensing, except when the Backflow Technician is an agent of the assembly owner.

**R309-305-6. Technician Responsibilities.**

(1) All technicians shall notify the Division of Drinking Water, local health department and the appropriate public water system of any backflow incident as soon as possible, but within eight hours. The Division can be reached during business hours at 801-536-4200 or after hours at 801-536-4123;

(2) All technicians shall notify the appropriate public water system of a failing backflow prevention assembly within five days;

(3) All technicians shall ensure that acceptable procedures are used for testing, repairing and maintaining any backflow prevention assembly;

(4) All technicians shall report the backflow prevention assembly test results to the appropriate public water system within 30 days;

(5) All technicians shall include, on the test report form, any materials or replacement parts used to effect a repair or to perform maintenance on a backflow prevention assembly;

(6) All technicians shall ensure that any replacement part is equal in quality to parts originally supplied within the backflow prevention assembly and are supplied only by the manufacturer or their agent;

(7) All technicians shall not change the design, material, or operational characteristics of the assembly during any repair or maintenance;

(8) All technicians shall perform each test and shall be responsible for the competency and accuracy of all testing and

reports thereof;

(9) All technicians shall ensure the status of their technician certification is current; and

(10) All technicians shall be equipped with and competent in the use of all tools, gauges, and equipment necessary to properly test, repair and maintain a backflow prevention assembly.

### **R309-305-7. Examinations.**

(1) Exam Issuance: The examination recognized by the Commission for certification shall be issued through the Division of Drinking Water for both initial certification and renewal of certification.

If an individual fails an examination, the individual may file another application for reexamination on the next available test date.

(a) Examinations (both written and performance) that are used to determine competency and ability shall be approved by the Cross Connection Control Commission prior to being issued.

(b) Oral examinations may be administered to an individual who has failed to pass at least two consecutive written examinations. The oral examination shall be administered by at least one Commission member and two Class III Backflow Technicians. If the individual fails the examination, he shall be given written notification of those areas deficient.

(2) Exam Scoring: Class I, Class II and Class III Technician's must successfully complete a written exam with a score of 70% or higher. Class II Technician's must also successfully demonstrate competence and ability in the performance examination, for the testing of a Pressure Vacuum Breaker Assembly, a Spill-Resistant Pressure Vacuum Breaker Assembly, a Double Check Valve Assembly, and a Reduced Pressure Principal Backflow Prevention Assembly.

(a) The performance examination shall be conducted by a minimum of two Class III Technicians.

(b) Each candidate must demonstrate competence and shall be evaluated by a proctor and assessed a pass or fail grade in each of the following areas.

- (i) Properly identify backflow assembly
- (ii) Properly identify test equipment needed
- (iii) Properly connect test equipment
- (iv) Test assembly
- (v) Identify inaccuracies
- (vi) Properly diagnose assembly problems
- (vii) Properly record test results

The candidate must receive a pass grade from the proctor in all areas listed above for each assembly tested in order to pass the performance examination.

(c) An individual may apply for reexamination of either portion of the examination a maximum of two times. After a third failing grade, the individual must register for and complete another technician's course prior to any further reexamination.

(3) Class III Exam: Class III Technicians must participate in, and pass, a Class III Certification course, approved by the Cross Connection Control Commission, in addition to the successful completion of the Class II Technician's certification course.

### **R309-305-8. Certificates.**

(1) Certificate Issuance: For a certificate to be issued, the individual must complete a Technician's training course and pass with a minimum score of 70% the written examination. For Class II and III certificates, passing marks on the performance examination shall also be required.

(2) Certificate Renewal: The Backflow Technician's certificate is issued by the Executive Secretary and shall expire December 31, three years from the year of issuance.

(a) Backflow Technician certificates shall be issued by the Commission Secretary, by delegated authority from the Drinking Water Board.

(b) The Backflow Technician's certificate may be renewed up to six months in advance of the expiration date.

(c) To renew a Class I or II Technician certificate, the Technician must register and participate in an approved backflow prevention renewal course, and pass the renewal examination (minimum score of 70%) which shall include a performance portion for Class II Certification.

(d) To renew a Class III Technician certificate, the following criteria shall be met:

(i) In the 3 year certification period a total of three events from the following list shall be obtained in any combination:

(A) Instruction at a Commission approved backflow technician certification or renewal course.

(B) Serve as a proctor for the performance examination at a Commission approved backflow technician certification or renewal course.

(ii) Attendance at a minimum of two of the annual Class III coordination meetings or receive a meeting update from the Commission Secretary.

(iii) Attendance and successful review at a Class III renewal course, as approved by the Cross Connection Control Commission. The course would consist of presentation of a randomly picked topic in backflow prevention before a peer group of other Class III technicians, and a demonstration of knowledge of all the testing equipment available by a random selection of test equipment for the technician to perform the performance exam.

(e) Should the applicant fail the renewal written examination (minimum score of 70%), renewal of that existing license shall not be allowed until a passing score is obtained. If the applicant fails to pass the test after three attempts, the applicant shall be required to participate in an approved Backflow Technician's course before retaking the written and performance examinations. (Class I Technicians only need to pass the written examination.)

(3) Certification Revocation: The Executive Secretary may suspend or revoke a Backflow Technician's certification, for good cause, including any of the following:

(a) The certified person has acted in disregard for public health or safety;

(b) The certified person has engaged in activities beyond the scope of their licensure through the Department of Commerce, Division of Professional Licensing (i.e. installation, or replacement of assemblies);

(c) The certified person has misrepresented or falsified figures or reports concerning backflow prevention assembly or test results;

(d) The certified person has failed to notify proper authorities of a failing backflow prevention assembly within five days, as required by R309-305-6(2);

(e) The certified person has failed to notify proper authorities of a backflow incident for which the technician had personal knowledge, as required by R309-305-6(1);

(f) The certified person has implemented a change of the design, material or operational characteristics of a backflow prevention assembly that is in use, and which has not been authorized by the Executive Secretary; or

(g) Disasters or "Acts of God", which could not be reasonably anticipated or prevented, shall not be grounds for suspension or revocation actions.

### **R309-305-9. Fees.**

(1) Fees: The fees for certification shall be submitted in accordance with Section 63-38-3.2.

(2) All fees shall be deposited in a special account to defray the costs of administering the Cross Connection Control

and Certification programs.

(3) **Renewal Fees:** The renewal fee for all classes of Technicians shall be in accordance with Section 63-38-3.2.

(4) All fees shall be deposited in a special account to defray the cost of the program.

(5) All fees are non-refundable.

**R309-305-10. Training.**

(1) **Training:** Minimum training course curriculum, written tests and performance tests shall be established by the Commission and implemented by the Secretary of the Commission for both the Technician Class I and Class II courses and the renewal courses.

(a) The length of the initial certification course for a Class I cross connection control program administrator shall be a minimum of 32 hours including examination.

(b) The length of the initial certification course for a Class II backflow assembly tester shall be a minimum of 32 hours excluding examination.

(c) The length of each renewal course shall be a minimum of 16 hours including the renewal examination (both written and performance examinations).

**R309-305-11. Cross Connection Control Commission.**

(1) **Appointment of Members:** A Cross Connection Control Commission shall be appointed by the Drinking Water Board from nominations made by cooperating agencies.

(2) **Responsibility:** The Commission is charged with the responsibility of conducting all work necessary to promote the cross connection program as well as recommending qualified individuals for certification, and overseeing the maintenance of necessary records.

(3) **Representative Agencies:** The Commission shall consist of seven members:

(a) One member (nominated by the League of Cities and Towns) shall represent a community drinking water supply.

(b) One member (nominated by the Utah Pipes Trades Education Program) shall represent the plumbing trade and must be a licensed Journeyman Plumber.

(c) One member (nominated by the Utah Mechanical Contractors Association) shall represent the mechanical trade contractors.

(d) One member (nominated by the Drinking Water Board) shall represent the Drinking Water Board.

(e) One member (nominated by the Rural Water Association of Utah) shall represent small water systems.

(f) One member (nominated by the Utah Chapter American Backflow Prevention Association) shall represent Class II Backflow Technicians and shall be a Class II or III Backflow Technician.

(g) One member (nominated by the Utah Association of Plumbing and Mechanical Officials) shall represent plumbing inspection officials and shall be a licensed plumbing inspector.

(4) **Term:** Each member shall serve a two year term. At the initial meeting of the Commission, lots shall be drawn corresponding to two one and three two year terms. Thereafter, all Commission members' terms shall be on a staggered basis.

(5) **Nominations of Members:** All nominations of Commission members shall be presented to the Drinking Water Board, which reserves the right to refuse any nomination.

(6) **Unexpired Term:** An appointment to succeed a Commission member who is unable to complete his full term shall be for the unexpired term only, and shall be nominated to, and appointed by, the Drinking Water Board in accordance with R309-305-11(1).

(7) **Quorum:** At least four Commission members shall be required to constitute a quorum to conduct the Commission's business.

(8) **Officers:** Each year the Commission shall elect officers

as needed to conduct its business.

(a) The Commission shall meet at least once a year.

(b) All actions taken by the Commission shall require a minimum of four affirmative votes.

**R309-305-12. Secretary of the Commission.**

(1) **Appointment:** The Executive Secretary of the Drinking Water Board shall appoint, with the consent of the Commission, a staff member to function as the Secretary to the Commission. This Secretary shall serve to coordinate the business of the Commission and to bring issues before the Commission.

(2) **Duties:** The Secretary's duties shall be to:

(a) act as a liaison between the Commission, certified Technicians, public water suppliers, and the public at large;

(b) maintain records necessary to implement and enforce these rules;

(c) notify sponsor agencies of Commission nominations as needed;

(d) coordinate and review all cross connection control programs, certification training and the certification of Backflow Technicians;

(e) serve as a source of public information for Certified Technicians, water purveyors, and the public at large;

(f) receive and process applications for certification;

(g) investigate and verify all complaints against or concerning certified Backflow Prevention Technicians, and advise the Executive Secretary of the Drinking Water Board regarding any enforcement actions that are being recommended by the Commission;

(h) develop and administer examinations;

(i) review and correct examinations.

(3) The Secretary to the Commission is also responsible for making recommendations to the Executive Secretary regarding backflow technician certification as provided in these rules.

**KEY: drinking water, cross connection control, backflow assembly tester**

**October 15, 2004**

**Notice of Continuation April 10, 2000**

**19-4-104(4)(a)**

**63-46b-4**

**R317. Environmental Quality, Water Quality.**  
**R317-7. Underground Injection Control (UIC) Program.**  
**R317-7-0. Effective Date and Applicability of Rules.**

The effective date of these rules is January 19, 1983 (40 C.F.R. 147.2250). Class II wells are administered by the Division of Oil, Gas and Mining, whose primacy became effective October 8, 1982 (40 C.F.R. 147.2251).

**R317-7-1. Incorporation By Reference.**

1.1 Underground Injection Control Program - 40 C.F.R. 144.7, 144.13(d), 144.14, 144.16, 144.23(c), 144.32, 144.34, 144.36, 144.38, 144.39, 144.40, 144.41, 144.51(a)-(o) and (q), 144.52, 144.53, 144.54, 144.55, 144.60, 144.61, 144.62, 144.63, 144.64, 144.65, 144.66, 144.70, and 144.87, July 1, 2003 ed., are adopted and incorporated by reference with the following exceptions:

A. "Director" is hereby replaced with "Executive Secretary".

B. "one quarter mile" is hereby replaced with "two miles".

1.2 Underground Injection Control Program - Criteria and Standards - 40 C.F.R. 146.4, 146.6, 146.7, 146.8, 146.12, 146.13(d), 146.14, 146.32, 146.34, 146.61, 146.62, 146.63, 146.64, 146.65, 146.66, 146.67, 146.68, 146.69, 146.70, 146.71, 146.72, and 146.73, July 1, 2003 ed., are adopted and incorporated by reference with the following exceptions:

A. "Director" is hereby replaced with "Executive Secretary";

B. "one quarter (1/4) mile" and "one-fourth (1/4) mile" are each hereby replaced with "two miles".

1.3 Hazardous Waste Injection Restrictions - 40 C.F.R. Part 148, July 1, 2003 ed., is adopted and incorporated by reference with the exception that "Director" is hereby replaced with "Executive Secretary".

1.4 Identification and Listing of Hazardous Waste - 40 C.F.R. Part 261, July 1, 2003 ed., is adopted and incorporated by reference.

1.5 National Primary Drinking Water Regulations - 40 C.F.R. Part 141, July 1, 2003 ed., is adopted and incorporated by reference.

1.6 Guidelines Establishing Test Procedures for the Analysis of Pollutants - 40 C.F.R. Part 136 Table 1B, July 1, 2003 ed., is adopted and incorporated by reference.

1.7 Nuclear Regulatory Commission - Standards for Protection Against Radiation - 10 C.F.R. Part 20 Appendix B, Table 2 Column 2, January 1, 2003 ed., is adopted and incorporated by reference.

1.8 Procedures for Decision Making - 40 C.F.R. 124.3(a); 124.5(a), (c), (d) and (f); 124.6(a), (c), (d) and (e); 124.8; 124.10(a)(1)ii, iii, and (a)(1)(V); 124.10(b), (c), (d), and (e); 124.11; 124.12(a); and 124.17(a) and (c), July 1, 2003 ed., are adopted and incorporated by reference with the exception that "Director" is hereby replaced by "Executive Secretary".

**R317-7-2. Definitions.**

2.1 "Abandoned Well" means a well whose use has been permanently discontinued or which is in a state of disrepair such that it cannot be used for its intended purpose or for observation purposes.

2.2 "Application" means standard forms for applying for a permit, including any additions, revisions or modifications.

2.3 "Aquifer" means a geologic formation or any part thereof that is capable of yielding significant water to a well or spring.

2.4 "Area of Review" means the zone of endangering influence or fixed area radius determined in accordance with the provisions of 40 C.F.R. 146.6.

2.5 "Background Data" means the constituents or parameters and the concentrations or measurements which describe water quality and water quality variability prior to

surface or subsurface discharge.

2.6 "Barrel" means 42 (U.S.) gallons at 60 degrees F and atmospheric pressure.

2.7 "Casing" means a pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and thus prevent the walls from caving, to prevent loss of drilling mud into porous ground, or to prevent water, gas, or other fluid from entering or leaving the hole.

2.8 "Casing Pressure" means the pressure within the casing or between the casing and tubing at the wellhead.

2.9 "Catastrophic Collapse" means the sudden and utter failure of overlying "strata" caused by removal of underlying materials.

2.10 "Cementing" means the operation whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing.

2.11 "Cesspool" means a "drywell" that receives untreated sanitary waste containing human excreta, and which sometimes has an open bottom and/or perforated sides.

2.12 "Confining Bed" means a body of impermeable or distinctly less permeable material stratigraphically adjacent to one or more aquifers.

2.13 "Confining Zone" means a geological formation, group of formations, or part of a formation that is capable of limiting fluid movement above an injection zone.

2.14 "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

2.15 "Conventional Mine" means an open pit or underground excavation for the production of minerals.

2.16 "Disposal Well" means a well used for the disposal of fluids into a subsurface stratum.

2.17 "Drilling Mud" means mud of not less than 36 viscosity (A.P.I. Full Funnel Method) and a weight of not less than nine pounds per gallon.

2.18 "Drywell" means a well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids.

2.19 "Exempted Aquifer" means an aquifer or its portion that meets the criteria in the definition of "underground source of drinking water" but which has been exempted according to the procedures of 40 C.F.R. 144.7.

2.20 "Existing Injection Well" means an "injection well" other than a "new injection well."

2.21 "Experimental Technology" means a technology which has not been proven feasible under the conditions in which it is being tested.

2.22 "Fault" means a surface or zone of rock fracture along which there has been a displacement.

2.23 "Flow Rate" means the volume per time unit given to the flow of gases or other fluid substance which emerges from an orifice, pump, turbine or passes along a conduit or channel.

2.24 "Fluid" means material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

2.25 "Formation" means a body of rock characterized by a degree of lithologic homogeneity which is prevailing, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

2.26 "Formation Fluid" means "fluid" present in a "formation" under natural conditions as opposed to introduced fluids, such as drilling mud.

2.27 "Generator" means any person, by site location, whose act or process produces hazardous waste identified or listed in 40 C.F.R. Part 261.

2.28 "Groundwater" means water below the ground surface in a zone of saturation.

2.29 "Ground water protection area" refers to the drinking



water source protection zones for ground water sources delineated by the Utah Division of Drinking Water according to Utah Administrative Code R309-600 - Drinking Water Source Protection For Ground-Water Sources.

2.30 "Hazardous Waste" means a hazardous waste as defined in R315-2-3.

2.31 "Hazardous Waste Management Facility" means all contiguous land, structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combination of them).

2.32 "Improved sinkhole" means a naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface.

2.33 "Injection Well" means a well into which fluids are being injected for subsurface emplacement of the fluids.

2.34 "Injection Zone" means a geological "formation," group of formations, or part of a formation receiving fluids through a well.

2.35 "Lithology" means the description of rocks on the basis of their physical and chemical characteristics.

2.36 "Monitoring Well" means a well used to measure groundwater levels and to obtain water samples for water quality analysis.

2.37 "New Injection Well" means an injection well which began injection after January 19, 1983.

2.38 "Packer" means a device lowered into a well to produce a fluid-tight seal within the casing.

2.39 "Plugging" means the act or process of stopping the flow of water, oil, or gas into or out of a formation through a borehole or well penetrating that formation.

2.40 "Plugging Record" means a systematic listing of permanent or temporary abandonment of water, oil, gas, test, exploration and waste injection wells, and may contain a well log, description of amounts and types of plugging material used, the method employed for plugging, a description of formations which are sealed and a graphic log of the well showing formation location, formation thickness, and location of plugging structures.

2.41 "Point of injection" means the last accessible sampling point prior to waste fluids being released into the subsurface environment through a Class V injection well. For example, the point of injection of a Class V septic system might be the distribution box - the last accessible sampling point before the waste fluids drain into the underlying soils. For a dry well, it is likely to be the well bore itself.

2.42 "Pressure" means the total load or force per unit area acting on a surface.

2.43 "Project" means a group of wells in a single operation.

2.44 "Professional Engineer" means any person qualified to practice engineering before the public in the state of Utah and professionally registered as required under the Professional Engineers and Professional Land Surveyors Licensing Act Rules (UAC R156-22).

2.45 "Professional Geologist" means any person qualified to practice geology before the public in the state of Utah and professionally registered as required under the Professional Geologist Licensing Act Rules (UAC R156-76).

2.46 "Radioactive Waste" means any waste which contains radioactive material in concentrations which exceed those listed in 10 C.F.R. Part 20, Appendix B, Table II Column 2.

2.47 "Sanitary waste" means liquid or solid wastes originating solely from humans and human activities, such as wastes collected from toilets, showers, wash basins, sinks used for cleaning domestic areas, sinks used for food preparation,

clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned. Sources of these wastes may include single or multiple residences, hotels and motels, restaurants, bunkhouses, schools, ranger stations, crew quarters, guard stations, campgrounds, picnic grounds, day-use recreation areas, other commercial facilities, and industrial facilities provided the waste is not mixed with industrial waste.

2.48 "Septic system" means a "well" that is used to emplace sanitary waste below the surface and is typically comprised of a septic tank and subsurface fluid distribution system or disposal system.

2.49 "Stratum" (plural strata) means a single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material.

2.50 "Subsidence" means the lowering of the natural land surface in response to earth movements; lowering of fluid pressure; removal of underlying supporting material by mining or solution of solids, either artificially or from natural causes; compaction due to wetting (Hydrocompaction); oxidation of organic matter in soils; or added load on the land surface.

2.51 "Subsurface fluid distribution system" means an assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground.

2.52 "Surface Casing" means the first string of well casing to be installed in the well.

2.53 "Total Dissolved Solids (TDS)" means the total residue (filterable) as determined by use of the method specified in 40 C.F.R. Part 136 Table 1B.

2.54 "Transferee" means the owner or operator receiving ownership and/or operational control of the well.

2.55 "Transferor" means the owner or operator transferring ownership and/or operational control of the well.

2.56 "Underground Injection" means a "well injection".

2.57 "Underground Sources of Drinking Water (USDW)" means an aquifer or its portion which:

A. Supplies any public water system, or which contains a sufficient quantity of ground water to supply a public water system; and

1. currently supplies drinking water for human consumption; or

2. contains fewer than 10,000 mg/l total dissolved solids (TDS); and

B. is not an exempted aquifer. (See Section 7-4).

2.58 "Well" means a bored, drilled or driven shaft whose depth is greater than the largest surface dimension; or a dug hole whose depth is greater than the largest surface dimension; or an improved sinkhole; or a subsurface fluid distribution system.

2.59 "Well Injection" means the subsurface emplacement of fluids through a well.

2.60 "Well Monitoring" means the measurement, by on-site instruments or laboratory methods, of the quality of water in a well.

2.61 "Well Plug" means a watertight and gas-tight seal installed in a borehole or well to prevent movement of fluids.

2.62 "Well Stimulation" means several processes used to clean the well bore, enlarge channels, and increase pore space in the interval to be injected thus making it possible for wastewater to move more readily into the formation, and includes:

- (1) surging;
- (2) jetting;
- (3) blasting;
- (4) acidizing; and
- (5) hydraulic fracturing.

### **R317-7-3. Classification of Injection Wells.**

Injection wells are classified as follows:

### 3.1 Class I

A. Hazardous Waste Injection Wells: wells used by generators of hazardous wastes or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing, within two miles of the well bore, an underground source of drinking water;

B. Nonhazardous Injection Wells: other industrial and municipal waste disposal wells which inject nonhazardous fluids beneath the lowermost formation containing, within two miles of the well bore, an underground source of drinking water; this category includes disposal wells operated in conjunction with uranium mining activities.

C. Radioactive waste disposal wells which inject fluids below the lowermost formation containing an underground source of drinking water within two miles of the well bore.

### 3.2 Class II. Wells which inject fluids:

A. which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with wastewaters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection;

B. for enhanced recovery of oil or natural gas; and

C. for storage of hydrocarbons which are liquid at standard temperature and pressure.

Class II injection wells are regulated by the Division of Oil, Gas and Mining under Oil and Gas Conservation General Rules, R649-5.

3.3 Class III. Wells which inject for extraction of minerals, including:

A. mining of sulfur by the Frasch process;

B. in situ production of uranium or other metals. This category includes only in situ production from ore bodies which have not been conventionally mined. Solution mining of conventional mines such as stopes leaching is included in Class V; and

C. solution mining of salts or potash.

### 3.4 Class IV

A. Wells used by generators of hazardous wastes or of radioactive wastes, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous wastes or radioactive wastes into a formation which, within two miles of the well, contains an underground source of drinking water;

B. wells used by generators of hazardous wastes or of radioactive wastes, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous wastes or radioactive wastes above a formation which, within two miles of the well, contains an underground source of drinking water;

C. wells used by generators of hazardous wastes or by owners or operators of hazardous waste management facilities, to dispose of hazardous wastes which cannot be classified under Section 7-3.1(A) or 7-3.4(A) and (B) of these rules (e.g. wells used to dispose of hazardous wastes into or above a formation which contains an aquifer which has been exempted).

3.5 Class V. Injection wells not included in Classes I, II, III, or IV. Class V wells include:

A. air conditioning return flow wells used to return to the supply aquifer the water used for heating or cooling in a heat pump;

B. large capacity cesspools, including multiple dwelling, community or regional cesspools, or other devices that receive sanitary wastes, containing human excreta, which have an open bottom and sometimes have perforated sides. The UIC requirements do not apply to single family residential cesspools nor to non-residential cesspools which receive solely sanitary wastes and have the capacity to serve fewer than 20 persons per day;

C. cooling water return flow wells used to inject water

previously used for cooling;

D. drainage wells used to drain surface fluid, primarily storm runoff, into a subsurface formation;

E. dry wells used for the injection of wastes into a subsurface formation;

F. recharge wells used to replenish the water in an aquifer;

G. salt water intrusion barrier wells used to inject water into a fresh water aquifer to prevent the intrusion of salt water into the fresh water;

H. sand backfill and other backfill wells used to inject a mixture of water and sand, mill tailings or other solids into mined out portions of subsurface mines, whether what is injected is radioactive waste or not;

I. septic systems used to inject the waste or effluent from a multiple dwelling, business establishment, community, or regional business establishment septic tank. The UIC requirements do not apply to single family residential septic system wells, nor to non-residential septic system wells which are used solely for the disposal of sanitary waste and have the capacity to serve fewer than 20 persons per day;

J. subsidence control wells (not used for the purpose of oil or natural gas production) used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water;

K. stopes leaching, geothermal and experimental wells;

L. brine disposal wells for halogen recovery processes;

M. injection wells associated with the recovery of geothermal energy for heating, aquaculture and production of electric power; and

N. injection wells used for in situ recovery of lignite, coal, tar sands, and oil shale.

O. motor vehicle waste disposal wells that receive or have received fluids from vehicular repair or maintenance activities, such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (e.g., transmission and muffler repair shop), or any facility that does any vehicular repair work. Fluids disposed in these wells may contain organic and inorganic chemicals in concentrations that exceed the maximum contaminant levels (MCLs) established by the primary drinking water regulations (see 40 CFR Part 141 and Utah Public Drinking Water Rules R309-103). These fluids also may include waste petroleum products and may contain contaminants, such as heavy metals and volatile organic compounds, which pose risks to human health.

### **R317-7-4. Identification of USDW'S and Exempted Aquifers.**

The Executive Secretary shall identify USDW's and exempt aquifers following the procedures and based on the requirements outlined in 40 C.F.R. 144.7 and 40 C.F.R. 146.4.

### **R317-7-5. Prohibition of Unauthorized Injection.**

5.1 Any underground injection is prohibited except as authorized by permit or as allowed under these rules.

5.2 No authorization by permit or by these rules for underground injection shall be construed to authorize or permit any underground injection which endangers a drinking water source.

5.3 Underground injections are prohibited which would allow movement of fluid containing any contaminant into underground sources of drinking water if the presence of that contaminant may cause a violation of any primary drinking water regulation (40 C.F.R. Part 141 and Utah Primary Drinking Water Standards R309-200-5), or which may adversely affect the health of persons. Underground injections shall not be authorized if they may cause a violation of any ground water quality rules that may be promulgated by the Utah Water Quality Board. Any applicant for a permit shall have the burden of showing that the requirements of this paragraph are met.

5.4 For Class I and III wells, if any monitoring indicates the movement of injection or formation fluids into underground sources of drinking water, the Executive Secretary shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting, including closure of the injection well, as are necessary to prevent such movement. In the case of wells authorized by permit, these additional requirements shall be imposed by modifying the permit or the permit may be terminated, or appropriate enforcement action may be taken if the permit has been violated.

5.5 For Class V wells, if at any time the Executive Secretary determines that a Class V well may cause a violation of primary drinking water rules under R309-200, the Executive Secretary shall:

- A. require the injector to obtain an individual permit;
- B. order the injector to take such actions, including closure of the injection well, as may be necessary to prevent the violation; or
- C. take appropriate enforcement action.

5.6 Whenever the Executive Secretary determines that a Class V well may be otherwise adversely affecting the health of persons, the Executive Secretary may require such actions as may be necessary to prevent the adverse effect.

#### 5.7 Class IV Wells

A. Prohibitions. The construction, operation or maintenance of any Class IV well is prohibited except as specified in 40 C.F.R. 144.13 (c) and 144.23(c) as limited by the definition of Class IV wells in Section 7-3.4 of these rules.

B. Plugging and abandonment requirements. Prior to abandoning a Class IV well, the owner or operator shall close the well in a manner acceptable to the Executive Secretary. At least 30 days prior to abandoning a Class IV well, the owner or operator shall notify the Executive Secretary of the intent to abandon the well.

5.8 Notwithstanding any other provision of this section, the Executive Secretary may take emergency action upon receipt of information that a contaminant which is present in, or is likely to enter a public water system, may present an imminent and substantial endangerment to the health of persons.

5.9 Records. The Executive Secretary may require, by written notice on a selective well-by-well basis, an owner or operator of an injection well to establish and maintain records, make reports, conduct monitoring, and provide other information as is deemed necessary to determine whether the owner or operator has acted or is acting in compliance with these rules.

### **R317-7-6. Permit and Compliance Requirements - New and Existing Wells.**

6.1 The owner or operator of any new injection well is required to obtain a permit from the Executive Secretary prior to construction unless excepted by R317-7-6.3. Compliance with construction plans and standards is required prior to commencing injection operations. Changes in construction plans require approval of the Executive Secretary.

6.2 Owners or operators of existing underground injection wells are required to obtain a permit from the Executive Secretary unless specifically excepted by Section 7-6.3 of these rules.

#### 6.3

A. Existing and new Class V injection wells are authorized by rule, subject to the conditions in Section 7-6.5 of these rules.

B. Well authorization under this Section 7-6.3 expires upon the effective date of a permit issued in accordance with these rules or upon proper closure of the well.

C. An owner or operator of a well which is authorized by rule under this Section 7-6.3 is prohibited from injecting into the well:

1. Upon the effective date of a permit denial.

2. Upon failure to submit a permit application in a timely manner if requested by the Executive Secretary under Section 7-6.4 of these rules.

3. Upon failure to submit inventory information in a timely manner in accordance with Section 7-6.4(C) of these rules.

#### 6.4

A. The Executive Secretary may require any owner or operator of a Class I, III or V well authorized under Section 7-6.3 to apply for and obtain an individual or area permit. Cases where permits may be required include:

1. The injection well is not in compliance with the applicable rules.

2. The injection well is not or no longer is within the category of wells and types of well operations authorized by Section 7-6.3.

3. Protection of an USDW.

B. Any owner or operator authorized under Section 7-6.3 may request a permit and hence be excluded from coverage under Section 7-6.3.

C. Owners or operators of all injection wells regulated by Section 7-6.3 shall submit the following inventory information to the Executive Secretary:

1. facility name and location;
2. name and address of legal contact;
3. ownership of facility;
4. nature and type of injection wells; and
5. operating status of injection wells.

Inventory information shall be submitted no later than January 19, 1984 for existing injection wells and before injection begins for new injection wells.

6.5 Additional requirements for large-capacity cesspools and motor vehicle waste disposal wells (see Class V well descriptions in Sections 7-3.5(B) and 7-3.5(O), respectively).

A. All existing large-capacity cesspools (operational or under construction by April 5, 2000) must close by April 5, 2005. See closure requirements in Section 7-6.6.

B. All new or converted large-capacity cesspools (construction not started before April 5, 2000) are prohibited.

C. All existing motor vehicle waste disposal wells (operational or under construction by April 5, 2000) must either be closed or their owners or operators must obtain a UIC permit.

1. For those wells located within a ground water protection area as designated by the Utah Division of Drinking Water (DDW), closure or permit application submittal must take place within one year of completion of DDW's ground water protection area assessment for the pertinent area.

2. All motor vehicle waste disposal wells statewide located outside a ground water protection area must either be closed or their owners or operators must submit a UIC permit application by January 1, 2007.

3. If well closure is the option chosen, the closure requirements in Section 7-6.6 must be followed. The closure deadline may be extended by the Executive Secretary for up to one year under certain conditions, such as intent to connect to a sanitary sewer.

4. If obtaining a UIC permit is the option chosen, Utah Drinking Water Maximum Contaminant Levels (MCL's), Utah Ground Water Quality Standards, and EPA Adult Lifetime Health Advisories must be met at the point of injection while the permit application is under review. These standards must also be met at the point of injection under the terms of the permit, when issued. Utah Ground Water Protection Levels may be required to be met at downgradient ground water monitoring wells, if required to be installed. Such a permit may require pretreatment of the wastewater, and will require adherence to best management practices and monitoring of the quality of the injectate and any sludge generated.

D. All new or converted motor vehicle waste disposal wells (construction not started before April 5, 2000) are

prohibited.

6.6 Class V well plugging and abandonment requirements.

A. Prior to abandoning a Class V well, the owner or operator shall close the well in a manner that prevents the movement of fluid containing any contaminant into an underground source of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR Part 141 or Utah Primary Drinking Water Standards R309-200-5, or may otherwise adversely affect the health of persons.

B. The owner or operator shall dispose of or otherwise manage any soil, gravel, sludge, liquids, or other materials removed from or adjacent to the well in accordance with all applicable Federal, State, and local regulations and requirements.

C. The owner or operator must notify the Executive Secretary of intent to close the well at least 30 days prior to closure.

6.7 Conversion of motor vehicle waste disposal wells. In limited cases, the Executive Secretary may authorize the conversion (reclassification) of a motor vehicle waste disposal well to another type of Class V well. Motor vehicle wells may only be converted if: all motor vehicle fluids are segregated by physical barriers and are not allowed to enter the well; and, injection of motor vehicle waste is unlikely based on a facility's compliance history and records showing proper waste disposal. The use of a semi-permanent plug as the means to segregate waste is not sufficient to convert a motor vehicle waste disposal well to another type of Class V well.

6.8 Time for Application for Permit. Any person who performs or proposes an underground injection for which a permit is or will be required shall submit a complete application to the Executive Secretary in accordance with Section 7-9 a reasonable time before construction is expected to begin, except for new wells covered by an existing area permit.

6.9 All applications for a Utah UIC permit, including any required Technical Report that addresses the technical requirements of R317-7-10 or R317-7-11, any technical information necessary for the adequate evaluation of any permit application, or any permit renewal applications and Technical Reports that are significantly different from the original permit application, must be prepared by or under the direction, and bear the seal, of a professional geologist or professional engineer.

#### **R317-7-7. Area Permits.**

A. The Executive Secretary may issue a permit on an area basis, rather than for each well individually, provided that the permit is for injection wells:

1. described and identified by location in permit application, if they are existing wells, except that the Executive Secretary may accept a single description of wells with substantially the same characteristics;
2. within the same well field, facility site, reservoir, project, or similar unit in the State;
3. operated by a single owner or operator; and
4. used to inject other than hazardous waste.

B. Area permits shall specify:

1. the area within which underground injections are authorized; and
2. the requirements for construction, monitoring, reporting, operation, and abandonment, for all wells authorized by the permit.

C. The area permit may authorize the permittee to construct and operate, convert, or plug and abandon injection wells within the permit area provided that:

1. the permittee notifies the Executive Secretary at such time as the permit requires, when and where the new well has been or will be located;
2. the additional well meets the area permit criteria; and

3. the cumulative effects of drilling and operation of additional injection wells are considered by the Executive Secretary during evaluation of the area permit application and are acceptable to the Executive Secretary.

D. If the Executive Secretary determines that any additional well does not meet the area permit requirements, the Executive Secretary may modify or terminate the permit or take appropriate enforcement action.

E. If the Executive Secretary determines the cumulative effects are unacceptable, the permit may be modified.

F. The requirements of R317-7-6.9 apply to area permits.

#### **R317-7-8. Emergency Permits.**

A. Notwithstanding any provision in this Part 7, the Executive Secretary is authorized to issue emergency permits for specific underground injections provided the conditions and requirements of 40 C.F.R. 144.34 are met.

B. The requirements of R317-7-6.9 apply to emergency permits.

#### **R317-7-9. Permitting Procedures and Conditions.**

9.1 Application for a Permit

A. Any person who is required to have a permit shall complete, sign and submit an application to the Executive Secretary.

B. When the owner and operator are different, it is the operator's duty to obtain a permit.

C. The application must be complete before the permit is issued.

D. All applicants shall provide the following information:

1. activities conducted by the applicant which require a permit;
2. name, mailing address and location of facility;
3. up to four Standard Industrial Code (SIC) codes which best reflect the principal products or services provided;
4. operator's name, address, telephone number, ownership status, and status as Federal, State, private, public or other entity;
5. whether the facility is located on Indian lands;
6. list of State and Federal environmental permits or construction approvals received or applied for and other relevant environmental permits;
7. topographic map (or other map if the topographic map is unavailable) extending one mile beyond the property boundary; depicting the facility and its intake and discharge structures, any hazardous waste, treatment, storage and disposal facilities; each injection well; and wells, springs, surface water bodies, and drinking water wells listed in public records or otherwise known;
8. a brief description of the nature of the business;
9. a map showing the injection well for which a permit is sought and the applicable area of review. Within the area of review, the map must show a number, or name, and location of all producing wells, injection wells, abandoned wells, dry holes, surface bodies of water, springs, mines, (surface and subsurface), quarries, water wells and other pertinent surface features including residences and roads. The map should also show faults, if known or suspected. Only information of public record is required to be included on this map;
10. a tabulation of data on all wells within the area of review which penetrates into the proposed injection zone. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion, any available water quality data, and any additional information the Executive Secretary may require;
11. maps and cross sections indicating the vertical limits of all underground sources of drinking water within the area of review, their position relative to the injection formation and the direction of water movement, where known, in each

underground source of drinking water which may be affected by the proposed injection;

12. maps and cross sections detailing the geologic structure and lithology of the local area;

13. generalized maps and cross sections illustrating the regional geologic and hydrologic setting;

14. proposed operating data:

(a) average and maximum daily rate and volume of the fluid to be injected;

(b) average and maximum injection pressure; and

(c) source and an appropriate analysis of the chemical, physical, radiological and biological characteristics of injection fluids;

15. proposed formation testing program to obtain an analysis of the chemical, physical and radiological characteristics of and other information on the receiving formation;

16. proposed stimulation program;

17. proposed injection procedure;

18. schematic or other appropriate drawings of the surface and subsurface construction details of the system;

19. contingency plans to cope with all shut-ins or well failures to prevent migration of fluids into any underground source of drinking water;

20. plans (including maps) for meeting the monitoring requirements;

21. for wells within the area of review which penetrate the injection zone but are not properly completed or plugged, the corrective action proposed to be taken;

22. construction procedures, as follows:

(a) For Class I Nonhazardous Wells: a cementing and casing program, logging procedures, deviation checks, and a drilling, testing, and coring program, which comply with Section 7-10.1(A) or 40 C.F.R. 146.12;

(b) For Class I Hazardous Waste Wells: cementing and casing program, well materials specifications and their life expectancy, logging procedures, deviation checks, and a drilling, testing and coring program, which comply with 40 C.F.R. 146.65 and 146.66;

(c) For Class III wells: cementing and casing program, logging procedures, deviation checks, and a drilling, testing, and coring program, which comply with section 7-10.1(B) or 40 C.F.R. 146.32.

23. A plan for plugging and abandoning the well, as follows:

(a) Class I Nonhazardous Well plans shall include information required by 40 C.F.R. 146.14(c) and Section 7-10.5 of these rules;

(b) Class I Hazardous Waste Well plans shall include information required by 40 C.F.R. 146.71(a)(4) and 146.72(a);

(c) Class III well plans shall include information required by 40 C.F.R. 146.34(c) and Section 7-10.5 of these rules.

24. A certificate that the applicant has assured, through a performance bond or other appropriate means, the resources necessary to close, plug or abandon the well. Class I Hazardous Waste wells shall also demonstrate financial responsibility pursuant to 40 C.F.R. 144.60 through 144.70;

25. such other information as may be required by the Executive Secretary.

9.2 Applicants shall keep records of all data used to complete permit applications and supplemental information for at least three years from the date of permit approval.

9.3 Permit applications and reports required under these regulations shall be signed in accordance with 40 C.F.R. Section 144.32.

9.4 Permit Provisions, Conditions and Schedules of Compliance.

Any permit issued by the Executive Secretary is subject to the conditions and requirements and shall be issued in

accordance with the procedures outlined in 40 C.F.R. 144.51 (a)-(o) and (q), 144.52, 144.53, 144.54, 144.55 and 146.7, and 40 C.F.R. 124.3(a), 124.5(a),(c),(d) and (f), 124.6(a),(c),(d) and (e), 124.8, 124.10(a)(1)ii, and iii, (a)(1)(v), 124.10(b),(c),(d) and (e), 124.11, 124.12(a) and 124.17(a) and (c). The permit may specify schedules of compliance which require compliance not later than three years after the effective date of the permit.

9.5 Duration of Permits. Permits for Class I and Class V wells shall be effective for a fixed term not to exceed ten years. Permits for Class III wells shall be issued for a period up to the operating life of the facility. Each issued Class III well permit shall be reviewed by the Executive Secretary at least once every five years to determine whether it should be modified, revoked and reissued, or terminated. The Executive Secretary may issue any permit for a duration that is less than the full allowable term under this section.

9.6 Transfer, Modification, and Termination. Permits may be transferred, modified, revoked, reissued, or terminated by the Executive Secretary under the conditions and following the procedures outlined in 40 C.F.R. 144.36, 144.38, 144.39, 144.40, and 144.41.

9.7 Confidentiality of Information. The following information when submitted as required by these rules cannot be claimed confidential:

A. name and address of permit applicant or permittee; and

B. information which deals with the existence, absence or level of contaminants in drinking water.

9.8 Waivers of Requirements

A. The Executive Secretary may waive the requirements of these rules only under the conditions and circumstances outlined in 40 C.F.R. Section 144.16.

B. The "two mile" distance provisions in Sections 7-3.1(B), 7-3.4, 7-10.1(A)(1), and 7-11 of these rules may be reduced by the Board on a case-by-case basis to less than two miles but in no event to less than 1/4 mile upon a finding by the Board that the distance reduction will not pose a threat to any USDW. The burden shall be on the applicant to demonstrate that hydrogeologic conditions, ground water quality in the area, and other environmental studies and information support the finding.

### **R317-7-10. Technical Requirements for Class I Nonhazardous and Class III Wells.**

#### **10.1 Construction Requirements**

##### **A. Class I Nonhazardous Well Construction Requirements**

1. All Class I Nonhazardous wells as defined in Section 7-3.1(B) shall be sited so they inject beneath the lowermost formation containing, within two miles of the well bore, an USDW.

2. All Class I Nonhazardous wells shall be cased and cemented to prevent the movement of fluids into or between USDW's. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements the following factors shall be considered:

a. depth to the injection zone;

b. injection pressure, external pressure, internal pressure, and axial loading;

c. hole size;

d. size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification, and construction material);

e. corrosiveness of injected fluid, formation fluids, and temperatures;

f. lithology of injection and confining intervals; and

g. type or grade of cement.

3. All Class I Nonhazardous injection wells (except for municipal wells injecting noncorrosive wastes) shall inject

through tubing with a packer set immediately above the injection zone or tubing with an approved fluid seal. Alternatives may be used with the written approval of the Executive Secretary if they provide a comparable level of protection.

The following factors shall be considered in determining and specifying requirements for tubing, packer or alternatives:

- a. depth of setting;
- b. characteristics of injected fluid;
- c. injection pressure;
- d. annular pressure;
- e. rate, temperature and volume of injected fluid; and
- f. size of casing.

4. Appropriate logs and other tests shall be conducted during the drilling and construction of new wells and a descriptive report interpreting the results of such logs and tests shall be prepared by a qualified log analyst and submitted to the Executive Secretary. At a minimum, such logs and tests shall include:

a. deviation checks on holes constructed by drilling a pilot hole, and then enlarging the pilot hole;

b. Such other logs and tests as may be required by the Executive Secretary. In determining which logs and tests shall be required, the following shall be considered for use in the following situations:

(1) for surface casing intended to protect USDW's:

(a) electric and caliper logs (before casing is installed);

(b) cement bond, temperature or density log (after casing is set and cemented);

(2) for intermediate and long strings of casing intended to facilitate injection:

(a) electric, porosity and gamma ray logs (before casing is installed);

(b) fracture finder logs;

(c) cement bond, temperature or density log (after casing is set and cemented).

5. At a minimum, the following information concerning the injection formation shall be determined or calculated for new wells:

a. fluid pressure;

b. temperature;

c. fracture pressure;

d. physical and chemical characteristics of the injection matrix; and

e. physical and chemical characteristics of the formation fluids.

#### B. Class III Construction Requirements

1. All new Class III wells shall be cased and cemented to prevent the migration of fluids into or between underground sources of drinking water. The Executive Secretary may waive the cementing requirement for new wells in existing projects or portions of existing projects where he has substantial evidence that no contamination of underground sources or drinking water would result. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:

a. depth to the injection zone;

b. injection pressure, external pressure, internal pressure, and axial loading;

c. hole size;

d. size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification, and construction material);

e. corrosiveness of injected fluids and formation fluids;

f. lithology of injection and confining zones; and

g. type and grade of cement.

2. Appropriate logs and other tests shall be conducted during the drilling and construction of new Class III wells. A

descriptive report interpreting the results of such logs and tests shall be prepared by a qualified log analyst and submitted to the Executive Secretary. The logs and tests appropriate to each type of Class III well shall be determined based on the intended function, depth, construction and other characteristics of the well, availability of similar data in the area of the drilling site, and the need for additional information that may arise from time to time as the construction of the well progresses. Deviation checks shall be conducted on all holes where pilot holes and reaming are used, unless the hole will be cased and cemented by circulating cement to the surface. Where deviation checks are necessary they shall be conducted at sufficiently frequent intervals to assure that vertical avenues for fluid migration in the form of diverging holes are not created during drilling.

3. Where the injection zone is a formation which is naturally water-bearing the following information concerning the injection zone shall be determined or calculated for new Class III wells or projects:

a. fluid pressure;

b. fracture pressure; and

c. physical and chemical characteristics of the formation fluids.

4. Where the injection zone is not a water bearing formation, only the fracture pressure must be submitted.

5. Where injection is into a formation which contains water with less than 10,000 mg/l TDS, monitoring wells shall be completed into the injection zone and into any USDW above the injection zone.

6. Where injection is into a formation which does not contain water with less than 10,000 mg/l TDS, no monitoring wells are necessary in the injection stratum.

7. Where the injection wells penetrate an USDW in a area subject to subsidence or catastrophic collapse, an adequate number of monitoring wells shall be completed into the USDW.

#### 10.2 Operation Requirements

A. For Class I Nonhazardous and Class III wells it is required that:

1. Except during stimulation, the injection pressure at the wellhead shall not exceed a maximum which shall be calculated to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. In no case shall the injection pressure initiate fractures in the confining zone or cause the movement of injection or formation fluids into an USDW.

2. Injection between the outermost casing protecting USDW's and the well bore is prohibited.

B. For Class I Nonhazardous wells, unless an alternative to tubing and packer has been approved, the annulus between the tubing and the long string of casings shall be filled with a fluid approved by the Executive Secretary and a pressure approved by the Secretary shall be maintained on the annulus.

10.3 Monitoring. The permittee shall identify types of tests and methods used to generate the monitoring data:

A. Class I Nonhazardous well monitoring shall, at a minimum, include:

1. the analysis of the injected fluids with sufficient frequency to yield representative data of their characteristics;

2. installation and use of continuous recording devices to monitor injection pressure, flow rate and volume, and the pressure on the annulus between tubing and the long string of casing;

3. a demonstration of mechanical integrity pursuant to 40 C.F.R. 146.8 at least once every five years during the life of the well; and

4. the type, number and location of wells within the area of review to be used to monitor any migration of fluids into and pressure in the USDW, the parameters to be measured and the frequency of monitoring.

5. Ambient monitoring requirements for Class I

Nonhazardous wells found in 40 C.F.R. 146.13(d).

B. Class III monitoring shall, at a minimum, include:

1. the analyses of the physical and chemical characteristics of the injected fluid with sufficient frequency to yield representative data on its characteristics;

2. monitoring of injection pressure and either flow rate or volume semi-monthly, or metering and daily recording of injected and produced fluid volumes as appropriate;

3. demonstration of mechanical integrity pursuant to 40 C.F.R. 146.8 at least once every five years during the life of the well for salt solution mining;

4. monitoring of the fluid level in the injection zone semi-monthly, where appropriate and monitoring of the parameters chosen to measure water quality in the monitoring wells required by Section 7-10.2 of these rules, semi-monthly;

5. quarterly monitoring of wells required by Section 7-10.1(B)(7).

6. All Class III wells may be monitored on a field or project basis rather than an individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one injection well, operating with a common manifold. Separate monitoring systems for each well are not required, provided the owner/operator demonstrates that manifold monitoring is comparable to individual well monitoring.

7. In determining the number, location, construction and frequency of monitoring of the monitoring wells, the criteria in 40 C.F.R. 146.32(h) shall be considered.

#### 10.4 Reporting Requirements

A. For Class I Nonhazardous injection wells reporting shall, at a minimum, include:

1. quarterly reports to the Executive Secretary on:

a. the physical, chemical and other relevant characteristics of injection fluids;

b. monthly average, maximum and minimum values for injection pressure, flow rate and volume, and annular pressure; and

c. the results of monitoring of wells in the area of review.

2. Reporting the results, with the first quarterly report after the completion of:

a. periodic tests of mechanical integrity;

b. any other test of the injection well conducted by the permittee if required by the Executive Secretary; and

c. any well work over.

B. For Class III injection wells reporting shall, at a minimum, include:

1. quarterly reporting to the Executive Secretary on required monitoring;

2. results of mechanical integrity and any other periodic test required by the Executive Secretary reported with the first regular quarterly report after the completion of the test; and

3. monitoring may be reported on a project or field basis rather than individual well basis where manifold monitoring is used.

#### 10.5 Plugging and Abandonment Requirements

A. Prior to abandoning Class I Nonhazardous and Class III wells, the well shall be plugged with cement in a manner which will not allow the movement of fluid either into or between underground sources of drinking water. The Executive Secretary may allow Class III wells to use other plugging materials if he is satisfied that such materials will prevent movement of fluids into or between underground sources of drinking water.

B. Placement of the cement plugs shall be accomplished by one of the following:

1. the Balance Method;

2. the Dump Bailer Method;

3. the Two-Plug Method; or

4. an alternative method approved by the Executive

Secretary which will reliably provide a comparable level of protection to USDW's.

C. The well to be abandoned shall be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once, or by a comparable method prescribed by the Executive Secretary, prior to the placement of the cement plug.

D. The plugging and abandonment plan required in Section 7-9 shall, in the case of a Class III well field which underlies or is in an aquifer which has been exempted, also demonstrate adequate protection of USDW's. The Executive Secretary shall prescribe aquifer cleanup and monitoring where he deems it necessary and feasible to insure adequate protection of USDW's.

10.6 Information to be Considered by the Executive Secretary. Requirements for information from well owners or operators and evaluations by the Executive Secretary for the issuance of permits, approval of well operation or well plugging and abandonment of Class I Nonhazardous injection wells are found in 40 C.F.R. 146.14 and Class III injection wells are found in 40 C.F.R. 146.34.

### **R317-7-11. Technical Requirements for Class I Hazardous Waste Injection Wells.**

11.1 Applicability. Statements of applicability and definitions are described in 40 C.F.R. 146.61.

11.2 Minimum Siting Criteria. Minimum siting requirements for Class I hazardous waste wells are described in 40 C.F.R. 146.62.

11.3 Area of Review. The area of review is defined for Class I hazardous waste injection wells in 40 C.F.R. 146.63.

11.4 Corrective Action for Wells in the Area of Review. Corrective action requirements for wells found within the area of review are located in 40 C.F.R. 146.64.

11.5 Construction Requirements. Construction requirements for all Class I hazardous waste injection wells are found in 40 C.F.R. 146.65.

11.6 Logging, Sampling, and Testing Prior to New Well Operation. Pre-operation requirements for logging, sampling, and testing of new wells are found in 40 C.F.R. 146.66.

11.7 Operating Requirements. Operation requirements for Class I hazardous waste injection wells are found in 40 C.F.R. 146.67.

11.8 Testing and Monitoring Requirements. Testing and monitoring requirements are found in 40 C.F.R. 146.68.

11.9 Reporting Requirements. Reporting requirements are found in 40 C.F.R. 146.69.

11.10 Information to be Evaluated by the Executive Secretary. Requirements for information from well owners or operators and evaluations by the Executive Secretary for the issuance of permits, approval of well operation or well plugging and abandonment are found in 40 C.F.R. 146.70.

11.11 Closure. Well closure requirements are found in 40 C.F.R. 146.71.

11.12 Post-closure Care. Post-closure care requirements for Class I hazardous waste injection wells and facilities are found in 40 C.F.R. 146.72.

11.13 Financial Responsibility for Post-closure Care. Financial responsibility requirements for care of a Class I hazardous waste injection well during post-closure are found in 40 C.F.R. 146.73.

11.14 Requirements for Wells Injecting Hazardous Waste. Requirements for injection of waste accompanied by a manifest are found in 40 C.F.R. 144.14.

### **R317-7-12. Hazardous Waste Injection Restrictions.**

12.1 Purpose, Scope, and Applicability. Standards are found in 40 C.F.R. 148.1.

12.2 Definitions. Definitions are found in 40 C.F.R.

148.2.

12.3 Dilution Prohibited as a Substitute for Treatment. The prohibition is found in 40 C.F.R. 148.3.

12.4 Procedures for Case-by-case Extensions to an Effective Date. Requirements are found in 40 C.F.R. 148.4.

12.5 Waste Analysis. Requirements are found in 40 C.F.R. 148.5.

12.6 Waste Specific Prohibitions - Solvent Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.10.

12.7 Waste Specific Prohibitions - Dioxin - Containing Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.11.

12.8 Waste Specific Prohibitions - California List Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.12.

12.9 Waste Specific Prohibitions - First Third Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.14.

12.10 Waste Specific Prohibitions - Second Third Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.15.

12.11 Waste Specific Prohibitions - Third Third Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.16.

12.12 Waste Specific Prohibitions - Newly Listed Wastes. Prohibitions and requirements are found in 40 C.F.R. 148.17.

12.13 Petitions to Allow Injection of a Waste Prohibited Under Sections 7.11 and 7.12. Requirements for petitions to allow injection of prohibited wastes are found in 40 C.F.R. 148.20.

12.14 Information to be Submitted in Support of Petitions. Requirements are found in 40 C.F.R. 148.21.

12.15 Requirements for Petition Submission, Review and Approval or Denial. Requirements are found in 40 C.F.R. 148.22.

12.16 Review of Exemptions Granted Pursuant to a Petition. Requirements are found in 40 C.F.R. 148.23.

12.17 Termination of Approved Petition. Petition termination requirements are found in 40 C.F.R. 148.24.

### **R317-7-13. Public Participation.**

In addition to adjudicatory hearings required under the State Administrative Procedures Act 63-46b, et seq. and proceedings otherwise outlined or referenced in these regulations, the Board or its duly appointed representative will investigate and provide written response to all citizen complaints duly submitted. In addition, the Board shall not oppose intervention in any civil or administrative proceeding by any citizen where permissive intervention may be authorized by statute or rule. The Board will publish notice of and provide at least thirty (30) days of public comment on any proposed settlement of any enforcement action.

**KEY: water quality, underground injection control**

**October 26, 2004**

**19-5**

**Notice of Continuation November 13, 2001**



**R414. Health, Health Care Financing, Coverage and Reimbursement.****R414-1B. Prohibition of Payment for Certain Abortion Services.****R414-1B-1. Introduction and Authority.**

This rule is to assure compliance with the prohibition on using public funds for certain abortion services as provided in Utah Code Section 76-7-326. It is authorized by Utah Code Sections 26-1-5 and 26-18-3.

**R414-1B-2. Definitions.**

(1) "Abortion billing code" means the following codes:

(a) 59840, 59841, 59850, 59851, 59852, 59855, 59856 and 59857 as shown in the Current Procedural Terminology (CPT) manual of the American Medical Association, 2003 edition; and

(b) 69.01, 69.51, 74.91 and 75.0 as shown in the International Classification of Diseases, 9th Edition, Volumes 1 and 2, Clinical Modification, Volume 3 Procedures.

(2) "Certification" or "Certify" means submitting to the Division of Health Care Financing, Utah Department of Health, a Department-approved document signed by one authorized to act on behalf of a Medicaid provider.

(3) "Public funds" means money of the state, its institutions or its political subdivisions used to pay or otherwise reimburse a person, agency, or facility. "Public funds" does not include (i) clinical revenue generated from nongovernmental payors; or (ii) gift or donor funds from third party nongovernmental sources.

**R414-1B-3. Certification.**

(1) Each Medicaid provider that bills the Utah Department of Health for services related to an abortion billing code at any time after May 3, 2004 must certify that public funds it receives from the Department are not used to pay or otherwise reimburse, either directly or indirectly, any person, agency, or facility for the performance of any induced abortion services unless:

(a) in the professional judgment of the pregnant woman's attending physician, the abortion is necessary to save the pregnant woman's life;

(b) the pregnancy is the result of rape or incest reported to law enforcement agencies, unless the woman was unable to report the crime for physical reasons or fear of retaliation; or

(c) in the professional judgment of the pregnant woman's attending physician, the abortion is necessary to prevent permanent, irreparable and grave damage to a major bodily function of the pregnant women provided that a caesarian procedure or other medical procedure that could also save the life of the child is not a viable option.

(2) The certification shall be ongoing and apply to all future claims unless the provider notifies the Department in writing of a change in its certification status.

(3) Nothing in this rule shall increase Medicaid coverage for abortion services beyond what is required under federal law.

**R414-1B-4. Standards for Certification.**

(1) Each provider who submits a certification is responsible to be informed of the abortion funding restrictions found in Utah Code section 76-7-326 and to assess whether it receives public funds for any abortion that is not excepted in subsections (a), (b), or (c) of Utah Code subsection 76-7-326(2).

(2) A provider is not using public funds to directly or indirectly fund prohibited abortion services if it certifies that:

(a) it uses non-public funds to make up any difference between the reimbursement it receives from all payors for services identified by abortion billing codes, other than those services identified in R414-1B-3(1), and the costs incurred by the provider for those procedures; or

(b) it has adopted another method, based on generally

accepted accounting principles, that provides a good faith basis for supporting the certification.

(3) Each provider that submits a certification meeting the requirements of this rule shall maintain records to support the certification and make those records available to the Department on request consistent with participation as a Medicaid provider.

**KEY: Medicaid, abortion, physicians, hospitals  
October 6, 2004**

**26-1-5  
26-18-3**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-14. Home Health Service.****R414-14-0. Policy Statement.**

A. Home health services are part-time intermittent health care services, based on medical necessity, provided to homebound or semi-homebound persons in their permanent place of residence as an alternative to institutional care. Home health services are provided by a public or private state licensed, Medicare certified home health agency. Home health services are based on physician order and plan of care.

B. A hospital, skilled nursing facility, or intermediate care facility does not qualify as a person's place of residence for the purpose of receiving home health service.

**R414-14-1. Authority and Purpose.****A. Authority**

1. Home health service is a required Medicaid, Title XIX program authorized by Section 1901 et seq., of the Social Security Act, Section 1905(a)(7) of the Social Security Act and 42 CFR 440.70.

2. This rule is also authorized by Utah Code Annotated Sections 26-1-4.1, 26-1-5, and 26-18-3.

**B. Purpose**

The purpose of home health care is to provide skilled or supportive care to patients in their place of residence as an alternative to premature or inappropriate institutionalization. Home health care must minimize the effects of disability or pain and promote, maintain, or protect health while allowing individuals to live at home in personal dignity and independence.

**R414-14-2. Definitions.**

A. "Home health agency" means a public agency or private organization, which is licensed by the Bureau of Health Facility Licensure under the authority of Utah Code Annotated, Title 26, Chapter 21, and in accordance with Utah Administrative Code 1989, 432-700. A home health agency is primarily engaged in providing skilled nursing service and other therapeutic services.

B. "Home Health Visit" means a personal contact in the place of residence of a patient made for the purpose of providing a covered service by appropriate personnel under the supervision of a home health agency.

C. "Plan of Care" means a written plan developed cooperatively by home health agency staff and the attending physician. The plan is designed to meet specific needs of an individual, is based on orders written by the attending physician, and is approved and periodically reviewed and updated by the attending physician.

D. "Prior authorization" means that degree of approval for payment of services required to be obtained from Division of Health Care Financing staff by a licensed provider before the service is provided.

**R414-14-3. Eligibility Requirements/Coverage.**

Home health services are available to categorically eligible and medically needy individuals.

**R414-14-4. Program Access Requirements.**

A. Home health service shall be provided only to an individual who is under the care of a physician. The attending physician shall write the orders on which a plan of care is established and certify the necessity for home health services.

B. The home health agency shall accept a recipient for home health care on the basis of a reasonable expectation that a recipient's needs can be met adequately by the agency in the recipient's place of residence.

**R414-14-5. Service Coverage.**

A. Home health service shall be provided to a patient who is under the care of a physician who certifies the necessity for home health service and writes orders on which a plan of care can be developed.

B. The total plan of care shall be reviewed and signed by the attending physician and home health agency personnel as often as the severity of the patient's condition requires, but at least once every 60 days in accordance with 42 CFR 440.70.

C. Two levels of home health service are covered: Skilled Home Health Care and Supportive Maintenance Home Health Care.

D. Skilled nursing service encompasses the expert application of nursing theory, practice and techniques by a registered professional nurse to meet the needs of patients in their place of residence through professional judgments, through independently solving patient care problems, and through application of standardized procedures and medically delegated techniques.

E. Home health aide service encompasses assistance with, or direct provision of, routine care not requiring specialized nursing skill. The home health aide is closely supervised by a registered, professional nurse to assure competent care. The aide works under written instructions for care to be provided.

F. Supportive maintenance home health care serves those patients who are semi-homebound, who have a medical condition which has stabilized, but who demonstrate continuing health problems requiring minimal assistance, observation, teaching or follow-up. This assistance can be provided by a certified home health agency through the knowledge and skill of a licensed practical nurse (LPN) or a home health aide with periodic supervision by a registered nurse. A physician continues to provide direction.

G. IV therapy, enteral and parenteral nutrition therapy are provided as a home health service either in conjunction with skilled or maintenance care or as the only service to be provided. Specific policy is outlined in the medical supplies program, and all requirements of the home health program must be met in relation to orders, plan of care, 60 day review and recertification.

H. Therapy services: physical therapy and speech pathology services are occasionally indicated and approved for the patient needing home health service. Any therapy services offered by the home health agency directly or under arrangement must be ordered by a physician and provided by a qualified licensed therapist in accordance with the plan of care.

I. Medical supplies utilized for home health service must be suitable for use in the home in providing home health care, consistent with physician orders, and approved as part of the plan of care.

**R414-14-6. Standards of Care.**

A. Home health service shall be provided in accordance with 42 CFR 440.70, which is hereby adopted and incorporated by reference.

B. Quality, cost-effective care and a safe environment in the home shall be provided through adequate training, knowledge, judgement, and skill of the registered nurse or licensed practical nurse licensed in the State of Utah in accordance with Title 58, Chapter 31 Utah Code Annotated.

C. Home health aide services shall be provided through written instructions and under the supervision of a registered professional nurse by a person selected and trained to assist with routine care not requiring specialized nursing skills.

**R414-14-7. Limitations.**

A. Home health service must be cost effective. It must cost less, over the long term service period, to provide the required care and service in the patient's home than it would cost to meet the medical needs in an alternative setting.

B. Home health service must be based on physician orders and a plan of care reviewed and recertified every 60 days, or more frequently if patient condition indicates.

C. An initial assessment visit may be provided without prior authorization to assess the patient's needs and establish the plan of care. After the initial visit, all home health care and service must be based on prior authorization.

D. Medical supplies provided by the home health agency do not require prior approval, but are limited to:

1. Supplies used during the initial visit to establish the plan of care.

2. Supplies that are consistent with the plan of care.

3. Non-durable equipment.

E. Supportive maintenance home health care is limited to one visit per day.

F. All home health service must be supervised by a registered nurse employed by an approved, certified home health agency. Nursing service and all approved therapy services must be provided by the appropriate licensed professional.

G. Home health care provided to a patient capable of self care is not a covered Medicaid benefit.

H. Personal care services, except as determined necessary in providing skilled care, is not a covered home health benefit.

I. Housekeeping or homemaking services are not covered home health benefits.

J. Occupational therapy is not a covered Medicaid benefit.

**R414-14-8. Prior Authorization.**

A. Home health nursing service beyond the initial evaluation visit requires prior authorization.

B. All home health service beyond the initial visit, including supplies and therapies, shall be specified in the plan of care submitted for prior authorization by the home health agency selected by the patient to provide the service. The level of service, e.g., skilled or maintenance service, will be established and approved based on the prior authorization request. When level of service needs change, a new prior authorization request must be submitted.

C. Therapy services shall be supported by medical need and by prior authorization before any service is provided.

**R414-14-9. Reimbursement for Services.**

Reimbursement for home health services shall be provided as documented in the Utah State Medicaid Plan, ATTACHMENT 4.19-B.

**KEY: medicaid**

1989

Notice of Continuation October 6, 2004

26-1-4.1

26-1-5

26-18-3

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-14A. Hospice Care.****R414-14A-0. Policy Statement.**

A. Hospice care derives from the recognition that the impending death of an individual warrants a change in focus from curative care to palliative care.

B. Hospice care shall be rendered by a Medicare-certified hospice and shall be provided in accordance with Medicare regulations.

C. Hospice coverage shall be available for at least 210 days.

**R414-14A-1. Authority and Purpose.****A. Authority**

Section 9505 of Public Law 99-272, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), enacted on April 7, 1986, amended Title XIX of the Social Security Act to permit hospice care benefits as defined under sections 1905(a)(18) and 1905(o) of the Act to be provided to individuals eligible for Medicaid under the State Plan.

B. The purpose of hospice care is to help terminally ill individuals continue life with minimal disruption in normal activities while remaining primarily in the home environment.

**R414-14A-2. Definitions as Used in this Chapter.**

A. "Hospice" means a public agency or private organization that is primarily engaged in providing care to terminally ill individuals, meets the Medicare conditions of participation for hospices, and has a valid provider agreement.

B. "Terminally ill" means that the individual has a medical prognosis that his life expectancy is six months or less.

C. "Attending physician" means a physician who is identified by the individual, at the time he elects to receive hospice care, as having the most significant role in the determination and delivery of the individual's medical care.

D. "Bereavement counseling" means counseling services provided to the individual's family after the individual's death.

E. "Medical social services" means the provision of counseling and assessment activities which contribute meaningfully to the treatment of a recipient's condition.

F. "Inpatient care" means the hospice services provided by an inpatient facility to a recipient who has been admitted to a hospital, long-term care facility, or facility of a hospice that provides care 24 hours a day.

G. "Interdisciplinary group" means a group of qualified individuals with expertise in meeting the special needs of hospice recipients and their families, which includes at least:

1. one physician;
2. one registered nurse;
3. one social worker; and
4. one pastoral or other counselor.

H. "Election statement" means a written statement electing hospice care and filed by a recipient, or his representative, with a hospice.

I. "Respite care" means short-term inpatient care provided to the recipient only when necessary to relieve the family members or other persons caring for the recipient.

**R414-14A-3. Eligibility Requirements/Coverage.**

To be covered, hospice services shall meet the following requirements:

A. Services shall be reasonable and necessary for the palliation or management of the terminal illness as well as related conditions.

B. A certification that the individual is terminally ill shall be completed.

C. The individual shall elect hospice care by filing an election statement with a particular hospice.

D. A plan of care shall be established by the interdisciplinary group.

**R414-14A-4. Program Access Requirements.**

Hospice care is available to categorically and medically needy individuals under Medicaid.

**R414-14A-5. Service Coverage.**

The following services are required hospice services:

A. nursing care provided by or under the supervision of a registered nurse;

B. medical social services provided by a qualified social worker under the direction of a physician;

C. administrative and general supervisory activities performed by physicians who are employees of, or working under arrangements made with, the hospice;

D. counseling services for the individual and family members or other persons caring for the person at home;

E. short-term inpatient care in a participating hospice inpatient unit, or a hospital, skilled nursing or intermediate care facility that additionally meets the special hospice standards regarding staffing and patient areas;

F. medical appliances and supplies, including drugs and biologicals. Only drugs which are used primarily for the relief of pain and symptom control related to the individual's terminal illness are covered;

G. home health aide and homemaker services furnished by qualified aides;

H. physical therapy, occupational therapy, and speech-language pathology services provided for purposes of symptom control.

**R414-14A-6. Standards of Care.**

The State shall enforce the Medicare standards of care as outlined in 42 CFR, Part 418, which are hereby adopted and incorporated by reference.

**R414-14A-7. Limitations.**

A. Recipients of hospice care shall sign an election of hospice care which waives all other Medicaid coverage except the services of a designated family physician, ambulance service, and services unrelated to the terminal illness.

B. Medicaid shall make no payment to the hospice, selected by the Medicaid recipient, for any services or supplies other than the hospice service.

C. The hospice shall not charge any amount to or collect any amount from the recipient or recipient's family for a covered hospice service during the period of hospice coverage.

D. Payments to a hospice for inpatient care shall be limited according to the number of days of inpatient care furnished to Medicaid patients. During the 12-month period beginning November 1 of each year and ending October 31, the aggregate number of inpatient days (both for general inpatient care and inpatient respite care) may not exceed 20 percent of the aggregate total number of days of hospice care provided to all Medicaid recipients during that same period.

E. Respite care shall be provided only on an occasional basis and shall not be reimbursed for more than five consecutive days at a time.

F. Respite care shall not be provided when the hospice recipient is a nursing home resident.

**R414-14A-8. Prior Authorization.**

Prior authorization procedures are not applicable to hospice services provided to a Medicaid recipient.

**R414-14A-9. Reimbursement for Services.**

A. Medicaid payments for hospice services shall be made at one of the four predetermined rates established under

Medicare.

B. The rates shall be based on the Medicare rates for Utah.

C. For each day that an individual is under the care of a Medicare-certified hospice, the hospice shall be reimbursed in accordance with the established Medicaid fee schedule.

D. Payment rates are based on the type and intensity of the services furnished to the individual for that day according to one of the following levels of care: routine home care, continuous home care, inpatient respite care, or general inpatient care.

E. For recipients in a skilled nursing facility or intermediate care facility who elect to receive hospice service from a Medicare-certified hospice agency, Medicaid shall pay the hospice agency an additional per diem for routine home care and continuous home care days only, to cover the cost of room and board.

1. The room and board rate shall be based on the statewide average base rate for nursing homes (weighted averages without rate differential factors) less a percentage for nursing and related costs.

2. The nursing and related costs are defined as cost centers 07 and 08 on the facility's cost profile. The percentage is calculated by taking the percent of 07 and 08 to the total reported costs.

3. Medicaid reimbursement to the intermediate care or skilled nursing facility for the recipient shall cease.

4. The hospice agency shall reimburse the intermediate care or skilled nursing facility for the cost of room and board.

5. Room and board costs, in this context, shall include: performance of personal care services (including assistance in the activities of daily living), socializing activities, administration of medication, maintaining the cleanliness of a resident's room, and supervision and assisting in the use of durable medical equipment and prescribed therapies.

**KEY: medicaid**

**1989**

**Notice of Continuation October 6, 2004**

**26-1-4.1**

**26-1-5**

**26-18-3**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

1989

Notice of Continuation October 6, 2004

26-1-4.1

26-1-5

26-18-3

**R414-31. Inpatient Psychiatric Services for Individuals Under Age 21 in Psychiatric Facilities or Programs.****R414-31-0. Policy Statement.**

Except for certain age groups, Medicaid excludes coverage of patients in institutions for mental diseases. States may elect to provide inpatient psychiatric services for individuals under age 21 in psychiatric facilities or programs as an optional Medicaid service. Utah provides this optional service to Medicaid recipients in accordance with the conditions set forth below.

**R414-31-1. Authority and Purpose.**

Section 1905(a)(16) and (h) of the Social Security Act authorizes the provision of this service under a state's Medicaid program.

**R414-31-2. Definitions.**

"Institution for mental diseases" means a hospital, nursing facility, or other institution of more than 16 beds, that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services. An institution for the mentally retarded is not an institution for mental disease.

**R414-31-3. Eligibility Requirements/Coverage.**

This service is available to Medicaid recipients under the age of 21 who meet the categorically or medically needy eligibility criteria. Services can be provided before the recipient reaches age 21 or, if the recipient was receiving the services immediately before he reached age 21, before the earlier of the following: (1) the date he no longer requires the services; or (2) the date he reaches age 22.

**R414-31-5. Service Coverage.**

Inpatient psychiatric services for individuals under age 21 shall be considered a benefit of the Medicaid program only for care and treatment provided under the direction of a physician in:

- A. a psychiatric hospital or in an inpatient program in a psychiatric facility under the authority of, or licensed by the Division or Board of Mental Health and accredited by the Joint Commission on Accreditation of Hospitals (JCAH); or
- B. a psychiatric hospital or in an inpatient program in a psychiatric facility under contract with the Division of Health Care Financing to provide mental health services.

**R414-31-6. Standards of Care.**

Standards of care must comport with the requirements under the 42 Code of Federal Regulations section 441.150 through 441.181, which is hereby adopted by reference.

**R414-31-7. Limitations.**

Not applicable

**R414-31-8. Prior Authorization.**

Although prior authorization for this service is not required, all admissions to approved psychiatric facilities are reviewed by the Bureau of Medical Review to ensure that certification of need requirements are met.

**R414-31-9. Reimbursement for Services.**

The Utah State Hospital is reimbursed reasonable cost based on Medicare reimbursement principles. TEFRA limits do not apply because of the long lengths-of-stay experienced by many of the patients.

**KEY: medicaid**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-33B. Substance Abuse Targeted Case Management.****R414-33B-1. Introduction and Authority.**

(1) This rule outlines targeted case management services available to Medicaid clients diagnosed with a substance abuse disorder.

(2) This rule is authorized under UCA 26-18-3 and governs the services allowed under 42 USC section 1396n(g) which authorizes targeted case management services.

**R414-33B-2. Definitions.**

In this rule, "Substance abuse disorder" means diagnoses listed in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Text Revision (DSM-IV-TR), in the range of 291.00-291.99, 292.00-292.99, 303.00-303.99, 304.00-304.99 and 305.00-305.99

**R414-33B-3. Client Eligibility Requirements.**

(1) Targeted case management is available to Medicaid clients with substance abuse disorders who meet the categorically and medically needy eligibility categories and who are enrolled in the Traditional Medicaid Plan.

(2) Targeted case management is available to the children of Medicaid clients who are at risk of developing a substance abuse disorder due to the client's history of substance abuse and current substance abuse.

**R414-33B-4. Program Access Requirements.**

(1) Targeted case management services must be provided by or through a substance abuse program that is under contract with or directly operated by a local county substance abuse authority.

(2) Targeted case management may be provided to a Medicaid client who is diagnosed with a substance abuse disorder for whom a needs assessment completed by a qualified targeted case manager documents that:

(a) the individual requires treatment or services from a variety of agencies and providers to meet his documented medical, social, educational, and other needs; and

(b) there is reasonable indication that the individual will access needed services only if assisted by a qualified targeted case manager who, in accordance with an individualized case management service plan, locates, coordinates, and regularly monitors the service.

(3) Targeted case management may be provided to a child of a Medicaid client for whom a needs assessment completed by a qualified targeted case manager documents that:

(a) the child is at risk of developing a substance abuse disorder due to parental history of substance of substance abuse or current substance abuse.

(b) the child requires treatment or services from a variety of agencies and providers to meet his documented medical, social, educational, and other needs; and

(c) there is reasonable indication that the child will access needed services only if assisted by a qualified targeted case manager who, in accordance with an individualized case management service plan, locates, coordinates, and regularly monitors the service.

**R414-33B-5. Service Coverage.**

(1) Covered services are:

(a) assessing and documenting the client's need for community resources and services;

(b) developing a written, individualized, coordinated case management service plan to assure the client's adequate access to needed medical, social, educational and other related services with input as appropriate from the client, family and other agencies knowledgeable about the client's needs;

(c) linking the client with community resources and needed services, including assisting the client to establish and maintain eligibility for entitlements other than Medicaid;

(d) coordinating the delivery of services to the client, including CHEC screening and follow-up, including consultation with other agencies to ensure the most appropriate interventions and services are provided by all agencies and providers involved in the client's care;

(e) monitoring and coordinating as needed prescribed medications with prescribing professionals to ensure that all medications prescribed are appropriate, providing information on the client's medication regimen to other prescribers and other agencies and providers involved in the client's care;

(f) periodically assessing and monitoring the client's status and functioning and modifying the targeted case management service plan, or the client's clinical treatment plan, as needed;

(g) periodic monitoring of the client to ensure needed services have been identified and that they are being obtained in a timely manner;

(h) instructing the client or caretaker, as appropriate, in independently accessing needed services;

(i) monitoring the quality and appropriateness of the client's services; and

(j) monitoring the client's progress and continued need for targeted case management and other services;

(2) The agency may bill Medicaid for the above activities only if the activities are identified in the case management service plan and the time spent in the activity involves a face-to-face encounter, telephone or written communication with the client, family, caretaker, service provider, or other individual with a direct involvement in providing or assuring the client obtains the necessary services documented in the service plan.

(3) Case management service provided to a hospital or nursing facility patient is limited to a maximum of five hours per admission.

**R414-33B-6. Qualified Providers.**

Targeted case management services must be provided by an individual who is:

(1) a licensed physician, a licensed psychologist, a licensed clinical social worker, a licensed certified social worker, a licensed social service worker, a licensed advanced practice registered nurse, a licensed registered nurse, a licensed professional counselor, a licensed substance abuse counselor, a licensed marriage and family counselor; or

(2) an individual working toward licensure in one of the professions identified in subsection (a); or

(3) a licensed practical nurse or a non-licensed individual working under the supervision of one of the individuals identified in subsection (1) or (2).

**R414-33B-7. Reimbursement Methodology.**

The Department pays the lower of the amount billed and the rate on the fee schedule. The fee schedule was initially established after consultation with provider representatives. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private pay patients.

**KEY: Medicaid  
October 15, 2004**

**26-18-3**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-34. Substance Abuse Services.****R414-34-1. Introduction and Authority.**

(1) This rule outlines the program designed to evaluate and treat individuals with substance abuse disorders.

(2) This rule is authorized under UCA 26-18-3 and governs the services allowed under 42 CFR 440.130, Oct. 2003 ed.

**R414-34-2. Definitions.**

In this rule:

(a) "Diagnostic services" means any medical procedure recommended by a physician or other licensed mental health therapist to enable him to identify the existence, nature, or extent of substance abuse disorder in a client.

(b) "Rehabilitative services" means any medical or remedial services recommended by a physician or other licensed mental health therapist for maximum reduction of a client's substance abuse disorder and restoration of the client to his best possible functional level.

(c) "Substance abuse disorder" means diagnoses listed in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Text Revision (DSM-IV-TR), in the range of 291.00-291.99, 292.00-292.99, 303.00-303.99, 304.00-304.99 and 305.00-305.99.

**R414-34-3. Client Eligibility Requirements.**

Substance abuse treatment is available to any categorically or medically needy Medicaid client.

**R414-34-4. Program Access Requirements.**

(1) Diagnostic and rehabilitative substance abuse services must be provided by or through a substance abuse program that is under contract with or directly operated by a local county substance abuse authority.

(2) The substance abuse treatment program must evaluate the client to determine if:

(a) the client carries a primary diagnosis of a substance abuse disorder and requires substance abuse treatment services; or

(b) the client's child requires services to reduce the child's risk of developing a substance abuser disorder.

**R414-34-5. Service Coverage.**

(1) Services must be recommended by a licensed mental health therapist.

(2) The scope of diagnostic and rehabilitative substance abuse services includes the following:

- (a) psychiatric diagnostic interview examination;
- (b) alcohol and drug assessment by a non-physician;
- (c) psychological testing;
- (d) individual psychotherapy;
- (e) group psychotherapy;
- (f) individual psychotherapy with medical evaluation and management services;
- (g) family psychotherapy with client present;
- (h) family psychotherapy without client present;
- (i) therapeutic behavioral services;
- (j) pharmacologic management;
- (k) individual skills training and development;
- (l) psychosocial rehabilitative services; and
- (m) intensive psychosocial rehabilitative services for children through the month of their thirteenth birthday.

(3) Medicaid adult clients in the Non-Traditional Medicaid Plan have the following service exclusions:

- (a) hypnosis, occupational, and recreational therapy; and
- (b) office calls in conjunction with medication management for repetitive therapeutic injections; and

(4) Psychiatric diagnosis interview examinations for legal purposes only, such as for custodial or visitation rights are excluded from coverage for all Medicaid clients.

**R414-34-6. Qualified Providers.**

(1) Diagnostic and rehabilitative services must be provided by an individual, as limited by the scope of his license, who is:

(a) a licensed physician, a licensed psychologist, a licensed clinical social worker, a licensed certified social worker, a licensed social service worker, a licensed advanced practice registered nurse specializing in mental health nursing, a licensed registered nurse, a licensed professional counselor, a licensed substance abuse counselor, or a licensed marriage and family counselor; or

(b) an individual working toward licensure in one of the professions identified in subsection (a); or

(c) a licensed practical nurse or other trained staff working under the supervision of one of the individuals identified in subsection (1)(a) or (b).

**R414-34-7. Reimbursement Methodology.**

The Department pays the lower of the amount billed or the rate on the substance abuse treatment providers' fee schedule. The fee schedule was initially established after consultation with provider representatives. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private pay patients.

**KEY: Medicaid  
October 15, 2004**

**26-18-3**



**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-54. Speech-Language Pathology Services.****R414-54-1. Introduction and Authority.**

(1) The Speech-Language Pathology Program provides speech-language services to meet the basic speech-language pathology needs of Medicaid clients.

(2) Speech-language pathology services are described in 42 CFR, subsection 440.110(c)(1)(2), October 1997 edition, which is adopted and incorporated by reference.

**R414-54-2. Definitions.**

(1) The definitions in the Speech-language Pathology and Audiology Licensing Act, Title 58, Chapter 41, apply to this rule.

(2) In addition, "Client", "Categorically Needy", and "Medically Needy" have the same meanings as defined in R414-1.

**R414-54-3. Client Eligibility Requirements.**

Speech-language pathology services are available to Categorically Needy and Medically Needy individuals.

**R414-54-4. Program Access Requirements.**

A physician must refer clients to a speech-language pathologist before any service may be provided.

**R414-54-5. Service Coverage.**

(1) Speech-language services for individuals or groups with speech or language disorders or dysphagia include: evaluative, diagnostic, screening, treatment, preventive, and corrective processes. Only speech-language pathologists, or speech-language pathology aides under supervision of speech-language pathologists, may provide these services.

(2) All services must be related to a medical need. Treatments for social, educational, and developmental needs, while important to the individual, are not covered services.

(3) Only speech-language pathologists may bill for reimbursable services.

**R414-54-6. Reimbursement.**

(1) The Department pays for speech and language pathology services according to an established fees schedule, based on CPT codes as described in the State Plan, Attachment 4.19-B. Fee schedules were initially established after consultation with provider representatives. Adjustments to the schedule are made in accordance with appropriations and to produce efficient and effective services.

(2) The Department pays the lower of the amount billed and the rate on the schedule. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private-pay patients.

**KEY: Medicaid  
October 25, 2004**

**Notice of Continuation March 23, 2004**

**26-1-5**

**26-18-3**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-303. Coverage Groups.****R414-303-1. Authority and Purpose.**

This rule is authorized by Utah Code Sections 26-1-5 and 26-18-3 and establishes Medicaid eligibility requirements for the following coverage groups:

- (1) Aged;
- (2) Blind;
- (3) Disabled;
- (4) Family;
- (5) Institutional;
- (6) Transitional;
- (7) Child;
- (8) Refugee;
- (9) Prenatal and Newborn;
- (10) Pregnant Women;
- (11) DD/MR Home and Community Based Services Waiver;
- (12) Aging Home and Community Based Services Waiver;
- (13) Technologically Dependent Child Waiver/Travis C. Waiver;
- (14) Persons with Brain Injury Home and Community Based Services Waiver;
- (15) Personal Assistance Waiver for Adults with Physical Disabilities; and
- (16) Cancer Program.

**R414-303-2. Definitions.**

The definitions in R414-1 and R414-301 apply to this rule. In addition:

- (1) "Medicaid agency" means any one of the state departments that determine eligibility for one or more of the following medical assistance programs: Medicaid, the Primary Care Network, or the Covered-at-Work program.
- (2) "Federal poverty guideline" means the U.S. federal poverty measure issued annually by the Department of Health and Human Services that is used to determine financial eligibility for certain means-tested federal programs. Any usage in this rule of the term poverty means the federal poverty guideline.

**R414-303-3. A, B and D Medicaid and A, B and D Institutional Medicaid Coverage Groups.**

(1) The Department provides Medicaid coverage to individuals as described in 42 CFR 435.120, 435.122, 435.130 through 435.135, 435.137, 435.138, 435.139, 435.211, 435.301, 435.320, 435.322, 435.324, 435.340, 435.350 and 435.541, 2001 ed., which are incorporated by reference. The Department provides coverage to individuals as described in 20 CFR 416.901 through 416.1094, 2002 ed., which is incorporated by reference. The Department provides coverage to individuals as required by 1634(b), (c) and (d), 1902(a)(10)(A)(i)(II), 1902(a)(10)(A)(ii)(X), and 1902(a)(10)(E)(i) through (iv)(I) of Title XIX of the Social Security Act in effect January 1, 2001, which are incorporated by reference. The Department provides coverage to individuals described in Section 1902(a)(10)(A)(ii)(XIII) of Title XIX of the Social Security Act in effect January 1, 2001, which is incorporated by reference. Coverage under Section 1902(a)(10)(A)(ii)(XIII) is known as the Medicaid Work Incentive Program.

(2) Proof of disability includes a certification of disability from the State Medicaid Disability Office, Supplemental Security Income (SSI) status, or proof that a disabled client is recognized as disabled by the Social Security Administration (SSA).

(3) An applicant or recipient may request the State Medicaid Disability Office to review medical evidence to determine if the individual is disabled or blind. If the client has

earned income, the State Medicaid Disability Office shall review medical information to determine if the client is disabled without regard to whether the earned income exceeds the Substantial Gainful Activity level defined by the Social Security Administration.

(a) If, within the prior 12 months, SSA has determined that the individual is not disabled, the Medicaid agency must follow SSA's decision. If the individual is appealing SSA's denial of disability, the State Medicaid Disability Office must follow SSA's decision throughout the appeal process, including the final SSA decision.

(b) If, within the prior 12 months, SSA has determined an individual is not disabled but the individual claims to have become disabled since the SSA decision, the State Medicaid Disability Office shall review current medical information to determine if the client is disabled.

(c) Clients must provide the required medical evidence and cooperate in obtaining any necessary evaluations to establish disability.

(d) Recipients must cooperate in completing continuing disability reviews as required by the State Medicaid Disability Office unless they have a current approval of disability from SSA. Medicaid eligibility as a disabled individual will end if the individual fails to cooperate in a continuing disability review.

(4) If an individual denied disability status by the Medicaid Disability Review Office requests a fair hearing, the Disability Review Office may reconsider its determination as part of fair hearing process.

(a) The individual may provide the Department additional medical evidence for the reconsideration.

(b) The reconsideration may take place before the date the fair hearing is scheduled to take place.

(c) The Department shall notify the individual of its decision upon reconsideration. Thereafter, the individual may choose to pursue or abandon his fair hearing rights.

(5) If the Department denies an individual's Medicaid application because it or SSA has determined that the individual is not disabled and that determination is later reversed on appeal and the individual has otherwise been eligible, the individual's eligibility shall extend back to the application that gave rise to the appeal.

(a) Eligibility cannot begin any earlier than the date of disability onset or the date that is three months before the date of application as defined in R414-306-4(2), whichever is later.

(b) If the individual is not receiving medical assistance at the time a successful appeal decision is made, the individual must contact the Medicaid agency to request the Disability Medicaid coverage.

(c) The individual must provide any verifications the Medicaid agency needs to determine eligibility for past or current months for which the individual is requesting medical assistance.

(d) If an individual is determined eligible for past or current months, but must pay a spenddown to receive coverage, the spenddown must be met before Medicaid coverage may be provided for those months.

(6) The age requirement for Aged Medicaid is 65 years of age.

(7) For children described in Section 1902(a)(10)(A)(i)(II) of the Social Security Act in effect January 1, 2001, the Department shall conduct periodic redeterminations to assure that the child continues to meet the SSI eligibility criteria as required by the section.

(8) Coverage for qualifying individuals described in Section 1902(a)(10)(E)(iv)(I) of Title XIX of the Social Security Act in effect January 1, 2001, is limited to the amount of funds allocated under Section 1933 of Title XIX of the Social Security Act in effect January 1, 2001, for a given year, or as

subsequently authorized by Congress. Applicants will be denied coverage when the uncommitted allocated funds are insufficient to provide such coverage.

(9) To determine eligibility under Section 1902(a)(10)(A)(ii)(XIII), if the countable income of the individual and the individual's family does not exceed 250% of the federal poverty guideline for the applicable family size, the Department shall disregard an amount of earned and unearned income of the individual, the individual's spouse, and a minor individual's parents that equals the difference between the total income and the Supplemental Security Income maximum benefit rate payable.

(10) The Department shall require individuals eligible under Section 1902(a)(10)(A)(ii)(XIII) to apply for cost-effective health insurance that is available to them.

**R414-303-4. Family Medicaid and Family Institutional Medicaid Coverage Groups.**

(1) This section provides the eligibility criteria for Family Medicaid and Family Institutional Medicaid Coverage groups.

(2) The Department provides Medicaid coverage to individuals who are eligible as described in 42 CFR 435.110, 435.113 through 435.117, 435.119, 435.210 for groups defined under 201(a)(5) and (6), 435.211, 435.217, 435.223, and 435.300 through 435.310, 2003 ed. and Title XIX of the Social Security Act Sections 1902(e)(1), (4), (5), (6), (7), and 1931(a), (b), and (g) (1931 FM) in effect January 1, 2003, which are incorporated by reference.

(3) For unemployed two-parent households, the Department does not require the primary wage earner to have an employment history.

(4) A specified relative, as that term is used in the provisions incorporated into this section, other than the child's parents, may apply for assistance for a child. In addition to other Family Medicaid requirements, all the following applies to a Family Medicaid application by a specified relative:

(a) The child must be currently deprived of support because both parents are absent from the home where the child lives.

(b) The child must be currently living with, not just visiting, the specified relative.

(c) The income and resources of the specified relative are not counted unless the specified relative is also included in the Medicaid coverage group.

(d) If the specified relative is currently included in a 1931 Family Medicaid household, the child must be included in the 1931 FM eligibility determination for the specified relative.

(e) The specified relative may choose to be excluded from the Medicaid coverage group. If the specified relative chooses to be excluded from the Medicaid coverage group, the ineligible children of the specified relative must be excluded and the specified relative is not included in the income standard calculation.

(f) The specified relative may choose to exclude any child from the Medicaid coverage group. If a child is excluded from coverage, that child's income and resources are not used to determine eligibility or spenddown.

(g) If the specified relative is not the parent of a dependent child who meets deprivation of support criteria and elects to be included in the Medicaid coverage group, the following income provisions apply:

(i) The monthly gross earned income of the specified relative and spouse is counted.

(ii) \$90 will be deducted from the monthly gross earned income for each employed person.

(iii) The \$30 and 1/3 disregard is allowed from earned income for each employed person, as described in R414-304-6(4).

(iv) Child care expenses and the cost of providing care for

an incapacitated spouse necessary for employment are deducted for only the specified relative's children, spouse, or both. The maximum allowable deduction will be \$200.00 per child under age two, and \$175.00 per child age two and older or incapacitated spouse each month for full-time employment. For part-time employment, the maximum deduction is \$160.00 per child under age two, and \$140.00 per child age two and older or incapacitated spouse each month.

(v) Unearned income of the specified relative and the excluded spouse that is not excluded income is counted.

(vi) Total countable earned and unearned income is divided by the number of family members living in the specified relative's household.

(5) An American Indian child in a boarding school and a child in a school for the deaf and blind are considered temporarily absent from the household.

(6) Temporary absence from the home for purposes of schooling, vacation, medical treatment, military service, or other temporary purpose shall not constitute non-resident status. The following situations do not meet the definition of absence for purposes of determining deprivation of support:

(a) parental absences caused solely by reason of employment, schooling, military service, or training;

(b) an absent parent who will return home to live within 30 days from the date of application;

(c) an absent parent is the primary child care provider for the children, and the child care is frequent enough that the children are not deprived of parental support, care, or guidance.

(7) Joint custody situations are evaluated based on the actual circumstances that exist for a dependent child. The same policy is applied in joint custody cases as is applied in other absent parent cases.

(8) The Department imposes no suitable home requirement.

(9) Medicaid assistance is not continued for a temporary period if deprivation of support no longer exists. If deprivation of support ends due to increased hours of employment of the primary wage earner, the household may qualify for Transitional Medicaid described in R414-303-5.

(10) Full-time employment nullifies a person's claim to incapacity. To claim an incapacity, a parent must meet one of the following criteria:

(a) receive SSI;

(b) be recognized as 100% disabled by the Veteran's Administration, or be determined disabled by the Medicaid Disability Review Office or the Social Security Administration;

(c) provide, either on a Department-approved form or in another written document, completed by one of the following licensed medical professionals: medical doctor; doctor of Osteopathy; Advanced Practice Registered Nurse; Physician's Assistant; or a mental health therapist, which includes a psychologist, Licensed Clinical Social Worker, Certified Social Worker, Marriage and Family Therapist, Professional Counselor, or MD, DO or APRN engaged in the practice of mental health therapy, that states the incapacity is expected to last at least 30 days. The medical report must also state that the incapacity will substantially reduce the parent's ability to work or care for the child.

**R414-303-5. 12 Month Transitional Family Medicaid.**

The Department covers households that lose eligibility for 1931 Family Medicaid, in accordance with the provisions of Title XIX of the Social Security Act, Sections 1925 and 1931(c)(2).

**R414-303-6. Four Month Transitional Family Medicaid.**

(1) The Department adopts 42 CFR 435.112 and 435.115(f), (g) and (h), 2001 ed., and Title XIX of the Social Security Act, Section 1931(c)(1) in effect January 1, 2001

which are incorporated by reference.

(2) Changes in household composition do not affect eligibility for the four month extension period. New household members may be added to the case only if they meet the AFDC or AFDC two-parent criteria for being included in the household if they were applying in the current month. Newborn babies are considered household members even if they were unborn the month the household became ineligible for Family Medicaid under Section 1931 of the Social Security Act. New members added to the case will lose eligibility when the household loses eligibility. Assistance shall be terminated for household members who leave the household.

**R414-303-7. Foster Care.**

(1) The Department adopts 42 CFR 435.115(e)(2), 2001 ed., which is incorporated by reference.

(2) Eligibility for foster children is not governed by this rule. The Department of Human Services determines eligibility for foster care Medicaid.

**R414-303-8. Subsidized Adoptions.**

(1) The Department adopts 42 CFR 435.115(e)(1), 2001 ed., which is incorporated by reference.

(2) Eligibility for subsidized adoptions is not governed by this rule. The Department of Human Services determines eligibility for subsidized adoption Medicaid.

**R414-303-9. Child Medicaid.**

(1) The Department adopts 42 CFR 435.222 and 435.301 through 435.308, 2001 ed., which are incorporated by reference.

(2) The Department elects to cover all individuals under age 18 who would be eligible for AFDC but do not qualify as dependent children. Individuals who are 18 years old may be covered if they would be eligible for AFDC except for not living with a specified relative or not being deprived of support.

(3) If a child receiving SSI elects to receive Child Medicaid or receives benefits under the Home and Community Based Services Waiver, the child's SSI income shall be counted with other household income.

**R414-303-10. Refugee Medicaid.**

(1) The Department adopts 45 CFR 400.90 through 400.107, 2001 ed., which are modified by the Federal Register 60 FR 33584, published Wednesday, June 28, 1995, and 45 CFR 401, 2001 ed., all of which are incorporated by reference.

(2) Specified relative rules do not apply.

(3) Child support enforcement rules do not apply.

(4) The sponsor's income and resources are not counted. In-kind service or shelter provided by the sponsor is not counted.

(5) Initial settlement payments made to a refugee from a resettlement agency are not counted.

(6) Refugees may qualify for medical assistance for eight months after entry into the United States.

**R414-303-11. Prenatal and Newborn Medicaid.**

(1) The Department adopts Title XIX of the Social Security Act, Section 1902(a)(10)(A)(i)(IV), (VI), (VII), 1902(a)(47) and 1902(l), in effect January 1, 2001, and Title XIX of the Social Security Act, Section 1902(k) in effect January 1, 1993, which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "covered provider" means a provider that the Department has determined is qualified to make a determination of presumptive eligibility for a pregnant woman and that meets the criteria defined in Section 1920(b)(2) of the Social Security Act;

(b) "presumptive eligibility" means a period of eligibility for medical services for a pregnant woman based on self-

declaration that she meets the eligibility criteria.

(3) The Department provides coverage to pregnant women during a period of presumptive eligibility if a covered provider determines, based on preliminary information, that the woman:

(a) is pregnant;

(b) meets citizenship or alien status criteria as defined in R414-302-1;

(c) has a declared household income that does not exceed 133% of the federal poverty guideline applicable to her declared household size; and

(d) the woman is not covered by CHIP.

(4) No resource test applies to determine presumptive eligibility of a pregnant woman.

(5) A pregnant woman made eligible for a presumptive eligibility period must apply for Medicaid benefits by the last day of the month following the month the presumptive coverage begins.

(6) The presumptive eligibility period shall end on the earlier of:

(a) the day that the Medicaid agency determines whether the woman is eligible for Medicaid based on her application; or

(b) in the case of a woman who does not file a Medicaid application by the last day of the month following the month the woman was determined presumptively eligible, the last day of that following month.

(7) A pregnant woman may receive medical assistance during only one presumptive eligibility period for any single term of pregnancy.

(8) The Department elects to impose a resource standard on Newborn Medicaid coverage for children age six to the month in which they turn age 19. The resource standard is the same as other Family Medicaid Categories.

(9) The Department elects to provide Prenatal Medicaid coverage to pregnant women whose countable income is equal to or below 133% of poverty.

(10) At the initial determination of eligibility for Prenatal Medicaid applicants who have \$5,000 or more of assets, the Department will require the applicant to pay four percent of countable resources to become eligible for Prenatal Medicaid. This payment amount shall not exceed \$3,367. The payment must be met with cash; incurred medical bills and medical expenses are not allowed to meet this payment.

(a) In subsequent months, through the 60 day postpartum period, the Department disregards all excess resources.

(b) This resource payment applies only to pregnant women covered under Sections 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX) of the Social Security Act in effect January 1, 2001.

(c) No resource payment will be required when the Department makes a determination based on information received from a medical professional that social, medical, or other reasons place the pregnant woman in a high risk category.

(11) Children born after September 30, 1983, may qualify for the newborn program through the month in which they turn 19.

(12) A child who is 18 but not yet 19 and meets the criteria under 1902(l)(1)(D) cannot be made ineligible for coverage under the Newborn program because of deeming income or assets from a parent, even if the child lives in the parent's home.

**R414-303-12. Pregnant Women Medicaid.**

(1) The Department adopts 42 CFR 435.116 (a), 435.301 (a) and (b)(1)(i) and (iv), 2001 ed. and Title XIX of the Social Security Act, Section 1902(a)(10)(A)(i)(III) in effect January 1, 2001, which are incorporated by reference.

**R414-303-13. DD/MR Home and Community Based Services Waiver.**

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) Medicaid Eligibility for Developmentally Disabled Mentally Retarded (DD/MR) Home and Community-Based Services is limited to mentally retarded and developmentally disabled individuals. Eligibility is limited to those referred by the Division of Services to People with Disabilities (DSPD) or any DD/MR worker.

(3) Medicaid eligibility for DD/MR Home and Community-Based Services is limited to individuals who qualify for a regular Medicaid coverage group, except for individuals who only qualify for the Primary Care Network.

(4) A client's resources must be equal to or less than the regular Medicaid resource limit. The spousal impoverishment resource provisions for married, institutionalized individuals in R414-305-3 apply.

(5) All of the client's income is countable unless excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance.

(6) To determine countable earned income, the Department will deduct from the individual's earned income an amount equal to the substantial gainful activity level of earnings defined in Section 223(d)(4) of the Compilation of the Social Security Laws in effect January 1, 2001.

(7) The Department shall allow deductions for any health insurance or medical expenses for the waiver eligible client that are paid by the waiver client.

(8) The spousal impoverishment provisions for Institutional Medicaid income apply.

(9) The client obligation for the contribution to care, which may be referred to as a spenddown, will be the amount of income that exceeds the personal needs allowance after allowable deductions. The contribution to care must be paid to the Department.

(10) The Department shall count parental and spousal income only if the client is given a cash contribution from a parent or spouse.

(11) A client who transfers resources for less than fair market value for the purpose of obtaining Medicaid may be ineligible for an indefinite period of time. If the transfer occurred prior to August 11, 1993, the period of ineligibility shall not exceed 30 months.

#### **R414-303-14. Aging Home and Community Based Services Waiver.**

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) Medicaid eligibility for Aging Home and Community-Based Services is limited to individuals eligible for Aged Medicaid who could qualify for skilled nursing home care except that the spousal impoverishment resource limits apply. Eligibility is limited to those referred by the Division of Aging or a county aging worker.

(3) A client's resources must be equal to or less than the regular Medicaid resource limit. The spousal impoverishment resource provisions for married, institutionalized individuals in R414-305-3 apply.

(4) All income is counted, unless excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance. The client's contribution to care, which may be referred to as a spenddown, is determined counting only the client's income less allowable deductions.

(5) The spousal impoverishment provisions for

Institutional Medicaid income apply. Income deductions include health insurance premiums, medical expenses, a percentage of shelter costs and an aging waiver personal needs deduction.

(6) A client who transfers resources for less than fair market value for the purpose of obtaining Medicaid may be ineligible for an indefinite period of time. If the transfer occurred prior to August 11, 1993, the period of ineligibility shall not exceed 30 months.

(7) The Department shall count a spouse's income only if the client is given a cash contribution from a spouse.

#### **R414-303-15. Technologically Dependent Child Waiver/Travis C. Waiver.**

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) The Department will operate this program statewide with a limited number of available slots.

(3) Eligibility for services under this waiver require that the individual meets the medical criteria established by the Department and the Division in Section Appendix C-4 of the Home and Community Based Waiver for Technology Dependent/Medically Fragile Children implementation plan effective on January 1, 1995 and renewed effective July 1, 2003 through June 30, 2008, which is incorporated by reference.

(4) To be eligible for admission to this waiver, the individual must be under age 21 at the time of admission to the waiver. An individual is considered to be under age 21 until the month after the month in which the twenty first birthday falls.

(5) Once admitted to the waiver, the individual can continue to receive waiver benefits and services as long as the individual continues to meet the medical criteria defined by the Department in R414-303-15(3), non-financial Medicaid eligibility criteria in R414-302, a Medicaid category of coverage defined in R414-303, and the income and resource criteria defined in R414-303-13, except that the earned income deduction is limited to \$125.

(6) Income and resource eligibility requirements follow the rules for the DD/MR Home and Community Based Services Waiver found in R414-303-13, except that the earned income deduction is limited to \$125.

#### **R414-303-16. Persons with Brain Injury Home and Community Based Services Waiver.**

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) The Department will operate this program statewide with a limited number of available slots.

(3) Eligibility for services under this waiver requires that the individual has medical needs resulting from a brain injury. This means that the individual must be in need of skilled nursing or rehabilitation services as a result of the damage sustained because of the brain injury. A medical need determination will be established through the Department of Human Services, Division of Services for People with Disabilities.

(4) To qualify for services under this waiver, the individual must be 18 years old or older. The person is considered to be 18 in the month in which the 18th birthday falls.

(5) All other eligibility requirements follow the rules for the Aging Home and Community Based Services Waiver found in R414-303-14.

(6) The spousal impoverishment provisions for Institutional Medicaid income apply, with one exception: An

individual who has a dependent family member living in the home is allowed a deduction for a dependent family member even if the individual is not married or is not living with the spouse.

**R414-303-17. Personal Assistance Waiver for Adults with Physical Disabilities.**

(1) The Department adopts 42 CFR 435.726 and 435.217, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.

(2) The Department operates this program statewide with a limited number of slots, and eligibility for this waiver is limited to individuals 18 years of age and over.

(3) The individual must meet non-financial criteria for Aged, Blind, or Disabled Medicaid.

(4) A client must qualify for a nursing home level of care. Eligibility is limited to those referred by the Division of Services to People with Disabilities and determined medically eligible by the Bureau of Medicare/Medicaid Program Certification and Resident Assessment.

(5) A client's resources must be equal to or less than \$2000. The spousal impoverishment resource provisions for married, institutionalized clients in R414-305-3 apply to this rule.

(6) Countable income is determined using income rules of Aged, Blind, or Disabled Institutional Medicaid. All income is counted, unless excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance. After determining countable income, eligibility is determined counting only the gross income of the client.

(7) The client's income can not exceed three times the SSI benefit amount payable under Section 1611(b)(1) of the Social Security Act, except that individuals with income over this amount can spenddown to the Medicaid Basic Maintenance Standard for a household of one.

(8) Transfer of resource provisions described in R414-305-6 apply to this rule.

**R414-303-18. Medicaid Cancer Program.**

(1) The Department shall provide coverage to individuals described in 1902(a)(10)(A)(ii)(XVIII) of the Social Security Act in effect January 1, 2001, as amended by Pub. L. No. 106-354 effective October 24, 2000, which is incorporated by reference. This coverage shall be referred to as the Medicaid Cancer Program.

(2) Medicaid eligibility for services under this program will be provided to women who have been screened for breast or cervical cancer under the Centers for Disease Control and prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act and are in need of treatment.

(3) A woman who is covered for treatment of breast or cervical cancer under a group health plan or other health insurance coverage defined by the Health Information Portability and Accountability Act (HIPAA) of Section 2701 (c) of the Public Health Service Act, is not eligible for coverage under the program. If the woman has insurance coverage but is subject to a pre-existing condition period that prevents her from receiving treatment for her breast or cervical cancer or precancerous condition, she is considered to not have other health insurance coverage until the pre-existing condition period ends at which time her eligibility for the program ends.

(4) A woman who is eligible for Medicaid under any mandatory categorically needy eligibility group, or any optional categorically needy or medically needy program that does not require a spenddown or a premium, is not eligible for coverage under the program.

(5) A woman must be under 65 years of age to enroll in the program.

(6) Coverage for the treatment of precancerous conditions is limited to two calendar months after the month benefits are made effective.

(7) Coverage for a woman with breast or cervical cancer under 1902(a)(10)(A)(ii)(XVIII) ends when she is no longer in need of treatment for breast or cervical cancer. At each eligibility review, eligibility workers determine whether an eligible woman is still in need of treatment based on the woman's doctor's statement or report.

**KEY: income, coverage groups**

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**26-1-5**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-304. Income and Budgeting.**

**R414-304-1. Definitions.**

(1) The definitions in R414-1 and R414-301 apply to this rule. In addition:

(a) "Allocation for a spouse" means an amount of income that is the difference between the SSI federal benefit rate for a couple minus the federal benefit rate for an individual.

(b) "Basic maintenance standard" or "BMS" means the income level for eligibility for 1931 Family Medicaid, and for coverage of the medically needy based on the number of family members who are counted in the household size.

(c) "Benefit month" means a month or any portion of a month for which an individual is eligible for Medicaid.

(d) "Deeming" or "deemed" means a process of counting income from a spouse or a parent, or the sponsor of a qualified alien, to decide what amount of income after certain allowable deductions, if any, must be considered income to the applicant or recipient.

(e) "Federal poverty guideline" or "FPL" means the U.S. federal poverty measure issued annually by the Department of Health and Human Services that is used to determine financial eligibility for certain means-tested federal programs. Any usage in this rule of poverty means the federal poverty guideline.

(f) "Household size" means the number of family members, including the client, who are counted based on the criteria of the particular program to decide what level of income to use to determine eligibility.

(g) "Medically needy" means medical assistance coverage under the provisions of 42 CFR 435.301, 2001 ed., and that uses the Basic Maintenance Standard as the income limit for eligibility.

(h) "Poverty-related" refers to any one of a variety of medical assistance programs that use a percentage of the federal poverty guideline for the household size involved as the income limit to determine eligibility.

(i) "Qualified Domestic Relations Order" means a domestic relations order that creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a pension plan pursuant to a state domestic relations law.

(j) "Sponsor" means one or more persons who have signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997 for an alien immigrating to the United States on or after December 19, 1997.

(k) "Temporarily absent" means a member of a household is living away from the home for a period of time but intends to return to the home when the reason for the temporary absence is accomplished. Reasons for a temporary absence may include an absence for the purpose of education, medical care, visits, military service, temporary religious service or other volunteer service such as the Peace Corps.

**R414-304-2. A, B and D Medicaid and A, B and D Institutional Medicaid Unearned Income Provisions.**

(1) The Department adopts 42 CFR 435.725, 435.726, 435.811 through 435.832, 2001 ed., and 20 CFR 416.1102, 416.1103, 416.1120 through 416.1148, 416.1150, 416.1151, 416.1163 through 416.1166, and Appendix to Subpart K of 416, 2002 ed., which are incorporated by reference. The Department adopts Subsection 404(h)(4) and 1612(b)(22) of the Compilation of the Social Security Laws in effect January 1, 2001, which are incorporated by reference. The Department shall not count as income any payments that are prohibited under other federal laws from being counted as income to determine eligibility for federally-funded medical assistance

programs.

(2) The following definitions apply to this section:

(a) "Eligible spouse" means the member of a married couple who is either aged, blind, or disabled.

(b) "In-kind support donor" means an individual who provides food or shelter without receiving full market value compensation in return.

(c) "Presumed maximum value" means the allowed maximum amount an individual is charged for the receipt of food and shelter. This amount shall not exceed 1/3 of the SSI federal benefit rate plus \$20.

(3) Only the portion of a VA check to which the client is legally entitled is countable income. VA payments for aid and attendance do not count as income. The portion of a VA payment that is made because of unusual medical expenses is not countable income. Other VA income based on need is countable income, but is not subject to the \$20 general income disregard.

(4) The value of special circumstance items is not countable income if the items are paid for by donors.

(5) For A, B and D Medicaid two-thirds of current child support received in a month for the disabled child is countable unearned income. It does not matter if the payments are voluntary or court-ordered. It does not matter if the child support is received in cash or in-kind. If there is more than one child for whom the payment is made, the amount is divided equally among the children unless a court order indicates a different division. Child support payments that are payments owed for past months or years are countable income to determine eligibility for the parent or guardian receiving the payments.

(6) For A, B and D Institutional Medicaid, court-ordered child support payments must be paid to the Office of Recovery Services (ORS) when the child resides out-of-home in a Medicaid 24-hour care facility. If the child has no income or insufficient income to provide for a personal needs allowance, ORS will allow the parent to retain up to the amount of the personal needs allowance to send to the child for personal needs. All other current child support payments received by the child or guardian that are not subject to collection by ORS shall count as unearned income to the child.

(7) The interest earned from a sales contract on either or both the lump sum and installment payments is countable unearned income when it is received or made available to the client.

(8) If the client, or the client and spouse do not live with an in-kind support donor, in-kind support and maintenance is the lesser of the value or the presumed maximum value of food or shelter received. If the client, or the client and spouse live with an in-kind support donor and do not pay a prorated share of household operating expenses, in-kind support and maintenance is the difference between the prorated share of household operating expenses and the amount the client, or the client and spouse actually pay, or the presumed maximum value, whichever is less.

(9) SSA reimbursements of Medicare premiums are not countable income.

(10) Payments under a contract, retroactive payments from SSI and SSA reimbursements of Medicare premiums are not considered lump sum payments.

(11) Educational loans, grants, and scholarships guaranteed by the U.S. Department of Education are not countable income if the recipient is an undergraduate. Income from service learning programs is not countable income if the recipient is an undergraduate. Deductions are allowed from countable educational income if receipt of the income depends on school attendance and if the client pays the expense. Allowable deductions include:

(a) tuition;

- (b) fees;
- (c) books;
- (d) equipment;
- (e) special clothing needed for classes;
- (f) travel to and from school at a rate of 21 cents a mile, unless the grant identifies a larger amount;
- (g) child care necessary for school attendance.

(12) Except for an individual eligible for the Medicaid Work Incentive Program, the following provisions apply to non-institutional medical assistance:

(a) For A, B, or D Medicaid, the income of a spouse or a parent shall not be considered in determining Medicaid eligibility of a person who receives SSI or meets 1619(b) criteria. SSI recipients and 1619(b) status individuals who meet all other Medicaid eligibility factors shall be eligible for Medicaid without spending down.

(b) If an ineligible spouse of an aged, blind, or disabled person has more income after deductions than the allocation for a spouse, that income shall be deemed to be income to the aged, blind, or disabled spouse to determine eligibility.

(c) The Department shall determine household size and whose income counts for A, B or D Medicaid as described below.

(i) If only one spouse is aged, blind or disabled:

(A) income of the ineligible spouse shall be deemed to be income to the eligible spouse when it exceeds the allocation for a spouse. The combined income shall then be compared to 100% of the federal poverty guideline for a two-person household. If the combined income exceeds that amount, it shall be compared, after allowable deductions, to the BMS for two to calculate the spenddown.

(B) If the ineligible spouse's income does not exceed the allocation for a spouse, the ineligible spouse's income shall not be counted and the ineligible spouse shall not be included in the household size. Only the eligible spouse's income shall be compared to 100% of the federal poverty guideline for one. If the income exceeds that amount, it shall be compared, after allowable deductions, to the BMS for one to calculate the spenddown.

(ii) If both spouses are either aged, blind or disabled, the income of both spouses is combined and compared to 100% of the federal poverty guideline for a two-person household. SSI income is not counted.

(A) If the combined income exceeds that amount, and one spouse receives SSI, only the income of the non-SSI spouse, after allowable deductions, shall be compared to the BMS for a one-person household to calculate the spenddown.

(B) If neither spouse receives SSI and their combined income exceeds 100% of the federal poverty guideline, then the income of both spouses, after allowable deductions, shall be compared to the BMS for a two-person household to calculate the spenddown.

(C) If neither spouse receives SSI and only one spouse will be covered under the applicable program, income of the non-covered spouse shall be deemed to the covered spouse when it exceeds the spousal allocation. If the non-covered spouse's income does not exceed the spousal allocation, then only the covered spouse's income shall be counted. In both cases, the countable income shall be compared to 100% of the two-person poverty guideline. If it exceeds the limit, then income, after allowable deductions, shall be compared to the BMS.

(I) If the non-covered spouse has deemable income, the countable income, after allowable deductions, shall be compared to a two-person BMS to calculate a spenddown.

(II) If the non-covered spouse does not have deemable income, then only the covered spouse's income, after allowable deductions, shall be compared to a one-person BMS to calculate the spenddown.

(iii) In determining eligibility under (c) for an aged or

disabled person whose spouse is blind, both spouses income is combined.

(A) If the combined income after allowable deductions is under 100% of the federal poverty guideline, the aged or disabled spouse will be eligible under the 100% poverty group defined in 1902(a)(10)(A)(ii) of the Social Security Act, and the blind spouse is eligible without a spenddown under the medically needy group defined in 42 CFR 435.301.

(B) If the combined income after allowable deductions is over 100% of poverty, both spouses are eligible with a spenddown under the medically needy group defined in 42 CFR 435.301.

(iv) If one spouse is disabled and working and the other is aged, blind, or disabled but is neither an SSI recipient nor a 1619(b) eligible individual and is not working, the working disabled spouse may choose to receive coverage under the Medicaid Work Incentive program. If both spouses want coverage, however, the Department shall first determine eligibility for them as a couple. If a spenddown is owed for them as a couple, they must meet the spenddown to receive coverage for both of them.

(e) Except when determining countable income for the 100% poverty-related Aged and Disabled Medicaid programs, income will not be deemed from a spouse who meets 1619(b) protected group criteria.

(f) The Department shall determine household size and whose income counts for QMB, SLMB, and QI-1 assistance as described below.

(i) If both spouses receive Part A Medicare and both want coverage, income shall be combined and compared to the applicable percentage of the poverty guideline for a two-person household.

(ii) If one spouse receives Part A Medicare, and the other spouse is aged, blind, or disabled and that spouse either does not receive Part A Medicare or does not want coverage, then income of the ineligible spouse shall be deemed to the eligible spouse when it exceeds the allocation for a spouse. If the income of the ineligible spouse does not exceed the allocation for a spouse, then only the income of the eligible spouse shall be counted. In both cases, the countable income shall be compared to the applicable percentage of the federal poverty guideline for a two-person household.

(iii) If one spouse receives Part A Medicare and the other spouse is not aged, blind or disabled, income of the ineligible spouse shall be deemed to the eligible spouse when it exceeds the allocation for a spouse. The combined countable income shall be compared to the applicable percentage of the federal poverty guideline for a two-person household. If the ineligible spouse's deemable income does not exceed the allocation for a spouse, only the eligible spouse's income shall be counted, and compared to the applicable percentage of the poverty guideline for a one-person household.

(iv) SSI income will not be counted to determine eligibility for QMB, SLMB or QI-1 assistance.

(g) If any parent in the home receives SSI or is eligible for 1619(b) protected group coverage, the income of neither parent shall be considered to determine a child's eligibility for B or D Medicaid.

(h) Payments for providing foster care to a child are countable income. The portion of the payment that represents a reimbursement for the expenses related to providing foster care is not countable income.

(13) For institutional Medicaid including home and community based waiver programs, the Department shall only count the client in the household size and only count the client's income, and income deemed from an alien client's sponsor, to determine contribution to cost of care.

(14) Interest accrued on an Individual Development Account as defined in Sections 404-416 of Pub. L. No. 105-285



effective October 27, 1998, shall not count as income.

(15) Income, unearned and earned, shall be deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997.

(16) Sponsor deeming will end when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. Beginning after December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(17) Sponsor deeming does not apply to applicants who are eligible for Medicaid for emergency services only.

(18) If income such as retirement income has been divided between divorced spouses by the divorce decree pursuant to a Qualified Domestic Relations Order, only the amount paid to the individual is counted as income.

#### **R414-304-3. Medicaid Work Incentive Program Unearned Income Provisions.**

(1) The Department adopts 20 CFR 416.1102, 416.1103, 416.1120 through 416.1148, 416.1150, 416.1151, and Appendix to Subpart K of 416, 2002 ed., which are incorporated by reference. The Department adopts Subsection 404(h)(4) and 1612(b)(22) of the Compilation of the Social Security Laws in effect January 1, 2001. The Department shall not count as income any payments that are prohibited under other federal laws from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The Department shall allow the provisions found in R414-304-2 (3) through (11), and (14) through (18).

(3) The income from an ineligible spouse or parent shall be determined by the total of the earned and unearned income using the appropriate exclusions in 20 CFR 416.1161, except that court ordered support payments would not be allowed as an income deduction.

(4) For the Medicaid Work Incentive Program, the income of a spouse or parent shall not be considered in determining eligibility of a person who receives SSI. SSI recipients who meet all other Medicaid Work Incentive Program eligibility factors shall be eligible without paying a Medicaid buy-in premium.

(5) The Department shall determine household size and whose income counts for the Medicaid Work Incentive Program as described below:

(a) If the Medicaid Work Incentive Program individual is an adult and is not living with a spouse, count only the income of the individual. Include in the household size, any dependent children under age 18, or who are 18, 19, or 20 and are full-time students. These dependent children must be living in the home or be temporarily absent. After allowable deductions, the net income shall be compared to 250% of the federal poverty guideline for the household size involved.

(b) If the Medicaid Work Incentive Program individual is living with a spouse, combine their income before allowing any deductions. Include in the household size the spouse and any children under age 18, or who are 18, 19, or 20 and are full-time students. These dependent children must be living in the home or be temporarily absent. Compare the net income of the Medicaid Work Incentive Program individual and spouse to 250% of the federal poverty guideline for the household size involved.

(c) If the Medicaid Work Incentive Program individual is a child living with a parent, combine the income of the Medicaid Work Incentive Program individual and the parents before allowing any deductions. Include in the household size the parents, any minor siblings, and siblings who are age 18, 19, or

20 and are full-time students, who are living in the home or temporarily absent. Compare the net income of the Medicaid Work Incentive Program individual and the individual's parents to 250% of the federal poverty guideline for the household size involved.

#### **R414-304-4. Family Medicaid and Institutional Family Medicaid Unearned Income Provisions.**

This section provides eligibility criteria governing unearned income for the determination of eligibility for Family Medicaid and Institutional Family Medicaid coverage groups.

(1) The Department adopts 42 CFR 435.725, 435.726, 435.811 through 435.832, 2001 ed., and 45 CFR 233.20(a)(1), 233.20(a)(3)(iv), 233.20(a)(3)(v), 233.20(a)(3)(xxi), 233.20(4)(ii), and 233.51, 2003 ed., which are incorporated by reference. The Department adopts Subsection 404(h)(4) of the Compilation of the Social Security Laws in effect January 1, 2003, which is incorporated by reference. The Department shall not count as income any payments that are prohibited under other federal laws from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The following definitions apply to this section:

(a) A "bona fide loan" is a loan that has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment.

(b) "Unearned income" means cash received for which the individual performs no service.

(c) "Quarter" means any three-month period that includes January through March, April through June, July through September or October through December.

(3) Bona fide loans are not countable income.

(4) Support and maintenance assistance provided in-kind by a non-profit organization certified by the Department of Human Services is not countable income.

(5) The value of food stamp assistance is not countable income.

(6) SSI and State Supplemental Payments are income for children receiving Child, Family, Newborn, or Newborn Plus Medicaid.

(7) If rental income is unearned income, deduct \$30. If the rental income is consistent with community standards, additional deductions are allowed if the client can prove greater expenses. The following expenses in excess of \$30 may be allowed:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property. This includes utility costs.

(c) only the interest can be deducted on a loan or mortgage made for upkeep or repair;

(d) if meals are provided to a boarder, the value of a one-person food stamp allotment.

(8) Cash gifts that do not exceed \$30 a quarter per person in the assistance unit are not countable income. A cash gift may be divided equally among all members of the assistance unit.

(9) Deferred income that was not deferred by choice is countable income when it is received by the client if receipt can be reasonably anticipated. If the income was deferred by choice, count it as income when it could have been received.

(10) The value of special circumstance items is not countable income if the items are paid for by donors.

(11) Home energy assistance is not countable income.

(12) Do not count payments from any source that are to repair or replace lost, stolen or damaged exempt property. If the payments include an amount for temporary housing, count only the amount that the client does not intend to use or that is more than what is needed for temporary housing.

(13) SSA reimbursements of Medicare premiums are not countable income.

(14) Payments from trust funds are countable income in the month the payment is received or made available to the individual.

(15) Payments from the Department of Workforce Services under the Family Employment program, the Working Toward Employment Program, and the Refugee Cash Assistance program are not countable income. Income used to determine the amount of these payments is counted to determine eligibility for Medicaid, unless the income is an excluded income under other laws or regulations.

(16) Only the portion of a Veteran's Administration check to which the client is legally entitled is countable income.

(17) If the entitlement amount of a benefit differs from the payment, the full entitlement amount is counted as income unless the amount being withheld from the entitlement is due to an overpayment of such benefits, in which case the entitlement less the amount withheld to repay the overpayment is counted. If deductions are being withheld that are purely voluntary, or are to repay a debt or meet a legal obligation other than an overpayment of the benefit, the full entitlement is counted as income.

(18) Deposits to joint checking or savings accounts are countable income, even if the deposits are made by a non-household member. Clients who dispute ownership of deposits to joint checking or savings accounts shall be given an opportunity to prove that the deposits do not represent income to them. Funds that are successfully disputed are not countable income.

(19) Income, unearned and earned, is deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997.

(20) Sponsor deeming ends when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. Beginning after December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(21) Sponsor deeming does not apply to applicants who are eligible for Medicaid for emergency services only.

(22) The interest earned from a sales contract on either or both the lump sum and installment payments is countable unearned income when it is received or made available to the client.

(23) Interest accrued on an Individual Development Account as defined in 42 USC 604(h) does not count as income.

(24) Current child support payments are countable income to the child for whom the payments are being made. If a payment is for more than one child, the amount is divided equally among the children unless a court order indicates a different division. Child support payments made for past months or years (arrearages) are countable income to determine eligibility of the parent or guardian who is receiving the payment. If ORS is collecting the child support, it is counted as current even if it is mailed late by ORS. Arrearages are payments collected for past months or years that were not paid on time and are like repayments for past-due debts. ORS may be collecting both current child support and arrearages.

(25) Payments from annuities count as unearned income in the month received.

(26) If income such as retirement income has been divided between divorced spouses by the divorce decree pursuant to a Qualified Domestic Relations Order, count only the amount paid to the individual.

**R414-304-5. A, B and D Medicaid and A, B and D Institutional Medicaid Earned Income Provisions.**

(1) The Department adopts 42 CFR 435.725, 435.726, 435.811 through 435.832, 2001 ed., and 20 CFR 416.1110 through 416.1112, 2002 ed., which are incorporated by reference. The department adopts Subsection 1612(b)(4)(A) and (B) of the Compilation of the Social Security Laws, in effect January 1, 2001, which is incorporated by reference.

(2) If an SSI recipient has a plan for achieving self-support approved by the Social Security Administration, the Department shall not count income set aside in the plan that allows the individual to purchase work-related equipment or meet self support goals. This income shall be excluded and may include earned and unearned income.

(3) Expenses relating to the fulfillment of a plan to achieve self-support shall not be allowed as deductions from income.

(4) For A, B and D Medicaid, earned income used to compute a needs-based grant is not countable.

(5) For A, B and D Institutional Medicaid, \$125 shall be deducted from earned income before contribution towards cost of care is determined.

(6) For A, B and D Institutional Medicaid impairment-related work expenses shall be allowed as an earned income deduction.

(7) Capital gains shall be included in the gross income from self-employment.

(8) To determine countable net income from self-employment, the state shall allow a 40 percent flat rate exclusion off the gross self-employment income as a deduction for business expenses. For self-employed individuals who have actual allowable business expenses greater than the 40 percent flat rate exclusion amount, if the individual provides verification of the actual expenses, the self-employment net profit amount will be calculated using the same deductions that are allowed under federal income tax rules.

(9) No deductions shall be allowed for the following business expenses:

- (a) transportation to and from work;
- (b) payments on the principal for business resources;
- (c) net losses from previous tax years;
- (d) taxes;
- (e) money set aside for retirement;
- (f) work-related personal expenses.

(10) Net losses of self-employment from the current tax year may be deducted from other earned income.

(11) Earned income paid by the U.S. Census Bureau to temporary census takers shall be excluded for any A, B, or D category programs that use a percentage of the federal poverty guideline as an eligibility income limit.

(12) Deductions from earned income such as insurance premiums, savings, garnishments or deferred income is counted in the month when it could have been received.

**R414-304-6. Family Medicaid and Family Institutional Medicaid Earned Income Provisions.**

This section provides eligibility criteria governing earned income for the determination of eligibility for Family Medicaid and Institutional Family Medicaid coverage groups.

(1) The Department adopts 42 CFR 435.725, 435.726, 435.811 through 435.832, 2001 ed. and 45 CFR 233.20(a)(6)(iii) through (iv), 233.20(a)(6)(v)(B), 233.20(a)(6)(vi) through (vii), and 233.20(a)(11), 2003 ed., which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "Full-time student" means a person enrolled for the number of hours defined by the particular institution as fulfilling full-time requirements.

(b) "Part-time student" means a person who is enrolled for at least one-half the number of hours or periods considered by the institution to be customary to complete the course of study within the minimum time-period. If no schedule is set by the

school, the course of study must be no less than an average of two class periods or two hours a day, whichever is less.

(c) "School attendance" means enrollment in a public or private elementary or secondary school, a university or college, vocational or technical school or the Job Corps, for the express purpose of gaining skills that lead to gainful employment.

(d) "Full-time employment" means an average of 100 or more hours of work a month or an average of 23 hours a week.

(e) "Aid to Families with Dependent Children" (AFDC) means a state plan for aid that was in effect on June 16, 1996.

(f) "1931 Family Medicaid" is Medicaid coverage required by Subsection 1931(a), (b), and (g) of the Compilation of Social Security Laws.

(3) The income of a dependent child is not countable income if the child is:

(a) in school or training full-time;

(b) in school or training part-time, if employed less than 100 hours a month;

(c) in a job placement under the federal Workforce Information Act (WIA).

(4) For Family Medicaid, the AFDC \$30 and 1/3 of earned income deduction is allowed if the wage earner has received 1931 Family Medicaid in one of the four previous months and this disregard has not been exhausted.

(5) The Department determines countable net income from self-employment by allowing a 40 percent flat rate exclusion off the gross self-employment income as a deduction for business expenses. If a self-employed individual provides verification of actual business expenses greater than the 40 percent flat rate exclusion amount, the Department allows actual expenses to be deducted. The expenses must be business expenses allowed under federal income tax rules.

(6) Items such as personal business and entertainment expenses, personal transportation, purchase of capital equipment, and payments on the principal of loans for capital assets or durable goods, are not business expenses.

(7) For Family Medicaid, the Department shall deduct child-care costs, and the costs of providing care for an incapacitated adult who is included in the Medicaid household size, from the earned income of clients working 100 hours or more in a calendar month. A maximum of up to \$200.00 per month per child under age 2 and \$175.00 per month per child age 2 and older or incapacitated adult, may be deducted. A maximum of up to \$160.00 per month per child under age 2 and \$140.00 per month per child age 2 and older or incapacitated adult, may be deducted from the earned income of clients working less than 100 hours in a calendar month.

(8) For Family Institutional Medicaid, the Department shall deduct child-care costs from the earned income of clients working 100 hours or more in a calendar month. A maximum of up to \$160 a month per child may be deducted. A maximum of up to \$130 a month is deducted from the earned income of clients working less than 100 hours in a calendar month.

(9) Earned income paid by the U.S. Census Bureau to temporary census takers is excluded for any family Medicaid programs that use a percentage of the federal poverty guideline as an eligibility income limit, and for determining eligibility for 1931 Family Medicaid.

(10) Under 1931 Family Medicaid, for households that pass the 185% gross income test, if net income does not exceed the applicable BMS, the household is eligible for 1931 Family Medicaid. No health insurance premiums or medical bills are deducted from gross income to determine net income for 1931 Family Medicaid.

(11) For Family Medicaid recipients who otherwise meet 1931 Family Medicaid criteria, who lose eligibility because of earned income that does not exceed 185% of the federal poverty guideline, the state shall disregard earned income of the specified relative for six months to determine eligibility for 1931

Family Medicaid. Before the end of the sixth month, the state shall conduct a review of the household's earned income. If the earned income exceeds 185% of the federal poverty guideline, the household is eligible to receive Transitional Medicaid following the provisions of R414-303 as long as it meets all other criteria.

(12) After the first six months of disregarding earned income, if the average monthly earned income of the household does not exceed 185% of the federal poverty guideline for a household of the same size, the state shall continue to disregard earned income for an additional six months to determine eligibility for 1931 Family Medicaid. In the twelfth month of receiving such income disregard, if the household continues to have earned income, the household is eligible to receive Transitional Medicaid following the provisions of R414-303 as long as it meets all other criteria.

#### **R414-304-7. A, B and D Medicaid and Family Medicaid Income Deductions.**

(1) The Department adopts 42 CFR 435.831, 2001 ed., which is incorporated by reference.

(2) For aged, blind and disabled individuals eligible under 42 CFR 435.301(b)(2)(iii),(iv), and (v), described more fully in 42 CFR 435.320, .322 and .324, the Department shall allow an income deduction equal to the difference between 100% of the federal poverty guideline and the current BMS income standard for the applicable household size, to determine the spenddown amount.

(3) The Department shall allow health insurance premiums the client or a financially responsible family member pays providing coverage for any family members living with the client as deductions from income in the month of payment. The Department shall also allow an income deduction for health insurance premiums for the month it is due when the Department is paying the premium on behalf of the client as authorized by Section 1905(a) of Title XIX of the Social Security Act, 2001 ed., except no deduction is allowed for Medicare premiums the Department pays for recipients.

(a) The entire payment shall be allowed as a deduction in the month it is due and will not be prorated.

(b) The Department shall not allow health insurance premiums as a deduction for determining eligibility for the poverty-related medical assistance programs or 1931 Family Medicaid.

(4) Health insurance premiums the client or a financially responsible family member paid in the application month or during the three month retroactive period which are not fully used as a deduction to reduce a spenddown in the month paid may be allowed as a deduction to reduce a spenddown in any month after the month paid but only through the month of application.

(5) Medicare premiums shall not be allowed as income deductions if the state will pay the premium or will reimburse the client.

(6) Medical expenses shall be allowed as income deductions only if the expenses meet all of the following conditions:

(a) The medical service was received by the client, client's spouse, parent of an unemancipated client or unemancipated sibling of an unemancipated client, a deceased spouse or a deceased dependent child.

(b) The medical bill shall not be paid by Medicaid or be payable by a third party.

(c) The medical bill remains unpaid, or the medical service was received and paid during the month of application or during the three-month time-period immediately preceding the date of application. The date the medical service was provided on an unpaid expense does not matter. Bills for services received and paid during the application month or the three-month time-

period preceding the date of application can be used as deductions only through the month of application.

(7) A medical expense shall not be allowed as a deduction more than once.

(8) A medical expense allowed as a deduction must be for a medically necessary service. The Department shall be responsible for deciding if services are not medically necessary.

(9) The Department shall not allow as a medical expense, co-payments or co-insurance amounts required under the State Medicaid Plan that are owed or paid by the client to receive Medicaid-covered services.

(10) For poverty-related medical assistance, an individual or household shall be ineligible if countable income exceeds the applicable income limit. Medical costs are not allowable deductions for determining eligibility for poverty-related medical assistance programs. No spenddown shall be allowed to meet the income limit for poverty-related medical assistance programs.

(11) As a condition of eligibility, clients must certify on a form approved by the Department that medical expenses in the benefit month are expected to exceed the spenddown amount. The client must do this when spenddown starts and at each review when the client continues to be eligible under the spenddown program. If medical expenses are less than or equal to the spenddown, the client shall not be eligible for that month. The client may elect to use allowable medical expenses the client still owes from previous months to reduce the spenddown so that expected medical expenses for the benefit month exceed the remaining spenddown owed, if neither Medicaid nor a third party will pay the bill.

(12) Pre-paid medical expenses shall not be allowed as deductions.

(13) The Department elects not to set limits on the amount of medical expenses that can be deducted.

(14) Clients may choose to meet their spenddown obligation by incurring medical expenses or by paying a corresponding amount to the Department.

(15) For A, B and D Medicaid, institutional costs shall be allowed as deductions if the services are medically necessary. The Department shall be responsible for deciding if services for institutional care are not medically necessary.

(16) No one shall be required to pay a spenddown of less than \$1.

(17) Medicaid covered medical costs incurred in a current benefit month cannot be used to meet spenddown when the client is enrolled in a Medicaid Health Plan. Bills for mental health services incurred in a benefit month cannot be used to meet spenddown if the client will be eligible for Medicaid and lives in a county which has a single mental health provider under contract with Medicaid to provide services to all Medicaid clients who live in that county. Bills for mental health services received in a retroactive or application month that the client has fully-paid during that time can be used to meet spenddown as long as the services were not provided by the mental health provider in the client's county of residence which is under contract with Medicaid to provide services to all Medicaid clients.

#### **R414-304-8. Medicaid Work Incentive Program Income Deductions.**

(1) The Department shall allow the provisions found in R414-304-7 (1), (3) and (5).

(2) The Department shall apply the following deductions from income in determining countable income that is compared to 250% of the federal poverty guideline:

(a) \$20 from unearned income. If there is less than \$20 in unearned income, deduct the balance of the \$20 from earned income;

(b) \$65 plus one half of the remaining earned income.

(3) For the Medicaid Work Incentive Program (MWI), an individual or household shall be ineligible if countable income exceeds the applicable income limit. Health insurance premiums and medical costs will not be deducted from income before comparing countable income to the applicable limit.

(4) Health insurance premiums paid by the Medicaid Work Incentive Program individual or a financially responsible household member, to purchase health insurance for himself or other family members in the household shall be deducted from income before determining the MWI buy-in premium.

(5) An eligible individual may meet the MWI buy-in premium with cash, check or money order payable to the Office of Recovery Services.

(6) No one will be required to pay a MWI buy-in premium of less than \$1.

#### **R414-304-9. A, B, and D Institutional Medicaid and Family Institutional Medicaid Income Deductions.**

(1) The Department adopts 42 CFR 435.725, 435.726, and 435.832, 2001 ed., which are incorporated by reference. The Department adopts Subsection 1902(r)(1) and 1924 of the Compilation of the Social Security Laws, in effect January 1, 2001, which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "Family member" means a son, daughter, parent, or sibling of the client or the client's spouse who lives with the spouse.

(b) "Dependent" means earning less than \$2,000 a year, not being claimed as a dependent by any other individual, and receiving more than half of one's annual support from the client or the client's spouse.

(3) Health insurance premiums:

(a) For institutionalized and waiver eligible clients, the Department shall allow an income deduction for health insurance premiums only for the institutionalized or waiver eligible client and only if paid with the institutionalized or waiver eligible client's funds. Health insurance premiums shall be allowed as an income deduction in the month due. The payment shall not be pro-rated. The Department also allows an income deduction for health insurance premiums for the month it is due if the Department is paying the premium on behalf of the client as authorized by Section 1905(a) of Title XIX of the Social Security Act, 2001 ed., except no deduction is allowed for Medicare premiums the Department pays for recipients.

(b) The Department shall allow the portion of a combined premium, attributable to the institutionalized or waiver-eligible client, as an income deduction if the combined premium includes a spouse or dependent family member and is paid from the funds of the institutionalized or waiver eligible client.

(4) Medicare premiums shall not be allowed as income deductions if the state pays the premium or reimburses the client.

(5) Medical expenses shall be allowed as income deductions only if the expenses meet all of the following conditions:

(a) the medical service was received by the client;

(b) the unpaid medical bill shall not be paid by Medicaid or be payable by a third party;

(c) the paid medical bill can be allowed only in the month paid. No portion of any paid bill can be allowed after the month of payment.

(6) A medical expense shall not be allowed as an income deduction more than once.

(7) A medical expense allowed as an income deduction must be for a medically necessary service. The Department of Health shall be responsible for deciding if services are not medically necessary.

(8) Pre-paid medical expenses shall not be allowed as income deductions.

(9) The Department shall not allow as a medical expense, co-payments or co-insurance amounts required under the State Medicaid Plan that are owed or paid by a client to receive Medicaid-covered services.

(10) The Department elects not to set limits on the amount of medical expenses that can be deducted.

(11) Institutionalized clients are to contribute all countable income remaining after allowable income deductions to the institution as their contribution to the cost of their care.

(12) The personal needs allowance shall be equal to \$45.

(13) When a doctor verifies that a single person, or a person whose spouse resides in a medical institution is expected to return home within six months of entering a medical institution or nursing home, the Department shall deduct a personal needs allowance equal to the current Medicaid Income Limit (BMS) for one person, defined in R414-304-11(5), for up to six months to maintain the individual's community residence.

(14) Except for an individual eligible for the Personal Assistance Waiver, an individual receiving assistance under the terms of a Home and Community-Based Services Waiver shall be eligible to receive a deduction for a non-institutionalized, non-waiver-eligible spouse and dependent family member as if that individual were institutionalized.

(a) Income received by the spouse or dependent family member shall be counted in calculating the deduction if that type of income is countable to determine Medicaid eligibility. No income disregards shall be allowed. Certain needs-based income and state supplemental payments shall not be counted in calculating the deduction. Tribal income shall be counted.

(b) If the income of a spouse or dependent family member is not reported, no deduction shall be allowed for the spouse or dependent family member.

(15) A client shall not be eligible for Medicaid coverage if medical costs are not at least equal to the contribution required towards the cost of care.

(16) To determine an income deduction for a community spouse, the standard utility allowance for households with heating costs shall be equal to the standard utility allowance used by the federal food stamp program. For households without heating costs, actual utility costs shall be used. The maximum allowance for a telephone bill is equal to the amount allowed by the federal food stamp program. Clients shall not be required to verify utility costs more than once in a certification period.

(17) Medicaid covered medical costs incurred in a current benefit month cannot be used to meet spenddown when the client is enrolled in a Medicaid Health Plan. Bills for mental health services incurred in a benefit month cannot be used to meet spenddown if the client will be eligible for Medicaid and lives in a county which has a single mental health provider under contract with Medicaid to provide services to all Medicaid clients who live in that county. Bills for mental health services received in a retroactive or application month that the client has fully-paid during that time can be used to meet spenddown as long as the services were not provided by the mental health provider in the client's county of residence which is under contract with Medicaid to provide services to all Medicaid clients.

#### **R414-304-10. Budgeting.**

(1) The Department adopts 42 CFR 435.601 and 435.640, 2001 ed., which are incorporated by reference. The Department adopts 45 CFR 233.20(a)(3)(iii), 233.31, and 233.33, 2001 ed., which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "Best estimate" means that income is calculated for the upcoming certification period based on current information about income being received, expected income deductions, and household size.

(b) "Prospective eligibility" means that eligibility is determined each month for the immediately following month based on a best estimate of income.

(c) "Prospective budgeting" is the process of calculating income and determining eligibility and spenddown for future months based on the best estimate of income, deductions, and household size.

(d) "Income averaging" means using a history of past income and expected changes, and averaging it over a determined period of time that is representative of future monthly income.

(e) "Income anticipating" means using current facts regarding rate of pay and number of working hours to anticipate future monthly income.

(f) "Income annualizing" means using total income earned during one or more past years, or a shorter applicable time period, and anticipating any future changes, to estimate the average annual income. That estimated annual income is then divided by 12 to determine the household's average monthly income.

(g) "Factoring" means that a monthly amount shall be determined to take into account the months of pay where an individual receives a fifth paycheck when paid weekly or a third paycheck when paid every other week. Weekly income shall be factored by multiplying the weekly amount by 4.3 to obtain a monthly amount. Income paid every other week shall be factored by 2.15 to obtain a monthly amount.

(h) "Reportable income changes" include any change in the source of income and any change that causes income to change by more than \$25. All income changes must be reported for an institutionalized individual.

(3) The Department shall do prospective budgeting on a monthly basis.

(4) A best estimate of income based on the best available information shall be an accurate reflection of client income in that month.

(5) The Department shall use the best estimate of income to be received or made available to the client in a month to determine eligibility and spenddown.

(6) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing.

(7) The Department shall count income in the following manner:

(a) For QMB, SLMB, QI-1, Medicaid Work Incentive Program, and A, B, D, and Institutional Medicaid income shall be counted as it is received. Income that is received weekly or every other week shall not be factored.

(b) For Family Medicaid programs, income that is received weekly or every other week shall be factored.

(8) Lump sums are income in the month received. Any amount of a lump sum remaining after the end of the month of receipt is a resource, unless otherwise excluded under statute or regulation. Lump sum payments can be earned or unearned income.

(9) Income paid out under a contract shall be prorated to determine the countable income for each month. Only the prorated amount shall be used to determine spenddown or eligibility for a month. If the income will be received in fewer months than the contract covers, the income shall be prorated over the period of the contract. If received in more months than the contract covers, the income shall be prorated over the period of time in which the money will be received.

(10) To determine the average monthly income for farm and self-employment income, the Department shall determine the annual income earned during one or more past years, or other applicable time period, and factor in any current changes in expected income for future months. Less than one year's worth of income may be used if this income has recently begun, or a change occurs making past information unrepresentative of

future income. The monthly average income shall be adjusted during the year when information about changes or expected changes is received by the Department.

(11) Student income received other than monthly shall be prorated to determine the monthly countable income. This is done by dividing the total amount by the number of calendar months that classes are in session.

(12) Income from Indian trust accounts not exempt by federal law shall be prorated to determine the monthly countable income when the income varies from month to month, or it is received less often than monthly. This is done by dividing the total amount by the number of months it covers.

(13) Eligibility for retroactive assistance shall be based on the income received in the month for which retroactive coverage is sought. When income is being prorated or annualized, then the monthly countable income determined using this method shall be used for the months in the retroactive period, except when the income was not being received during, and was not intended to cover, those specific months in the retroactive period. Income will not be factored for retroactive months.

**R414-304-11. Income Standards.**

(1) The Department adopts Sections 1902(a)(10)(E), 1902(l), 1902(m), 1903(f) and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 2001, which are incorporated by reference.

(2) The Aged and Disabled poverty-related Medicaid income standard shall be calculated as 100% of the federal non-farm poverty guideline. If an Aged or Disabled person's income exceeds this amount, the current Medicaid Income Standards (BMS) shall apply unless the disabled individual or a disabled aged individual has earned income. In this case, the income standards of either the Medically Needy (BMS) program or the Medicaid Work Incentive program may be applied. The individual may choose coverage under either program if the individual meets all other eligibility criteria for both programs.

(3) The income standard for the Medicaid Work Incentive Program shall be equal to 250% of the federal poverty guideline for a family of the size involved. If income exceeds this amount, the current Medicaid Income Standards (BMS) shall apply. The Department shall charge a MWI buy-in premium for the Medicaid Work Incentive Program when the countable income of the eligible individual, or the eligible individual and spouse, when the spouse is also eligible or has deemable income, exceeds 100% of the federal poverty guideline for the Aged and Disabled 100% poverty-related coverage group. When the eligible individual is a minor child, the Department shall charge a MWI buy-in premium when the child's countable income, including income deemed from parents, exceeds 100% of the federal poverty guideline for a one-person household. The premium will be calculated as 15% percent of only the eligible individual's, or eligible couple's, countable income.

(4) The income limit for pregnant women, and children under one year of age, shall be equal to 133% of the federal poverty guideline for a family of the size involved. If income exceeds this amount, the current Medicaid Income Standards (BMS) shall apply.

(5) The current Medicaid Income Standards (BMS) are as follows:

TABLE	
Household Size	Medicaid Income Standard (BMS)
1	382
2	468
3	583
4	683
5	777
6	857
7	897
8	938

9	982
10	1,023
11	1,066
12	1,108
13	1,150
14	1,192
15	1,236
16	1,277
17	1,320
18	1,364

**R414-304-12. A, B and D Medicaid, Medicaid Work Incentive, QMB, SLMB, and QI-1 Filing Unit.**

(1) The Department adopts 42 CFR 435.601 and 435.602, 2001 ed., which are incorporated by reference. The Department adopts Subsections 1902(l)(1), (2), and (3), 1902(m)(1) and (2), and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 2001, which are incorporated by reference.

(2) The following individuals shall be counted in the BMS for A, B and D Medicaid:

- (a) the client;
- (b) a spouse who lives in the same home, if the spouse is eligible for A, B, or D Medicaid, and is included in the coverage;
- (c) a spouse who lives in the same home, if the spouse has deemable income above the allocation for a spouse.

(3) The following individuals shall be counted in the household size for the 100% of poverty A or D Medicaid program:

- (a) the client;
- (b) a spouse who lives in the same home, if the spouse is aged, blind, or disabled, regardless of the type of income the spouse receives, or whether the spouse is included in the coverage;
- (c) a spouse who lives in the same home, if the spouse is not aged, blind or disabled, but has deemable income above the allocation for a spouse.

(4) The following individuals shall be counted in the household size for a QMB, SLMB, or QI-1 case:

- (a) the client;
- (b) a spouse living in the same home who receives Part A Medicare or is Aged, Blind, or Disabled, regardless of whether the spouse has any deemable income or whether the spouse is included in the coverage;
- (c) a spouse living in the same home who does not receive Part A Medicare and is not Aged, Blind, or Disabled, if the spouse has deemable income above the allocation for a spouse.

(5) The following individuals shall be counted in the household size for the Medicaid Work Incentive Program:

- (a) the client;
- (b) a spouse living in the same home;
- (c) parents living with a minor child;
- (d) children under age 18;
- (e) children age 18, 19, or 20 if they are in school full-time.

(6) Eligibility for A, B and D Medicaid and the spenddown, if any; A and D 100% poverty-related Medicaid; and QMB, SLMB, and QI-1 programs shall be based on the income of the following individuals:

- (a) the client;
- (b) parents living with the minor client;
- (c) a spouse who is living with the client. Income of the spouse is counted based on R414-304-2;
- (d) an alien client's sponsor, and the spouse of the sponsor, if any.

(7) Eligibility for the Medicaid Work Incentive Program shall be based on income of the following individuals:

- (a) the client;
- (b) parents living with the minor client;
- (c) a spouse who is living with the client;
- (d) an alien client's sponsor, and the spouse of the sponsor, if any.

(8) If a person is "included" in the BMS, it means that family member shall be counted as part of the household and his or her income and resources shall be counted to determine eligibility for the household, whether or not that family member receives medical assistance.

(9) If a person is "included" in the household size, it means that family member shall be counted as part of the household to determine what income limit applies, regardless of whether that family member's income will be counted or whether that family member will receive medical assistance.

**R414-304-13. Family Medicaid Filing Unit.**

This section provides criteria governing who is included in a family Medicaid household.

(1) The Department adopts 42 CFR 435.601 and 435.602, 2001 ed., 45 CFR 206.10(a)(1)(iii), 233.20(a)(1) and 233.20(a)(3)(vi), 2001 ed., which are incorporated by reference.

(2) For Family Medicaid programs, if a household includes individuals who meet the U.S. citizen or qualified alien status requirements and family members who do not meet U.S. citizen or qualified alien status requirements, the Department includes the ineligible alien family members in the household size to determine the applicable income limit for the eligible family members. The ineligible alien family members do not receive regular Medicaid coverage, but may be able to qualify for Medicaid that covers only emergency services under other provisions of Medicaid law.

(3) Except for determinations under 1931 Family Medicaid, any unemancipated minor child may be excluded from the Medicaid coverage group, and an ineligible alien child may be excluded from the household size, at the request of the specified relative responsible for the children. An excluded child is considered an ineligible child and is not counted as part of the household size for deciding what income limit is applicable to the family. Income and resources of an excluded child are not considered when determining eligibility or spenddown.

(4) The Department does not use a grandparent's income to determine eligibility or spenddown for a minor child, and the grandparent is not counted in the household size. A cash contribution from the grandparents received by the minor child or parent of the minor child is countable income.

(5) Except for determinations under 1931 Family Medicaid, if anyone in the household is pregnant, the unborn child is included in the household size. If a medical authority confirms that the pregnant woman will have more than one child, all of the unborn children are included in the household size.

(6) If a child is voluntarily placed in foster care and is in the custody of a state agency, the parents are included in the household size.

(7) Parents who have relinquished their parental rights shall not be included in the household size.

(8) If a court order places a child in the custody of the state, and the child is temporarily placed in an institution, the parents shall not be included in the household size.

(9) If a person is "included" or "counted" in the household size, it means that that family member is counted as part of the household and his or her income and resources are counted to determine eligibility for the household, whether or not that family member receives medical assistance. The household size determines which BMS income level or, in the case of poverty-related programs, which poverty guideline income level applies to determine eligibility for the client or family.

**R414-304-14. A, B and D Institutional and Waiver Medicaid and Family Institutional Medicaid Filing Unit.**

(1) For A, B, and D institutional, and home and community-based waiver Medicaid, the Department shall not

use income of the client's parents or the client's spouse to determine eligibility and the contribution to cost of care, which may be referred to as a spenddown.

(2) For Family institutional, and home and community-based waiver Medicaid programs, the Department adopts 45 CFR 206.10(a)(1)(vii), 2001 ed., which is incorporated by reference.

(3) The Department shall base eligibility and the contribution to cost of care, which may be referred to as a spenddown on the income of the client and the sponsor of an alien who is subject to deeming according to the rules described in 20 CFR 416.1166a, 2002 ed., which is incorporated by reference.

(4) The Department shall base eligibility and the contribution to cost of care, which may be referred to as a spenddown, on the income of the client and the income deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997. Sponsor deeming will end when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. Beginning after December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

**KEY: financial disclosures, income, budgeting  
October 16, 2004  
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26-18-1

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-306. Program Benefits.****R414-306-1. Medicaid Benefits.**

(1) The Department adopts 42 CFR 440.240, 441.56, and 431.625, 1999 ed., which are incorporated by reference.

(2) The Department elects to coordinate Medicaid with Medicare Part B for all Medicaid recipients.

(3) The Department is responsible for defining emergency services which will be paid for by Medicaid for aliens who do not meet citizenship requirements for full Medicaid coverage. Emergency services include medical services given to prevent death or permanent disability. Emergency services do not include prenatal or postpartum services, prolonged medical support, long term care, or organ transplants. Prior authorization is required if the client applies for medical assistance before receiving medical services.

(4) Workers must inform applicants about the Child Health Evaluation and Care (CHEC) program. By signing the application form the client acknowledges receipt of CHEC program information.

**R414-306-2. QMB, SLMB, and QI-1 Benefits.**

(1) The Department adopts Subsection 1905(p) and Section 1933 of the Compilation of the Social Security Laws, 2001 ed., U.S. Government Printing Office, Washington, D.C., which is incorporated by reference.

(2) The Department does not cover premiums for enrollment with any health insurance plans except for Medicare.

**R414-306-3. QMB and SLMB Date of Entitlement.**

The Department adopts Subsection 1902(e)(8) of the Compilation of the Social Security Laws, 2001 ed., U.S. Government Printing Office, Washington, D.C., which is incorporated by reference.

**R414-306-4. Effective Date of Eligibility.**

(1) The Department adopts 42 CFR 435.914, 2001 ed., which is incorporated by reference.

(2) Eligibility for any Medicaid program, or the SLMB or QI-1 program, shall begin no earlier than the date that is three months before the date of application for benefits. Coverage shall not be effective on the first day of a month if that date is more than three months before the application date. Coverage in the months before the application month cannot begin before the date the applicant met the eligibility criteria.

(a) Institutional Medicaid shall begin on the date that the Department receives verification of nursing home admission from the nursing home, but no earlier than the date that is three months before the date of application for nursing home services.

(b) Eligibility under a Home and Community Based (HCB) Services waiver shall begin on the date the client is determined to meet the level-of-care criteria and home and community based services are scheduled to begin within the month, but no earlier than the date that is three months before the date of application for HCB services.

(c) Eligibility for benefits as a Qualifying Individual-Group 1 can begin no earlier than the date that is three months before the date of application and in no case before January 1, 1998. An individual selected to receive QI-1 benefits in a month of the year is entitled to receive such assistance for the remainder of the calendar year if the individual continues to be a qualifying individual and the program still exists. Receipt of QI-1 benefits in one calendar year does not entitle the individual to continued assistance in any succeeding year.

(3) Eligibility in the application month and on-going months shall begin on the first day of such month, except for

(a) an individual who just moved to Utah, in which case the effective date of eligibility of such individual cannot be

earlier than the date that the individual meets the state residency requirement defined in R414-302-2; and

(b) an individual who is a qualified alien subject to the five-year bar on receiving regular Medicaid services, in which case eligibility cannot begin earlier than the date that is five years after the date the person became a qualified alien, or the date the five-year bar ends due to other events defined in statute.

(c) an individual who is a qualified alien not subject to the five-year bar on receiving regular Medicaid services, in which case eligibility cannot begin earlier than the date the individual's qualified alien status began.

(4) There is no provision for retroactive QMB assistance.

(5) After being approved for Medicaid, a client may request retroactive coverage based on the date of the approved application, but only if the client had not previously requested the retroactive coverage, and had either been denied for such time period or had failed to meet a spenddown for such time period. The recipient must provide verifications needed to establish eligibility for the retroactive period being requested.

**R414-306-5. Availability of Medical Services.**

(1) The Department adopts 42 CFR 431.52, 2001 ed., which is incorporated by reference.

(2) A person may receive medical services from an out-of-state provider if that provider accepts the Utah Medicaid reimbursement rate for the service.

(3) If a medical service requires prior approval for reimbursement in-state, the medical service will require prior approval if received out-of-state.

(4) If a person has a primary care provider, the person shall receive medical services from that provider, or obtain authorization from the primary care provider to receive medical services from another medical provider.

(5) If a person is enrolled in a Medicaid Health Plan, the person shall receive medical services from a provider within the Medicaid Health Plan's network, or obtain authorization from the Medicaid Health Plan or Utah Medicaid to receive medical services from an out-of-network medical provider.

**R414-306-6. Medical Transportation.**

(1) The Department adopts 42 CFR 431.53, 2001 ed., which is incorporated by reference.

(2) The following applies to all forms of non-emergency medical transportation including services provided by a contracted medical transportation provider and reimbursement for use of personal transportation.

(a) Non-emergency medical transportation is limited to transportation expenses to go to and from the nearest appropriate Medicaid provider to obtain a Medicaid covered service that is medically necessary. If the recipient chooses to travel to a Medicaid provider that is not the nearest appropriate provider, reimbursement of mileage is limited to the distance to go to the nearest appropriate provider. The Department will not cover transportation expenses to go to non-Medicaid providers, or to obtain services not covered by the Medicaid plan.

(b) Non-emergency medical transportation is limited to individuals who are covered under the Traditional Medicaid benefit plan. Individuals covered by the Non-Traditional Medicaid plan, the Primary Care Network, the Covered-At-Work program, and Medicare Cost-Sharing programs are not eligible for non-emergency medical transportation.

(c) If transportation is available to a Traditional Medicaid recipient without cost to the recipient, the recipient shall use this transportation. A Traditional Medicaid recipient who needs specialized transportation and who meets the criteria for the Medicaid transportation contractor services found in subsection (13) may receive transportation from the Medicaid transportation contractor.

(d) A Traditional Medicaid recipient who has access to



and is able to use public transportation to get to medical appointments may receive a bus pass upon request. The bus pass may be used to pay the fare for an attendant who accompanies a recipient under age 18 or a recipient who has a medical need for an attendant. A recipient who has access to and is capable of using public paratransit services can request authorization to use such transportation. The recipient must follow procedures and meet criteria required by the paratransit provider.

(e) Transportation for picking up prescriptions is not covered unless en route to or from a medical appointment.

(f) The Department will not provide non-emergency medical transportation to nursing home residents because the nursing home must provide the transportation as part of its contracted rate.

(g) The Department will not provide non-emergency medical transportation to and from mental health appointments for recipients covered by a prepaid Mental Health Plan because the prepaid Mental Health Plan must provide transportation, as part of its contracted rate, to recipients to obtain covered mental health services.

(h) If medical services are not available in-state, a Traditional Medicaid recipient must receive prior authorization from the Department for the services and the transportation. If the services and the transportation are approved, the Department shall determine, at its discretion, the most cost effective and appropriate transportation, and method of payment for the transportation.

(3) If personal transportation is used and it is the most reasonable and economical mode of transportation available, the local office shall reimburse actual mileage at the rate of \$0.18 per mile. The Department may deny reimbursement for multiple trips in a day unless the client can demonstrate why multiple trips were necessary. Total reimbursement for mileage must not exceed \$150.00 a month per household, unless:

(a) an eligibility worker determines that higher reimbursement is necessary because a recipient's medical condition requires frequent travel to a Medicaid provider to obtain Medicaid covered services that are medically necessary; or

(b) an eligibility worker or supervisor determines that higher reimbursement is necessary because a recipient had an unusual medical need in a given month that required frequent or long-distance travel to a Medicaid provider to obtain Medicaid covered services that were medically necessary.

(4) The local office supervisor can authorize advance payment for use of personal transportation, overnight stay costs, or both, if the provider verifies the medical appointment, and the client would be unable to obtain the necessary medical services without an advance. The recipient is responsible to repay an advance if the recipient does not provide verification of travel expenses equal to or greater than the amount of funds advanced within 10 days after returning from the scheduled appointment.

(5) Transportation reimbursement for use of a personal vehicle may be made to the recipient, to a second party, or to the recipient and second party jointly.

(6) If two or more Traditional Medicaid recipients travel together in a personal vehicle, reimbursement shall be made to only one recipient, or to the driver, and only for the actual miles traveled.

(7) If medical services are not available locally, a Traditional Medicaid recipient may be reimbursed for transportation to obtain medical services outside of the recipient's local area. If the closest medical provider is out-of-state, a recipient may be reimbursed for transportation to the out-of-state provider if this travel is more cost effective than traveling to an in-state provider. The medical provider's office must verify that the recipient needs to travel outside the local area for medical services, unless:

(a) there are no Medicaid providers in the local area who can provide the services; or

(b) it is the custom in the local area to obtain medical services outside the local area or in neighboring states.

(8) A Traditional Medicaid recipient who receives medical treatment outside of the recipient's local area may receive reimbursement for lodging costs when staying overnight, if:

(a) the recipient is obtaining a Medicaid covered service that is medically necessary from the nearest Medicaid provider that can treat the recipient's medical condition; and

(b) the recipient must travel over 100 miles to obtain the medical treatment and would not arrive home before 8:00 p.m. due to the drive time;

(c) the recipient must travel over 100 miles to obtain the medical treatment and would have to leave home before 6:30 a.m. due to drive time to arrive at the scheduled appointment; or

(d) the medical treatment requires an overnight stay.

(9) The Department shall reimburse actual lodging and food costs or \$50.00 per night, whichever is less. Reimbursement for food costs shall be no more than \$25 of the \$50 overnight reimbursement rate.

(10) If a recipient has a medical need to stay more than two nights to receive medical services, the recipient must obtain approval from the Department before expenses for additional nights can be reimbursed.

(11) If a recipient has a medical need for a companion or attendant when traveling outside of the recipient's local area, and the recipient is not staying in a medical facility, lodging costs for the companion or attendant may be reimbursed according to the rate specified in subsection (9). The reimbursement may also include salary if the attendant is not a member of the recipient's family, but not for standby time. One parent or guardian may qualify as an attendant if the parent or guardian must receive medical instructions to meet the recipient's needs, or the recipient is a minor child.

(12) Reimbursements for personal transportation shall not be made for trips made more than 12 months before the month the client requests reimbursement, with one exception. If a client is granted coverage for months more than one year prior to the eligibility decision, the client may request reimbursement and provide verification for personal transportation costs incurred during those months. In this case, the client must make the request and provide verification within three months after receiving the eligibility decision.

(13) Reimbursement for fee-for-service providers:

(a) Payments for Medical transportation are based on the established fee schedule unless a lower amount is billed. The amount billed cannot exceed usual and customary charges to private pay patients.

(b) Fees are established using the methodology as described in the State Plan, Attachment 4.19-B Section R, Transportation.

(14) Medical Transportation under a Section 1915(b) waiver using a transportation contractor:

(a) Non-emergency medical transportation will be provided by a contracted transportation provider. The contractor provides non-emergency medical transportation services statewide, either as the primary provider or through a subcontractor. Transportation service under the waiver do not include bus passes and paratransit services by a public carrier, such as Flextrans.

(b) Prior authorization is required for all transportation services provided through the contractor.

(c) If the medical service is not available within the state, or the nearest Medicaid provider is outside the state, medical transportation to services outside of Utah is covered up to 120 ground travel miles one-way outside of the Utah border. The ride must originate or end within Utah borders. Non-emergency transportation originating and ending outside of Utah is not

covered.

(d) A recipient is not eligible for non-emergency medical transportation services if the recipient owns a licensed vehicle or lives in a residence with a family member who owns a licensed vehicle, unless a physician verifies that the nature of the recipient's medical condition or disability makes driving inadvisable and there is no family member physically able to drive the recipient to and from medical appointments.

(e) A recipient is not eligible for non-emergency medical transportation services if public transportation is available in the recipient's area, unless the public transportation is inappropriate for the recipient's medical or mental condition as certified by a physician.

(f) A recipient is not eligible for non-emergency medical transportation services if paratransit services such as Flextrans are available in the recipient's area, unless the recipient's medical condition requires door to door services due to physical inability to get from the curb or parking lot to the medical provider's facility. This inability must be certified by a physician. To be eligible for transportation under the waiver, the recipient must receive a denial of services letter from Flextrans or other paratransit services.

(g) Transportation for urgent care services is provided under the provisions of items (d), (e) and (f) above and will be provided within 24 hours of request. Urgent care is defined as non-emergency medical care which is considered by the prudent lay person as medically safe to wait for medical attention within the next 24 hours.

**R414-306-7. State Supplemental Payments for Institutionalized SSI Recipients.**

(1) The Department adopts Subsection 1616(a) through (d) of the Compilation of the Social Security Laws, 2001 ed., U.S. Government Printing Office, Washington, D.C., which is incorporated by reference.

(2) A State Supplemental payment equal to \$15 shall be paid to a resident of a medical institution who receives a Supplemental Security Income (SSI) payment.

(3) Recipients must be eligible for Medicaid benefits to receive the State Supplemental payment.

(4) Recipients are eligible to receive the \$15 State Supplemental payment beginning with the first month that their SSI assistance is reduced to \$30 a month because they stay in an institution and they are eligible for Medicaid.

(5) The State Supplemental payment terminates effective the month the recipient no longer meets the eligibility criteria for receiving such supplemental payment.

**KEY: program benefits, medical transportation**

**July 19, 2004**

**26-18**

**Notice of Continuation January 31, 2003**

**R527. Human Services, Recovery Services.****R527-200. Administrative Procedures.****R527-200-1. Authority.**

This rule establishes procedures for informal adjudicative proceedings as required by Section 63-46b-5 of the Administrative Procedures Act.

**R527-200-2. Definitions.**

1. Terms used in this rule are defined in Sections 62A-11-303 and 63-46b-2.

2. In addition,

a. "office" means the Office of Recovery Services;

b. "participate" means

(i) in a proceeding that was initiated by a notice of agency action, present relevant information to the presiding officer within the time period described by statute or rule for requesting a hearing; and

(ii) if a hearing is scheduled, participate means attend the hearing;

c. "party" means the Office of Recovery Services and the respondent.

d. in a proceeding to determine the noncooperation of a IV-A or Non-IV-A Medicaid recipient or applicant, the recipient or applicant is the respondent and is therefore a "party".

e. "location information" means the current, verified residential address of a custodial or noncustodial parent and, if different and known to the office, the current, verified residence of any child named in a parent-time order that specifies time periods during which the child shall be with the noncustodial parent as provided in Sections 30-3-32 through 30-3-38. If a current, verified residential address is not available, "location information" means an employment address if known.

f. "other location information" means a verified, non-residential mailing address such as a Post Office Box or Rural Route, at which a party whose location information is being sought receives mail.

g. "files" on custodial and noncustodial parents means records contained in open child support services cases, in which both paper and electronic case information may be stored.

**R527-200-3. Purpose.**

The purpose of this rule is to:

1. establish the form of proceedings;
2. provide procedures for requesting and obtaining a hearing when a proceeding is initiated by a notice of agency action;
3. provide procedures and standards for orders resulting from the administrative process;
4. provide procedures for informal proceedings;
5. provide procedures for the conduct of hearings and other informal adjudicative proceedings;
6. provide procedures for requesting reconsideration;
7. provide procedures for a motion to set aside a default order;
8. provide procedures for amending an administrative order;
9. provide procedures for setting aside an administrative order; and
10. provide procedures for requesting judicial review.

**R527-200-4. Designation of Presiding Officers.**

The following persons are designated presiding officers in adjudicative proceedings:

1. agents;
2. senior agents;
3. team managers;
4. quality assurance specialists;
5. associate regional directors;
6. regional directors;

7. directors;

8. other persons designated by the director of the Office of Recovery Services.

**R527-200-5. Form of Proceeding.**

All adjudicative proceedings commenced by the office through a notice of agency action, or commenced by other persons affected by the office's actions through a request for agency action shall be informal adjudicative proceedings.

**R527-200-6. Informal Adjudicative Proceedings.**

The following adjudicative proceedings are considered to be informal:

1. proceedings to establish or modify child support orders;
2. proceedings to determine paternity;
3. proceedings to establish a judgment for genetic testing costs;
4. proceedings to establish a judgment for birth expenses;
5. proceedings to establish or modify an order regarding liability for medical and dental expenses of a dependent child;
6. proceedings to establish an order when a notice to enroll a child in a medical insurance plan is contested;
7. proceedings to establish an order against a garnishee enforcing an administrative garnishment;
8. proceedings to determine whether the information concerning a support debt which will be reported to consumer reporting agencies is accurate;
9. proceedings to establish a retained support obligation;
10. proceedings to amend an administrative order;
11. proceedings to set aside an administrative order;
12. proceedings to establish an order which determines past-due support following a request for agency action;
13. proceedings to establish an order when an office determination of noncooperation is contested by IV-A or Non-IV-A Medicaid recipients;
14. proceedings to establish a judgment against a responsible party for costs and/or fees, and to impose penalties associated with legal action taken by the office;
15. proceedings to establish an order of non-disclosure when a determination is made not to disclose a parent's identifying information to another state in an interstate case action;
16. proceedings to approve or deny requests for waiver or deferral of estate recovery for reimbursement of Medicaid;
17. proceedings to determine whether location information or other location information available in files on custodial or noncustodial parents may be released to the requesting party or to the requesting party's legal counsel in accordance with the provisions of Utah Code Title 62A, Chapter 11;
18. proceedings to establish an order when a payment schedule is contested;
19. proceedings to establish an order when a lien-levy action is contested; and
20. proceedings to establish an order when the obligation based on a change in the physical custody of a child is contested.

**R527-200-7. Service of Notice and Orders.**

Notices, orders, written decisions, or any other documents for which service is required or permitted to be made by Section 63-46b may be served using methods provided by Section 63-46b or the Utah Rules of Civil Procedure.

**R527-200-8. Procedures for Informal Adjudicative Proceedings.**

The procedures for informal adjudicative proceedings are as follows:

1. In proceedings initiated by a notice of agency action, the presiding officer will issue an order of default unless the

respondent does one of the following within 30 days in response to service of the notice:

- a. pays the entire amount in full; or,
- b. participates as provided in R527-200-13;
2. In proceedings initiated by a notice of agency action, the presiding officer shall schedule a hearing if available under R527-200-10 and the office receives the respondent's written request:
  - a. within 30 days of service of notice of agency action; or
  - b. before an order is issued by the presiding officer.
  3. Within a reasonable time after the close of an informal adjudicative proceeding, the presiding officer shall issue a signed order in writing which states the following:
    - a. the decision;
    - b. the reason for the decision;
    - c. a notice of the right to request reconsideration and the right to petition for judicial review; and
    - d. the time limits for requesting reconsideration or filing a petition for judicial review.
  4. The presiding officer's order shall be based on the facts appearing in the agency's case records and on the facts presented in evidence at any hearings or other adjudicative proceedings.
  5. A copy of the presiding officer's order shall be promptly mailed to each of the parties.

**R527-200-9. Response time for Proceedings Initiated by a Request for Agency Action.**

The respondent may request an informal adjudicative proceeding within the following timeframes:

1. within 30 calendar days of the date of the notice when contesting the amount of past-due support in the Annual Notice of Past-due Support;
2. within 15 calendar days of the date of this notice, or within 30 calendar days of the date of this notice if the non-requesting party resides outside of Utah and intervention is required from another IV-D agency to facilitate communication with the non-requesting party, when contesting whether location information or other location information may be released; and
3. within 15 calendar days of the date of the notice when contesting the obligation based on a change in physical custody of the child.

**R527-200-10. Availability of a Hearing in Informal Adjudicative Proceedings.**

1. A hearing before a presiding officer in the Office of Administrative Hearings, Department of Human Services is permitted in an informal adjudicative proceeding if:
  - a. the proceeding was initiated by a notice of agency action; and
  - b. the respondent in a properly filed request for hearing or in the course of participation raises a genuine issue as to a material fact as provided in R527-200-11; and
  - c. the respondent participates in a preliminary agency conference.
2. A proceeding before a presiding officer in the Office of Recovery Services, Department of Human Services is permitted if an informal adjudicative proceeding is initiated by a request for agency action.
  - a. The presiding officer shall conduct a review of all documentation provided by the requesting party and in the agency files, and issue a Decision and Order stating the decision and the reasons for the decision.
  - b. The requesting party shall not be required to appear, either in person or through representation when the proceeding is conducted, but may choose to attend.

**R527-200-11. Hearings in Informal Adjudicative Proceedings.**

1. In proceedings initiated by a notice of agency action, all

hearing requests shall be referred to the presiding officer appointed to conduct hearings.

2. The presiding officer shall give timely notice of the date and time of the hearing to all parties.
3. Before granting a hearing in a case referred, the presiding officer appointed to conduct the hearing may decide whether the respondent raises a genuine issue as to a material fact. Upon determining there is no genuine issue as to a material fact, the presiding officer may deny the request for hearing, and close the adjudicative proceeding.
4. The respondent may object to the denial of a hearing as grounds for relief in a request for reconsideration.
5. There is no genuine issue as to a material fact if:
  - a. the evidence gathered by the office and the evidence presented for acceptance by the respondent are sufficient to establish the obligation of the respondent under applicable law; and
  - b. no other evidence in the record or presented for acceptance by the respondent in the course of respondent's participation conflicts with the evidence to be relied upon by the presiding officer in issuing an order.
6. Evidence upon which a presiding officer may rely in issuing an order when there has been no hearing:
  - a. documented wage information from employers or governmental sources;
  - b. failure of the respondent to produce upon request of the presiding officer canceled checks as evidence of payments made;
  - c. failure of the respondent to produce a record kept by the clerk of court, a financial institution, or the office, showing payments made;
  - d. failure of the respondent to produce a written agreement in a Non-IV-A case which was signed by both the absent parent and the custodial parent providing for an alternate means of satisfying a child support obligation;
  - e. birth certificates of the children whose support is sought from the respondent;
  - f. certified copies of the latest support orders;
  - g. other applicable documentation.

**R527-200-12. Telephonic Hearings.**

Telephonic hearings will be held at the discretion of the Office of Administrative Hearings, Department of Human Services.

**R527-200-13. Procedures and Standards for Orders Resulting from Service of a Notice of Agency Action.**

1. If the respondent agrees with the notice of agency action, he may stipulate to the facts and to the amount of the debt and current obligation to be paid. A stipulation, and judgment and order based on that stipulation is prepared by the office for the respondent's signature. Orders based on stipulation are not subject to reconsideration or judicial review.
2. If the respondent participates by attending a preliminary conference or otherwise presents relevant information to the presiding officer, but does not reach an agreement with the office or is unavailable to sign a stipulation, and does not request a hearing, the presiding officer shall issue a judgment and order based on that participation.
3. If the respondent participates in any way after receiving a notice of agency action to establish paternity and child support, but fails to appear for genetic testing or respond to the notice of test results, the presiding officer shall issue an order of paternity and child support based on existing information and circumstances.
4. If the respondent requests a hearing and participates by attending a preliminary agency conference, and after that conference the respondent does not agree with the notice of agency action, and participates by attending the hearing, the

presiding officer who conducts the hearing shall issue an order based upon the hearing.

5. If the respondent fails to participate as follows, the appropriate presiding officer may issue an order of default and default judgment:

a. the respondent fails to respond to the notice of agency action and does not request a hearing;

b. after proper notice the respondent fails to attend a preliminary conference scheduled by the presiding officer to consider matters which may aid in the disposition of the action; or

c. after proper notice the respondent fails to attend a hearing scheduled by the presiding officer pursuant to a written request for a hearing.

6. The default judgment is taken for the same amount and for the same months specified in the notice of agency action which was served on the respondent. The judgment cannot be taken for more than the amount or time periods specified in the notice of agency action. If there is no previous court order and the best available information supports the amount, the judgment may be taken for less than the amount specified in the notice of agency action. The respondent may seek to have the default order set aside, in accordance with Section 63-46b-11.

7. If a respondent's request for a hearing is denied under R527-200-11, the presiding officer issues a judgment and order based upon the information in the case record.

8. Notwithstanding any order which sets payments on arrearages, the office reserves the right to periodically report the total past-due support amount to consumer reporting agencies, intercept state and federal tax refunds, submit cases to the federal administrative offset program where permitted by federal regulation, levy upon real and personal property, and to reassess payments on arrearages.

#### **R527-200-14. Conduct of Hearings and Other Informal Adjudicative Proceedings.**

1. The hearing, or other proceeding shall be conducted by a duly qualified presiding officer. The presiding officer shall not have been involved in preparing the information alleged in the notice which is the basis of the adjudicative proceeding. No presiding officer shall conduct a hearing or other adjudicative proceeding in a contested case if it is alleged and proved that good cause exists for the removal of the presiding officer assigned to the case. The party or representative requesting the change of presiding officer shall make the request in writing, and the request shall be filed and called to the attention of the presiding officer not less than 24 hours in advance of the hearing.

2. Duties of the presiding officer when conducting a hearing:

a. Based upon the notice of agency action, objections thereto, if any, and the evidence adduced at the hearing, the presiding officer shall determine the liability and responsibility, if any, of the respondent under Section 62A-11-304.2. Following determination of liability, the presiding officer shall refer the obligor to the team handling the case for determination of acceptable periodic payment or alternative means of satisfaction of any arrearage obligation.

b. The presiding officer conducting the hearing may:

(i) regulate the course of hearing on all issues designated for hearing;

(ii) receive and determine procedural requests, rule on offers of proof and evidentiary objections, receive relevant evidence, rule on the scope and extent of cross-examination, and hear argument and make determination of all questions of law necessary to the conduct of the hearing;

(iii) request testimony under oath or affirmation administered by the presiding officer;

(iv) upon motion, amend the notice of agency action to

conform to the evidence.

3. Rules of Evidence in hearings:

a. Discovery is prohibited, but the office may issue subpoenas or other orders to compel production of necessary evidence.

b. Any person who is a party to the proceedings may call witnesses and present such oral, documentary, and other evidence and comment on the issues and conduct such cross-examination of any witness as may be required for a full and true disclosure of all facts relevant to any issue designated for fact hearing and as may affect the disposition of any interest which permits the person participating to be a party.

c. Any evidence may be presented by affidavit rather than by oral testimony subject to the right of any party to call and examine or cross-examine the affiant.

d. All relevant evidence shall be admitted.

e. Official notice may be taken of all facts of which judicial notice may be taken in the courts of this state.

f. All parties shall have access to information contained in the office's files and to all materials and information gathered in the investigation, to the extent permitted by law and subject to R527-5.

g. Intervention is prohibited.

h. In child support cases the hearing shall be open to the obligee and all parties, as defined in R527-200-2.

4. Rights of the parties in hearings: A respondent appearing before the presiding officer for the purpose of a hearing may be represented by a licensed attorney, or, after leave of the presiding officer, any other person designated to act as the respondent's representative for the purpose of the hearing. The office's supporting evidence for the office's claim shall be presented at a hearing before a presiding officer by an agent or representative from the office. The supporting evidence may, at the office's discretion, be presented by a representative from the office of the Attorney General or by a staff attorney.

#### **R527-200-15. Agency Review.**

Agency review shall not be allowed. Nothing in this rule prohibits a party from filing a request for reconsideration or for judicial review as provided in Sections 63-46b-13 and 63-46b-14.

#### **R527-200-16. Reconsideration.**

Either the respondent or the office may request reconsideration in accordance with Section 63-46b-13 once during an informal adjudicative proceeding.

#### **R527-200-17. Setting Aside Administrative Orders.**

1. The office may set aside an administrative order for reasons including the following:

a. A rule or policy was not followed when the order was taken.

b. The respondent was not properly served with a notice of agency action.

c. The respondent was not given due process.

d. The order has been replaced by a judicial order which covers the same time period.

2. The office shall notify the respondent of its intent to set the order aside by serving the respondent with a notice of agency action. The notice shall be signed by a presiding officer.

3. If after serving the respondent with a notice of agency action, the presiding officer determines that the order shall be set aside, the office shall notify the respondent.

#### **R527-200-18. Amending Administrative Orders.**

1. The office may amend an order for reasons including the following:

a. A clerical mistake was made in the preparation of the order.

b. The time periods covered in the order overlap the time periods in another order for the same participants.

2. The office shall notify the respondent of its intent to amend the order by serving the respondent with a notice of agency action. The notice shall be signed by a presiding officer.

3. If after serving the respondent with a notice of agency action, the presiding officer determines that the order shall be amended, the office shall provide a copy of the amended order to the respondent.

**R527-200-19. Amending an Administrative Paternity Order.**

1. If an administrative paternity order has been entered and the individual determined to be the father requests that paternity be disestablished based on genetic test results from an accredited lab which appear to exclude him as the biological father and genetic testing has not previously been completed, the presiding officer shall initiate an adjudicative proceeding to amend the paternity order prospectively.

2. The presiding officer shall notify the mother and the previously determined legal father of the intent to amend the order by sending notices of intent to amend based on the genetic test results.

3. If the mother or previously determined legal father do not present other evidence which calls into doubt the credibility of the genetic test results and the mother does not contest the administrative action, the presiding officer shall issue an order which amends the original order, finding the previously determined legal father to no longer be the legal father effective the date the amended order is issued. The presiding officer shall send a copy of the order to both the mother and the former legal father.

4. If other evidence is presented which calls into doubt the credibility of the genetic test results or the mother contests the administrative action, the presiding officer shall not amend the original paternity order. The presiding officer shall send notice of the decision to the mother and the father, which will inform the father of his right to administrative reconsideration of the decision and to appeal the decision to a court of competent jurisdiction.

**KEY: administrative law, child support**

October 18, 2004

30-3-32 through 30-3-38

Notice of Continuation May 7, 2001

62A-11-304.1

62A-11-304.2

62A-11-304.4

62A-11-307.2

63-46b

**R539. Human Services, Services for People with Disabilities.****R539-1. Eligibility.****R539-1-1. Purpose.**

- (1) The purpose of this rule is to provide:
- (a) procedures and standards for the determination of eligibility for Division services as required by Title 62A, Chapter 5, Part-1; and
- (b) notice to Applicants of hearing rights and the hearing process.

**R539-1-2. Authority.**

- (1) This rule establishes procedures and standards for the determination of eligibility for Division services as required by Title 62A, Chapter 5, Part-1.
- (2) The procedures of this rule constitute the minimum requirements for eligibility for Division funding. Additional procedures may be required to comply with any other governing statute, federal law, or federal regulation.

**R539-1-3. Definitions.**

- (1) Terms used in this rule are defined in Section 62A-5-101.
- (2) In addition:
- (a) "Agency Action" means an action taken by the Division that denies, defers, or changes services to an Applicant applying for, or a person receiving, Division funding;
- (b) "Applicant" means an individual or a representative of an individual applying for determination of eligibility;
- (c) "Brain Injury" means any acquired injury to the brain and is neurological in nature. This would not include those with deteriorating diseases such as Multiple Sclerosis, muscular dystrophy, Huntington's chorea, ataxia, or cancer, but would include cerebral vascular accident;
- (d) "Department" means the Department of Human Services;
- (e) "Developmental Disability" means mental retardation and related conditions;
- (f) "Division" means the Division of Services for People with Disabilities;
- (g) "Form" means a standard document required by Division rule or other applicable law;
- (h) "Guardian" means someone appointed by a court to be a substitute decision maker for a person deemed to be incompetent of making informed decisions;
- (i) "Hearing Request" means an oral or written request made by a person or a person's representative for a hearing concerning a denial, deferral or change in service;
- (j) "ICF/MR" means Intermediate Care Facility for Persons with Mental Retardation;
- (k) "Person" means someone who has been found eligible for Division funding for support services due to a disability and who is waiting for or receiving services at the present time;
- (l) "Region" means one of four geographical areas of the state of Utah referred to as central, eastern, northern or western;
- (m) "Region Office" means the place Applicants apply for services and where support coordinators, supervisors and region directors are located;
- (n) "Related Conditions" means a severe, chronic disability that meets the following conditions:
- (i) It is attributable to:
- (A) Cerebral palsy or epilepsy; or
- (B) Any other condition, other than mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, and requires treatment or services similar to those required for these persons.
- (ii) It is manifest before the person reaches age 22.
- (iii) It is likely to continue indefinitely.

- (iv) It results in substantial functional limitations in three or more of the following areas of major life activity:

- (A) Self-care.
- (B) Understanding and use of language.
- (C) Learning.
- (D) Mobility.
- (E) Self-direction
- (F) Capacity for independent living.
- (o) "Representative" means the person's legal representative including the person's parents if the person is a minor child, a court appointed guardian or a lawyer retained by the person;

- (p) "Resident" is an Applicant or Guardian who is physically present in Utah and provides a statement of intent to reside in Utah;

- (q) "Support" is assistance for portions of a task allowing a person to independently complete other portions of the task or to assume increasingly greater responsibility for performing the task independently;

- (r) "Support Coordinator" means an employee of the Division who completes written documentation of supports and determination of eligibility and support needs;

- (s) "Team Member" means members of the person's circle of support who participate in the planning and delivery of services and supports with the Person. Team members may include the Person applying for or receiving services, his or her parents, Guardian, the support coordinator, friends of the Person, and other professionals and Provider staff working with the Person; and

- (t) "Waiver" means the Medicaid approved plan for a state to provide home and community-based services to persons with disabilities in lieu of institutionalization in a Title XIX facility, the Division administers three such waivers; the developmental disabilities and mental retardation waiver, the brain injury waiver and physical disabilities waiver.

**R539-1-4. Eligibility for Non-Waiver Developmental Disability Services.**

- (1) The Division will serve those Applicants who meet the definition of disabled in Subsections 62A-5-101(4)(a)(i) through (iv) and 62A-5-101(4)(b).

- (2) When determining limitations in the areas listed below, age appropriate abilities must be considered.

- (a) Self-care - An Applicant who requires assistance, training and/or supervision with eating, dressing, grooming, bathing or toileting.

- (b) Expressive and/or Receptive Language - An Applicant who lacks functional communication skills, requires the use of assistive devices to communicate, or does not demonstrate an understanding of requests or is unable to follow two-step instructions.

- (c) Learning - An Applicant who has a valid diagnosis of mental retardation based on the criteria found in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).

- (d) Mobility - An Applicant with mobility impairment who requires the use of assistive devices to be mobile and who cannot physically self-evacuate from a building during an emergency.

- (e) Capacity for Independent Living - An Applicant (age 7-17) who is unable to locate and use a telephone, cross streets safely, or understand that it is not safe to accept rides, food or money from strangers. An adult who lacks basic survival skills in the areas of shopping, preparing food, housekeeping, or paying bills.

- (f) Self-direction - An Applicant (age 7-17) who is significantly at risk in making age appropriate decisions. An adult who is unable to provide informed consent for medical/health care, personal safety, legal, financial,

habilitative, or residential issues and/or who has been declared legally incompetent. A person who is a significant danger to self or others without supervision.

(g) Economic self-sufficiency - (This area is not applicable to children under 18.) An adult who receives disability benefits and who is unable to work more than 20 hours a week or is paid less than minimum wage without employment support.

(3) Applicant must be diagnosed with mental retardation as per 62A-5-101(6) or related conditions as per 42CFR435.1009.

(a) Applicants who have a disability due to mental illness, hearing impairment and/or visual impairment, learning disability, behavior disorder, substance abuse or personality disorder do not qualify for services under this rule.

(4) The Applicant, parent of a minor child, or the Applicant's Guardian must be a resident of the state of Utah prior to the Division's final determination of eligibility.

(5) The Applicant or Applicant's Representative shall be provided with information about all service options available through the Division as well as a copy of the Division's Guide to Services.

(6) It is the Applicant's or Applicant's Representative's responsibility to ensure that the appropriate documentation is provided to the intake worker to determine eligibility.

(7) The following documents are required to determine eligibility for non-waivered developmental disabilities services.

(a) A Division Eligibility for Services Form 19 completed by the designated staff within each region office. For children under seven years of age, Eligibility for Services Form 19C, completed by the designated staff within each region office, will be accepted in lieu of the Eligibility for Services Form 19. The staff member will indicate on the Eligibility for Services Form 19C that the child has substantial functional limitation in three areas of major life activity; that the limitations are likely to continue indefinitely; and what assessment provides the basis of this determination.

(b) Inventory for Client and Agency Planning (ICAP) assessment shall be completed by the Division;

(c) Social History completed by or for the Applicant within one year of the date of application;

(d) Psychological Evaluation provided by the Applicant or, for children under seven years of age, a Developmental Assessment may be used as an alternative; and

(e) Supporting documentation for all functional limitations identified on the Division Eligibility for Services Form 19 or Division Eligibility for Services Form 19C shall be gathered and filed in Applicant's record. Additional supporting documentation shall be required when eligibility is not clearly supported by the above-required documentation. Examples of supporting documentation include, but are not limited to, mental health assessments, educational records, neuropsychological evaluations, and medical health summaries.

(8) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to Applicant or Applicant's Representative indicating that the intake case will be placed in inactive status.

(a) The Applicant or Applicant's Representative may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant or Applicant's Representative shall be required to update information.

(9) When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, Region staff shall determine the Applicant eligible or ineligible for funding for non-waiver developmental disabilities services within 90 days of receiving the required documentation.

(10) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion of the

determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(11) People receiving services will have their eligibility re-determined on an annual basis. If people are determined to no longer be eligible for services, a transition plan will be developed to discontinue services and ensure health and safety needs are met.

(12) This rule does not apply to Applicants who meet the separate eligibility criteria for physical disability and brain injury outlined in Rule 539-1-6 and Rule 539-1-8 respectively.

(13) Persons not participating in a Waiver or Persons participating in a Waiver but receiving non-Waiver services may have reductions in non-Waiver service packages or be discharged from non-Waiver services completely, due to budget shortfalls, reduced legislative allocations and/or reevaluations of eligibility.

#### **R539-1-5. Eligibility for Developmental Disabilities / Mental Retardation Waiver Services.**

(1) Matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Mental Retardation and Developmental Disabilities to provide an array of home and community-based services that an eligible individual needs.

(a) A Notice of Agency Action, Form 522-F, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion to inform of the determination of eligibility or ineligibility for the Waiver. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Health.

(2) Applicants who are found eligible for Waiver funding may choose to participate in the Medicaid Waiver. If the Applicant chooses not to participate in the Waiver, their funding will be equivalent to the State portion of the Waiver budget they would have received had they participated in the Waiver.

#### **R539-1-6. Eligibility for Non-Waivered Physical Disabilities Services.**

(1) The Division will serve those Applicants who meet the eligibility requirements for physical disabilities services. To be determined eligible for non-waivered Physical Disabilities Services, the Applicant must:

(a) Have the functional loss of two or more limbs;

(b) Be 18 years of age or older;

(c) Have at least one personal attendant trained or willing to be trained and available to provide support services in a residence that is safe and can accommodate the personnel and equipment (if any) needed to adequately and safely care for the Person; and

(d) Be medically stable, have a physical disability and require in accordance with the Person's physician's written documentation, at least 14 hours per week of personal assistance services in order to remain in the community and prevent unwanted institutionalization.

(e) Have their physician document that the Person's qualifying disability and need for personal assistance services are attested to by a medically determinable physical impairment which the physician expects will last for a continuous period of not less than 12 months and which has resulted in the individual's functional loss of two or more limbs, to the extent that the assistance of another trained person is required in order to accomplish activities of daily living/instrumental activities of



daily living;

(f) Be capable, as certified by a physician, of selecting, training and supervising a personal attendant;

(g) Be capable of managing personal financial and legal affairs; and

(h) Be a resident of the State of Utah.

(2) Applicants seeking non-Waiver funding for physical disabilities services from the Division shall apply directly to the Division's State Office, by submitting a completed Physical Disabilities Services Application Form 3-1 signed by a licensed physician.

(3) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to Applicant indicating that the intake case will be placed in inactive status.

(a) The Applicant may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant shall be required to update information.

(4) When all necessary eligibility documentation is received from the Applicant and the Applicant is determined eligible, the Applicant will be assessed by a Nurse Coordinator, according to the Physical Disabilities Needs Assessment Form 3-2 and the Minimum Data Set-Home and Community-based (MDS-HC), and given a score prior to placing a Person into services. The Physical Disabilities Nurse Coordinator shall:

(a) use the Physical Disabilities Needs Assessment Form 3-2 to evaluate each Person's level of need;

(b) determine and prioritize needs scores;

(c) rank order the needs scores for every Person eligible for service, and

(d) if funding is unavailable, enter the Person's name and score on the Physical Disabilities wait list.

(5) The Physical Disabilities Nurse Coordinator assures that the needs assessment score and ranking remain current by updating the needs assessment score as necessary. A Person's ranking may change as needs assessments are completed for new Applicants found to be eligible for services.

(6) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522-I, shall inform the Applicant of eligibility determination and placement on the pending list. The Applicant may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

(7) This does not apply to Applicants who meet the separate eligibility criteria for developmental disability/mental retardation and brain injury outlined in Rule 539-1-4 and Rule 539-1-8 respectively.

(8) Persons not participating in a waiver or Persons participating in a waiver but receiving non-waiver services may have reductions in service packages or be discharged from services completely, due to budget shortfalls, reduced legislative allocations and/or reevaluations of eligibility.

#### **R539-1-7. Eligibility for Physical Disabilities Waiver Services.**

(1) Matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Physical Disabilities to provide an array of home and community-based services that an eligible individual needs.

(2) Applicants who are found eligible for the Home and Community-Based Waiver for People with Physical Disabilities funding but who choose not to participate in the Home and Community-Based Waiver for People with Physical Disabilities, will receive only the state paid portion of services.

#### **R539-1-8. Eligibility for Non-Waiver Brain Injury Services.**

(1) The Division will serve those Applicants who meet the eligibility requirements for brain injury services. To be determined eligible for non-waiver brain injury services the Applicant must:

(a) have a documented acquired neurological brain injury;

(b) Be 18 years of age or older;

(c) score between 40 and 120 on the Brain Injury Comprehensive Assessment Form 4-1.

(2) Applicants with substance abuse or deteriorating diseases like Multiple Sclerosis, Muscular Dystrophy, Huntington's Chorea, Ataxia or Cancer as a primary diagnosis are ineligible for these non-waiver services.

(3) The Applicant shall be provided with information concerning service options available through the Division and a copy of the Division's Guide to Services.

(4) The Applicant or the Applicant's Guardian must be a resident of the state of Utah prior to the Division's final determination of eligibility.

(5) It is the Applicant's or Applicant's Representative's responsibility to provide the intake worker with documentation of brain injury, signed by a licensed physician;

(6) The intake worker will complete or compile the following documents:

(a) Brain Injury Intake, Screening and Comprehensive Assessment Form 4-1, Part I through Part VII; and

(b) Brain Injury Social History Summary Form 824BI, completed or updated within one year of eligibility determination;

(7) If eligibility documentation is not completed within 90 calendar days of initial contact, a written notification letter shall be sent to Applicant or Applicant's Representative indicating that the intake case will be placed in inactive status.

(a) The Applicant or Applicant's Representative may activate the application at anytime thereafter by providing the remaining required information.

(b) The Applicant or Applicant's Representative shall be required to update information.

(8) When all necessary eligibility documentation is received from the Applicant or Applicant's Representative, region staff shall determine the Applicant eligible or ineligible for funding for brain injury supports.

(9) A Notice of Agency Action, Form 522-I, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion of the determination of eligibility or ineligibility for funding. The Notice of Agency Action, Form 522, shall inform the Applicant or Applicant's Representative of eligibility determination and placement on the waiting list. The Applicant or Applicant's Representative may challenge the Notice of Agency Action by filing a written request for an administrative hearing before the Department of Human Services, Office of Administrative Hearings.

#### **R539-1-9. Eligibility for Acquired Brain Injury Waiver Services.**

(1) Matching federal funds may be available through the Medicaid Home and Community-Based Waiver for People with Acquired Brain Injury to provide an array of home and community-based services that an eligible individual needs.

(2) Applicants who are found eligible for the Home and Community-Based Waiver for People with Brain Injury funding but who choose not to participate in the Home and Community-Based Waiver for People with Brain Injury, will receive only the state paid portion of services.

(3) A Notice of Agency Action, Form 522-F, and a Hearing Request, Form 490S, shall be mailed to each Applicant or Applicant's Representative upon completion to inform of the determination of eligibility or ineligibility for the Waiver. The Applicant or Applicant's Representative may challenge the

Notice of Agency Action by filing a written request for an administrative hearing before the Department of Health.

**R539-1-10. Graduated Fee Schedule.**

(1) Pursuant to Utah Code 62A-5-105 the Division establishes a graduated fee schedule for use in assessing fees to individuals. The graduated fee schedule shall be applied to Persons who do not meet the Medicaid eligibility requirements listed in the Developmental Disabilities/Mental Retardation Waiver, the Traumatic Brain Injury Waiver or the Physical Disabilities Waiver. Family size and gross income shall be used to determine the fee. This rule does not apply to Persons who qualify for Medicaid waiver funding but who choose to have funding reduced to the state match per R539-1-2 rather than participate in the Medicaid Waiver.

(a) Persons who do not participate in a Medicaid Waiver who do not meet Waiver level of care must apply for a Medicaid Card within 30 days of receiving notice of this rule. Persons who do not participate in a Medicaid Waiver who meet Waiver level of care must apply for determination of financial eligibility using Form 927 within 30 days of receiving notice of this rule. Persons who do not participate in a Medicaid Waiver shall provide the Support Coordinator or Nurse Coordinator with the financial determination letter within 10 days of the receipt of such documentation. Persons who do not participate in a Medicaid Waiver and who fail to comply with these requirements shall have funding reduced to the state match rate.

(b) Persons who do not participate in a Medicaid Waiver due to financial eligibility, must be reduced to the state match rate.

(c) Persons who only meet the general eligibility requirements, as per R539-1-4, R539-1-6, and R539-1-8, must report all cash assets (stocks, bonds, certified deposits, savings, checking and trust amounts), annual income and number of family members living together using Division Form 2-1G. Persons with Discretionary Trusts are exempt from the Graduated Fee Schedule as per Subsection 62A-5-110(6). The Form 2-1G shall be reviewed at the time of the annual planning meeting. The Person / family shall return Form 2-1G to the support coordinator prior to delivery of new services. Persons / families currently receiving services will have 60 days from receiving notice of this rule to return a completed and signed Form 2-1G to the Division. Persons / families who complete the Division Graduated Fee Assessment Form 2-1G shall be assessed a fee no more than 3% of their income. If the form is not received within 60 days of receiving notice of this rule, the Person will have funding reduced to the state match rate.

(d) Cash assets, income and number of family members will be used to calculate available income (using the formula: (assets + income) / by the total number of family members = available income). Available income will be used to determine the fee percent (0 percent to 3 percent). The annual fee amount will be calculated by multiplying available income by the fee percent. Persons who do not participate in a Medicaid Waiver, who only meet general eligibility requirements, and have available incomes below 300 percent of the poverty level will not be assessed a fee. Persons with available incomes between 300 and 399 percent of poverty will be assessed a 1 percent fee, Persons with available incomes between 400 and 499 percent of poverty will be assessed a 2 percent fee and those with available income over 500 percent of poverty will be assessed a 3 percent fee.

(e) No fee shall be assessed for a Person who does not participate in a Medicaid Waiver and who receives funding for less than 31 percent of their assessed need. A multiplier shall be applied to the fee of Persons who do not participate in a Medicaid Waiver and who receive 31 to 100% percent of their assessed need.

(f) If a Person's annual allocation is at the state match rate,

they will not be assessed a fee.

(g) Only one fee will be assessed per family, regardless of the number of children in the family receiving services. Persons who do not participate in a Medicaid Waiver under the age of 18 shall be assessed a fee based upon parent income. Persons who do not participate in a Medicaid Waiver over the age of 18 shall be assessed a fee based upon individual income and assets.

(h) If the Person is assessed a fee, the Person shall pay the Division of Services for People with Disabilities or designee 1/12th of the annual fee by the end of each month, beginning the following month after the notice of this rule was sent to the Person.

(i) If the Person fails to pay the fee for six months, the Division may reduce the Person's next year annual allocation to recover the amount due. If a Person can show good cause, the Division Director may grant exceptions on a case-by-case basis.

**KEY: human services, disability**

**August 19, 2004**

**62A-5-103**

**Notice of Continuation December 18, 2002**

**62A-5-105**

**R590. Insurance, Administration.****R590-102. Insurance Department Fee Payment Rule.****R590-102-1. Authority.**

This rule is adopted pursuant to Subsections 31A-3-103(2) and (4) which require the commissioner to publish the schedule of fees approved by the Legislature and to establish deadlines for payment of each of the various fees.

**R590-102-2. Purpose and Scope.**

(1) The purpose of this rule is to publish the schedule of fees approved by the legislature, to establish fee deadlines, and to disclose this information to licensees and the public.

(2) The rule applies to all persons engaged in the business of insurance in Utah, to all licensees, to applicants for licenses, registrations, certificates, or other similar filings and for services provided by the department for which a fee is required.

**R590-102-3. Definitions.**

For the purposes of this rule the following definitions will apply.

(1) "Admitted insurers" include: fraternal, health, health maintenance organization, life, limited health plan, motor club, non-profit health service, property-casualty, and title insurers.

(2) "Agency" means:

(a) a person, other than an individual, including a sole proprietorship by which a natural person does business under an assumed name; and

(b) an insurance organization required to be licensed under Subsection 31A-23-212(3).

(3) "Captive insurer" includes association captive, branch captive, industrial insured captive, pure captive, and sponsored captive.

(4) "Deadline" means the date or time imposed by statute, order, or rule by which:

(a) a payment must be received by the department without incurring penalties for late payment or non-payment; or

(b) a filing must be received by the department without incurring penalties for late receipt or non-receipt.

(5) "Fee" means an amount set by the legislature for licenses, registrations, certificates, and other filings and services provided by the Insurance Department.

(6) "Full-line agency" includes producer, consultant, independent adjuster, managing general agent, public adjuster, reinsurance intermediary broker, and third party administrator.

(7) "Full-line individual" includes a producer, consultant, independent adjuster, managing general agent, public adjuster, reinsurance intermediary broker, and third party administrator.

(8) "Limited-line agency" includes bail bond and limited-line producer.

(9) "Limited-line individual" includes bail bond agent, limited-lines producer and customer service representative.

(10) "Other organizations" include: home warranty, joint underwriter, purchasing group, rate service organization, risk retention group, service contract provider, surplus line insurer, accredited reinsurer, and trustee reinsurer.

(11) "Paper filing" means each item of a filing that must be manually entered into the department's database because it was submitted by some method such as paper facsimile, or email rather than submitted electronically when the department has mandated an electronic filing method.

(12) "Received by the department" means:

(a) except as provided in Subsection R590-102-3(11)(b), the date delivered to and stamped received by the department, whether delivered in person or electronically; or

(b) if delivered to the department by a delivery service, the delivery service's postmark date or pick-up date unless a statute, rule, or order related to a specific filing or payment provides otherwise.

**R590-102-4. General Instructions.**

(1) Any fee payable to the department not included in Subsections R590-102-5 through 14, shall be due when service is requested, if applicable, otherwise by the due date on the invoice. A non-electronic payment fee will be added to the fee due the department when a payment that can be made electronically is done through a non-electronic method.

(2) Payment.

(a) Checks shall be made payable to the Utah Insurance Department. A check that is dishonored in the process of the collection will not constitute payment of the fee for which it was issued and any action taken based on the payment will be voided. Late fees and other penalties, resulting from the voided action will apply until proper payment is made. A check payment that is dishonored is a violation of this rule.

(b) Cash payments. The department is not responsible for un-receipted cash that is lost or misdelivered.

(c) Electronic payments.

(i) Credit Card. Credit cards may be used to pay any fee due to the department. Credit card payments that are dishonored will not constitute payment of the fee and any action taken based on the payment will be voided. Late fees and other penalties, resulting from the voided action, will apply until proper payment is made. A credit card payment that is dishonored is a violation of this rule.

(ii) Automated clearinghouse (ACH). Payers or purchasers desiring to use this method must contact the department for the proper routing and transit information. Payments that are made in error to another agency or that are not deposited into the department's account will not constitute payment of the fee and any action taken based on the payment will be voided. Late fees and other penalties resulting from the voided action will apply until proper payment is made. An ACH payment that is dishonored is a violation of this rule.

(3) Retaliation. The fees enumerated in this rule are not subject to retaliation in accordance with Section 31A-3-401 if other states or countries impose higher fees.

(4) Refunds.

(a) All fees in this rule are non-refundable.

(b) Overpayments of fees are refundable.

(c) Requests for return of overpayments must be in writing.

(5) Implementation date.

(a) All fees, except resident and non-resident individual and agency license renewal fees, are implemented November 1, 2003.

(b) Resident and non-resident individual and agency license renewal fees are implemented December 1, 2003.

(6) A non-electronic processing fee will be assessed for a particular service if the department has established an electronic process for that service. See Section 12 for non-electronic processing fees.

**R590-102-5. Admitted Insurer Annual License and Annual Service Fees.**

(1) Annual license fees.

(a) certificate of authority, initial license application - due with license application: \$1,002;

(b) certificate of authority - renewal - due by the due date on the invoice: \$302;

(c) certificate of authority - reinstatement - due with application for reinstatement: \$1,002;

(d) certificate of authority - amendments - due with request for amendment: \$252;

(e) application for merger, acquisition, or change of control - Form A, due with filing: \$2,002. Expenses incurred for consultant(s) services necessary to evaluate the Form A will be charged to the applicant and due when billed;

(f) redomestication filing - due with filing: \$2,002; and

(g) application for organizational permit for mutual insurer to solicit applications for qualifying insurance policies or subscriptions for mutual bonds or contribution notes - due with application: \$1,002.

(2) The annual initial or annual renewal license fee includes the following licensing services for which no additional fee is required:

(a) filing annual statement and report of Utah business - due annually on March 1;

(b) filing holding company registration statement - Form B;

(c) filing application for material transactions between affiliated companies - Form D;

(d) application for: stock solicitation permit, public offering filing, but not an SEC filing; an SEC filing; private placement offering; and

(e) application for individual license to solicit in accordance with the stock solicitation permit.

(3) Annual service fee:

(a) Due annually by the due date on the invoice. The fee is based on the Utah premium as shown in the latest annual statement on file with the National Association of Insurance Commissioners (NAIC) and the department. Fee calculation example: the 2004 annual service fee calculation will use the Utah premium shown in the December 31, 2003 annual statement.

(i) \$0 premium volume: no service fee;

(ii) more than \$zero but less than \$1 million in premium volume: \$700;

(iii) \$1 million but less than \$3 million in premium volume: \$1,100;

(iv) \$3 million but less than \$6 million in premium volume: \$1,550;

(v) \$6 million but less than \$11 million in premium volume: \$2,100;

(vi) \$11 million but less than \$15 million in premium volume: \$2,750;

(vii) \$15 million but less than \$20 million in premium volume: \$3,500; and

(viii) \$20 million or more in premium volume: \$4,350.

(b) The annual service fee includes the following services for which no additional fee is required:

(i) filing of amendments to articles of incorporation, charter, or bylaws;

(ii) filing of power of attorney;

(iii) filing of registered agent;

(iv) affixing commissioner's seal and certifying any paper;

(v) filing of authorization to appoint and remove agents;

(vi) filing of producer/agency appointment with an insurer - initial;

(vii) filing of producer/agency appointment with an insurer - termination;

(viii) filing of producer/agency appointment with an insurer - biennial renewal;

(ix) report filing, all lines of insurance;

(x) rate filing, all lines of insurance; and

(xi) form filing, all lines of insurance.

(c) The annual service fee is for services that the department will provide for an admitted insurer during the year. The fee is paid in advance of providing the services.

**R590-102-6. Surplus Lines Insurer, Accredited Reinsurer, Trusteed Reinsurer, Other Organizations Annual License and Annual Service Fees.**

(1) Annual license fee.

(a) other organizations - initial - due with application: \$252;

(b) other organizations - renewal - due annually by the due date on the invoice: \$202;

(c) other organization - reinstatement - due with application for reinstatement: \$252;

(d) The annual other organizations initial or renewal fee includes the risk retention group annual statement filing - due annually on May 1.

(e) surplus line insurer, accredited reinsurer, and trusteed reinsurer:

(i) surplus lines insurer, accredited reinsurer, and trusteed reinsurer - initial - due with application \$1,002.

(ii) surplus lines insurer, accredited reinsurer, and trusteed reinsurer - renewal - due annually by the due date on the invoice: \$302;

(iii) surplus lines insurer, accredited reinsurer, and trusteed reinsurer - reinstatement - due with application for reinstatement: \$1,002;

(iv) The annual initial or renewal surplus line license fee includes the surplus lines annual statement filing for:

(A) U.S. companies - due annually on May 1; and

(B) foreign companies - due within 60 days of the annual statement's filing with the insurance regulatory authority where the company is domiciled.

(v) The annual initial or renewal accredited reinsurer and trusteed reinsurer license fee includes the annual statement filing - due annually on March 1.

(2) Annual service fee:

(a) Other organizations - due annually by the due date on the invoice: \$200.

(b) Surplus lines insurer, accredited reinsurer, and trusteed reinsurer - due annually by the due date on the invoice: \$200

(c) The annual service fee includes the following services for which no additional fee is required:

(i) filing of power of attorney;

(ii) filing of registered agent;

(iii) rate, form, report or service contract filing; and

(iv) any other services provided to the licensee.

(d) The annual service fee is for services that the department will provide during the year. The fee is paid in advance of providing the services.

**R590-102-7. Captive Insurer Fees.**

(1) Initial license application - due with license application: \$202.

(2) Initial license application review - due by the due date on the invoice: actual costs incurred by the department to review the application.

(3) Annual license fees:

(a) initial - due by the due date on the invoice: \$302;

(b) renewal - due by the due date on the invoice: \$302;

and

(c) reinstatement - due with application for reinstatement: \$302.

(4) Annual service fee - due by the due date on the invoice: \$200.

**R590-102-8. Viatical Settlement Provider Fees.**

(1) Annual license fees:

(a) initial - due with application: \$1,002;

(b) renewal - due by the due date on the invoice: \$302;

and

(c) reinstatement - due with reinstatement application: \$1,002.

(2) Annual service fee - due by the due date on the invoice: \$600.

**R590-102-9. Individual Resident and Non-Resident Biennial License Fees.**

(1) Resident and non-resident full-line individual initial license or renewal fee for two-year period:

(a) initial license fee - due with application: \$72;

(b) express initial license fee - due with application: \$72;  
 (c) renewal license fee if renewed prior to renewal deadline - due with renewal application: \$72;

(d) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal application: \$142; and

(e) lapsed license reinstatement fee if reinstated 31 days through 730 days after renewal deadline - due with application for reinstatement: \$192.

(2) Resident and non-resident limited-line individual initial or renewal license fee, for two-year period:

(a) initial license fee - due with application: \$47;

(b) renewal license fee if renewed prior to renewal deadline - due with renewal application: \$47;

(c) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal application: \$92; and

(d) lapsed license reinstatement fee if reinstated 31 days through 730 days after renewal deadline - due with application for reinstatement: \$142.

(3) Fee for addition of producer classification or line of authority to individual producer license - due with request for additional classification or line of authority: \$27.

(4) The initial and renewal full-line producer and limited-line producer fee includes the following services for which no additional fee is required:

(a) issuance of letter of certification;

(b) issuance of letter of clearance;

(c) issuance of duplicate license;

(d) individual continuing education services; and

(e) other services provided to the licensee.

(5) The initial and renewal individual license fee includes services the department will provide during the year. The fee is paid in advance of providing the services.

#### **R590-102-10. Biennial Agency License Fees.**

(1) Resident and non-resident agency initial or renewal license per two-year license period for a full-line agency and for a limited-line agency:

(a) initial license fee - due with application: \$77;

(b) renewal license fee if renewed prior to renewal deadline - due with renewal application: \$77;

(c) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal application: \$152; and

(d) lapsed license reinstatement fee if reinstated 31 days through 730 days after renewal deadline - due with application for reinstatement: \$202.

(2) Fee for addition of producer classification or line of authority to agency license - due with request for additional classification or line of authority: \$27.

(3) Bail bond agency per annual license period:

(a) initial license fee - due with application: \$252;

(b) renewal license fee if renewed prior to renewal deadline - due with renewal application: \$252;

(c) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal application: \$502; and

(d) lapsed license reinstatement fee if reinstated 31 days after renewal deadline - due with application for reinstatement: \$602.

(4) Health insurance purchasing alliance annual license:

(a) initial license fee - due with application: \$502;

(b) renewal license fee if renewed prior to renewal deadline - due with renewal application: \$502;

(c) renewal license fee if renewed 1 through 30 days after renewal deadline and prior to license lapse - due with renewal application: \$752; and

(d) lapsed license reinstatement fee if reinstated 31 days

after renewal deadline - due with application for reinstatement: \$802.

(5) The initial and renewal agency license fee includes the following services for which no additional fee is required:

(a) issuance of letter of certification;

(b) issuance of letter of clearance;

(c) issuance of duplicate license;

(d) filing of producer designation to agency license - initial;

(e) filing of producer designation to agency license - termination;

(f) filing of producer designation to agency license - biennial renewal;

(g) filing of amendment to agency license;

(h) filing of power of attorney; and

(i) any other services provided to the licensee.

(6) The initial and renewal agency license fee includes services the department will provide during the year. The fee is paid in advance of providing the services.

(7) Title agency filing (rate, form, or report) - due with filing: \$25.

#### **R590-102-11. Continuing Education Fees.**

(1) Continuing education provider license fees:

(a) initial license fee - due with application: \$252;

(b) renewal license fee if renewed prior to renewal deadline - due with renewal application: \$252;

(c) renewal license fee if renewed 1 through 60-days after renewal deadline and prior to license lapse - due with renewal application: \$302; and

(d) Lapsed license reinstatement fee if reinstated 61 days after renewal deadline - due with application for reinstatement: \$352.

(2) Continuing education course post-approval fee - due with request for approval: \$5 per credit hour, minimum fee \$27.

#### **R590-102-12. Non-electronic Processing Fees.**

(1) Paper filing processing fee - assessed on a non-electronic filing when the department has mandated the use of an electronic filing process - due with each paper filing or by the due date on the invoice: \$5.

(2) Paper application processing fee - assessed on a non-electronic application when the department has mandated the use of an electronic application process - due with each paper application or by the due date on the invoice: \$25.

#### **R590-102-13. Dedicated Fees.**

The following are fees dedicated to specific uses:

(1) annual fraud assessment fee - due by the due date on the invoice;

(2) annual title assessment fee - due by the due date on the invoice;

(3) relative value study book fee - due when book purchased or by invoice due date: 12; and

(4) mailing fee for books - due if book is to be mailed to purchaser: \$3.

#### **R590-102-14. Electronic Commerce Dedicated Fees.**

(1) E-commerce and internet technology services fee:

(a) admitted insurer and surplus lines insurer - due with the annual initial, annual renewal, or reinstatement application: \$75;

(b) captive insurer - due with the annual initial, annual renewal, or reinstatement application: \$1,000;

(c) other organization and viatical settlement provider - due with the annual initial, annual renewal, or reinstatement application: \$50;

(d) continuing education provider - due with the annual initial, annual renewal, or reinstatement application: \$20;

(e) agency - due with the biennial initial, biennial renewal, or reinstatement application: \$10; and

(f) individual - due with the biennial initial, biennial renewal, or reinstatement application: \$5.

(2) The e-commerce and internet technology services fees are authorized until July 1, 2006.

(3) Database access fee - due when the department's database is accessed to input or acquire data: \$3 per transaction.

**R590-102-15. Other Fees.**

(1) photocopy fee - per page: \$.50.

(2) Complete annual statement copy fee - per statement: \$42.

(3) Fee for accepting service of legal process: \$12.

(4) Fees for production of information lists regarding admitted insurers, other organizations, individuals, agencies, or other information that can be produced by list:

(a) printed list: \$1 per page;

(b) electronic list:

(i) 1 to 500 records: \$52; and

(ii) 501 or more records: \$.11 per record.

(5) Returned check fee: \$20.

(6) Workers compensation loss cost multiplier schedule: \$5.

(7) Address correction fee -- assessed when department has to research and enter new address for a licensee -- due by the due date on the invoice: \$35.

**R590-102-16. Separability.**

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of this provision to other persons or circumstances shall not be affected.

**KEY: insurance**

**September 1, 2004**

**Notice of Continuation February 21, 2002**

**31A-3-103**

**R590. Insurance, Administration.****R590-167. Individual, Small Employer, and Group Health Benefit Plan Rule.****R590-167-1. Authority, Purpose and Scope.**

## (1) Authority.

This rule is intended to implement the provisions of Chapter 30, Title 31A, the Individual and Small Employer Health Insurance Act, referred to in this rule as the Act. The commissioner's authority to enforce this rule is provided under Subsections 31A-2-201(3)(a) and 31A-30-106(1)(k).

## (2) Purpose.

## (a) The general purposes of the Act and this rule are:

(i) to enhance the availability of health insurance coverage to individuals and small employers;

(ii) to regulate and prevent abuse in insurer rating practices and establish limits on differences in rates between health benefit plans;

(iii) to ensure renewability of coverage;

(iv) to establish limitations on the use of preexisting condition exclusions;

(v) to provide for portability; and

(vi) to improve the overall fairness and efficiency of the individual and small employer health insurance market.

## (b) The Act and this rule are intended to:

(i) promote broader spreading of risk in the individual and small employer marketplace; and

(ii) regulate rating practices for all health benefit plans sold to individuals and small employers, whether sold directly or through associations or other groupings of individuals and small employers.

## (3) Scope.

Carriers that provide health benefit plans to individuals and small employers are intended to be subject to all of the provisions of this rule.

**R590-167-2. Definitions.**

In addition to the definitions in Sections 31A-1-301 and 31A-30-103, the following definitions shall apply for the purposes of this rule:

(1) "Associate member of an employee organization" means any individual who participates in an employee benefit plan, as defined in 29 U.S.C. Section 1002(1), that is a multi-employer plan, as defined in 29 U.S.C. Section 1002(37A), other than the following:

(a) an individual, or the beneficiary of such individual, who is employed by a participating employer within a bargaining unit covered by at least one of the collective bargaining agreements under or pursuant to which the employee benefit plan is established or maintained; or

(b) an individual who is a present or former employee, or a beneficiary of such employee, of the sponsoring employee organization, of an employer who is or was a party to at least one of the collective bargaining agreements under or pursuant to which the employee benefit plan is established or maintained, or of the employee benefit plan, or of a related plan.

(2) "Change in a Rating Factor" means the cumulative change with respect to such factor considered over a 12 month period. If a covered carrier changes rating factors with respect to more than one case characteristic in a 12 month period, the carrier shall consider the cumulative effect of all such changes in applying the 10% test.

## (3) "Change in Rating Method" means:

(a) a change in the number of case characteristics used by a covered carrier to determine premium rates for health benefit plans in a class of business;

(b) a change in the manner or procedures by which insureds are assigned into categories for the purpose of applying a case characteristic to determine premium rates for health benefit plans in a class of business;

(c) a change in the method of allocating expenses among health benefit plans in a class of business; or

(d) a change in a rating factor with respect to any case characteristic if the change would produce a change in premium for any individual or small employer that exceeds 10%.

(4) "New entrant" means an eligible employee, or the dependent of an eligible employee, who becomes part of an employer group after the initial period for enrollment in a health benefit plan.

(5) "Risk characteristic" means the health status, claims experience, duration of coverage, or any similar characteristic related to the health status or experience of an individual, a small employer or of any member of a small employer.

(6) "Risk load" means the percentage above the applicable base premium rate that is charged by a covered carrier to a covered insured to reflect the risk characteristics of the covered individuals.

**R590-167-3. Applicability and Scope.**

## (1) This rule shall apply to any health benefit plan which:

(a) meets one or more of the conditions set forth in Subsections 31A-30-104(1) and (2);

(b) provides coverage to a covered insured located in this state, without regard to whether the policy or certificate was issued in this state; and

(c) is in effect on or after the effective date of this rule.

(2)(a) If a small employer has employees in more than one state, the provisions of the Act and this rule shall apply to a health benefit plan issued to the small employer if:

(i) the majority of eligible employees of such small employer are employed in this state; or

(ii) if no state contains a majority of the eligible employees of the small employer, the primary business location of the small employer is in this state.

(b) In determining whether the laws of this state or another state apply to a health benefit plan issued to a small employer described in Subsection R590-167-3(2)(a), the provisions of the subsection shall be applied as of the date the health benefit plan was issued to the small employer for the period that the health benefit plan remains in effect.

(c) If a health benefit plan is subject to the Act and this rule, the provisions of the Act and this rule shall apply to all individuals covered under the health benefit plan, whether they reside in this state or in another state.

(3) A carrier that is not operating as a covered carrier in this state may not become subject to the provisions of the Act and this rule solely because an individual or a small employer that was issued a health benefit plan in another state by that carrier moves to this state.

**R590-167-4. Establishment of Classes of Business.**

(1) A covered carrier that establishes more than one class of business pursuant to the provisions of Section 31A-30-105 shall maintain on file for inspection by the commissioner the following information with respect to each class of business so established:

(a) a description of each criterion employed by the carrier, or any of its agents, for determining membership in the class of business;

(b) a statement describing the justification for establishing the class as a separate class of business and documentation that the establishment of the class of business is intended to reflect substantial differences in expected claims experience or administrative costs related to the reasons set forth in Section 31A-30-105; and

(c) a statement disclosing which, if any, health benefit plans are currently available for purchase in the class and any significant limitations related to the purchase of such plans.

(2) A carrier may not directly or indirectly use group size

as a criterion for establishing eligibility for a class of business.

**R590-167-5. Transition for Assumptions of Business from Another Carrier.**

(1)(a) A covered carrier may not transfer or assume the entire insurance obligation, risk, or both of a health benefit plan covering an individual or a small employer in this state unless:

- (i) the transaction has been approved by the commissioner of the state of domicile of the assuming carrier;
- (ii) the transaction has been approved by the commissioner of the state of domicile of the ceding carrier; and
- (iii) the transaction otherwise meets the requirements of this section.

(b) A carrier domiciled in this state that proposes to assume or cede the entire insurance obligation, risk, or both of one or more health benefit plans covering covered individuals from or to another carrier shall make a filing for approval with the commissioner at least 60 days prior to the date of the proposed assumption. The commissioner may approve the transaction, if the commissioner finds that the transaction is in the best interests of the individuals insured under the health benefit plans to be transferred and is consistent with the purposes of the Act and this rule. The commissioner may not approve the transaction until at least 30 days after the date of the filing; except that, if the carrier is in hazardous financial condition, the commissioner may approve the transaction as soon as the commissioner deems reasonable after the filing.

(c)(i) The filing required under Subsection R590-167-5(1)(b) shall:

(A) describe the class of business, including any eligibility requirements, of the ceding carrier from which the health benefit plans will be ceded;

(B) describe whether the assuming carrier will maintain the assumed health benefit plans as a separate class of business, pursuant to Subsection R590-167-5(3), or will incorporate them into an existing class of business, pursuant to Subsection R590-167-5(4). If the assumed health benefit plans will be incorporated into an existing class of business, the filing shall describe the class of business of the assuming carrier into which the health benefit plans will be incorporated;

(C) describe whether the health benefit plans being assumed are currently available for purchase by individuals or small employers;

(D) describe the potential effect of the assumption, if any, on the benefits provided by the health benefit plans to be assumed;

(E) describe the potential effect of the assumption, if any, on the premiums for the health benefit plans to be assumed;

(F) describe any other potential material effects of the assumption on the coverage provided to the individuals and small employers covered by the health benefit plans to be assumed; and

(G) include any other information required by the commissioner.

(ii) A covered carrier required to make a filing under Subsection R590-167-5(1)(b) shall also make an informational filing with the commissioner of each state in which there are individual or small employer health benefit plans that would be included in the transaction. The informational filing to each state shall be made concurrently with the filing made under Subsection R590-167-5(1)(b) and shall include at least the information specified in Subsection R590-167-5(1)(b)(ii) for the individual or small employer health benefit plans in that state.

(d) A covered carrier may not transfer or assume the entire insurance obligation and/or risk of a health benefit plan covering an individual or a small employer in this state unless it complies with the following provisions:

(i) The carrier has provided notice to the commissioner at least 60 days prior to the date of the proposed assumption. The

notice shall contain the information specified in Subsection R590-167-5(1)(c) for the health benefit plans covering individuals and small employers in this state.

(ii) If the assumption of a class of business would result in the assuming covered carrier being out of compliance with the limitations related to premium rates contained in Section 31A-30-106, the assuming carrier shall make a filing with the commissioner pursuant to Subsection 31A-30-105(3) seeking an extended transition period.

(iii) An assuming carrier seeking an extended transition period may not complete the assumption of health benefit plans covering individuals or small employers in this state unless the commissioner grants the extended transition period requested pursuant to Subsection R590-167-5(1)(d)(ii).

(iv) Unless a different period is approved by the commissioner, an extended transition period shall, with respect to an assumed class of business, be for no more than 15 months and, with respect to each individual small employer, shall last only until the anniversary date of such employer's coverage, except that the period with respect to an individual small employer may be extended beyond its first anniversary date for a period of up to 12 months if the anniversary date occurs within three months of the date of assumption of the class of business.

(2)(a) Except as provided in Subsection R590-167-5(2)(b), a covered carrier may not cede or assume the entire insurance obligation, risk, or both for an individual or small employer health benefit plan unless the transaction includes the ceding to the assuming carrier of the entire class of business which includes such health benefit plan.

(b) A covered carrier may cede less than an entire class of business to an assuming carrier if:

(i) one or more individuals or small employers in the class have exercised their right under contract or state law to reject, either directly or by implication, the ceding of their health benefit plans to another carrier. In that instance, the transaction shall include each health benefit plan in the class of business except those health benefit plans for which an individual or a small employer has rejected the proposed cession; or

(ii) after a written request from the transferring carrier, the commissioner determines that the transfer of less than the entire class of business is in the best interests of the individual or small employers insured in that class of business.

(3) Except as provided in Subsection R590-167-5(4), a covered carrier that assumes one or more health benefit plans from another carrier shall maintain such health benefit plans as a separate class of business.

(4) A covered carrier that assumes one or more health benefit plans from another carrier may exceed the limitation contained in Section 31A-30-105 relating to the maximum number of classes of business a carrier may establish, due solely to such assumption for a period of up to 15 months after the date of the assumption, provided that the carrier complies with the following provisions:

(a) Upon assumption of the health benefit plans, such health benefit plans shall be maintained as a separate class of business. During the 15-month period following the assumption, each of the assumed individual or small employer health benefit plans shall be transferred by the assuming covered carrier into a single class of business operated by the assuming covered carrier. The assuming covered carrier shall select the class of business into which the assumed health benefit plans will be transferred in a manner such that the transfer results in the least possible change to the benefits and rating method of the assumed health benefit plans.

(b) The transfers authorized in Subsection R590-167-5(4)(a) shall occur with respect to each individual or small employer on the anniversary date of the individual's or small employer's coverage, except that the period with respect to an



individual small employer may be extended beyond its first anniversary date for a period of up to 12 months if the anniversary date occurs within three months of the date of assumption of the class of business.

(c) A covered carrier making a transfer pursuant to Subsection R590-167-5(4)(a) may alter the benefits of the assumed health benefit plans to conform to the benefits currently offered by the carrier in the class of business into which the health benefit plans have been transferred.

(d) The premium rate for an assumed individual or small employer health benefit plan may not be modified by the assuming covered carrier until the health benefit plan is transferred pursuant to Subsection R590-167-5(4)(a). Upon transfer, the assuming covered carrier shall calculate a new premium rate for the health benefit plan from the rate manual established for the class of business into which the health benefit plan is transferred. In making such calculation, the risk load applied to the health benefit plan shall be no higher than the risk load applicable to such health benefit plan prior to the assumption.

(e) During the 15 month period provided in this subsection, the transfer of individual or small employer health benefit plans from the assumed class of business in accordance with this subsection may not be considered a violation of the first sentence of Subsection 31A-30-106(2).

(5) An assuming carrier may not apply eligibility requirements, including minimum participation and contribution requirements, with respect to an assumed health benefit plan, or with respect to any health benefit plan subsequently offered to an individual or small employer covered by such an assumed health benefit plan, that are more stringent than the requirements applicable to such health benefit plan prior to the assumption.

(6) The commissioner may approve a longer period of transition upon application of a covered carrier. The application shall be made within 60 days after the date of assumption of the class of business and shall clearly state the justification for a longer transition period.

(7) Nothing in this section or in the Act is intended to:

(a) reduce or diminish any legal or contractual obligation or requirement, including any obligation provided in Section 31A-14-213, of the ceding or assuming carrier related to the transaction;

(b) authorize a carrier that is not admitted to transact the business of insurance in this state to offer or insure health benefit plans in this state; or

(c) reduce or diminish the protections related to an assumption reinsurance transaction provided in Section 31A-14-213 or otherwise provided by law.

#### **R590-167-6. Restrictions Relating to Premium Rates.**

(1) A covered carrier shall develop a separate rate manual for each class of business. Base premium rates and new business premium rates charged to individuals and small employers by the covered carrier shall be computed solely from the applicable rate manual developed pursuant to this subsection. To the extent that a portion of the premium rates charged by a covered carrier is based on the carrier's discretion, the manual shall specify the criteria and factors considered by the carrier in exercising such discretion.

(2)(a) A covered carrier may not modify the rating method, as defined in Section R590-167-2, used in the rate manual for a class of business until the change has been approved as provided in this subsection. The commissioner may approve a change to a rating method if the commissioner finds that the change is reasonable, actuarially appropriate, and consistent with the purposes of the Act and this rule.

(b) A carrier may modify the rating method for a class of business only after filing an actuarial certification. The filing shall clearly request approval for a change in rating method and

contain at least the following information:

(i) the reasons the change in rating method is being requested;

(ii) a complete description of each of the proposed modifications to the rating method;

(iii) a description of how the change in rating method would affect the premium rates currently charged to individuals and small employers in the class of business, including an estimate from a qualified actuary of the number of groups or individuals, and a description of the types of groups or individuals, whose premium rates may change by more than 10% due to the proposed change in rating method, not including general increases in premium rates applicable to all individuals and small employers in a health benefit plan;

(iv) a certification from a qualified actuary that the new rating method would be based on objective and credible data and would be actuarially sound and appropriate; and

(v) a certification from a qualified actuary that the proposed change in rating method would not produce premium rates for individuals and small employers that would be in violation of Sections 31A-30-106 and 31A-30-106.5.

(3) The rate manual developed pursuant to Subsections 31A-30-106(4) and R590-167-6(1) shall specify the case characteristics and rate factors to be applied by the covered carrier in establishing premium rates for the class of business.

(a) A covered carrier may not use case characteristics other than those specified in Subsection 31A-30-106(1)(h) without the prior approval of the commissioner. A covered carrier seeking such an approval shall make a filing with the commissioner for a change in rating method under Subsection R590-167-6(2)(b). Tobacco use is not an allowable case characteristic. Tobacco use is an allowable risk characteristic when utilized in compliance with Section 31A-30-106(1)(b).

(b) A covered carrier shall use the same case characteristics in establishing premium rates for each health benefit plan in a class of business and shall apply them in the same manner in establishing premium rates for each such health benefit plan. Case characteristics shall be applied without regard to the risk characteristics of an individual or small employer.

(c) The rate manual shall clearly illustrate the relationship among the base premium rates charged for each health benefit plan in the class of business. If the new business premium rate is different than the base premium rate for a health benefit plan, the rate manual shall illustrate the difference.

(d) Differences among base premium rates for health benefit plans shall be based solely on the reasonable and objective differences in the design and benefits of the health benefit plans and may not be based in any way on the nature of an individual or small employer that choose or are expected to choose a particular health benefit plan. A covered carrier shall apply case characteristics and rate factors within a class of business in a manner that assures that premium differences among health benefit plans for identical individuals or small employers vary only due to reasonable and objective differences in the design and benefits of the health benefit plans and are not due to the nature of the individuals or small employers that choose or are expected to choose a particular health benefit plan.

(e) The rate manual shall provide for premium rates to be developed in a two step process.

(i) In the first step, a base premium rate shall be developed for the individual or small employer without regard to any risk characteristics.

(ii) In the second step, the resulting base premium rate may be adjusted by a risk load, subject to the provisions of Sections 31A-30-106 and 31A-30-106.5, to reflect the risk characteristics.

(f) Each rate manual developed pursuant to Subsection

R590-167-6(1) shall be maintained by the carrier for a period of six years. Updates and changes to the manual shall be maintained with the manual.

(4)(a) Except as provided in Subsection R590-167-6(4)(b), a premium charged to an individual or small employer for a health benefit plan may not include a separate application fee, underwriting fee, or any other separate fee or charge.

(b) A carrier may charge a separate fee with respect to an individual or small employer health benefit plan, but only one fee with respect to such plan, provided the fee is no more than \$5 per month per individual or employee and is applied in a uniform manner to each health benefit plan in a class of business.

(5) If group size is used as a case characteristic by a covered carrier, the highest rate factor associated with a group size classification may not exceed the lowest rate factor associated with such a classification by more than 20% without prior approval of the commissioner.

(6) The restrictions related to changes in premium rates in Subsections 31A-30-106(1)(c) and 31A-30-106(1)(f) shall be applied as follows:

(a) A covered carrier shall revise its rate manual each rating period to reflect changes in base premium rates and changes in new business premium rates.

(b)(i) If, for any health benefit plan with respect to any rating period, the percentage change in the new business premium rate is less than or the same as the percentage change in the base premium rate, the change in the new business premium rate shall be deemed to be the change in the base premium rate for the purposes of Subsections 31A-30-106(1)(c) and 31A-30-106(1)(f).

(ii) If, for any health benefit plan with respect to any rating period, the percentage change in the new business premium rate exceeds the percentage change in the base premium rate, the health benefit plan shall be considered a health benefit plan into which the covered carrier is no longer enrolling new individuals or small employers for the purposes of Subsections 31A-30-106(1)(c) and 31A-30-106(1)(f).

(c) If, for any rating period, the change in the new business premium rate for a health benefit plan differs from the change in the new business premium rate for any other health benefit plan in the same class of business by more than 20%, the carrier shall make a filing with the commissioner containing a complete explanation of how the respective changes in new business premium rates were established and the reason for the difference. The filing shall be made 30 days before the beginning of the rating period.

(d) A covered carrier shall keep on file for a period of at least six years the calculations used to determine the change in base premium rates and new business premium rates for each health benefit plan for each rating period.

(7)(a) Except as provided in Subsection R590-167-6(7)(b), a change in premium rate for an individual or small employer shall produce a revised premium rate that is no more than the following:

(i) the base premium rate for the individual or small employer, as shown in the rate manual as revised for the rating period, multiplied by:

(ii) one plus the sum of:

(iii) the risk load applicable to the individual or small employer during the previous rating period; and

(iv) 15% prorated for periods of less than one year.

(b) In the case of a health benefit plan into which a covered carrier is no longer enrolling new individuals or small employers, a change in premium rate for an individual or small employer shall produce a revised premium rate that is no more than the following:

(i) the base premium rate for the individual or small employer, given its present composition and as shown in the rate

manual in effect for the individual or small employer at the beginning of the previous rating period, multiplied by:

(ii) one plus the lesser of:

(A) the change in the base rate; or

(B) the percentage change in the new business premium for the most similar health benefit plan into which the covered carrier is enrolling new individuals or small employers, multiplied by:

(iii) one plus the sum of:

(A) the risk load applicable to the individual or small employer during the previous rating period; and

(B) 15%, prorated for periods of less than one year.

(c) Notwithstanding the provisions of Subsections R590-167-6(7)(a) and (b), a change in premium rate for an individual or small employer may not produce a revised premium rate that would exceed the limitations on rates provided in Subsection 31A-30-106(1)(b).

(8)(a) A representative of a Taft Hartley trust, including a carrier upon the written request of such a trust, may file in writing with the commissioner a request for the waiver of application of the provisions of Subsection 31A-30-106(1) with respect to such trust.

(b) A request made under Subsection R590-167-6(8)(a) shall identify the provisions for which the trust is seeking the waiver and shall describe, with respect to each provision, the extent to which application of such provision would:

(i) adversely affect the participants and beneficiaries of the trust; and

(ii) require modifications to one or more of the collective bargaining agreements under or pursuant to which the trust was or is established or maintained.

(c) A waiver granted under Subsection 31A-30-104(5) shall not apply to an individual who participates in the trust because the individual is an associate member of an employee organization or the beneficiary of such an individual.

#### **R590-167-7. Application to Reenter State.**

(1) A carrier that has been prohibited from writing coverage for individuals or small employers in this state pursuant to Subsection 31A-30-107.3 may not resume offering health benefit plans to individuals or small employers in this state until the carrier has made a petition to the commissioner to be reinstated as a covered carrier and the petition has been approved by the commissioner. In reviewing a petition, the commissioner may ask for such information and assurances as the commissioner finds reasonable and appropriate.

(2) In the case of a covered carrier doing business in only one established geographic service area of the state, if the covered carrier elects to nonrenew a health benefit plan under Subsections 31A-30-107(3)(e) or 107.1(3)(e), the covered carrier shall be prohibited from offering health benefit plans to individuals or small employers in any part of the service area for a period of five years. In addition, the covered carrier may not offer health benefit plans to individuals or small employers in any other geographic area of the state without the prior approval of the commissioner. In considering whether to grant approval, the commissioner may ask for such information and assurances as the commissioner finds reasonable and appropriate.

#### **R590-167-8. Qualifying Previous Coverage.**

A covered carrier shall not deny, exclude, or limit benefits because of a preexisting condition without first ascertaining the existence and source of previous coverage. The covered carrier shall have the responsibility to contact the source of such previous coverage to resolve any questions about the benefits or limitations related to such previous coverage. Previous coverage may be coverage that continues after the issuance of the new health benefit plan. The previous carrier shall fully cooperate in furnishing the needed information required by this

section.

**R590-167-9. Restrictive Riders.**

A restrictive rider, endorsement or other provision that violates the provisions of Subsection 31A-30-107.5 may not remain in force. A covered carrier shall immediately provide written notice to those individuals or small employers whose coverage will be changed pursuant to this section.

**R590-167-10. Status of Carriers as Covered Carriers.**

(1) Prior to marketing a health benefit plan, a carrier shall make a filing with the commissioner indicating whether the carrier intends to operate as a covered carrier in this state under the terms of the Act and of this rule. Such filing will indicate if the covered carrier intends to market to individuals, small employers or both, and be signed by an officer of the company.

(2) Except as provided by Subsection R590-167-10(3), a carrier may not offer health benefit plans to individuals, small employers, or continue to provide coverage under health benefit plans previously issued to individuals or small employers in this state, unless the filing provided pursuant to Subsection R590-167-10(1) indicates that the carrier intends to operate as a covered carrier in this state.

(3) If a carrier does not intend to operate as a covered carrier in this state, the carrier may continue to provide coverage under health benefit plans previously issued to individuals and small employers in this state only if the carrier complies with the following provisions:

(a) the carrier complies with the requirements of the Act with respect to each of the health benefit plans previously issued to individuals and small employers by the carrier;

(b) the carrier provides coverage to each new entrant to a health benefit plan previously issued to an individual or small employer by the carrier;

(c) the carrier complies with the requirements of Sections 31A-30-106 and 106.6, and this rule as they apply to individuals and small employers whose coverage has been terminated by the carrier and to individuals and small employers whose coverage has been limited or restricted by the carrier; and

(d) the carrier files a letter of intent indicating the carrier does not intend to operate as a covered carrier in this state and will maintain the business in compliance with the Act and this rule.

(4) If the filing made pursuant Subsection R590-167-10(3) indicates that a carrier does not intend to operate as a covered carrier in this state, the carrier shall be precluded from operating as a covered carrier in this state, except as provided for in Subsection R590-167-10(3), for a period of five years from the date of the filing. Upon a written request from such a carrier, the commissioner may reduce the period provided for in the previous sentence if the commissioner finds that permitting the carrier to operate as a covered carrier would be in the best interests of the individuals and small employers in the state.

**R590-167-11. Actuarial Certification and Additional Filing Requirements.**

(1) Actuarial Certification.

(a) An actuarial certification shall be filed annually and meet the requirements of Section 31A-30-106(4)(b) and the following:

(i) the actuarial certification shall be a written statement that meets the requirements of Title 31A Chapter 30, R590-167, and the applicable standards of practice as promulgated by the Actuarial Standards Board;

(ii) the actuary must state that he or she meets the qualifications of Subsection 31A-30-103(1);

(iii) the actuarial certification shall contain the following statement: "I, (name), certify that (name of covered carrier) is in compliance with the provisions of Title 31A Chapter 30, and

R590-167, based upon the examination of (name of covered carrier), including review of the appropriate records and of the actuarial assumptions and methods utilized by (name of covered carrier) in establishing premium rates for applicable health benefit plans;" and

(iv) the actuarial certification shall list and describe each written demonstration used by the actuary to establish compliance with Title 31A Chapter 30 and R590-167.

(b) The actuarial certification shall be filed no later than April 1 of each year.

(2) Rating Manual.

(a) For every health benefit plan subject to the Act and this rule, the carrier shall file with the commissioner a copy of the applicable rating manual, for both new business and renewal rates, which includes:

(i) signed certification by an actuary that to the best of the actuary's knowledge and judgment the rate filing is in compliance with the applicable laws and rules of the State of Utah;

(ii) a complete and detailed description of how the final premium, including any fees, is calculated from the rating manual;

(iii) all changes and updates, which includes a complete and detailed description of how the final premium, including any fees, is calculated from the rating manual; and

(iv) a description of the carriers classes of business as described in Subsection R590-167-4(1).

(b) The rate manual shall be filed:

(i) with an initial product filing; or

(ii) within 30 days prior to use for an existing health benefit plan

(3) (3) Index Premium Rates.

(a) A small employer carrier shall file annually the index premium rate information required by Section 31A-29-117(2). The report shall include:

(i) the small employer index premium rate as of March 1 of the previous year;

(ii) the small employer index premium rate as of March 1 of the current year; and

(iii) the average percentage change in the index premium rate as of March 1, of the current and preceding year.

(b) The information described in Subsection R590-167-11(4)(a) shall be filed no later than April 1 of each year.

**R590-167-12. Records.**

Records submitted to the commissioner under this rule shall be maintained by the commissioner as protected records under Title 63, Chapter 2, Government Records Access and Management Act.

**R590-167-13. Penalties.**

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

**R590-167-14. Enforcement Date.**

The commissioner will begin enforcing the revised provisions of this rule 45 days from the rule's effective date.

**R590-167-15. Severability.**

If any provision of this rule or the application of it to any person or circumstance is, for any reason, held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances will not be affected by the invalid provision.

**KEY: health insurance**

**October 7, 2004**

**Notice of Continuation September 28, 2004**

**31A-30-106**

**R590. Insurance, Administration.****R590-229. Annuity Disclosure.****R590-229-1. Authority.**

This rule is promulgated pursuant to Section 31A-22-425 wherein the commissioner is to make rules to establish standards for buyer's guides and disclosures and Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A.

**R590-229-2. Purpose.**

The purpose of this rule is to:

(1) provide standards for the disclosure of minimum information about annuity contracts to protect consumers by specifying:

(a) the minimum information that must be disclosed; and  
(b) the method for disclosing it in connection with the sale of annuity contracts; and

(2) foster consumer education by ensuring that purchasers of annuity contracts understand certain basic features of annuity contracts.

**R590-229-3. Scope.**

(1) This rule applies to individual and group annuity contracts and certificates except:

(a) registered or non-registered variable annuities or other registered products;

(b)(i) annuities used to fund:

(A) an employee pension plan that is covered by the Employee Retirement Income Security Act (ERISA);

(B) a plan described by Internal Revenue Code (IRC) Sections 401(a), 401(k), or 403(b) where the plan is established or maintained by an employer;

(C) a government or church plan defined in IRC Section 414 or a deferred compensation plan or a state or local government or a tax exempt organization under IRC Section 457; or

(D) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(ii) Notwithstanding Subsection (1)(b)(i) of this section, this rule shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make whether on a pre-tax or after-tax basis and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement; and

(c) structured settlement annuities; and

(d) funding agreements.

(2) The disclosure document requirements of this rule do not apply to immediate and deferred annuities that contain no nonguaranteed elements.

**R590-229-4. Definitions.**

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Buyer's Guide" means a document which contains, and is limited to, the language contained in the "Buyer's Guide to Fixed Deferred Annuities" and its "Appendix I Equity-Indexed Annuities," dated 1998, as adopted by, and available from the National Association of Insurance Commissioners, which are incorporated in this rule by reference or go to the department's website.

(2) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

(3) "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion, but where the values or

amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates with any applicable bonus, benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if all of the underlying elements that go into its calculation are either guaranteed or determinable.

(4) "Disclosure document" means the document described in Subsection 6(2) of this rule.

(5) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

(6) "Generic name" means a short title descriptive of the annuity contract being applied for such as "single premium deferred annuity".

(7) "Guaranteed elements" means premiums, credited interest rates with any applicable bonus, benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.

(8) "Non-guaranteed elements" means the premiums, credited interest rates with any applicable bonus, benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these that are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying elements that go into its calculation are non-guaranteed.

(9) "Structured settlement annuity" means a "qualified funding asset" as defined in IRC Section 130(d) or an annuity that would be a qualified funding asset under IRC Section 130(d) but for the fact that it is not owned by an assignee under a qualified assignment.

**R590-229-5. Appropriate Buyer's Guide.**

(1) Where an application for an equity-indexed annuity is taken, the "Buyer's Guide to Fixed Deferred Annuities" with "Appendix I for Equity-Indexed Annuities" shall be the Buyer's Guide given to the applicant and will be considered the appropriate Buyer's Guide for the product.

(2) For all other annuity products, the "Buyer's Guide to Fixed Deferred Annuities" with or without "Appendix I Equity-Indexed Annuities" will be considered the appropriate Buyer's Guide.

**R590-229-6. Standards for the Disclosure Document and Buyer's Guide.**

(1)(a) Where the application for an annuity contract is taken in a face-to-face meeting, the applicant shall, at or before the time of application, be given both the disclosure document described in Subsection 6(2) of this section and the appropriate Buyer's Guide, as described in Section 5.

(b) Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant shall be sent both the disclosure document and the appropriate Buyer's Guide no later than five business days after the completed application is received by the insurer.

(i) With respect to an application received as a result of a direct solicitation through the mail:

(A) providing a Buyer's Guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the appropriate Buyer's Guide be provided no later than five business days after receipt of the application; and

(B) providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document

be provided no later than five business days after receipt of the application.

(ii) With respect to an application received via the Internet:

(A) taking reasonable steps to make the appropriate Buyer's Guide available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the appropriate Buyer's Guide be provided no later than five business days of receipt of the application; and

(B) taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the disclosure document be provided no later than five business days after receipt of the application.

(c) A solicitation for an annuity contract provided in other than a face-to-face meeting shall include a statement that the prospective applicant can obtain from the insurer a free annuity Buyer's Guide upon request.

(2) At a minimum, the following information shall be included in the disclosure document required to be provided under this rule:

(a) the generic name of the contract, the company product name, if different, the form number, and the fact that it is an annuity;

(b) the insurer's name and address;

(c) a description of the contract and its benefits, emphasizing its long-term nature, including examples where appropriate of:

(i) the guaranteed, non-guaranteed and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate;

(ii) an explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate and the fact that rates may change from time to time and are not guaranteed;

(iii) periodic income options, both on a guaranteed and non-guaranteed basis;

(iv) any value reductions caused by withdrawals from or surrender of the contract;

(v) how values in the contract can be accessed;

(vi) the death benefit, if available, and how it will be calculated;

(vii) a summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and

(viii) impact of any rider, such as a long-term care rider;

(d) specific dollar amount or percentage charges and fees shall be listed with an explanation of how they apply; and

(e) information about the current guaranteed rate for a new contract that contains a clear notice that the rate is subject to change.

(3) An insurer shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

#### **R590-229-7. Report to Contract Owners.**

For an annuity in the payout period with changes in non-guaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide the contract owner with a report, at least annually, on the status of the contract that contains at least the following information:

(1) the beginning and end date of the current report period;

(2) the accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period;

(3) the total amounts, if any, that have been credited, charged to the contract value, or paid during the current report period; and

(4) the amount of outstanding loans, if any, as of the end

of the current report period.

#### **R590-229-8. Enforcement Date.**

The commissioner will begin enforcing the provisions of this rule on the date this rule goes into effect.

#### **R590-229-9. Severability.**

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

#### **KEY: insurance, annuity disclosure**

**October 7, 2004**

**31A-2-201**

**31A-22-425**

**R623. Lieutenant Governor, Elections.****R623-1. Lieutenant Governor's Procedure for Regulation of Lobbyist Activities.****R623-1-1. Purpose.**

Pursuant to Utah Code Section 36-11-404 this rule provides procedures for the lieutenant governor's office to:

- A. Issue lobbyist licenses;
- B. Disapprove lobbyist applications;
- C. Suspend and revoke lobbyist licenses;
- D. Reinstate lobbyist licenses; and
- E. Appoint administrative law judges.

**R623-1-2. Authority.**

This rule is required by Utah Code Section 36-11-404.

**R623-1-3. Definitions.**

In addition to the terms defined in Utah Code Section 36-11-102, the following definitions apply:

- A. "Director" means the director of the state elections office.
- B. "Register" means the process of obtaining a lobbying license as required by Sections 36-11-103 and 36-11-105.
- C. "Report" means any report required under Sections 36-11-201.

**R623-1-4. Registration/License Application Procedure.**

A. In order to register and obtain a license, a lobbyist shall:

1. Pay the \$25 registration fee.
2. File a registration/license application statement in compliance with the provisions of Section 36-11-103. The lieutenant governor's office shall make available forms that comply with Section 36-11-103. The lobbyist may either:
  - (a) Submit the completed form to the lieutenant governor's office; or
  - (b) File the lobbyist registration/license application by completing the electronic form available on the Utah Lobbyist Online system; and submit the completed signature authorization form to the lieutenant governor's office.

B. Upon receipt of a completed lobbyist registration/license application form the lieutenant governor's office shall:

1. Review the registration form for accuracy, completeness and compliance with the law;
2. Approve or disapprove the registration/license application; and
3. Notify the lobbyist in writing within 30 days of approval or disapproval.

C. An applicant who has not been convicted of any of the offenses listed in Section 36-11-103(4)(a)(i), and who has not had a civil penalty imposed as described in Section 36-11-103(4)(a)(ii), may commence lobbying activities upon filing of a completed registration/license application form with the lieutenant governor's office and payment of the registration fee.

D. By applying for a license, the lobbyist certifies that the lobbyist intends to engage in lobbying activities under the circumstances stated in the application or supplements filed with the lieutenant governor's office during the time the registration and license are valid.

1. If a lobbyist intends to cease all lobbying activities for the remainder of the period of licensure, the lobbyist shall notify the lieutenant governor's office in writing and surrender the license.

2. If the lobbyist has a change in circumstances that affects the lobbyist's activities, the lobbyist shall notify the lieutenant governor's office in writing.

3. If a lobbyist has surrendered the license and then decides to reengage in lobbying activities, a reissued license without a fee may be requested, if it is within the 2-year period

of the original registration.

4. The lobbyist must submit a written request to the lieutenant governor's office in order to have the license reissued.

5. A reissued license expires on December 31 of each even numbered year in accordance with Section 36-11-103(3)(b).

E. A lobbyist may add and delete principals and provide other notices electronically as prescribed by the lieutenant governor's office.

**R623-1-5. Disapproval of Application.**

A. A lobbyist who is convicted of violation of any of the offenses listed in Utah Code Section 36-11-103, shall have his application for license disapproved by the lieutenant governor's office and a license will not be issued.

B. The lobbyist will receive written notice of the license disapproval from the lieutenant governor's office within 30 days.

**R623-1-6. Suspensions, Revocations and Fines.**

A. Registration and reporting violations.

1. In addition to any fines imposed under 36-11-401, a lobbyist license may be suspended for any of the following willful and knowing violations of Section 36-11-103, Sections 36-11-201:

- a. Failure to register;
- b. Failure to file a year end or supplemental report on or before the statutory due date;
- c. Failure to file a year end or supplemental report;
- d. Filing a report or other document that contains materially false information or the omission of material information; including, but not limited to, the failure to list all principals for which the lobbyist works or is hired as an independent contractor;
- e. Failure to update a registration when a lobbyist accepts a new client for lobbying; or
- f. Otherwise violating Sections 36-11-103, 36-11-201.

2. If a fine or other penalty is imposed more than once under the immediately preceding section, suspension or permanent revocation of the lobbyist license shall be imposed.

3. The determination of the penalty to be imposed will be made by following the procedures as provided by Section R623-1-7.

B. Illegal Activities of lobbyists.

1. If the lieutenant governor's office discovers or receives evidence of a possible violation of Sections 36-11-301 to 305, the evidence will be sent to the appropriate county attorney or district attorney's office for prosecution.

2. If a lobbyist is convicted of a violation of Sections 36-11-103, 36-11-201, 36-11-301, 36-11-302, 36-11-303, 36-11-304, 36-11-305 or 36-11-403, the lieutenant governor shall revoke the lobbyist license for one year as required by Subsection 36-11-401(1) and give the lobbyist notice of the same, together with notice of the lobbyist's right to request a hearing under Section R623-1-9.

3. If the county or district attorney does not prosecute a possible violation under Sections 36-11-302 or 36-11-303, the lieutenant governor's office shall review the evidence to determine if a civil fine or suspension may be appropriate following the procedures for civil enforcement set forth in Section R623-1-7.

4. If a lobbyist is convicted of a violation of any of the Title 76 Criminal Code Sections referenced in Subsection 36-11-401(4), suspension of up to three years or permanent revocation of the lobbyist license shall be imposed, but no civil fine may be imposed. The determination of whether to revoke or suspend a lobbyist license and for what length of time shall be made following the procedures for civil enforcement as provided by Section R623-1-7.

**R623-1-7. Enforcement.**

A. Any person with evidence of a possible violation of the Lobbyist Disclosure and Regulation Act may provide such evidence to the director in the lieutenant governor's office or may file a complaint with such officer. If the evidence is of a criminal violation, the person may report the information directly to the appropriate county attorney or district attorney.

B. If the director discovers or receives evidence of a criminal violation, such evidence shall be provided to the appropriate county or district attorney and any civil enforcement actions will proceed as set forth in Subsection R623-1-6(B).

C. If the director discovers or receives evidence of a violation of a civil provision, the director will investigate the alleged violation and make a determination regarding what fine and/or suspension or revocation should be imposed, if any.

D. The director shall give notice of the recommended penalty to the lobbyist, and if a complaint was filed, to the complainant.

E. If either the lobbyist or the complainant desire to contest the recommended penalty, they or either of them may do so by requesting a hearing within fifteen (15) days of receipt of the notice of the recommended penalty. If neither file a request for a hearing within the fifteen day period, the recommended penalty will be the penalty imposed for the violation. The notice of recommended penalty shall include a notice of hearing rights.

F. The administrative law judge for the hearing is not bound by the recommended penalty and may impose a penalty greater or less than the recommended penalty, as seems justified by the evidence.

G. If a lobbyist license is suspended or revoked, the lieutenant governor's office shall remove the lobbyist's name from the official list and notify the following of such:

1. The speaker of the house of representatives;
2. The president of the senate; and
3. The governor.

**R623-1-8. Hearings, Appointment of Administrative Law Judges.**

A. Hearings will be conducted as informal adjudicative proceedings under the Administrative Procedures Act.

B. The lieutenant governor's office shall appoint administrative law judges from state agencies to act as presiding officers over adjudicative proceedings.

**R623-1-9. Reinstatement of a Lobbyist License.**

A. A lobbyist whose license is suspended or revoked may apply for reinstatement.

B. The lieutenant governor's office shall not reinstate any lobbyist license until the lobbyist pays any fines that have been imposed.

**KEY: lobbyist**  
**October 19, 2004**

**36-11-404**

**R657. Natural Resources, Wildlife Resources.****R657-9. Taking Waterfowl, Common Snipe and Coot.****R657-9-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, and in accordance with 50 CFR 20, 50 CFR 32.64 and 50 CFR 27.21, 2003 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking waterfowl, Common snipe, and coot.

(2) Specific dates, areas, limits, requirements and other administrative details which may change annually are published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

**R657-9-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Aggregate daily bag limit" means the maximum number of migratory game birds permitted to be taken by one person in any one day during the open season when such person hunts in more than one specified geographic area and/or for more than one species for which a combined daily bag limit is prescribed. The aggregate daily bag limit is equal to, but shall not exceed, the largest daily bag limit prescribed for any one species or for any one specified geographical area in which taking occurs.

(b) "Aggregate possession limit" means the maximum number of migratory game birds of a single species or combination of species taken in the United States permitted to be possessed by any one person when taking and possession occurs in more than one specified geographic area for which a possession limit is prescribed. The aggregate possession limit is equal to, but shall not exceed, the largest possession limit prescribed for any one of the species or specified geographic areas in which taking and possession occurs.

(c) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices birds.

(d) "Baited area" means any area on which shelled, shucked or unshucked corn, wheat or other grain, salt or other feed has been placed, exposed, deposited, distributed or scattered, if that shelled, shucked or unshucked corn, wheat or other grain, salt or other feed could serve as a lure or attraction for migratory game birds to, on, or over areas where hunters are attempting to take migratory game birds. Any such area will remain a baited area for ten days following the complete removal of all such shelled, shucked or unshucked corn, wheat or other grain, salt or other feed.

(e) "Baiting" means the direct or indirect placing, depositing, exposing, distributing or scattering of shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that could serve as a lure or attraction for migratory game birds to, on, or over any areas where hunters are attempting to take migratory game birds.

(f) "CFR" means the Code of Federal Regulations.

(g) "Closed season" means, for purposes of this rule, the days on which migratory game birds shall not be taken.

(h) "Daily bag limit" means the maximum number of migratory game birds of a single species or combination (aggregate) of species permitted to be taken by one person in any one day during the open season in any one specified geographic area for which a daily bag limit is prescribed.

(i) "Live decoys" means tame or captive ducks, geese or other live birds.

(j) "Migratory game birds" means those migratory birds included in the terms of conventions between the United States and any foreign country for the protection of migratory birds, for which open seasons are prescribed in this part and belong to the following families:

(i) Anatidae (ducks, geese, including brant, and swans);

(ii) Columbidae (doves and pigeons);

(iii) Gruidae (cranes);

(iv) Rallidae (rails, coots, and gallinules); and

(v) Scolopocidae (woodcock and snipe).

(k) "Nontoxic shot" means soft iron, steel, copper-plated steel, nickel-plated steel, zinc-plated steel, bismuth-tin, tungsten-iron, tungsten-polymer, tungsten-matrix, tin and any other shot types approved by the U.S. Fish and Wildlife Service. Lead, nickel-plated lead, copper-plated lead, copper and lead/copper alloy shot have not been approved.

(l) "Off-highway vehicle" means any motor vehicle designed for or capable of travel over unimproved terrain.

(m) "Open season" means, for purposes of this rule, the days on which migratory game birds may lawfully be taken. Each period prescribed as an open season shall be construed to include the first and last days thereof.

(n) "Permanent waterfowl blind" means any waterfowl blind that is left unattended overnight and that is not a portable structure capable of immediate relocation.

(o) "Personal abode" means one's principal or ordinary home or dwelling place, as distinguished from one's temporary or transient place of abode or dwelling, such as a hunting club, or any cabin, tent or trailer house used as a hunting club or any hotel, motel or rooming house used during a hunting, pleasure or business trip.

(p) "Possession limit" means the maximum number of migratory game birds of a single species or a combination of species permitted to be possessed by any one person when lawfully taken in the United States in any one specified geographic area for which a possession limit is prescribed.

(q) "Sinkbox" means any type of low floating device, having a depression, affording the hunter a means of concealment beneath the surface of the water.

(r) "Transport" means to ship, export, import or receive or deliver for shipment.

(s) "Waterfowl" means ducks, mergansers, geese, brant and swans.

(t) "Waterfowl blind" means any manufactured place of concealment, including boats, rafts, tents, excavated pits, or similar structures, which have been designed to partially or completely conceal a person while hunting waterfowl.

**R657-9-3. Stamp Requirements.**

(1) Any person 16 years of age or older may not hunt waterfowl without first obtaining a federal migratory bird hunting and conservation stamp, and having the stamp in possession.

(2) The stamp must be validated by the hunter's signature in ink across the face of the stamp.

(3) A federal migratory bird hunting and conservation stamp is not required for any person 12 through 15 years of age.

**R657-9-4. Permit Applications for Swan.**

(1) Applications for swan permits are available from license agents and division offices. Residents and nonresidents may apply.

(2)(a) Applications must be mailed by the date prescribed in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

(b) If an error is found on the application, the applicant may be contacted for correction.

(c) The division reserves the right to correct applications.

(3)(a) Late applications received by the date published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot will not be considered in the drawing, but will be processed for the purpose of entering data into the division's draw database to provide:

(i) future pre-printed applications;

(ii) notification by mail of late application and other draw



opportunities; and

(iii) re-evaluation of division or third-party errors.

(b) The handling fee will be used to process the late application. Any license fees submitted with the application shall be refunded.

(c) Late applications received after the date published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot will not be processed and will be returned.

(4) A person may obtain only one swan permit each year

(5) A person may not apply more than once annually.

(6) Group applications are not accepted.

(7) A small game or combination license may be purchased before applying, or the small game or combination license will be issued to the applicant upon successfully drawing a permit.

(8) Each application must include:

(a) a nonrefundable handling fee; and

(b) the small game or combination license fee, if the license has not yet been purchased.

#### **R657-9-5. Drawing.**

(1)(a) Applicants will be notified by mail or e-mail of draw results on the date published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe, and coot.

(b) Any remaining permits are available by mail-in request or over the counter at the Salt Lake division office beginning on the date specified in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

(2)(a) The Division shall issue no more than the number of swan permits authorized by the U.S. Fish and Wildlife Service each year.

(b) The Division may withhold up to 1% of the authorized number of swan permits each year to correct division errors, which may occur during the drawing process.

(c) Division errors may be corrected using the withheld swan permits in accordance with the Division Error Remedy Rule R657-50.

(d) Withheld swan permits shall be used to correct Division errors reported to or discovered by the Division on or before the fifth day preceding the opening day of the swan hunt.

(e) Withheld swan permits remaining after correcting any division errors shall be issued prior to the opening day of the swan hunt to the next person on the alternate drawing list.

(3)(a) A person who is successful in drawing a swan permit, must complete a one-time orientation course, except as provided under Subsection R657-9-7(3)(b), as prescribed by the division before the swan permit is distributed.

(b) Remaining swan permits available for sale by mail shall be issued only to persons having previously completed the orientation course.

(4) Licenses and permits are mailed to successful applicants.

(5)(a) An applicant may withdraw their application for the swan permit drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe, and coot.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake Division office.

(c) Handling fees will not be refunded.

(6)(a) An applicant may amend their application for the swan permit drawing by requesting such in writing by the initial application deadline.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the Salt Lake Division office.

(c) The applicant must identify in their statement the requested amendment to their application.

(d) An amendment may cause rejection if the amendment causes an error on the application.

#### **R657-9-6. Tagging Swans.**

(1) The carcass of a swan must be tagged before the carcass is moved from or the hunter leaves the site of kill as provided in Section 23-20-30.

(2) A person may not hunt or pursue a swan after the notches have been removed from the tag or the tag has been detached from the permit.

#### **R657-9-7. Return of Swan Harvest and Hunt Information.**

(1) Swan permit holders who do not hunt or are unsuccessful in taking a swan must respond to the swan questionnaire through the Division's Internet address, or by telephone, within ten days of the conclusion of the prescribed swan hunting season.

(2) Within three days of harvest, swan permit holders successful in taking a swan must personally present the swan or its head for measurement to the Division or the Bear River Migratory Bird Refuge and further provide all harvest information requested by the Division or Refuge.

(3) Hunters who fail to comply with the requirements of Subsections (1) or (2) shall be ineligible to:

(a) obtain a swan permit the following season; and

(b) obtain a swan permit after the first season of ineligibility until the swan orientation course is retaken.

#### **R657-9-8. Purchase of License by Mail.**

(1) A person may purchase a license by mail by sending the following information to the Salt Lake division office: full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, Social Security number, driver license number (if available), proof of hunter education certification, and fees.

(2)(a) Personal checks, money orders and cashier's checks are accepted.

(b) Personal checks drawn on an out-of-state account are not accepted.

(c) Checks must be made payable to the Utah Division of Wildlife Resources.

#### **R657-9-9. Firearms.**

(1) Migratory game birds may be taken with a shotgun or archery tackle.

(2) Migratory game birds may not be taken with a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, crossbow, except as provided in Rule R657-12, poison, drug, explosive or stupefying substance.

(3) Migratory game birds may not be taken with a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells.

#### **R657-9-10. Nontoxic Shot.**

(1) Only nontoxic shot may be in possession or used while hunting waterfowl and coot.

(2) A person may not possess or use lead shot:

(a) while hunting waterfowl or coot in any area of the state;

(b) on federal refuges;

(c) on the following waterfowl management areas: Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadow, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, Timpie Springs; or

- (d) on the Scott M. Matheson wetland preserve.

**R657-9-11. Use of Firearms on State Waterfowl Management Areas.**

(1) A person may not possess a firearm or archery tackle on the following waterfowl management areas any time of the year except during the specified waterfowl hunting seasons or as authorized by the division:

- (a) Box Elder County - Harold S. Crane, Locomotive Springs, Public Shooting Grounds, and Salt Creek;
- (b) Daggett County - Brown's Park;
- (c) Davis County - Farmington Bay, Howard Slough, and Ogden Bay;
- (d) Emery County - Desert Lake;
- (e) Millard County - Clear Lake;
- (f) Tooele County - Timpie Springs;
- (g) Uintah County - Stewart Lake;
- (h) Utah County - Powell Slough;
- (i) Wayne County - Bicknell Bottoms; and
- (j) Weber County - Ogden Bay and Harold S. Crane.

(2) During the waterfowl hunting seasons, a shotgun is the only firearm that may be in possession, except as provided in Rule R657-12.

(3) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

**R657-9-12. Airborne, Terrestrial, and Aquatic Vehicles.**

Migratory game birds may not be taken:

- (1) from or by means of any motorboat or other craft having a motor attached, or sailboat unless the motor has been completely shut off or sails furled and its progress has ceased; provided, that a craft under power may be used to retrieve dead or crippled birds; however, crippled birds may not be shot from such craft under power; or
- (2) by means or aid of any motor driven land, water or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying or stirring up of any migratory bird.

**R657-9-13. Airboats.**

(1) Air-thrust or air-propelled boats and personal watercraft are not allowed in designated parts of the following waterfowl management or federal refuge areas:

- (a) Box Elder County: Box Elder Lake, Bear River, that part of Harold S. Crane within one-half mile of all dikes and levees, Locomotive Springs, Public Shooting Grounds and Salt Creek, that part of Bear River Migratory Bird Refuge north of "D" line as posted.
  - (b) Daggett County: Brown's Park
  - (c) Davis County: Howard Slough, Ogden Bay and Farmington Bay within diked units.
  - (d) Emery County: Desert Lake
  - (e) Millard County: Clear Lake
  - (f) Tooele County: Timpie Springs
  - (g) Uintah County: Stewart Lake
  - (h) Utah County: Powell Slough
  - (i) Wayne County: Bicknell Bottoms
  - (j) Weber County: Ogden Bay within diked units or as posted and all of Harold S. Crane Waterfowl Management Area.
- (2) "Personal watercraft" means a motorboat that is:
- (a) less than 16 feet in length;
  - (b) propelled by a water jet pump; and
  - (c) designed to be operated by a person sitting, standing or kneeling on the vessel, rather than sitting or standing inside the vessel.

**R657-9-14. Motorized Vehicle Access.**

(1) Motorized vehicle travel is restricted to county roads, improved roads and parking areas.

(2) Off-highway vehicles are not permitted on state waterfowl management areas, except as marked and posted open.

(3) Off-highway vehicles are not permitted on Bear River Migratory Bird Refuge.

(4) Motorized boat use is restricted on waterfowl management areas as specified in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

**R657-9-15. Sinkbox.**

A person may not take migratory game birds from or by means, aid, or use of any type of low floating device, having a depression affording the hunter a means of concealment beneath the surface of the water.

**R657-9-16. Live Decoys.**

A person may not take migratory game birds with the use of live birds as decoys or from an area where tame or captive live ducks or geese are present unless such birds are and have been, for a period of ten consecutive days prior to such taking, confined within an enclosure which substantially reduces the audibility of their calls and totally conceals such birds from the sight of wild migratory waterfowl.

**R657-9-17. Amplified Bird Calls.**

A person may not use recorded or electrically amplified bird calls or sounds or recorded or electronically amplified imitations of bird calls or sounds.

**R657-9-18. Baiting.**

(1) A person may not take migratory game birds by the aid of baiting, or on or over any baited area where a person knows or reasonably should know that the area is or has been baited. This section does not prohibit:

- (a) the taking of any migratory game bird on or over the following lands or areas that are not otherwise baited areas:
  - (i) standing crops or flooded standing crops (including aquatics), standing, flooded or manipulated natural vegetation, flooded harvested croplands, or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;
  - (ii) from a blind or other place of concealment camouflaged with natural vegetation;
  - (iii) from a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing or scattering of grain or other feed; or
  - (iv) standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys or retrieving downed birds.

(b) The taking of any migratory game bird, except waterfowl, coots and cranes, on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown or solely as the result of a normal agricultural operation.

**R657-9-19. Possession During Closed Season.**

No person shall possess any freshly killed migratory game birds during the closed season.

**R657-9-20. Live Birds.**

(1) Every migratory game bird wounded by hunting and reduced to possession by the hunter shall be immediately killed

and become part of the daily bag limit.

(2) No person shall at any time, or by any means possess or transport live migratory game birds.

**R657-9-21. Waste of Migratory Game Birds.**

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or any part of them.

(2) No person shall kill or cripple any migratory game bird pursuant to this rule without making a reasonable effort to immediately retrieve the bird and include it in that person's daily bag limit.

**R657-9-22. Termination of Possession.**

Subject to all other requirements of this part, the possession of birds taken by any hunter shall be deemed to have ceased when the birds have been delivered by the hunter to another person as a gift; to a post office, a common carrier, or a migratory bird preservation facility and consigned for transport by the Postal Service or common carrier to some person other than the hunter.

**R657-9-23. Tagging Requirement.**

(1) No person shall put or leave any migratory game bird at any place other than at that person's personal abode, or in the custody of another person for picking, cleaning, processing, shipping, transporting or storing, including temporary storage, or for the purpose of having taxidermy services performed unless there is attached to the birds a disposal receipt, donation receipt or transportation slip signed by the hunter stating the hunter's address, the total number and species of birds, the date such birds were killed and the Utah hunting license number under which they were taken.

(2) Migratory game birds being transported in any vehicle as the personal baggage of the possessor shall not be considered as being in storage or temporary storage.

**R657-9-24. Donation or Gift.**

No person may receive, possess or give to another, any freshly killed migratory game birds as a gift, except at the personal abodes of the donor or donee, unless such birds have a tag attached, signed by the hunter who took the birds, stating such hunter's address, the total number and species of birds taken, the date such birds were taken and the Utah hunting license number under which taken.

**R657-9-25. Custody of Birds of Another.**

No person may receive or have in custody any migratory game birds belonging to another person unless such birds are tagged as required by Section R657-9-23.

**R657-9-26. Species Identification Requirement.**

No person shall transport within the United States any migratory game birds unless the head or one fully feathered wing remains attached to each bird while being transported from the place where taken until they have arrived at the personal abode of the possessor or a migratory bird preservation facility.

**R657-9-27. Marking Package or Container.**

(1) No person shall transport by the Postal Service or a common carrier migratory game birds unless the package or container in which such birds are transported has the name and address of the shipper and the consignee and an accurate statement of the numbers and kinds of species of birds contained therein clearly and conspicuously marked on the outside thereof.

(2) A Utah shipping permit obtained from the division must accompany each package shipped within or from Utah.

**R657-9-28. Migratory Bird Preservation Facilities.**

(1) No migratory bird preservation facility shall:

(a) receive or have in custody any migratory game bird unless accurate records are maintained that can identify each bird received by, or in the custody of, the facility by the name of the person from whom the bird was obtained, and show:

- (i) the number of each species;
- (ii) the location where taken;
- (iii) the date such birds were received;
- (iv) the name and address of the person from whom such birds were received;
- (v) the date such birds were disposed of; and
- (vi) the name and address of the person to whom such birds were delivered; or

(b) destroy any records required to be maintained under this section for a period of one year following the last entry on record.

(2) Record keeping as required by this section will not be necessary at hunting clubs that do not fully process migratory birds by removal of the head and wings.

(3) No migratory bird preservation facility shall prevent any person authorized to enforce this part from entering such facilities at all reasonable hours and inspecting the records and the premises where such operations are being carried out.

**R657-9-29. Importation.**

A person may not:

(1) import migratory game birds belonging to another person; or

(2) import migratory game birds in excess of the following importation limits:

(a) From any country except Canada and Mexico, during any one calendar week beginning on Sunday, not to exceed 10 ducks, singly or in the aggregate of all species, and five geese including brant, singly or in the aggregate of all species;

(b) From Canada, not to exceed the maximum number to be exported by Canadian authorities;

(c) From Mexico, not to exceed the maximum number permitted by Mexican authorities in any one day: provided that if the importer has his Mexican hunting permit date-stamped by appropriate Mexican wildlife authorities on the first day he hunts in Mexico, he may import the applicable Mexican possession limit corresponding to the days actually hunted during that particular trip.

**R657-9-30. Use of Dogs.**

(1) Dogs may be used to locate and retrieve migratory game birds during open hunting seasons.

(2) Dogs are not allowed on state wildlife management or waterfowl management areas, except during open hunting seasons or as posted by the division.

**R657-9-31. Season Dates and Bag and Possession Limits.**

(1) Season dates and bag and possession limits are specified in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

(2) A youth duck hunting day may be allowed for any person 15 years of age or younger as provided in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

**R657-9-32. Closed Areas.**

(1) A person may not trespass on state waterfowl management areas except during prescribed seasons, or for other activities as posted without prior permission from the division.

(2) A person may not participate in activities that are posted as prohibited.

(3) A person may not trespass, take, hunt, shoot at, or rally any waterfowl, snipe, or coot in the following specified areas:

(a) Brown's Park - That part adjacent to headquarters.

(b) Clear Lake - Spring Lake.

- (c) Desert Lake - That part known as "Desert Lake."
- (d) Farmington Bay - Headquarters area, within 600 feet of dikes and roads accessible by motorized vehicles and the waterfowl rest area in the northwest quarter of unit one as posted.
- (e) Ogden Bay - Headquarters area.
- (f) Public Shooting Grounds - That part as posted lying above and adjacent to the Hull Lake Diversion Dike known as "Duck Lake."
- (g) Salt Creek - That part as posted known as "Rest Lake."
- (h) Bear River Migratory Bird Refuge - For information contact the refuge manager, U.S. Fish and Wildlife Service, at (435) 723-5887. The entire refuge is closed to the hunting of snipe.
- (i) Fish Springs and Ouray National Wildlife Refuges - Waterfowl hunters must register at Fish Springs refuge headquarters prior to hunting. Both refuges are closed to the hunting of swans, and Fish Springs is closed to the hunting of geese.
- (j) State Parks  
Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated open by appropriate signing as provided in Rule R651-614-4.
- (k) Great Salt Lake Marina and adjacent areas as posted.
- (l) Millard County  
Gunnison Bend Reservoir and the inflow upstream to the Southerland Bridge.
- (m) Salt Lake International Airport - Hunting and shooting prohibited as posted.

**R657-9-33. Shooting Hours.**

- (1) A person may not hunt, pursue, or take wildlife, or discharge any firearm or archery tackle on state-owned lands adjacent to the Great Salt Lake, on division-controlled waterfowl management areas, or on federal refuges between official sunset and one-half hour before official sunrise.
- (2) Legal shooting hours for taking or attempting to take waterfowl, Common snipe, and coot are provided in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

**R657-9-34. Falconry.**

- (1) Falconers must obtain a valid small game or combination license, a federal migratory bird stamp and a falconry certificate of registration to hunt waterfowl.
- (2) Areas open and bag and possession limits for falconry are specified in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

**R657-9-35. Migratory Game Bird Harvest Information Program (HIP).**

- (1) A person must obtain an annual Migratory Game Bird Harvest Information Program (HIP) registration number to hunt migratory game birds.
- (2)(a) A person must call the telephone number published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot, or register online at the address published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot to obtain their HIP registration number.
- (b) A person must write their HIP registration number on their current year's hunting license.
- (3) Any person obtaining a HIP registration number will be required to provide their:
  - (a) hunting license number;
  - (b) hunting license type;
  - (c) name;
  - (d) address;
  - (e) phone number;

- (f) birth date; and
- (g) information about the previous year's migratory bird hunts.
- (4) Lifetime license holders will receive a sticker every three years from the Division to write their HIP number on and place on their lifetime license card.
- (5) Any person hunting migratory birds will be required, while in the field, to prove that they have registered and provided information for the HIP program.

**R657-9-36. Waterfowl Blinds on Waterfowl Management Areas.**

- (1) Waterfowl blinds on Division waterfowl management areas may be constructed or used as provided in Subsection (a) through Subsection (e).
  - (a) Waterfowl blinds may not be left unattended overnight, except for blinds constructed entirely of non-woody, vegetative materials that naturally occur where the blind is located.
  - (b) Trees and shrubs on waterfowl management areas that are live or dead standing may not be cut or damaged except as expressly authorized in writing by the Division.
  - (c) Excavating soil or rock on waterfowl management areas above or below water surface is strictly prohibited, except as expressly authorized in writing by the Division.
  - (d) Rock and soil material may not be transported to waterfowl management areas for purposes of constructing a blind.
  - (e) Waterfowl blinds may not be constructed or used in any area or manner, which obstructs vehicular or pedestrian travel on dikes.
- (2) The restrictions set forth in Subsection (1)(a) through Subsection (1)(c) do not apply to the following waterfowl management areas:
  - (a) Farmington Bay Waterfowl Management Area - West and North of Unit 1, Turpin Unit and Crystal Unit.
  - (b) Howard Slough Waterfowl Management Area - West and South of the exterior dike separating the waterfowl management area's fresh water impoundments from the Great Salt Lake.
  - (c) Ogden Bay Waterfowl Management Area - West of Unit 1, Unit 2, and Unit 3.
  - (d) Harold Crane Waterfowl Management Area - one half mile North and West of the exterior dike separating the waterfowl management area's fresh water impoundments from Willard Spur.
- (3) Waterfowl blinds constructed or maintained on waterfowl management areas in violation of this section may be removed or destroyed by the Division without notice.
- (4) Any unoccupied, permanent waterfowl blind located on state land open to public access for hunting may be used by any person without priority to the person that constructed the blind. It being the intent of this rule to make such blinds available to any person on a first-come, first-serve basis.
- (5) Waterfowl blinds or decoys cannot be left unattended overnight on state land open to public access for hunting in an effort to reserve the particular location where the blinds or decoys are placed.

**KEY: wildlife, birds, migratory birds, waterfowl****October 19, 2004****Notice of Continuation August 30, 2001****23-14-18****23-14-19****50 CFR part 20**

**R657. Natural Resources, Wildlife Resources.****R657-10. Taking Cougar.****R657-10-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking and pursuing cougar.

(2) Specific dates, areas, number of permits, limits, and other administrative details which may change annually are published in the proclamation of the Wildlife Board for taking cougar.

**R657-10-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Canned hunt" means that a cougar is treed, cornered, held at bay or its ability to escape is otherwise restricted for the purpose of allowing a person who was not a member of the initial hunting party to arrive and take the cougar.

(b) "Cougar" means Puma concolor, commonly known as mountain lion, lion, puma, panther or catamount.

(c) "Cougar pursuit permit" means a permit that authorizes a person to pursue cougar during designated seasons.

(d) "Evidence of sex" means the sex organs of a cougar, including a penis, scrotum or vulva.

(e) "Green pelt" means the untanned hide or skin of any cougar.

(f) "Kitten" means a cougar less than one year of age.

(g) "Pursue" means to chase, tree, corner or hold a cougar at bay.

(h) "Waiting period" means a specified period of time that a person who has obtained a cougar permit must wait before applying for any other cougar permit.

**R657-10-3. Permits for Taking Cougar.**

(1)(a) To harvest a cougar, a person must first obtain a valid limited entry cougar permit or a harvest objective cougar permit for the specified management units as provided in the proclamation of the Wildlife Board for taking cougar.

(b) Any person who obtains a limited entry cougar permit or a harvest objective cougar permit may pursue cougar on the unit for which the permit is valid.

(2) To pursue cougar, a person must first obtain a valid cougar pursuit permit from a division office. A cougar pursuit permit does not allow a person to kill a cougar.

(3) A person may not apply for or obtain more than one cougar permit for the same season, except:

(a) as provided in Subsection R657-10-26(3); or

(b) if the person is unsuccessful in the limited entry drawing, the person may purchase a harvest objective permit.

(4) Any cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

**R657-10-4. Permit Exchanges.**

(1)(a) Any person who has obtained a harvest objective cougar permit may exchange that permit for any other harvest objective units provided the unit objectives have not been met and the units are still open.

(b) Limited entry cougar permits may not be exchanged.

(2)(a) A handling fee will be charged for the exchange of a harvest objective permit.

(b) Any person who exchanges a harvest objective permit must complete a questionnaire at the time the exchange is made.

(3)(a) Any harvest objective permit exchanged is not valid until the day after the exchange is made.

(b) Harvest objective permits may be exchanged only at division offices.

**R657-10-5. Purchase of Permit by Mail.**

(1) A person may obtain a wildlife habitat authorization,

cougar pursuit permit or cougar harvest objective permit by mail by sending the following information to any division office: full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, driver's license number (if available), proof of hunter education certification, and fee.

(2)(a) Personal checks, cashier's checks, or money orders are accepted.

(b) Personal checks drawn on an out-of-state account are not accepted.

(c) Checks must be made payable to the Utah Division of Wildlife Resources.

**R657-10-6. Hunting Hours.**

Cougar may be taken or pursued only between one-half hour before official sunrise through one-half hour after official sunset.

**R657-10-7. Firearms and Archery Tackle.**

A person may use the following to take cougar:

(1) any firearm not capable of being fired fully automatic;

(2) a bow and arrows; and

(3) a crossbow as provided in Rule R657-12.

**R657-10-8. Traps and Trapping Devices.**

(1) Cougar may not be taken with a trap, snare or any other trapping device, except as authorized by the Division of Wildlife.

(2) Cougar accidentally caught in any trapping device must be released unharmed, and must not be pursued or taken.

(3)(a) Written permission must be obtained from a division representative to remove the carcass of a cougar from any trapping device.

(b) The carcass shall remain the property of the state of Utah and must be surrendered to the division.

**R657-10-9. State Parks.**

(1) Hunting of any wildlife is prohibited within the boundaries of all state park areas except those designated by the Division of Parks and Recreation in Section R651-614-4.

(2) Hunting with a rifle, handgun or muzzleloader in park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps and developed beaches.

(3) Hunting with shotguns and archery tackle is prohibited within one quarter mile of the above stated areas.

**R657-10-10. Prohibited Methods.**

(1) Cougar may be taken or pursued only during open seasons and using methods prescribed in this rule and the proclamation of the Wildlife Board for taking cougar. Otherwise, under the Wildlife Resources Code, it is unlawful for any person to possess, capture, kill, injure, drug, rope, trap, snare or in any way harm or transport cougar.

(2) After a cougar has been pursued, chased, treed, cornered or held at bay, a person may not, in any manner, restrict or hinder the animal's ability to escape.

(3) A person may not engage in a canned hunt.

(4) A person may not take any wildlife from an airplane or any other airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles.

(5) Electronic locating equipment may not be used to locate cougars wearing electronic radio devices.

**R657-10-11. Spotlighting.**

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight or other artificial light to locate protected wildlife

while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed weapon to hunt or take wildlife.

#### **R657-10-12. Party Hunting.**

A person may not take a cougar for another person.

#### **R657-10-13. Use of Dogs.**

(1) Dogs may be used to take or pursue cougar only during open seasons as provided in the proclamation of the Wildlife Board for taking cougar.

(2) The owner and handler of dogs used to take or pursue cougar must have a valid cougar permit or cougar pursuit permit in possession while engaged in taking or pursuing cougar.

(3) When dogs are used in the pursuit of a cougar, the licensed hunter intending to take the cougar must be present when the dogs are released and must continuously participate in the hunt thereafter until the hunt is completed.

(4) When dogs are used to take cougar and there is not an open pursuit season, the owner and handler of the dogs must have a valid pursuit permit and be accompanied by a licensed hunter as provided in Subsection (3), or have a valid pursuit permit and a cougar permit.

#### **R657-10-14. Tagging Requirements.**

(1) The carcass of a cougar must be tagged with a temporary possession tag before the carcass is moved from or the hunter leaves the site of kill as provided in Section 23-20-30.

(2) A person may not hunt or pursue a cougar after any of the notches have been removed from the tag or the tag has been detached from the permit.

(3) The temporary possession tag:

(a) must remain attached to the pelt or unskinned carcass until the permanent possession tag is attached; and

(b) is only valid for 48 hours after the date of kill.

(4) A person may not possess a cougar pelt or unskinned carcass without a valid permanent possession tag affixed to the pelt or unskinned carcass. This provision does not apply to a person in possession of a properly tagged carcass or pelt within 48 hours after the kill, provided the person was issued and is in possession of a valid permit.

#### **R657-10-15. Evidence of Sex and Age.**

(1) Evidence of sex must remain attached to the carcass or pelt of each cougar until a permanent tag has been attached by the division.

(2) The pelt and skull must be presented to the division in an unfrozen condition to allow the division to gather management data.

(3) It is mandatory that a tooth (PM1) be removed by the division at the time of permanent tagging to be used for aging purposes.

(4) The division may seize any pelt not accompanied by its skull or not having sufficient evidence of biological sex designation attached.

#### **R657-10-16. Permanent Tag.**

(1)(a) Each cougar must be taken by the permit holder to

a conservation officer or division office within 48 hours after the date of kill to have a permanent possession tag affixed to the pelt or unskinned carcass and for the removal of a tooth.

(b) After regular business hours, on weekends, or on holidays, a conservation officer may be reached by contacting the local police dispatch office.

(2) A person may not possess a green pelt after the 48-hour check-in period, or ship a green pelt out of Utah, or present a green pelt to a taxidermist if the green pelt does not have a permanent possession tag attached.

#### **R657-10-17. Transporting Cougar.**

Cougar that have been legally taken may be transported by the permit holder provided the cougar is properly tagged and the permittee possesses the appropriate permit.

#### **R657-10-18. Exporting Cougar from Utah.**

(1) A person may export a legally taken cougar or its parts if that person has a valid permit and the cougar is properly tagged with a permanent possession tag.

(2) A person may not ship or cause to be shipped from Utah, a cougar pelt without first obtaining a shipping permit issued by an authorized division representative.

#### **R657-10-19. Donating.**

(1) A person may donate protected wildlife or their parts to another person as provided in Section 23-20-9.

(2) A green pelt of any cougar donated to another person must have a permanent possession tag affixed.

(3) The written statement of donation must be retained with the pelt.

#### **R657-10-20. Purchasing or Selling.**

(1) Legally obtained, tanned cougar hides may be purchased or sold.

(2) A person may not purchase, sell, offer for sale, or barter a tooth, claw, paw, or skull of any cougar.

#### **R657-10-21. Waste of Wildlife.**

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts.

(2) The skinned carcass of a cougar may be left in the field and does not constitute waste of wildlife.

#### **R657-10-22. Livestock Depredation and Human Health and Safety.**

(1) If a cougar is harassing, chasing, disturbing, harming, attacking or killing livestock, or has committed such an act within the past 72 hours:

(a) in depredation cases, the livestock owner, an immediate family member or an employee of the owner on a regular payroll, and not hired specifically to take cougar, may kill the cougar;

(b) a landowner or livestock owner may notify the division of the depredation or human health and safety concerns, who shall authorize a local hunter to take the offending cougar or notify a USDA, Wildlife Services specialist; or

(c) the livestock owner may notify a USDA, Wildlife Services specialist of the depredation who may take the depredating cougar.

(2) Depredating cougar may be taken at any time by a USDA, Wildlife Services specialist, supervised by the Wildlife Services program, while acting in the performance of the person's assigned duties and in accordance with procedures approved by the division.

(3) A depredating cougar may be taken with any weapon authorized for taking cougar.

(4)(a) Any cougar taken pursuant to this section must be delivered to a division office or employee within 72 hours.

(b) In accordance with Subsection (1)(a) the cougar shall remain the property of the state, except the division may issue a cougar damage permit to a person who has killed a depredating cougar in accordance with this section, if that person wishes to maintain possession of the cougar.

(c) A person may acquire only one cougar annually.

(5)(a) Hunters interested in taking depredating cougar as provided in Subsection (1)(b) may contact the division.

(b) Hunters will be contacted by the division to take depredating cougar as needed.

#### **R657-10-23. Questionnaire.**

Each permittee who receives a questionnaire should return the questionnaire to the division regardless of success. Returning the questionnaire helps the division evaluate population trends, harvest success and other valuable information.

#### **R657-10-24. Taking Cougar.**

(1)(a) A person may take only one cougar during the season and from the area specified on the permit.

(b) Limited entry permits may be obtained by following the application procedures provided in this rule and the proclamation of the Wildlife Board for taking cougar.

(c) Harvest objective permits may be purchased over-the-counter at division offices.

(2) A person may not:

(a) take or pursue a female cougar with kittens or kittens with spots; or

(b) repeatedly pursue, chase, tree, corner, or hold at bay, the same cougar during the same day after the cougar has been released.

(3) Any cougar may be taken during the prescribed seasons, except a kitten with spots, or any cougar accompanied by kittens, or any cougar accompanied by an adult.

(4) A person may not take a cougar wearing a radio collar from any areas that are published in the proclamation of the Wildlife Board for taking cougar.

(5) The division may authorize hunters who have obtained a limited entry cougar permit to take cougar in a specified area of the state in the interest of protecting wildlife from depredation.

(6) Season dates, closed areas, harvest objective permit areas and limited entry permit areas are published in the proclamation of the Wildlife Board for taking cougar.

#### **R657-10-25. Extended and Preseason Hunts.**

(1) An extended or preseason hunt may be authorized by the division on selected cougar management units to control depredation or nuisance problems.

(2) The director may authorize only those hunters who drew a limited entry permit or have purchased a harvest objective permit to hunt on that management unit and participate in a preseason or extended season hunt.

#### **R657-10-26. Cougar Pursuit.**

(1) Cougar may be pursued only by persons who have obtained a valid cougar pursuit permit. The cougar pursuit permit does not allow a person to kill a cougar.

(2) A person may not:

(a) take or pursue a female cougar with kittens or kittens with spots;

(b) repeatedly pursue, chase, tree, corner or hold at bay, the same cougar during the same day; or

(c) possess a firearm or any device that could be used to kill a cougar while pursuing cougar.

(i) The weapon restrictions set forth in the subsection do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code,

provided the person is not utilizing or attempting to utilize the concealed weapon to injure or kill cougar.

(3) If eligible, a person who has obtained a cougar pursuit permit may also obtain a limited entry cougar permit or harvest objective cougar permit.

(4) Cougar may be pursued only on limited entry units or harvest objective units during the dates provided in the proclamation of the Wildlife Board for taking cougar.

(5) A cougar pursuit permit is valid on a calendar year basis.

#### **R657-10-27. General Application Information.**

(1) A person may not apply for or obtain more than one cougar permit for the same year, except as provided in Section R657-10-4.

(2) Limited entry cougar permits are valid only for the management unit and for the specified season designated on the permit.

#### **R657-10-28. Waiting Period.**

(1) Any person who obtained a limited entry permit valid for the current season may not apply for a permit for a period of three years.

(2) Any person who draws a limited entry permit for the current season may not apply for a permit for a period of three years.

(3) Waiting periods are not incurred as a result of purchasing harvest objective permits.

#### **R657-10-29. Application Procedure.**

(1) Applications are available from license agents and division offices.

(2)(a) Group applications are not accepted. A person may not apply more than once annually.

(b) Applicants may select up to three management unit choices when applying for limited entry cougar permits. Management unit choices must be listed in order of preference.

(3)(a) Applications must be mailed by the date published in the proclamation of the Wildlife Board for taking and pursuing cougar.

(b) If an error is found on the application, the applicant may be contacted for correction.

(c) The division reserves the right to correct applications.

(4)(a) Late applications received by the date published in the proclamation of the Wildlife Board for taking and pursuing cougar will not be considered in the drawing, but will be processed for the purpose of entering data into the Division's draw database to provide:

(i) future pre-printed applications;

(ii) notification by mail of late application and other draw opportunities; and

(iii) re-evaluation of Division or third-party errors.

(b) The handling fee will be used to process the late application. Any permit fees submitted with the application will be refunded.

(c) Late applications received after the date published in the proclamation of the Wildlife Board for taking and pursuing cougar will not be processed and will be returned.

(5) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get written permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

(6) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Section R657-10-31.

(7) To apply for a resident permit, a person must establish

residency at the time of purchase.

(8) The posting date of the drawing shall be considered the purchase date of a permit.

**R657-10-30. Fees.**

(1) Each application must include:

- (a) the permit fee; and
- (b) the nonrefundable handling fee.

(2) Permits are mailed to successful applicants.

(3)(a) Unsuccessful applicants, who applied in the drawing and who applied with a check or money order, will receive a refund in December.

(b) Unsuccessful applicants, who applied with a credit or debit card, will not be charged for a permit.

(c) The handling fees are nonrefundable.

**R657-10-31. Drawing and Remaining Permits.**

(1) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation shall be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(2) Applicants will be notified by mail or e-mail of drawing results on the date published in the proclamation of the Wildlife Board for taking cougar. The drawing results will be posted on the division Internet address.

(3) Beginning on the date published in the proclamation of the Wildlife Board for taking cougar, residents or nonresidents may purchase any of the remaining permits by mail-in application from the Salt Lake division office.

(4) Any limited entry cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

(5) Waiting periods do not apply to the purchase of remaining limited entry permits after the drawing. However, waiting periods are incurred as a result of purchasing remaining permits after the drawing. Therefore, if a remaining permit is purchased in the current year, waiting periods will be in effect when applying for limited entry permits in the drawing in following years.

(6)(a) An applicant may withdraw their application for the limited entry cougar permit drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking cougar.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to Utah Wildlife Administrative Services, P.O. Box 30389, Salt Lake City, Utah 84130-0389.

(c) Handling fees will not be refunded.

(7)(a) An applicant may amend their application for the limited entry cougar permit drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking cougar.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to Utah Wildlife Administrative Services, P.O. Box 30389, Salt Lake City, Utah 84130-0389.

(c) The applicant must identify in their statement the requested amendment to their application.

(d) An amendment may cause rejection if the amendment causes an error on the application.

**R657-10-32. Bonus Points.**

(1) A bonus point is awarded for:

- (a) a valid unsuccessful application when applying for a limited entry permit in the cougar drawing; or
- (b) a valid application when applying for a bonus point in the cougar drawing.

(2) The purchase of a harvest objective permit will not affect bonus points.

(3)(a) A person may apply for one cougar bonus point each year, except a person may not apply in the drawing for both a limited entry cougar permit and a cougar bonus point in the same year.

(b) A person may not apply for a bonus point if that person is ineligible to apply for a permit.

(c) Group applications will not be accepted when applying for bonus points.

(4)(a) Each applicant receives a random drawing number for:

- (i) the current valid limited entry cougar application; and
- (ii) each bonus point accrued.

(b) The applicant will retain the lowest random number for the drawing.

(5)(a) Fifty percent of the permits for each hunt unit will be reserved for applicants with bonus points.

(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points.

(c) If reserved permits remain, the reserved permits will be designated by random number to eligible applicants with the next greatest number of bonus points.

(d) The procedure in Subsection (c) will continue until all reserved permits have been issued or no applications for that hunt unit remain.

(e) Any reserved permits remaining and any applicants who were not selected for reserved permits will be returned to the drawing.

(6) Bonus points are forfeited if a person obtains a limited entry cougar permit except as provided in Subsection (7).

(7) Bonus points are not forfeited if:

(a) a person is successful in obtaining a Conservation Permit; or

(b) a person obtains a harvest objective cougar permit.

(8) Bonus points are not transferable.

(9) Bonus points are tracked using social security numbers or Division-issued hunter identification numbers.

**R657-10-33. Harvest Objective General Information.**

(1) Harvest objective permits are valid only for the management units designated on the permit and for the specified seasons published in the proclamation of the Wildlife Board for taking cougar.

(2) A person may select up to up to three harvest objective management units, wherein the permit will be valid.

(3) Harvest objective permits are not valid in a specified management unit after the harvest objective has been met for that specified management unit.

**R657-10-34. Harvest Objective Permit Sales.**

(1) Harvest objective permits are available over-the-counter beginning on the date published in the proclamation of the Wildlife Board for taking cougar from division offices.

(2) Any cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

(3) Any harvest objective permit exchanged is not valid until the day after the exchange is made.

**R657-10-35. Harvest Objective Unit Closures.**

(1) To hunt in a harvest objective unit, a hunter must call 1-888-668-LION to verify that the cougar management unit is still open. The phone line will be updated each day by 8 p.m.

(2) Harvest objective units are open to hunting until:

(a) the female cougar sub-objective for that unit is met;

(b) the cougar harvest objective for that unit is met; or

(c) the end of the hunting season as provided in the proclamation of the Wildlife Board for taking cougar.

(3) Upon closure of a harvest objective unit, a hunter may not take or pursue cougar except as provided in Section R657-



10-26.

(4) Any person who obtains a harvest objective cougar permit may exchange that permit as provided in Section R657-10-3.

**R657-10-36. Harvest Objective Unit Reporting.**

(1) Any person taking a cougar with a harvest objective permit shall report to the Division, when the permanent tag is affixed pursuant to Section R657-10-16, where the cougar was killed.

(2) Failure to accurately report the correct harvest objective management unit where the cougar was killed is unlawful.

(3) Any conviction for failure to accurately report, or aiding or assisting in the failure to accurately report as required in Subsection (1) shall be considered prima facie evidence of a knowing and flagrant violation for purposes of permit suspension.

**R657-10-37. Wildlife Management Areas.**

(1) A person may not use motor vehicles on division-owned wildlife management areas closed to motor vehicle use during the winter without first obtaining written authorization from the appropriate division regional office.

(2) The division may, in its sole discretion, authorize limited motor vehicle access to its wildlife management areas closed to such use during the winter provided:

(a) the person seeking access possesses a valid cougar permit for the area;

(b) motor vehicle access is necessary to effectively utilize the cougar permit; and

(c) motor vehicle access will not interfere with wintering wildlife or wildlife habitat.

**KEY: wildlife, cougar, game laws**

**October 19, 2004**

**23-14-18**

**Notice of Continuation August 30, 2001**

**23-14-19**

**R657. Natural Resources, Wildlife Resources.****R657-11. Taking Furbearers.****R657-11-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking furbearers.

(2) Specific dates, areas, number of permits, limits, and other administrative details which may change annually are published in the proclamation of the Wildlife Board for taking furbearers.

**R657-11-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Bait" means any lure containing animal parts larger than one cubic inch, with the exception of white-bleached bones with no hide or flesh attached.

(b) "Exposed bait" means bait which is visible from any angle.

(c) "Fur dealer" means any individual engaged in, wholly or in part, the business of buying, selling, or trading skins or pelts of furbearers within Utah.

(d) "Fur dealer's agent" means any person who is employed by a resident or nonresident fur dealer as a buyer.

(e) "Green pelt" means the untanned hide or skin of any furbearer.

(f) "Pursue" means to chase, tree, corner, or hold a furbearer at bay.

(g) "Scent" means any lure composed of material of less than one cubic inch.

**R657-11-3. License, Permit and Tag Requirements.**

(1) A person who has a valid current year furbearer license may take furbearers during the established furbearer seasons published in the proclamation of the Wildlife Board for taking furbearers.

(2) A person who has a valid current year furbearer license and valid temporary bobcat possession tags may take bobcat during the established bobcat season published in the proclamation of the Wildlife Board for taking furbearers.

(3) A person who has a valid current year furbearer license and valid marten trapping permit may take marten during the established marten season published in the proclamation of the Wildlife Board for taking furbearers.

(4) Any license, permit, or tag that is mutilated or otherwise made illegible is invalid and may not be used for taking or possessing furbearers.

**R657-11-4. Temporary Possession Tags for Bobcat.**

(1) Any person who has obtained a valid furbearer license may apply for up to six temporary bobcat possession tags.

(2) Applications will be available on the date published in the proclamation of the Wildlife Board for taking furbearers from any division office or will be mailed upon request.

(3) Applications must be received by the division no later than 5 p.m., on the date published in the proclamation of the Wildlife Board for taking furbearers. Applications completed incorrectly or received after the date published in the proclamation of the Wildlife Board for taking furbearers may be rejected.

(4)(a) Applicants must provide a valid furbearer license number on the application.

(b) The application must include \$5 for each tag requested. Applications may be delivered to any division office or sent to: Bobcat Application, P.O. Box 168888, Salt Lake City, Utah 84116-8888.

(5)(a) Temporary bobcat possession tags are valid for the entire bobcat season.

**R657-11-5. Tagging Bobcats.**

(1) The pelt or unskinned carcass of any bobcat must be tagged in accordance with Section 23-20-30.

(2) The tag must remain with the pelt or unskinned carcass until a permanent tag has been affixed.

(3) Possession of an untagged green pelt or unskinned carcass is prima facie evidence of unlawful taking and possession.

(4) The lower jaw of each bobcat taken must be removed and tagged with the numbered jaw tag corresponding to the number of the temporary possession tag affixed to the hide.

**R657-11-6. Marten Permits.**

(1) A person may not trap marten or have marten in possession without having a valid current year furbearer license and a marten trapping permit in possession.

(2) Marten trapping permits are available free of charge from any division office.

(3)(a) Applications for marten permits must contain the applicant's full name, mailing address, phone number, and valid current year furbearer license number.

(b) Permit applications are accepted by mail or in person at any regional division office.

**R657-11-7. Permanent Possession Tags for Bobcat and Marten.**

(1) A person may not:

(a) possess a green pelt or unskinned carcass from a bobcat or marten that does not have a permanent tag affixed after the Saturday following the close of the bobcat trapping season and marten seasons;

(b) possess a green pelt or the unskinned carcass of a bobcat with an affixed temporary bobcat possession tag issued to another person, except as provided in Subsections (5) and (6); or

(b) buy, sell, trade, or barter a green pelt from a bobcat or marten that does not have a permanent tag affixed.

(2) Bobcat and marten pelts must be delivered to a division representative to have a permanent tag affixed and to surrender the lower jaw.

(3) Bobcat and marten pelts may be delivered to the following division offices, by appointment only, during the dates published in the proclamation of the Wildlife Board for taking furbearers:

(a) Cedar City - Regional Office;

(b) Logan Hatchery;

(c) Ogden - Regional Office;

(d) Price - Regional Office;

(e) Salt Lake City - Salt Lake Office;

(f) Springville - Regional Office; and

(g) Vernal - Regional Office.

(4) There is no fee for permanent tags.

(5) Bobcat and marten which have been legally taken may be transported from an individual's place of residence by an individual other than the fur harvester to have the permanent tag affixed; bobcats must be tagged with a temporary possession tag and accompanied by a valid furbearer license belonging to the fur harvester.

(6) Any individual transporting a bobcat or marten for another person must have written authorization stating the following:

(a) date of kill;

(b) location of kill;

(c) species and sex of animal being transported;

(d) origin and destination of such transportation;

(e) the signature and furbearer license number of the fur harvester;

(f) the name of the individual transporting the bobcat or marten; and

(g) the fur harvester's marten permit number if marten is being transported.

(7) Green pelts of bobcats and marten legally taken from outside the state may not be possessed, bought, sold, traded, or bartered in Utah unless a permanent tag has been affixed or the pelts are accompanied by a shipping permit issued by the wildlife agency of the state where the animal was taken.

(8)(a) Fur harvesters taking marten are requested to present the entire skinned carcass intact, including the lower jaw, to the division in good condition when the pelt is presented for tagging.

(b) "Good condition" means the carcass is fresh or frozen and securely wrapped to prevent decomposition so that the tissue remains suitable for lab analysis.

#### **R657-11-8. Purchase of License by Mail.**

A person may purchase a license by mail by sending the following information to a division office: full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, Social Security number, driver license number (if available), proof of furharvester education certification, and fees.

#### **R657-11-9. Identification Numbers.**

(1) Each trapping device used to take furbearers must be permanently marked or tagged with the registered number of the person using them.

(2) Only the registration number of the person using the trapping device may be on the trapping device.

(3) No more than two trap registration numbers may be on a trapping device.

(4) Identification numbers must be legible and at least 1/4 inch in height.

(5) Registration numbers are permanent and may be obtained by mail or in person from any division office.

(6) Applicants must include their full name, including middle initial, and complete home address.

(7) A registration fee of \$5 must accompany the request. This fee is payable only once.

(8) Each individual is issued only one registration number.

(9) Any person who has obtained a registration number must notify the division within 30 days of any change in address or the theft of traps.

#### **R657-11-10. Traps.**

(1) All long spring, jump, or coil spring traps, except rubber-padded jaw traps, that are not completely submerged under water when set must have spacers on the jaws which leave an opening of at least 3/16 of an inch when the jaws are closed.

(2) Trapping within 100 yards of either side of the Green River, or any of its tributaries up to one-half mile from their confluence with the Green River, between Flaming Gorge Dam and the Utah-Colorado state line; and trapping within 100 yards of either side of the Colorado River, or any of its tributaries upstream to one-half mile from their confluence with the Colorado River, between Highway US-191 and the Utah-Colorado state line, is restricted to the following traps and trapping devices:

(a) nonlethal-set leg hold traps with a jaw spread less than 5-1/8 inches, and nonlethal-set padded leg hold traps. Drowning sets with these traps are prohibited;

(b) body-gripping, killing-type traps with body-gripping area less than 30 square inches (i.e., 110 Conibear); and

(c) nonlethal dry land snares equipped with a stop-lock device that prevents it from closing to less than a six-inch diameter.

(3) A person may not disturb or remove any trapping device, except:

(a) a person who possesses a valid current year furbearer

license, the appropriate permits or tags, and who has been issued a trapper registration number, which is permanently marked or affixed to the trapping device; or

(b) peace officers in the performance of their duties.

(4) A person may not kill or remove wildlife caught in any trapping device, except a person who possesses a valid current year furbearer license, the appropriate permits or tags, and who has been issued a trapper registration number, which is permanently marked or affixed to the trapping device.

(5)(a) A person may not set any trap or trapping device on posted private property without the landowner's permission.

(b) Any trap or trapping device set on posted property without the owner's permission may be sprung by the landowner.

(c) Wildlife officers should be informed as soon as possible of any illegally set traps or trapping devices.

(6) Peace officers in the performance of their duties may seize all traps, trapping devices, and wildlife used or held in violation of this rule.

(7) A person may not possess any trapping device that is not permanently marked or tagged with that person's registered trap number while engaged in taking wildlife.

(8) All traps and trapping devices must be visited and checked at least once every 48 hours, except killing traps striking dorso-ventrally and drowning sets which must be visited every 96 hours.

(9) A person may not transport or possess live protected wildlife. Any animal found in a trap or trapping device must be killed or released immediately by the trapper.

#### **R657-11-11. Use of Bait.**

(1) A person may not use any protected wildlife or their parts, except for white-bleached bones with no hide or flesh attached, as bait or scent; however, parts of legally taken furbearers and nonprotected wildlife may be used as bait.

(2) Traps or trapping devices may not be set within 30 feet of any exposed bait.

(3) A person using bait is responsible if it becomes exposed for any reason.

(4) White-bleached bones with no hide or flesh attached may be set within 30 feet of traps.

#### **R657-11-12. Accidental Trapping.**

(1)(a) Any bear, bobcat, cougar, fisher, marten, otter, wolverine, any furbearer trapped out of season, or other protected wildlife accidentally caught in a trap must be released unharmed.

(b) Written permission must be obtained from a division representative to remove the carcass of any of these species from a trap.

(c) The carcass remains the property of the state and must be turned over to the division.

(2) All incidents of accidental trapping of any of these animals must be reported to a division representative.

(3) Black-footed ferret, lynx and wolf are protected species under the Endangered Species Act. Accidental trapping or capture of these species must be reported to the division.

#### **R657-11-13. Methods of Take and Shooting Hours.**

(1) Furbearers, except bobcats, may be taken by any means, excluding explosives, poisons, and crossbows, or as otherwise provided in Section 23-13-17.

(2) Bobcats may be taken only by shooting, trapping, or with the aid of dogs as provided in Section R657-11-26.

(3) Marten may be taken only with an elevated, covered set in which the maximum trap size shall not exceed 1 1/2 foothold or 160 Conibear.

(4) Taking furbearers by shooting or with the aid of dogs is restricted to one-half hour before sunrise to one-half hour

after sunset, except as provided in Section 23-13-17.

(5) A person may not take any wildlife from an airplane or any other airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles.

#### **R657-11-14. Spotlighting.**

(1) Except as provided in Subsection (3):

(a) a person may not use or cast the rays of any spotlight, headlight, or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland, or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of the headlights of a motor vehicle or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed weapon to hunt or take wildlife.

(3) Spotlighting may be used to hunt coyote, red fox, striped skunk, or raccoon where allowed by a county ordinance enacted pursuant to Section 23-13-17.

(4) The ordinance shall provide that:

(a) any artificial light used to spotlight coyote, red fox, striped skunk, or raccoon must be carried by the hunter;

(b) a motor vehicle headlight or light attached to or powered by a motor vehicle may not be used to spotlight the animal; and

(c) while hunting with the use of an artificial light, the hunter may not occupy or operate any motor vehicle.

(5) For purposes of the county ordinance, "motor vehicle" shall have the meaning as defined in Section 41-6-1.

(6) The ordinance may specify:

(a) the time of day and seasons when spotlighting is permitted;

(b) areas closed or open to spotlighting within the unincorporated area of the county;

(c) safety zones within which spotlighting is prohibited;

(d) the weapons permitted; and

(e) penalties for violation of the ordinance.

(7)(a) A county may restrict the number of hunters engaging in spotlighting by requiring a permit to spotlight and issuing a limited number of permits.

(b) A fee may be charged for a spotlighting permit.

(8) A county may require hunters to notify the county sheriff of the time and place they will be engaged in spotlighting.

(9) The requirement that a county ordinance must be enacted before a person may use spotlighting to hunt coyote, red fox, striped skunk, or raccoon does not apply to:

(a) a person or his agent who is lawfully acting to protect his crops or domestic animals from predation by those animals; or

(b) an animal damage control agent acting in his official capacity under a memorandum of agreement with the division.

#### **R657-11-15. Use of Dogs.**

(1) Dogs may be used to take furbearers only during the prescribed open seasons.

(2) The owner and handler of dogs used to take or pursue a furbearer must have a valid furbearer license in possession while engaged in taking furbearers.

(3) When dogs are used in the pursuit of furbearers, the licensed hunter intending to take the furbearer must be present

when the dogs are released and must continuously participate in the hunt thereafter until the hunt is completed.

#### **R657-11-16. State Parks.**

(1) Taking any wildlife is prohibited within the boundaries of all state park areas except those designated by the Division of Parks and Recreation in Section R651-614-4.

(2) Hunting with a rifle, handgun, or muzzleloader on park areas designated open is prohibited within one mile of all park facilities including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(3) Hunting with shotguns and archery equipment is prohibited within one quarter mile of the above stated areas.

#### **R657-11-17. Transporting Furbearers.**

(1)(a) A person who has obtained the appropriate license and permit may transport green pelts of furbearers. Additional restrictions apply for taking bobcat and marten as provided in Section R657-11-6.

(b) A registered Utah fur dealer or that person's agent may transport or ship green pelts of furbearers within Utah.

(2) A furbearer license is not required to transport red fox or striped skunk.

#### **R657-11-18. Exporting Furbearers from Utah.**

(1) A person may not export or ship the green pelt of any furbearer from Utah without first obtaining a valid shipping permit from a division representative.

(2) A furbearer license is not required to export red fox or striped skunk from Utah.

#### **R657-11-19. Sales.**

(1) A person with a valid furbearer license may sell, offer for sale, barter, or exchange only those species that person is licensed to take, and which were legally taken.

(2) Any person who has obtained a valid fur dealer or fur dealer's agent certificate of registration may engage in, wholly or in part, the business of buying, selling, or trading green pelts or parts of furbearers within Utah.

(3) Fur dealers or their agents and taxidermists must keep records of all transactions dealing with green pelts of furbearers.

(4) Records must state the following:

(a) the transaction date; and

(b) the name, address, license number, and tag number of each seller.

(5) A receipt containing the information specified in Subsection (4) must be issued whenever the ownership of a pelt changes.

(6)(a) A person may possess furbearers and tanned hides legally acquired without possessing a license, provided proof of legal ownership or possession can be furnished.

(b) A furbearer license is not required to sell or possess red fox or striped skunk or their parts.

#### **R657-11-20. Wasting Wildlife.**

(1) A person may not waste or permit to be wasted or spoiled any protected wildlife or their parts as provided in Section 23-20-8.

(2) The skinned carcass of a furbearer may be left in the field and does not constitute waste of wildlife.

#### **R657-11-21. Depredation by Badger, Weasel, and Spotted Skunk.**

(1) Badger, weasel, and spotted skunk may be taken anytime without a license when creating a nuisance or causing damage, provided the animal or its parts are not sold or traded.

(2) Red fox and striped skunk may be taken any time without a license.

**R657-11-22. Depredation by Bobcat.**

(1) Depredating bobcats may be taken at any time by duly appointed animal damage control agents, supervised by the animal damage control program, while acting in the performance of their assigned duties and in accordance with procedures approved by the division.

(2) A livestock owner or his employee, on a regular payroll and not hired specifically to take furbearers, may take bobcats that are molesting livestock.

(3) Any bobcat taken by a livestock owner or his employee must be surrendered to the division within 72 hours.

**R657-11-23. Depredation by Beaver.**

(1) Beaver doing damage may be taken or removed during closed seasons.

(2) A permit to remove damaging beaver must first be obtained from a division office or conservation officer.

**R657-11-24. Questionnaire.**

Each permittee who receives a questionnaire should return the questionnaire to the division regardless of success. Returning the questionnaire helps the division evaluate population trends, harvest success, and other valuable information.

**R657-11-25. Prohibited Species.**

(1) A person may not take black-footed ferret, fisher, lynx, otter, wolf, or wolverine.

(2) Accidental trapping of any of these species must be reported to a division representative.

(3) Accidental trapping or capture of black-footed ferret, lynx and wolf must be reported to the division.

**R657-11-26. Season Dates and Bag Limits.**

Season dates, bag limits, and areas with special restrictions are published annually in the proclamation of the Wildlife Board for taking furbearers.

**R657-11-27. Applications for Trapping on State Waterfowl Management Areas.**

(1) Applications for trapping on state waterfowl management areas are available from the division offices, and from waterfowl management superintendents.

(2) Applications must be received in the mail no later than 5 p.m. on the date published in the proclamation of the Wildlife Board for taking furbearers. Applications completed incorrectly or received after the date published in the proclamation of the Wildlife Board for taking furbearers will be rejected.

(3) Application must be sent to the Wildlife Management section in the Salt Lake division office.

(4)(a) Trappers may apply for only one permit on only one management area in any 12 month period.

(b) Up to three trappers may apply as a group for a single permit.

(c) None of the group applicants may apply for any other area.

(5)(a) Only the trapper or trappers specified on the application may trap on the waterfowl management area.

(b) Violation of this section is cause for forfeiture of all trapping privileges on management areas for that trapping year.

(6) Areas open to trapping, trapping fees, and number of permits for individual areas are available at division offices or by contacting the waterfowl management area superintendents during the application period.

(7)(a) If the number of applications received exceeds the number of permits available, a drawing will be held. Applicants shall be notified by mail of drawing results.

(b) This drawing will determine successful applicants and alternates.

(8) Trapping dates and species that may be trapped shall be determined by the waterfowl management area superintendent.

(9) All trappers must trap under the supervision of the waterfowl management area superintendent.

**R657-11-28. Fees.**

(1) Upon payment of trapping fees, successful applicants are granted trapping rights for management areas.

(2) If a successful applicant fails to make full payment within ten days after the drawing, an alternate trapper will be selected.

(3) Permits are not valid until signed by the superintendent in charge of the area to be trapped.

**R657-11-29. Vehicle Travel.**

Vehicle travel is restricted to developed roads. However, written permission for other travel may be obtained from the waterfowl management area superintendent.

**R657-11-30. Trapping Hours.**

Traps may be tended only between one-half hour before official sunrise to one-half hour after official sunset.

**R657-11-31. Responsibility of Trappers.**

(1) All trappers are directly responsible to the waterfowl management area superintendent.

(2) Violation of management or trapping rules, including failure to return a trapping permit within five days of cessation of trapping activities, or failure to properly trap an area, as determined and recommended by the superintendent, may be cause for cancellation of trapping privileges, existing and future, on all waterfowl management areas.

**R657-11-32. Closed Area.**

Davis County - Trapping is allowed only on the dates published in the proclamation of the Wildlife Board for taking furbearers, on those lands administered by the state lying along the eastern shore of the Great Salt Lake, commonly known as the Layton-Kaysville marshes. In addition, there may be a portion of the above stated area that is closed to trapping. This area will be posted and marked.

**R657-11-33. Wildlife Management Areas.**

(1) A person may not use motor vehicles on division-owned wildlife management areas closed to motor vehicle use during the winter without first obtaining written authorization from the appropriate division regional office.

(2) For purposes of coyote trapping, the division may, in its sole discretion, authorize limited motor vehicle access to its wildlife management areas closed to such use during the winter provided the motor vehicle access will not interfere with wintering wildlife or wildlife habitat.

**KEY: wildlife, furbearers, game laws, wildlife law****October 19, 2004****23-14-18****Notice of Continuation August 30, 2000****23-14-19****23-13-17**

**R657. Natural Resources, Wildlife Resources.****R657-46. The Use of Game Birds in Dog Field Trials and Training.****R657-46-1. Purpose and Authority.**

Under authority of Sections 23-14-18, 23-14-19 and 23-17-9 this rule provides the requirements, standards, and application procedures for the use of game birds in dog field trials and training.

**R657-46-2. Definitions.**

- (1) Terms used in this rule are defined in Section 23-13-2.
- (2) In addition:
  - (a) "Field trial" means an organized event where the abilities of dog handlers and their dogs and are evaluated, including the ability of the dogs to hunt or retrieve game birds.
  - (b) "Game bird" means:
    - (i) crane;
    - (ii) blue, ruffed, sage, sharp-tailed, and spruce grouse;
    - (iii) chukar, red-legged, and Hungarian partridges;
    - (iv) pheasant;
    - (v) band-tailed pigeon;
    - (vi) bobwhite, California, Gambel's, harlequin, mountain, and scaled quail;
    - (vii) waterfowl;
    - (viii) common ground, Inca, mourning, and white-winged dove;
    - (ix) wild or pen-reared wild turkey of the following subspecies:
      - (A) Eastern;
      - (B) Florida or Osceola;
      - (C) Gould's;
      - (D) Merriam's;
      - (E) Ocellated; and
      - (F) Rio Grande; and
    - (x) ptarmigan.
  - (c) "Quad flyer test" means throwing pen-reared game birds by hand from four fixed stations and shooting of the pen-reared game birds one immediately after the other.
  - (d) "Train" or "training" means the informal handling, exercising, teaching, instructing, and disciplining of dogs in the skills and techniques of hunting and retrieving game birds characterized by absence of fees, judging, or awards.

**R657-46-3. Application for a Field Trial Certificate of Registration.**

- (1)(a) A person may conduct a field trial using pen-reared game birds provided that person applies for and obtains a certificate of registration from the Division of Wildlife Resources, except as provided in Subsection (b).
- (b) A person may conduct a field trial using pen-reared game birds on a commercial hunting area without obtaining a certificate of registration.
- (2) Applications are available at any division office.
- (3) The application must include written permission from the owner, lessee, or land management agency of the property where the field trial is to be conducted.
- (4)(a) Applications must be submitted to the appropriate regional division office where the field trial is being held.
- (b) Applications must be received at least 45 days prior to the date of the field trial.
- (5) The division will not approve any application for an area where, in the opinion of the division, the field trial or the release of pen-reared game birds interferes with wildlife, wildlife habitat or wildlife nesting periods.
- (6) Field trials may be held only during the dates and within the area specified on the field trial certificate of registration.

**R657-46-4. Use of Pen-Reared Game Birds for Field Trials.**

(1) Legally acquired pen-reared game birds may be possessed or used for field trials.

(2) Any person using pen-reared game birds must have an invoice or bill of sale in their possession showing lawful personal possession or ownership of such birds.

(3) Pen-reared game birds may not be imported into Utah without a valid veterinary health certificate as required in Rules R58-1 and R657-4.

(4)(a) Each pen reared game bird must be marked with an aluminum leg band or other permanent marking before being released in the field trial, except as provided in Subsection (d).

(b) Aluminum leg bands may be purchased at any division office.

(c) The aluminum leg band or other permanent marking must remain attached to the pen-reared game bird.

(d) Each pen-reared game bird used in a field trial that is conducted on a commercial hunting area may be released without marking each pen-reared game bird, as with an aluminum leg band.

(5) Pen-reared game birds used for a field trial may be released only on the property specified in the certificate of registration where the field trial is conducted.

(6) After release, pen-reared game birds may be taken:

(a) by the person who released the pen-reared game birds, or by any person participating in the field trial; and

(b) only during the dates of the field trial event as specified in the certificate of registration.

(7) Wild game birds may be taken only during legal hunting seasons as specified in the Upland Game or Waterfowl proclamations of the Wildlife Board.

(8) Pen-reared game birds acquired for a field trial that are not released may be held in possession:

(a) no longer than 60 days; or

(b) longer than 60 days provided the person possessing the pen-reared game birds first obtains a private aviculture certificate of registration as provided in Rule R657-4.

(9) Pen-reared game birds that leave the property where the field trial is held at the end of the field trial shall become the property of the state of Utah and may not be taken, except during legal hunting seasons as specified in the Upland Game or Waterfowl proclamations of the Wildlife Board.

**R657-46-5. Use of Pen-Reared Game Birds for Dog Training.**

(1) A person may train a dog using legally acquired pen-reared game birds provided:

(a) the person using the pen-reared game birds has an invoice or bill of sale in their possession showing lawful personal possession or ownership of the pen-reared game birds;

(b) each pen-reared game bird must be marked with an aluminum leg band or other permanent marking before being released for training, except as provided in Subsection (3)(a); and

(c) any pheasant released during training must be marked with a visible streamer or tape at least 12 inches in length before being released, and any pheasant killed during training must have the streamer or tape attached when killed.

(2) Aluminum leg bands may be purchased at any division office.

(3)(a) Each pen-reared game bird used for dog training that is conducted on a commercial hunting area may be released without marking each pen-reared game bird with an aluminum leg band or other permanent marking.

(b) Any pheasant released during training on a commercial hunting area may be released without marking as provided in Subsections (1)(b) and (1)(c).

(4) The training may not consist of more than four dogs at any time, except the training may consist of more than four dogs provided:

(a) the dogs exceeding four in number are eight months of age or younger; and

(b) no live ammunition is in possession of the person or persons engaged in training the dogs.

(5) A person or group of persons may not release more than ten pen-reared game birds per day or three pen-reared game birds per dog per day, whichever is greater.

(6) A person or group of persons may not use more than three firearms at any time, except four firearms may be used when training retrievers using the American Kennel Club quad flyer test.

(7) Pen-reared game birds acquired for training that are not released may be held in possession:

(a) no longer than 60 days; or

(b) longer than 60 days provided the person possessing the pen-reared game birds first obtains a private aviculture certificate of registration as provided in Rule R657-4.

(8) Pen-reared game birds that are not recovered on the day of the training or pen-reared game birds that escape shall become property of the state of Utah and may not be recaptured or taken, except during legal hunting seasons as specified in the Upland Game and Waterfowl proclamations of the Wildlife Board.

(9) A person training dogs on official dog training areas, designated by the division, is not required to comply with Subsection (1)(c) or Subsections (4), (5) or (6).

**R657-46-6. Use of Wild Game Birds for Dog Training.**

(1) A person may train a dog on wild game birds provided:

(a) the dog, or the person training the dog, may not harass, catch, capture, kill, injure, or at any time, possess any wild game birds, except during legal hunting seasons as provided in the Upland Game or Waterfowl proclamations of the Wildlife Board;

(b) the dogs are not on any state wildlife management or waterfowl management areas as specified in Rule R657-6, except during open hunting seasons or as posted by the division;

(c) the person training a dog on wild game birds, except during legal hunting seasons:

(i) may not possess a firearm, except a pistol firing blank cartridges;

(ii) must comply with city and county ordinances pertaining to the discharge of any firearm;

(iii) must obtain written permission from the landowner for training on properly posted private property.

(2) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed weapon to hunt or take wildlife.

**KEY: wildlife, birds, dogs, training**

**March 5, 2002**

**23-14-18**

**Notice of Continuation October 19, 2004**

**23-14-19**

**R710. Public Safety, Fire Marshal.****R710-6. Liquefied Petroleum Gas Rules.****R710-6-1. Adoption, Title, Purpose and Scope.**

Pursuant to Title 53, Chapter 7, Section 305, Utah State Code Annotated 1953, the Liquefied Petroleum Gas (LPG) Board adopts minimum rules to provide regulation to those who distribute, transfer, dispense or install LP Gas and/or its appliances in the State of Utah.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 58, LP Gas Code, 2001 edition, except as amended by provisions listed in R710-6-8, et seq.

1.2 National Fire Protection Association (NFPA), Standard 54, National Fuel Gas Code, 2002 edition, except as amended by provisions listed in R710-6-8, et seq.

1.3 National Fire Protection Association (NFPA), Standard 1192, Standard on Recreational Vehicles, 2002 Edition, except as amended by provisions listed in R710-6-8, et seq.

1.4 International Fire Code (IFC), Chapter 38, 2003 edition, as published by the International Code Council, Inc. (ICC), except as amended by provisions listed in R710-6-8, et seq.

1.5 A copy of the above codes are on file with the Division of Administrative Rules, and the State Fire Marshal's Office. The definitions contained in the afore referenced codes shall also pertain to these rules.

## 1.6 Title.

These rules shall be known as "Rules Governing LPG Operations in the State of Utah" and may be cited as such, and will be hereinafter referred to as "these rules".

## 1.7 Validity.

If any article, section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the LPG Board such decision shall not affect the validity of the remaining portion of these rules.

## 1.8 Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes or standards as adopted, the more restrictive requirement shall govern, as determined by the enforcing authority.

**R710-6-2. Definitions.**

2.1 "Board" means the Liquefied Petroleum Gas Board.

2.2 "Concern" means a person, firm, corporation, partnership, or association, licensed by the Board.

2.3 "Dispensing System" means equipment in which LP Gas is transferred from one container to another in liquid form.

2.4 "Division" means the Division of the State Fire Marshal.

2.5 "Enforcing Authority" means the division, the municipal or county fire department, other fire prevention agency acting within its respective fire prevention jurisdiction, or the building official of any city or county.

2.6 "ICC" means International Code Council, Inc.

2.7 "IFC" means International Fire Code.

2.8 "License" means a written document issued by the Division authorizing a concern to be engaged in an LPG business.

2.9 "LPG" means Liquefied Petroleum Gas.

2.10 "LPG Certificate" means a written document issued by the Division to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

2.11 "NFPA" means the National Fire Protection Association.

2.12 "Possessory Rights" means the right to possess LPG,

but excludes broker trading or selling.

2.13 "Public Place" means a highway, street, alley or other parcel of land, essentially unobstructed, which is deeded, dedicated or otherwise appropriated to the public for public use, and where the public exists, travels, traverses or is likely to frequent.

2.14 "Qualified Instructor" means a person holding a valid LPG certificate in the area in which he is instructing.

2.15 "UCA" means Utah State Code Annotated 1953 as amended.

**R710-6-3. Licensing.**

## 3.1 Type of license.

3.1.1 Class I: A licensed dealer who is engaged in the business of installing gas appliances or systems for the use of LPG and who sells, fills, refills, delivers, or is permitted to deliver any LPG.

3.1.2 Class II: A business engaged in the sale, transportation, and exchange of cylinders, but not transporting or transferring gas in liquid.

3.1.3 Class III: A business not engaged in the sale of LPG, but engaged in the sale and installation of gas appliances, or LPG systems.

## 3.1.4 Class IV: Those businesses listed below:

## 3.1.4.1 Dispensers

3.1.4.2 Sale of containers greater than 96 pounds water capacity.

## 3.1.4.3 Other LPG businesses not listed above.

## 3.2 Signature on Application.

The application shall be signed by an authorized representative of the applicant. If the application is made by a partnership, it shall be signed by at least one partner. If the application is made by a corporation or association other than a partnership, it shall be signed by the principal officers, or authorized agents.

## 3.3 Issuance.

Following receipt of the properly completed application, an inspection, completion of all inspection requirements, and compliance with the provision of the statute and these rules, the Division shall issue a license.

## 3.4 Original, Valid Date.

Original licenses shall be valid for one year from the date of application. Thereafter, each license shall be renewed annually and renewals thereof shall be valid for one year from issuance.

## 3.5 Renewal.

Application for renewal shall be made on forms provided by the SFM.

## 3.6 Refusal to Renew.

The Board may refuse to renew any license in the same manner, and for any reason, that they are authorized, pursuant to Article 5 of these rules to deny a license. The applicant shall, upon such refusal, have the same rights as are granted by Article 5 of this article to an applicant for a license which has been denied by the Board.

## 3.7 Change of Address.

Every licensee shall notify the Division, in writing, within thirty (30) days of any change of his address.

## 3.8 Under Another Name.

No licensee shall conduct his licensed business under a name other than the name or names which appears on his license.

## 3.9 List of Licensed Concerns.

3.9.1 The Division shall make available, upon request and without cost, to the Enforcing Authority, the name, address, and license number of each concern that is licensed pursuant to these rules.

3.9.2 Upon request, single copies of such list shall be furnished, without cost, to a licensed concern.



### 3.10 Inspection.

The holder of any license shall submit such license for inspection upon request of the Division or the Enforcing Authority.

### 3.11 Notification and LPG Certificate.

Every licensed concern shall, within twenty (20) days of employment, and within twenty (20) days of termination of any employee, report to the Division, the name, address, and LPG certificate number, if any, of every person performing any act requiring an LPG certificate for such licensed concern.

### 3.12 Posting.

Every license issued pursuant to the provisions of these rules shall be posted in a conspicuous place on the premises of the licensed location.

### 3.13 Duplicate License.

A duplicate license may be issued by the Division to replace any previously issued license, which has been lost or destroyed, upon the submission of a written statement from the licensee to the Division. Such statement shall attest to the fact that the license has been lost or destroyed. If the original license is found it shall be surrendered to Division within 15 days.

### 3.14 Registration Number.

Every license shall be identified by a number, delineated as P-(number).

### 3.15 Accidents, Reporting.

Any accident where a licensee and LPG are involved must be reported to the Board in writing by the affected licensee within 3 days upon receipt of information of the accident. The report must contain any pertinent information such as the location, names of persons involved, cause, contributing factors, and the type of accident. If death or serious injury of person(s), or property damage of \$5000.00 or more results from the accident, the report must be made immediately by telephone and followed by a written report.

### 3.16 Board investigation of accidents.

At their discretion, the Board will investigate, or direct the Division to investigate, all serious accidents as defined in Subsection 3.15.

## **R710-6-4. LP Gas Certificates.**

### 4.1 Application.

Application for an LPG certificate shall be made in writing to the Division. The application shall be signed by the applicant.

### 4.2 Examination.

Every person who performs any act or acts within the scope of a license issued under these rules, shall pass an initial examination in accordance with the provisions of this article.

### 4.3 Types of Initial Examinations:

#### 4.3.1 Carburetion

#### 4.3.2 Dispenser

#### 4.3.3 HVAC/Plumber

#### 4.3.4 Recreational Vehicle Service

#### 4.3.5 Serviceman

#### 4.3.6 Transportation and Delivery

### 4.4 Initial Examinations.

4.4.1 The initial examination shall include an open book written test of the applicant's knowledge of the work to be performed by the applicant. The written examination questions shall be taken from the adopted statute, administrative rules, NFPA 54, and NFPA 58.

4.4.2 The initial examination shall also include a practical or actual demonstration of some selected aspects of the job to be performed by the applicant.

4.4.3 To successfully complete the written and practical initial examinations, the applicant must obtain a minimum grade of seventy percent (70%) in each portion of the examination taken. Each portion of the examination will be graded separately. Failure of any one portion of the examination will

not delete the entire test.

4.4.4 Examinations may be given at various field locations as deemed necessary by the Division. Appointments for field examinations are required.

4.4.5 As required in Sections 4.2 and 4.3, those applicants that have successfully completed the requirements of the Certified Employee Training Program (CETP), as written by the National Propane Gas Association, and that corresponds to the work to be performed by the applicant, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

### 4.5 Original and Renewal Date.

Original LPG certificates shall be valid for one year from the date of issuance. Thereafter, each LPG certificate shall be renewed annually and renewals thereof shall be valid from for one year from issuance.

### 4.6 Renewal Date.

Application for renewal shall be made on forms provided by the Division.

### 4.7 Re-examination.

Every holder of a valid LPG Certificate shall take a re-examination every five years from the date of original certificate issuance, to comply with the provisions of Section 4.3 of these rules as follows:

4.7.1 The re-examination to comply with the provisions of Section 4.3 of these rules shall consist of an open book examination, to be mailed to the certificate holder at least 60 days before the renewal date.

4.7.2 The open book re-examination will consist of questions that focus on changes in the last five years to NFPA 54, NFPA 58, the statute, or the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the Board or Division.

4.7.3 The certificate holder is responsible to complete the re-examination and return it to the Division in sufficient time to renew.

4.7.4 The certificate holder is responsible to return to the Division with the re-examination the correct renewal fees to complete that certificate renewal.

### 4.8 Refusal to Renew.

The Division may refuse to renew any LPG certificate in the same manner and for any reason that is authorized pursuant to Article 5.

### 4.9 Inspection.

The holder of a LPG certificate shall submit such certificate for inspection, upon request of the Division or the enforcing authority.

### 4.10 Type.

4.10.1 Every LPG certificate shall indicate the type of act or acts to be performed and for which the applicant has qualified.

4.10.2 Any person holding a valid LPG certificate shall not be authorized to perform any act unless he is a licensee or is employed by a licensed concern.

4.10.3 It is the responsibility of the LPG certificate holder to insure that the concern they are employed by is licensed under this act.

### 4.11 Change of Address.

Any change in home address of any holder of a valid LPG certificate shall be reported by the registered person to the Division within thirty (30) days of such change.

### 4.12 Duplicate.

A duplicate LPG certificate may be issued by the Division to replace any previously issued certificate which has been lost or destroyed upon the submission of a written statement to the Division from the certified person. Such statement shall attest to the certificate having been lost or destroyed. If the original is found, it shall be surrendered to the Division within 15 days.

### 4.13 Contents of Certificate of Registration.

Every LPG certificate issued shall contain the following information:

- 4.13.1 The name and address of the applicant.
- 4.13.2 The physical description of applicant.
- 4.13.3 The signature of the LP Gas Board Chairman.
- 4.13.4 The date of issuance.
- 4.13.5 The expiration date.
- 4.13.6 Type of service the person is qualified to perform.
- 4.13.7 Have printed on the card the following: "This certificate is for identification only, and shall not be used for recommendation or advertising".

4.14 Minimum Age.

No LPG certificate shall be issued to any person who is under sixteen (16) years of age.

4.15 Restrictive Use.

4.15.1 No LPG certificate shall constitute authorization for any person to enforce any provisions of these rules.

4.15.2 A LPG certificate may be used for identification purposes only as long as such certificate remains valid and while the holder is employed by a licensed concern.

4.15.3 Regardless of the acts for which the applicant has qualified, the performance of only those acts authorized under the licensed concern employing such applicant shall be permissible.

4.15.4 Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a LPG certificate has qualified shall be permissible by such applicant.

4.16 Right to Contest.

4.16.1 Every person who takes an examination for a LPG certificate shall have the right to contest the validity of individual questions of such examination.

4.16.2 Every contention as to the validity of individual questions of an examination that cannot be reasonably resolved, shall be made in writing to the Division within 48 hours after taking said examination. Contentions shall state the reason for the objection.

4.16.3 The decision as to the action to be taken on the submitted contention shall be by the Board, and such decision shall be final.

4.16.4 The decision made by the Board, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

4.17 Non-Transferable.

LPG Certificates shall not be transferable to another individual. Individual LPG certificates shall be carried by the person to whom issued.

4.18 New Employees.

New employees of a licensed concern may perform the various acts while under the direct supervision of persons holding a valid LPG certificate for a period not to exceed 45 days from the initial date of employment. By the end of such period, new employees shall have taken and passed the required examination. In the event the employee fails the examination, re-examination shall be taken within 30 days. The employee shall remain under the direct supervision of an employee holding a valid LPG certificate, until certified.

4.19 Certificate Identification.

Every LPG certificate shall be identified by a number, delineated as PE-(number). Such number shall not be transferred from one person to another.

**R710-6-5. Adjudicative Proceedings.**

5.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

5.2 The issuance, renewal, or continued validity of a license or LPG certificate may be denied, suspended or revoked by the Division, if the Division finds that the applicant, person

employed for, or the person having authority and management of a concern commits any of the following violations:

5.2.1 The person or applicant is not the real person in interest.

5.2.2 The person or applicant provides material misrepresentation or false statement in the application, whether original or renewal.

5.2.3 The person or applicant refuses to allow inspection by the Division or enforcing authority on an annual basis to determine compliance with the provisions of these rules.

5.2.4 The person, applicant, or concern for a license does not have the proper or necessary facilities, including qualified personnel, to conduct the operations for which application is made.

5.2.5 The person or applicant for a LPG certificate does not possess the qualifications of skill or competence to conduct the operations for which application is made. This can also be evidenced by failure to pass the examination and/or practical tests.

5.2.6 The person or applicant refuses to take the examination.

5.2.7 The person or applicant has been convicted of a violation of one or more federal, state or local laws.

5.2.8 The person or applicant has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules.

5.2.9 Any offense of finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the person or applicant were granted a license or certificate of registration.

5.2.10 There are other factors upon which a reasonable and prudent person would rely to determine the suitability of the person or applicant to safely and competently distribute, transfer, dispense or install LP Gas and/or it's appliances.

5.2.11 The person or applicant does not complete the re-examination process by the person or applicants certificate or license expiration date.

5.2.12 The person or applicant fails to pay the license fee, certificate of registration fee, examination fee or other fees as required in Section 6 of these rules.

5.3 A person whose license or certificate of registration is suspended or revoked by the Division shall have an opportunity for a hearing before the LPG Board if requested by that person within 20 days after receiving notice.

5.4 All adjudicative proceedings, other than criminal prosecution, taken by the Enforcing Authority to enforce the Liquefied Petroleum Gas Section, Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

5.5 The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a license or certificate of registration.

5.6 The Board shall direct the Division to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

5.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

5.8 After a period of three (3) years from the date of revocation, the Board may review the written application of a person whose license or certificate of registration has been revoked.

5.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

**R710-6-6. Fees.**

- 6.1 Fee Schedule.

- 6.1.1 License and LPG Certificates (new and renewals):
    - 6.1.1.1 License
      - 6.1.1.1.1 Class I - \$450.00
      - 6.1.1.1.2 Class II - \$450.00
      - 6.1.1.1.3 Class III - \$105.00
      - 6.1.1.1.4 Class IV - \$150.00
    - 6.1.1.2 Branch office license - \$338.00
    - 6.1.1.3 LPG Certificate - \$30.00
    - 6.1.1.4 LPG Certificate (Dispenser--Class B) - \$10.00
    - 6.1.1.5 Duplicate - \$30.00
  - 6.1.2 Examinations:
    - 6.1.2.1 Initial examination - \$20.00
    - 6.1.2.2 Re-examination - \$20.00
    - 6.1.2.3 Five year examination - \$20.00
  - 6.1.3 Plan Reviews:
    - 6.1.3.1 More than 5000 water gallons of LPG - \$90.00
    - 6.1.3.2 5,000 water gallons or less of LPG - \$45.00
  - 6.1.4 Special Inspections.
    - 6.1.4.1 Per hour of inspection - \$50.00  
(charged in half hour increments with part half hours charged as full half hours).
  - 6.1.5 Re-inspection (3rd Inspection or more)- -\$250.00
  - 6.1.6 Private Container Inspection (More than one container) - \$150.00
  - 6.1.7 Private Container Inspection (One container) 75.00
- 6.2 Payment of Fees.  
The required fee shall accompany the application for license or LPG certificate or submission of plans for review.
- 6.3 Late Renewal Fees.
- 6.3.1 Any license or LPG certificate not renewed on or before one year from the original date of issuance will be subject to an additional fee equal to 10% of the required fee.
  - 6.3.2 When an LPG certificate has expired for more than one year, an application shall be made for an original certificate as if the application was being taken for the first time. Examinations will be retaken with initial examination fees.

#### **R710-6-7. Board Procedures.**

- 7.1 The Board will review the Division and Enforcing Authorities activities since the last meeting, and review and act on license and permit applications, review financial transactions, consider recommendations of the Division, and all other matters brought to the Board.
- 7.2 The Board may be asked to serve as a review board for items under disagreement.
- 7.3 Board meetings shall be presided over and conducted by the chairman and in his absence the vice chairman.
- 7.4 Meetings of the Board shall be conducted in accordance with an agenda, which shall be submitted to the members by the Division, not less than twenty-one (21) days before the regularly scheduled Board meeting.
- 7.5 The chairman of the Board and Board members shall be entitled to vote on all issues considered by the Board. A Board member who declares a conflict of interest or where a conflict of interest has been determined, shall not vote on that particular issue.
- 7.6 Public notice of Board meetings shall be made by the Division as prescribed in UCA Section 52-4-6.
- 7.7 The Division shall provide the Board with a secretary, who shall prepare minutes and shall perform all secretarial duties necessary for the Board to fulfill its responsibility. The minutes of Board meetings shall be completed and sent to Board members at least twenty-one (21) days prior to the scheduled Board meeting.
- 7.8 The Board may be called upon to interpret codes adopted by the Board.
- 7.9 The Board Chairman may assign member(s) various assignments as required to aid in the promotion of safety, health and welfare in the use of LPG.

#### **R710-6-8. Amendments and Additions.**

The following amendments and additions are hereby adopted by the Board:

- 8.1 All LP Gas facilities that are located in a public place shall be inspected by a certified LP Gas serviceman every five (5) years for leaks in all buried piping as follows:
  - 8.1.1 All buried piping shall be pressure tested and inspected for leaks as set forth in NFPA Standard 54, Sections 4.1.1 through 4.3.4.
  - 8.1.2 If a leak is detected and repaired, the buried piping shall again be pressure tested for leaks.
  - 8.1.3 The certified LP Gas serviceman shall keep a written record of the inspection and all corrections made to the buried piping located in a public place.
  - 8.1.4 The inspection records shall be available to be inspected on a regular basis by the Division.
- 8.2 Whenever the Division is required to complete more than two inspections to receive compliance on an LP Gas System, container, apparatus, appliance, appurtenance, tank or tank trailer, or any pertinent equipment for the storage, transportation or dispensation of LP Gas, the Division shall charge to the owner for each additional inspection, the re-inspection fee as stated in R710-6-6.1(e).
- 8.3 All LP Gas containers of more than 5000 water gallons shall be inspected at least biannually for compliance with the adopted statute and rules. The following containers are exempt from this requirement:
  - 8.3.1 Those excluded from the act in UCA, Section 53-7-303.
  - 8.3.2 Containers under federal control.
  - 8.3.3 Containers under the control of the U.S. Department of Transportation and used for transportation of LP Gas.
  - 8.3.4 Containers located at private residences.
- 8.4 Those using self-serve key or card services shall be trained in safe filling practices by the licensed dealer providing the services. A letter shall be sent to the Division by the licensed dealer stating that those using the self-serve key or card service have been trained.
- 8.5 IFC Amendments:
  - 8.5.1 IFC, Section 3801.2 Permits. On line 2 after the word "105.7" add "and the adopted LPG rules".
  - 8.5.2 IFC, Section 3803.1 - General. After the word "Code" on line 2 insert ",NFPA 54".
  - 8.5.3 IFC, Section 3809.12 Location of storage outside of buildings. On line three replace the number "20" with the number "10".
- 8.6 NFPA, Standard 58 Amendments:
  - 8.6.1 NFPA, Standard 58, Section 2-2.1.3 is amended to add the following section: (c) All new, used or existing containers of 5000 water gallons or less, installed in the State of Utah or relocated within the State of Utah shall meet the requirements listed in ASME, Boiler and Pressure Vessel Code, "Rules for the Construction of Unfired Pressure Vessels". All new, used or existing containers of more than 5000 water gallons, installed in the State of Utah or relocated within the State of Utah shall meet the requirements listed in ASME, Boiler and Pressure Vessel Code, "Rules for the Construction of Unfired Pressure Vessels", Section VIII, and shall either be registered by the National Board of Boiler and Pressure Vessel Inspectors or the Manufacturer's Data Report for Pressure Vessels, Form U-1A, be provided.
  - 8.6.2 NFPA, Standard 58, Section 2-2.1.3 is amended to add the following section: (d) If an existing container is relocated within the State of Utah, and depending upon the container size, does not bear the required ASME construction code and/or National Board Stamping, the new owner may submit to the Division a request for "Special Classification Permit". Material specifications and calculations of the container shall be submitted to the Division by the new owner.

Also, the new owner shall insure that a review of the proposed container be completed by a registered professional engineer experienced in pressure vessel container design and construction, and the new owner submit that report to the Division. The Division will approve or disapprove the proposed container. Approval by the Division shall be obtained before the container is set or filled with LP Gas.

8.6.3 NFPA, Standard 58, Section 2-2.1.9 is deleted and rewritten as follows: Repair or alteration of containers shall comply with the latest edition of the National Board Inspection Code or the API Pressure Vessel Inspection Code as applicable. Repairs and alterations shall only be made by those holding a National Board "R" Certificate of Authorization commonly known as an R Stamp.

8.6.4 NFPA, Standard 58, Section 2-2.5.1 is amended to add the following: Skid mounted ASME horizontal containers greater than 2000 water gallons, with non-fireproofed steel mounted attached supports, resting on concrete, pavement, gravel or firm packed earth, may be mounted on the attached supports to a maximum of 12 inches from the top of the skid to the bottom of the container.

8.6.5 NFPA Standard 58, Sections 2-4.3(3)(a) and (b) are deleted and amended to read as follows:

Type K copper tubing without joints below grade may be used in exterior LP Gas piping systems only.

8.6.6 NFPA, Standard 58, Section 3.2.4.2 is deleted and rewritten as follows: Guard posts or other approved means shall be provided for LP Gas containers, systems, bulk heads, connecting piping, valves and fittings, and dispensing cabinets that would be subject to vehicular damage. When guard posts are installed they shall be installed meeting the following listed requirements:

8.6.6.1 Constructed of steel not less than four inches in diameter and filled with concrete.

8.6.6.2 Set with spacing not more than four feet apart.

8.6.6.3 Buried three feet in the ground in concrete not less than 15 inches in diameter.

8.6.6.4 Set with the tops of the posts not less than three feet above the ground.

8.6.7 NFPA, Standard 58, Section 5.4.1.1 is deleted and rewritten as follows: At least 10 feet from the doorway or opening frequented by the public.

#### **R710-6-9. Penalties.**

9.1 Civil penalties for violation of any rule or referenced code shall be as follows:

9.1.1 Concern failure to license - \$210.00 to \$900.00

9.1.2 Person failure to obtain LPG Certificate - \$30.00 to \$90.00

9.1.3 Failure of concern to obtain LPG Certificate for employees who dispense LPG - \$210.00 to \$900.00

9.1.4 Concern doing business under improper class - \$140.00 to \$600.00

9.1.5 Failure to notify SFM of change of address - \$60.00

9.1.6 Violation of the adopted Statute or Rules - \$210.00 to \$900.00

9.2 Rationale.

9.2.1 Double the fee plus the cost of the license.

9.2.2 Double the fee plus the cost of the certificate.

9.2.3 Double the fee plus the cost of the license.

9.2.4 Double the fee.

9.2.5 Based on two hours of inspection fee at \$30.00 per hour.

9.2.6 Triple the fee.

**KEY: liquefied petroleum gas  
October 4, 2004  
Notice of Continuation July 5, 2001**

53-7-305

**R765. Regents (Board of), Administration.****R765-605. Utah Centennial Opportunity Program for Education.****R765-605-1. Purpose.**

To provide Board of Regents ("the Board") policy and procedures for implementing the Utah Centennial Opportunity Program for Education ("UCOPE," or "program"), UCA 53B-13a, enacted in H.B. 64 by the 1996 General Session of the Utah Legislature, as amended in 1997, 1998 and 2004 by S.B. 40, Cesar Chavez Scholarship Program.

**R765-605-2. References.**

- 2.1. Utah Code. Title 53B, Utah System of Higher Education, Chapter 8, Section 102.
- 2.2. Utah Code. Title 53B, Utah System of Higher Education, Chapter 8, Section 106.
- 2.3. Utah Code. Title 53B, Utah System of Higher Education, Chapter 13a.
- 2.4. State Board of Regents Policy R512, Determination of Resident Status.

**R765-605-3. Effective Date.**

These policies and procedures are effective October 16, 2004.

**R765-605-4. Policy.**

4.1. Program Description - UCOPE is a State supplement to increasingly inadequate grant and work assistance from Federal Government student financial aid programs. In UCA 53B-13a-103(1), the Legislature finds "that the general welfare and well-being of the state are directly related to the educational levels and skills of the citizens of the state, and that limited financial aid for students with demonstrated financial need to help finance costs of attendance at Utah postsecondary institutions is a necessary component for ensuring access to postsecondary education and training as the state enters its second century of statehood". Program funds may be used for either grants or work-study awards to students with demonstrated financial need, with no more than 3.0% of funds allocated to an eligible institution permitted to be used for administrative costs. These are the only purposes for which program funds may be used.

4.2. Award Year - The award year for UCOPE is the twelve-month period designated by an eligible institution, coinciding approximately with the state fiscal year beginning July 1 and ending June 30. An institution may choose to have its Summer enrollment period as either the first or the final enrollment period of the award year for UCOPE purposes.

4.3. Institutions Eligible to Participate - Eligible institutions include the ten institutions of the Utah System of Higher Education, and Utah private nonprofit postsecondary institutions which are accredited by a regional accrediting organization recognized by the Board. These are the only institutions eligible to participate. For purposes of this section, the Board recognizes the Northwest Association of Schools and Colleges. Utah private nonprofit postsecondary institutions accredited by the Northwest Association of Schools and Colleges are Brigham Young University, Westminster College and LDS Business College.

4.4. Students Eligible to Participate - To be eligible for grant or work-study assistance from UCOPE funds, a student must:

4.4.1. Be a resident student of the State of Utah under UCA 53B-8-102 and Board Policy R512 or exempt from paying the nonresident portion of total tuition under Utah Code Section 53B-8-106. For purposes of this section, in addition to the qualification methods set forth in Policy R512, an institution may recognize a student, other than a nonimmigrant alien, as a resident student of the State of Utah if the student graduated

from a Utah high school within 12 months of enrolling in the institution.

4.4.2. Be unconditionally admitted and currently enrolled in an eligible institution on at least a half-time basis as defined in Federal regulations applicable to Title IV of the Higher Education Act, in a post-high school program of at least nine months duration, leading to an Associate or Bachelor's degree, or to a diploma or certificate in an applied technology or other occupational specialty. This does not include unmatriculated students or students enrolled in postbaccalaureate programs or in remedial or developmental programs to prepare for admittance to a degree, diploma, or occupational certificate program.

4.4.3. Be maintaining satisfactory progress, as defined by the institution, toward the degree, diploma, or certificate objective in which enrolled.

4.4.4. Meet all requirements of general eligibility for Federal Higher Education Act Part IV Student Financial Aid Programs, as defined in applicable U. S. Department of Education Regulations and the current edition of the Department of Education Student Aid Handbook.

4.4.5. Have a demonstrated need for financial assistance based on the defined Cost of Attendance for the applicable student category at the institution and the expected family contribution as determined by the Federal need analysis process for Higher Education Act Title IV student financial assistance programs, or, to qualify for a Cesar Chavez Scholarship, have a family income less than 200% of the federal poverty guideline issued each year by the U.S. Department of Education for the family size.

4.5. Program Administrator - The program administrator for UCOPE 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. Determination of Funds Available for The Program - Funds available for UCOPE allotments to institutions may come from specifically earmarked state appropriations, from the statewide student financial aid line item appropriation to the Board, or from other sources such as private contributions. Amounts available for allotment each year are determined as follows:

4.6.1. Consistent with the original purposes of the Statewide Student Financial Aid line item appropriation to the Board, funds appropriated in the line item are applied in the following priority order:

4.6.1.1. First priority is given to matching funds for Utah System of Higher Education institutional awards from the Federal Government for campus-based Federal Perkins Loan Program capital contributions, Federal Supplemental Educational Opportunities Grant Program funds, and partial matching for the Federal College Work Study Program.

4.6.1.2. Second priority is given to providing the required state match for allocations of Leveraging Educational Assistance Partnership Program funds to the State of Utah.

4.6.1.3. All remaining funds are used for UCOPE.

4.6.2. All funds appropriated by specific legislation, or in a specific line item for UCOPE, and any funds from other sources contributed for UCOPE, are added together with funds available for UCOPE pursuant to subsection 4.6.1, to determine the total amount available for the program.

4.7. Allotment of Program Funds To Institutions.

4.7.1. The chief executive officer or chief student services officer of an eligible institution wishing to participate in UCOPE is required to submit to the program administrator a letter of intent to participate by the 15th of May preceding the beginning of the fiscal year (July 1 through June 30), and to include in the letter of intent a certification, subject to audit, of: (a) the total dollar amount of Federal Pell Grant funds awarded

in the most recent completed award year to all students at the institution; and (b) the total dollar amount of Pell Grant funds awarded specifically to students at the institution who were resident students of the state of Utah under UCA 53B-8-102 and Board Policy R512.

4.7.2. Failure to submit its letter of intent with the required Pell Grant information by the specified date constitutes an automatic decision by an eligible institution not to participate in the program for the specific fiscal year.

4.7.3. An eligible institution which submits a qualifying letter of intent by the specified date for a specific fiscal year is a participating institution for that fiscal year.

4.7.4. Allotment of program funds to participating institutions is in the same proportion as the amount of Federal Pell Grant funds received by each participating institution for resident undergraduate students bears to the total of such funds received for such students in the most recently completed award year by all participating institutions.

4.7.5. The program administrator sends official notification of its allotment, together with a program participation agreement, and blank copies of the format for institutional UCOPE reports to be submitted within 30 days of the end of the applicable fiscal year, to the chief executive officer of each participating institution, by the 20th of May preceding the fiscal year.

4.8. Annual Institutional Participation Agreements - To receive UCOPE funds for an award year, a participating institution is required to submit a participation agreement, signed by the chief executive officer, accepting the funds and agreeing 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 allotted to it for the award year in a budget for student financial aid administrative expenses of the institution, and will expend all funds so budgeted before the end of the state fiscal year for which allotted.

4.8.1.2(a). For the 1996-97 award year and award years 2000-01 and 2001-02, if the institution's allotment for the fiscal year is \$100,000 or more, the institution will place at least 30% of the total amount of program funds allotted to it for the award year in a budget to be used only for payment of work-study stipends to eligible students, for employment during the award year either in jobs provided under Federal Work-Study Program (FWSP) regulations or in jobs provided in accordance with UCOPE Work-Study Program (UWSP) policies (Section 4.9 herein). For award years 1997-98 through 1999-2000, if the institution's allotment for the fiscal year is \$50,000 or more, the institution will place at least 50% of the total amount of program funds allotted to it in a budget to be used only for payment of work-study stipends to eligible students, for employment during the award year either in jobs provided under FWSP regulations or in jobs provided in accordance with Section 4.9.

4.8.1.2(b). For any award year, the institution may, at its option, place all or any portion of its allotted UCOPE funds in a budget to be used only for payment of work-study stipends to eligible students, for employment during the award year either in jobs provided under Federal Work-Study Program (FWSP) regulations or in jobs provided in accordance with UCOPE Work-Study Program (UWSP) policies (Section 4.0 herein).

4.8.1.2(c). Work-study payments from the institution's UCOPE work-study budget, for jobs under either FWSP regulations or UWSP policies, will be counted as UCOPE awards for purposes of subsection 4.8.2.3.

4.8.1.3. All work-study jobs provided using UCOPE funds from the budget pursuant to this subsection, including those established under FWSP regulations, will be identified to the recipient as UCOPE work-study awards. No portion of the institution's UCOPE allotment may be used as institutional

match for Federal Work-Study Program allocations.

4.8.1.4. The institution will place the total remainder of program funds allotted to it for the award year, after amounts budgeted pursuant to subsections 4.8.1.1 and 4.8.1.2, in a budget to be used only for payment of UCOPE grants to eligible students during and for periods of enrollment within the award year. Grants awarded from this budget will be identified to the recipient as Utah Centennial Opportunity Program Grants.

4.8.1.5. The institution may carry forward or carry back from one fiscal year to another up to 10% of the amount of its UCOPE allocation for the fiscal year, or a larger percentage if approved in advance by the UCOPE program administrator, except for any portion budgeted for administrative expenses pursuant to Section 4.8.1.1.

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. UCOPE work-study or grant amounts will be awarded based on financial aid information and cost of attendance budgets at the time the awards are determined, with first priority given to eligible students who qualify for Federal Pell Grant assistance.

4.8.2.3. The total amount of any UCOPE grant award to an eligible student in an award year will not exceed \$5,000, and the minimum UCOPE grant and/or work-study award to an eligible student will be \$300, except that:

4.8.2.3(a). the minimum amount may be the amount of funds remaining in the institution's allotment for the award year in the case of the last eligible student receiving a UCOPE grant award for the year; and

4.8.2.3(b). 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 a minimum or maximum grant amount in proportion to the portion of the normally-expected period of enrollment represented by the quarter(s), semester(s) or other defined term for which the student is enrolled.

4.8.2.4. UCOPE Grants and work-study stipends will be awarded and packaged on an annual award year basis. Grants 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. Work-study wages will be paid regularly as earned, provided the student is continuing to make satisfactory progress.

4.8.2.5. All awards under the program will be made without regard to an applicant's race, creed, color, religion, ancestry, or age.

4.8.2.6. 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.

4.8.2.6(a). The student's signature on the Free Application for Federal Student Aid satisfies this requirement.

4.8.2.6(b). If the institution determines, after opportunity for a hearing on appeal according to established institutional procedures, that a student used UCOPE grant or work-study funds for other purposes, the institution will disqualify the student from UCOPE eligibility beginning with the quarter, semester, or other defined enrollment period after the one in which the determination is made.

4.8.2.7. In no case will the institution initially award

program grants or work-study stipends or both in amounts which, with Federal Stafford, Ford, 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.

4.8.2.8. 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 overaward of more than \$500, 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. Unit-Record Information - The institution agrees to cooperate with the program administrator and the Commissioner of Higher Education in development of a unit-record data base on student financial aid and related demographic information, to be used for: (a) research into the effects of student financial aid on students' access to and participation in postsecondary education and training; and (b) planning and modifying the design of the program.

4.8.4. Notification and Reports - The institution will inform the program administrator immediately if it determines it will not be able to utilize all program funds allotted to it for an award year, and 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.

4.8.5. 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.

4.8.6. Dissemination of Employment Opportunity Information - The institution will cooperate with the program administrator in disseminating to its students periodic information provided by the board, regarding employment opportunities determined from marketplace surveys.

4.9. UCOPE Work-Study Program Guidelines - If an institution elects to utilize its UCOPE Work-Study funds for the Utah Work-Study Program (UWSP) instead of in accordance with Federal Work-Study (FWSP) regulations, the following guidelines apply.

4.9.1. The institution may establish designated UWSP institutional jobs on campus or in other institutional operating sites, and administer such jobs in accordance with the following conditions.

4.9.1.1. The job must be supplemental to, and not displace, any regularly-established job held by a greater-than-half-time institutional employee in the three months immediately prior to establishment of the UWSP institutional job.

4.9.1.2. The hourly wage for the UWSP institutional job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the institution in equivalent positions in the institution's personnel system, unless the hourly wage of equivalent positions is less than the current Federal minimum wage.

4.9.1.3. The institution may pay up to one hundred percent of the hourly wage for the institutional job from its UCOPE work-study budget established pursuant to subsection 4.9.1, provided the total wages paid to a student for the job from UCOPE and any other institutional funds do not exceed the amount of the award to the student for the award year.

4.9.2. The institution may establish designated UWSP school assistant jobs for volunteer tutors, mentors, or teacher assistants, to work with educationally disadvantaged and high risk school pupils, by contract with individual schools or school districts, and administer such jobs in accordance with the following conditions.

4.9.2.1. The hourly wage for the UWSP school assistant job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the school or school district in equivalent positions in its personnel system, unless the hourly wage of equivalent positions is less than the current Federal minimum wage.

4.9.2.2. The institution may pay up to one hundred percent of the hourly wage for the job from its UCOPE work-study budget established pursuant to subsection 4.9.2, provided the total wages paid to a student for the job from any source do not exceed the amount of the award to the student for the award year.

4.9.3. The institution may establish designated UWSP community service jobs with volunteer community service organizations certified by the program administrator on advice of the Utah Commission on Volunteers, and administer such jobs in accordance with the following conditions.

4.9.3.1. The hourly wage for the UWSP community service job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the organization in equivalent positions in its personnel system, unless the hourly wage of equivalent positions is less than the current Federal minimum wage.

4.9.3.2. The institution may pay up to one hundred percent of the hourly wage for the job from its UCOPE work-study budget established pursuant to subsection 4.9.3, provided the total wages paid to a student for the position from any source do not exceed the amount of the award to the student for the award year.

4.9.4. The institution may establish designated UWSP matching jobs by contract with government agencies, private businesses, or non-profit corporations, and administer such jobs in accordance with the following conditions.

4.9.4.1. The matching job may not involve any religious or partisan political activities, or be with an organization whose primary purpose is religious or political.

4.9.4.2. The matching job must be supplemental to, and not displace, any regularly-established job held by a greater-than-half-time employee in the government agency, private business, or non-profit corporation in the three months immediately prior to establishment of the UWSP matching job.

4.9.4.3. The hourly wage for the UWSP matching job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the organization in equivalent positions in its personnel system, unless the hourly wage of equivalent positions is less than the current Federal minimum wage.

4.9.4.4. The institution may pay up to fifty percent of the hourly wage for the job from its UCOPE work-study budget established pursuant to subsection 4.9.4, provided the total wages (including the employer-paid portion) paid to the student do not exceed the amount of the award to the student for the award year.

4.9.5. Institutions are strongly encouraged to place students, when possible, in UWSP jobs which have a relationship to the student's field of study or training.

4.9.6. If an institution employs students in work-study jobs or other institutional jobs cumulatively over time to a point at which the institution is required to pay employee benefits other than the direct job wages for a UCOPE-funded work-study job, the institution is required to pay the costs of any such required employee benefits from institutional funds other than UCOPE-allotted funds.

4.10. Cesar Chavez Scholarship - The Cesar Chavez Scholarship Program is part of the Utah Centennial Opportunity Program for Education.

4.10.1. Students Eligible - To qualify for a Cesar Chavez Scholarship, a student must:

4.10.1.1. be an eligible student as defined in Section 53B-13a-102; and

4.10.1.3. have a family income less than 200% of the federal poverty guideline for the family size.

4.10.2. Scholarship Amounts - Cesar Chavez Scholarships shall be awarded in the following amounts:

4.10.2.1. if the scholarship recipient is enrolled at a public institution, an amount not to exceed the total of resident tuition and general fee charges; or

4.10.2.2. if the scholarship recipient is enrolled at a private, nonprofit institution, an amount not to exceed the total of tuition and general fee charges, but a scholarship for a student enrolled at a private, nonprofit institution may not exceed the maximum program grant established by the board for the fiscal year.

4.10.3. Allocation of UCOPE Funds to Cesar Chavez Scholarships - The board may allocate up to 10% of the money appropriated to the board for the Utah Centennial Opportunity Program in Education for the Cesar Chavez Scholarship Program.

**KEY: financial aid, higher education**  
**October 19, 2004**  
**Notice of Continuation June 30, 2003**

**53B-8-102**  
**53B-13a**



**R765. Regents (Board of), Administration.****R765-612. Lender Participation.****R765-612-1. Purpose.**

To establish the lender eligibility requirements for participation as an originating lender in the UHEAA loan program.

**R765-612-2. References.**

- 2.1 Utah Code Annotated Title 53B, Chapter 12.
- 2.2 Higher Education Act of 1965, as amended.

**R765-612-3. Definitions.**

3.1 Originating Lender. A lending institution which originates Federal Stafford, PLUS, SLS or Consolidation Loans.

3.2 Located in Utah. With respect to this rule, a lender is located in Utah if the lender has an office in Utah where the lender's full range of products and services is available to the lender's customers for routine business transactions. An office established for the sole purpose of collecting student loan applications is not sufficient to qualify a lender as being located in Utah.

**R765-612-4. Policy.**

4.1 To participate as an originating lender in the UHEAA loan program, a lender must:

- 4.1.1 be located in Utah;
- 4.1.2 be an eligible lender as defined by the Higher Education Act of 1965, as amended;
- 4.1.3 obtain a six-digit lender identification number issued by the U.S. Department of Education; and
- 4.1.4 execute an "Agreement to Guarantee Loans" with UHEAA.

4.2 A lender which meets the requirements of 4.1 may make loans guaranteed by UHEAA to any eligible borrower.

4.3 A lender which participates in the UHEAA loan program is considered pre-approved.

4.4 By disbursing the loan, the lender acknowledges its approval of the loan.

4.5 A guarantee issued by UHEAA may be cancelled by the lender, if the lender does not grant approval of the loan.

4.6 If the lender violates or fails to comply with the provisions of this policy or the Higher Education Act of 1965, as amended, the lender will be liable for any penalties, claims, actions and expenses relating to the violation. In addition, the lender may be subject to limitation, suspension or termination under the Higher Education Act of 1965, as amended.

**KEY: higher education, student loans**

**October 19, 2004**

**53B-12-101(6)**

**Notice of Continuation January 4, 2002**

**R850. School and Institutional Trust Lands, Administration.****R850-80. Sale of Trust Lands.****R850-80-100. Authorities.**

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X and XX of the Utah Constitution, and Subsections 53C-1-302(1)(a)(ii) and 53C-4-101(1) which authorize the Director of the School and Institutional Trust Lands Administration to prescribe the terms and conditions for the sale of trust land; and Subsection 72-5-203(2)(a) which directs the Administration to enact rules establishing a process by which responsible authorities may apply to convert permissive temporary easements or rights-of-entry to permanent easements or rights-of-entry.

**R850-80-150. Planning.**

Pursuant to Subsection 53C-2-201(1)(a), the Trust Lands Administration shall also undertake to complete the following planning obligations, in addition to the rule-based analysis and approval processes that are prescribed by this rule:

1. To the extent required by the Memorandum of Understanding between the State Planning Coordinator and the School and Institutional Trust Lands Administration, submit the proposal for review by the Resource Development Coordinating Committee (RDCC);
2. Evaluation of and response to comments received through the RDCC process; and
3. Evaluation of and response to any comments received through the solicitation process conducted pursuant to R850-80-400(1).

**R850-80-200. Sale of Trust Lands.**

The agency may sell trust lands at no less than the fair market value if the agency determines that sale of the lands would be consistent with these rules and in the best interest of the trust beneficiaries.

**R850-80-250. Determination of the Status of Temporary Easements and Rights-of-Entry.**

1. Prior to the sale of any trust land, the agency shall undertake the notification process set forth in R850-80-250(2) to evaluate whether any temporary easement or right-of-entry created under Subsection 72-5-203(1)(a)(i) exists on the subject property. This evaluation shall not adjudicate the status of any highway crossing trust land that may have been established pursuant to any federal statute, such as R.S. 2477. Highways established in accordance with the requirements of federal law, including R.S. 2477, prior to the state taking title to the underlying property are recognized as valid existing rights.
2. In order to determine the existence of a statutory temporary easement or right-of-entry on the subject property, the agency shall give notice to responsible authorities, as defined in Subsection 72-5-202(1), that the subject property is proposed for disposal through sale. This notice will permit any responsible authority asserting a temporary easement or right-of-entry pursuant to Subsection 72-5-203(1)(a)(i) to file an application to make such temporary easement or right-of-entry permanent (the "application"). The application shall contain a description of the facts which lead the applicant to believe that a statutory temporary easement or right-of-entry exists on the subject property, and other information that may be required by the agency to verify the assertion. Notice shall be provided as follows:
  - (a) Certified notice shall be mailed to the Attorney General and the executive body of the county in which the subject property is located. This notice shall include the legal description of the subject property proposed for sale and a map showing its location. The executive body of the county will have 90 days from the date of the notice within which to submit the application.

(b) Notice to other responsible authorities who may have an interest in the subject property will be given through publication at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county where the subject property is located. In addition to the legal description of the subject property being considered for sale, the advertisement shall put responsible authorities on notice that the agency may take action extinguishing the temporary easement or right-of-entry upon sale of the subject property. Other responsible authorities will have 90 days from the first date of publication within which to submit the application.

3. Upon the receipt of an application to convert a temporary easement or right-of-entry into a permanent property easement or right-of-entry, the agency will evaluate the request pursuant to the fiduciary responsibilities of the agency as described in Section 53C-1-302. A decision on whether or not to approve the application will be made at least 30 days prior to the sale of the subject property. Prior to the agency approving or rejecting an application, if any, the agency will review the supporting documentation submitted by the applicant. The agency shall consider material submitted by any responsible authority pursuant to the applicant's appropriate statutory authority. If no application is received after notice is given pursuant to R850-80-250(2), or if an application to make the temporary easement or right-of-entry permanent is not approved, the temporary easement or right-of-entry granted pursuant to Subsection 72-5-203(1)(a)(i) on the subject property will be extinguished upon the execution of a certificate of sale.

**R850-80-300. Sales Initiation Process.**

The sales process may be initiated by:

1. The acceptance of a completed application form pursuant to R850-3-400; or,
2. A determination by the director that disposal of a parcel of property is timely and in the best interests of the trust land beneficiaries.

**R850-80-400. Competitive Offering.**

1. Upon acceptance of a lease or sale application, the agency shall solicit competing applications for lease, sale or exchange through commercially feasible means, including publication at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county in which the sale is proposed. Certified notice that competing applications are being solicited shall be sent to lessees/permittees of record, adjoining lessees/permittees, and adjoining landowners at least 30 days prior to the selection of the successful applicant.
2. Notification and advertising shall include a description of the location of the parcel and any other information which may create interest in the parcel. The successful applicant shall bear the cost of the advertising.
3. The agency shall allow each applicant at least 20 days from the date of mailing of notice as evidenced by the certified mailing posting receipt (Postal Service form 3800), within which to submit a sealed bid containing their proposal for the subject parcel. Competing bids shall be evaluated using the criteria found in R850-30-500(2)(g), R850-80-500, and R850-90-200.
4. The director shall select the preferred applicant. If the preferred application is for a lease, it shall proceed through the process as outlined in R850-30-500(5). If the preferred application is for a sale, it shall proceed through the process outlined in R850-80-500. If the preferred application is for an exchange, it shall be processed pursuant to R850-90-300.
5. If any competing application received pursuant to R850-80-400 qualifies as a unit development lease as defined in R850-30-1100, the agency shall extend the sealed bid proposal deadline to 120 days.

**R850-80-500. Sale Determination Procedures.**

## 1. Preliminary Analysis

(a) The director may offer for sale, without further market analysis or sale determination, trust lands which have been:

- i) designated for disposal in General Management Plans; or
- ii) offered for sale within the previous three years but not purchased.

(b) The director may also offer for sale trust lands subject to market analysis and sale determination as provided in R850-80-500(2) and R850-80-500(3) when lands are not precluded from consideration under R850-80-500(1)(c).

(c) The director shall not further consider an application for sale when:

- i) the sale results in an unmanageable or uneconomical parcel of trust land, or eliminates or materially restricts access to a remnant holding, without additional remuneration to cover any loss in value to the remnant parcel;
- ii) the land has been, or is intended to be designated for development pursuant to R850-140;
- iii) the director finds that withdrawing the parcel from public application to develop a marketing plan is justified by market trends or anticipated market demand in the area; or
- iv) the director finds that the sale may lead to development which may have a negative effect on the value, developability or marketability of any remaining land holdings.

## 2. Market Analysis

(a) The agency shall contract for an appraisal in accordance with agency specifications for the purpose of estimating the fair market value of the trust land. The cost of the appraisal shall be borne by the successful purchaser of the parcel. The agency will determine the minimum acceptable selling price of the subject parcel using the appraisal, the data in (b) below and any other information which is deemed relevant. The minimum acceptable selling price of the parcel, as determined by the agency, shall be provided protected records status pursuant to Subsection 63-2-304(1) or 63-2-304(7) until the sale is consummated, unless otherwise ordered by the director.

(b) The agency shall conduct an economic analysis of the proposal, which shall include:

- i) appraisal;
- ii) real estate trends;
- iii) market demand;
- iv) opportunity costs including potential for appreciation; and
- v) associated management costs of retention.

## 3. Sale Determination

If the market analysis conducted pursuant to R850-80-500(2) above indicates that the increase in income to the trust from leasing the parcel, or from retaining the parcel for appreciation purposes, can reasonably be expected to exceed the return to the trust beneficiaries from the sale of the parcel, the director shall deny the sale application.

**R850-80-550. Methods of Sale.**

Upon authorization to sell trust land and related assets by the director pursuant to R850-80-300(2) or R850-80-500, the agency shall dispose of the land or assets using methods described below:

- 1. A public sale pursuant to R850-80-600, or
- 2. A negotiated sale to a party, either directly or using a broker or real estate marketing entity, after appropriate advertising of the proposed sale and 30-days prior written notice to the board and affected beneficiary institutions describing the terms, reasons and other pertinent facts of the proposed sale. Board approval is required in any of the following situations:

- (a) the value of the parcel exceeds \$100,000;
- (b) the parcel to be sold exceeds 320 acres in size; or

(c) advertising brings forth additional interested purchasers.

**R850-80-600. Public Sale Procedures.**

1. If a sale is authorized pursuant to R850-30-500(2)(h) or R850-80-400(4), the applicant shall be required to submit an amount equal to 10% of the offer to purchase. This amount shall constitute the applicant's bid for the purchase of the parcel and shall be provided protected records status pursuant to Subsection 63-2-304(1) or 63-2-304(7) until sealed bids are opened at a subsequent auction. The applicant will be allowed to enter into oral bidding subject to R850-80-600(5).

2. All sales shall be advertised through publication at least once each week for three consecutive weeks in one or more newspapers of general circulation in the county in which the land is located. Notices shall also be posted in the local governmental administrative building or courthouse and other appropriate locations. This advertisement shall indicate when and where the sale will be held. It shall contain a general description of the parcel to be sold including township, range and section and a brief description of where the parcel is located. The advertisement shall also indicate the agency office where parties interested in purchasing the land can obtain more information.

3. At least 30 days prior to the sale, notice shall be sent by certified mail to each person who owns property adjoining the land proposed for sale.

4. In addition to the requirements of R850-80-600(2), the agency may advertise sales using commonly accepted methods to the extent which the director has determined may reasonably increase the potential for additional bidding at the sale. Applicant's deposit for advertising specified by R850-80-300(1) will not be used for additional advertising.

## 5. Public sales shall commence with:

(a) the submission of fixed price sealed bids. A sealed bid shall contain an amount equal to at least 10% of the total amount offered to purchase the property. The agency may require these funds to be in the form of a certified check. On cash sales the purchaser shall pay the purchase price in full with guaranteed funds. The agency reserves the right to reject any bid however submitted. No less than three of those submitting the highest bids shall be allowed to enter into oral bidding, beginning at the amount of the highest sealed bid. The number of additional parties allowed to participate in oral bidding shall be those parties who submit a sealed bid that is within 20% of the third highest sealed bid. In the event that a parcel is offered both as one piece, and broken into several sub-parcels, the prevailing bidders for each of the sub-parcels shall be allowed to participate in the oral bidding when the parcel is offered as one piece. Current Grazing Permittees, Material Permittees and Special Use Lessees who submit sealed bids shall automatically qualify to enter into oral bidding, even if their sealed bid does not otherwise meet the qualifications described above. A bidder shall be held to the value of the bidder's sealed bid; or

(b) the payment of an agency-established bidding deposit. When the sales method outlined in this subsection is used, the agency may waive the requirement to not disclose the minimum acceptable sales price imposed by R850-80-500(2)(a).

6. If no bid submitted pursuant to R850-80-600(5)(a) equals or exceeds the minimum selling price, then the sale shall not be made except as provided below.

(a) The bidders who participated in the oral bidding may, at the discretion of the officer conducting the sale, be allowed to enter into additional oral bidding, with the starting amount being the previous high bid. In the event that more than one sealed bid was submitted, but there was no oral bidding, those persons having submitted a sealed bid who would have been allowed to enter into oral bidding pursuant to R850-80-600(5) shall be allowed to enter into oral bidding with the starting

amount being the highest sealed bid. To facilitate the sale of the parcel, the officer conducting the sale may divulge the minimum acceptable selling price;

(b) if there is still not a successful bidder, the person submitting the highest bid, whether it be sealed or oral, may request the agency to reevaluate the minimum selling price. If the agency chooses to accept the request of the person submitting the highest bid, it shall contract for an independent appraisal, the cost for which shall be borne by the requesting party. If this appraisal indicates a value less than the highest bid, then the agency may elect to notify the highest bidder by certified mail and give him two weeks from the date of notice in which to purchase the property pursuant to R850-80-600(7).

7. At the consummation of the sale, the agency shall collect at least 10% of the total sale price, interest on the unpaid balance from the date of sale to the first day of the following month, the advertising and appraisal costs, and a sales closing charge. The balance shall be payable in no more than 20 annual payments. The first payment shall be payable one year from the first day of the month following the sale; subsequent payments shall be payable on the first day of the same month each year thereafter until the balance is paid in full. Payments in excess of the current obligations shall be applied to principal. Any unpaid balance, plus interest to date, may be paid in full at any time without penalty.

8. The interest rate which shall be charged against any unpaid balance at the time of sale shall be the prime rate, as published by Zion's First National Bank, plus 2 1/2% (Prime Rate + 2 1/2%) as ascertained on the date that the sale is approved. Interest shall be calculated on a 365-day basis. Every year thereafter, the interest rate which shall be charged against the unpaid balance shall be the prime rate, as published by Zion's First National Bank, plus 2 1/2% (Prime Rate + 2 1/2%) as ascertained on the Monday prior to the first of the month previous to the due date of the annual installment.

9. Third parties owning authorized improvements on the parcel at the time of the sale shall be allowed 90 days to remove the improvements.

#### **R850-80-700. Certificates of Sale.**

1. As soon as reasonably possible following the sale, the agency shall prepare and deliver a certificate of sale to the purchaser. This certificate shall contain a legal description of the land purchased, and shall include information regarding the amount paid, the amount due, the time when the principal and interest shall become due, the beneficiary of the land, and any other terms, covenants, deed restrictions, or conditions which the agency finds appropriate. Upon payment in full, the agency shall issue a patent pursuant to Subsection 53C-4-102(7).

2. Certificates of sale shall be executed by the purchaser and returned to the agency within 30 days from the date of the purchaser's receipt of the certificate. If the certificate is not received by the agency within the 30 day period, certified notice will be sent to the purchaser giving notice that after 30 days the sale will be canceled with all monies received, including the down-payment, forfeited to the Trust Lands Administration. Notification by certified mail, return receipt requested, of this forfeiture provision shall accompany the transmittal of the certificate to the purchaser.

3. A certificate of sale shall be signed by the director after it has been signed by the purchaser and returned to the agency. The certificate and the agreement of sale shall not be final and no rights shall vest in the purchaser until the certificate is executed by the director. The agency reserves the right to reject bids for any reason prior to execution of the certificate by the director.

4. A certificate of sale may be assigned to any person qualified to purchase trust lands, provided that the assignment is approved by the agency, and that no assignment is effective

until approval is given by the director in writing.

5. An assignment must be consistent with these rules, executed by the assignee and assignor and acknowledged, and clearly set forth the certificate of sale number, the land involved, and the name and address of the assignee.

6. Assignment of a certificate of sale does not relieve the assignor from responsibility under the original contract.

7. Partial releases of property sold under certificates may be allowed at the discretion of the agency. The following conditions must be met:

(a) A partial release may only be made for parcels ten acres or larger;

(b) Access to the remainder of the land must be preserved without restriction;

(c) All utilities and infrastructure, including water, sewer and storm drains, electric power, and natural gas, installed on land covered by the certificate must have the capacity and capability to service all lands covered by the certificate;

(d) Unless the director makes a written finding that waiver of this condition would be in the best interests of the trust beneficiaries, payment shall be made to the agency in an amount equal to 125% of the price per acre paid by the purchaser under the certificate of sale, multiplied by the number of acres to be released, plus interest on that amount to the date payment is received. The payment shall be in the form of guaranteed funds, and shall be applied to principal. This payment shall not affect the amount or due dates of annual payments;

(e) Unless the director makes a written finding that waiver of this condition would be in the best interests of the beneficiaries, the 125% payment required by paragraph (d) above shall not include the 10% down payment required by statute or any other payment not designated by the payor, and accepted by the agency for that purpose;

(f) The buyer shall provide a survey and legal description prepared and sealed by a Utah Registered Land Surveyor of the parcel to be released; and

(g) The value of the remaining land shall not be reduced below the remaining principal balance of the certificate.

8. Certificates issued pursuant to this section shall contain provisions for remedies that the agency may elect in the event of default. Those remedies shall include, without limitation, acceleration of the debt, forfeiture, any remedy which the agency may pursue under the contract of sale, suit for judgment, foreclosure as provided for under Section 57-1-19 et seq. for trust deeds, and any other remedies afforded at law or equity. Purchasers who have defaulted on certificates of sale may be required to make larger down-payments on subsequent sales.

#### **R850-80-800. Agency-Initiated Sales.**

1. The agency may also offer lands for sale when they have been:

(a) Subdivided by the agency pursuant to Subsection 53C-4-102(4); or

(b) Otherwise subdivided pursuant to state law; and the subdivision is accepted by the director.

2. Sales of parcels pursuant to this section shall be made according to the following procedures:

(a) The agency may offer the subject parcels for sale after advertising pursuant to R850-80-600(2).

(b) The minimum acceptable sales price shall be no less than the appraised fair market value of the parcel and shall be disclosed.

(c) Sales shall be by public oral auction, with the minimum acceptable sales price as the starting bid. Buyers may be represented by third parties.

(d) Bidders must qualify by placing a deposit with the agency for each parcel on which they bid. The amount of the deposit shall be established by the agency for each public auction. Deposits shall be returned to unsuccessful bidders.

(e) Sealed bids shall be accepted from those unable to attend the auction and, if they equal or exceed the minimum acceptable sales price, shall be the starting bids in the oral auction. Sealed bids must clearly designate the lot on which the bid is made, and must include the qualifying deposit.

(f) Payment by the successful bidder shall be made pursuant to the applicable provisions of R850-80-600(7).

(g) In addition to the sales price, each purchaser of a parcel shall pay:

- i) a prorated portion of the appraisal costs; and
- ii) an application and sales processing charge.

(h) Other provisions of the sale shall be administered pursuant to R850-80-600(8), R850-80-600(10) and R850-80-700.

3. Over the Counter Sales

(a) Following a public auction, the director may designate any unsold parcel for over the counter sale. The designation shall continue in force for a period determined by the director, but not to exceed two years.

(b) The minimum acceptable price of an unsold parcel on an over the counter sale shall be set by the director, using one of the following:

- i) The average price of at least three parcels closest in size and characteristics which were sold at the related public auction under R850-80-800(2); or
- ii) A reappraisal.

4. At the discretion of the director, unsold parcels may be retained for offering at a subsequent public auction.

5. At the discretion of the director, unsold parcels may be listed with a realtor at the minimum acceptable price plus an amount equivalent to the commission which the realtor will charge on the sale.

**KEY: administrative procedures, sales**

**October 4, 2004**

**Notice of Continuation June 27, 2002**

**53C-1-302(1)(a)(ii)**

**53C-2-201(1)(a)**

**53C-4-101(1)**

**53C-4-102**

**53C-4-202(6)**

**63-2-304**

**72-5-203(1)(a)(i)**

**72-5-203(2)(a)**

**R861. Tax Commission, Administration.****R861-1A. Administrative Procedures.****R861-1A-1. Administrative Procedures Pursuant to Utah Code Ann. Section 59-1-210.**

A. Definitions as used in this rule:

1. "Agency" means the Tax Commission of the state of Utah.
2. "Agency head" means the Tax Commission of the state of Utah, or one or more tax commissioners.
3. "Appeal" means appeal from an order of the Commission to an appropriate judicial authority.
4. "Commission" means the Tax Commission of the state of Utah.
5. "Conference" means an informal meeting of a party or parties with division heads, officers, or employees designated by division heads and informal meetings between parties to an adjudicative proceeding and a presiding officer.
6. "Division" means any division of the Tax Commission, including but not restricted to the Auditing Division, Property Tax Division, Motor Vehicle Division, Motor Vehicle Business Administration Division, Data Processing Division, and the Operations Division.
7. "Hearing" means a proceeding, formal or informal, at which the parties may present evidence and arguments to the presiding officer in relation to a particular order or rule.
8. "Officer" means an employee of the Commission in a supervisory or responsible capacity.
9. "Order" means the final disposition by the Commission of any particular controversy or factual matter presented to it for its determination.
10. "Presiding officer" means one or more tax commissioners, administrative law judge, hearing officer, and other persons designated by the agency head to preside at hearings and adjudicative proceedings.
11. "Quorum" means three or more members of the Commission.
12. "Record" means that body of documents, transcripts, recordings, and exhibits from a hearing submitted for review on appeal.
13. "Rule" means an officially adopted Commission rule.
14. "Rulemaking Power" means the Commission's power to adopt rules and to administer the laws relating to the numerous divisions.
15. All definitions contained in the Administrative Procedures Act, Utah Code Ann. Section 63-46b-2 as amended, are hereby adopted and incorporated herein.

**R861-1A-2. Rulemaking Power Pursuant to Utah Code Ann. Section 59-1-210 and 63-46a-4.**

A. Policy and Scope. In accordance with the responsibility placed upon it by law, the Commission shall enact appropriate rules. These rules shall prescribe practices and procedures for the Commission and other state and county officials and agencies over which the Commission has supervisory power and shall interpret laws the Commission is charged with administering when such interpretation is deemed necessary and in the public interest.

B. Preparation. In the preparation of rules the Commission may refer to appropriate materials and consult such parties as it deems advisable, whether or not such persons are employees of the Commission. Drafts of proposed rules may be submitted to the Office of the Attorney General for examination as to legality and form.

C. Notice and Hearing. The Commission may publish, by means of local communication, notice of its intent to exercise its rulemaking power in a particular area. Notice therein will be given of a scheduled hearing or hearings not sooner than 15 days after such notice, at which hearing or hearings any party who would be substantially affected by such exercise may

present argument in support thereof or in objection thereto. Such notice and hearing or hearings will be instituted when the Commission deems them to be of substantial value and in the public interest or in accordance with Utah Code Ann. Section 63-46a-5. Such notice and hearing or hearings shall not be a prerequisite to the validity of any rule.

D. Adoption. Rules will be adopted by the Commission at formal meetings with a quorum present. Adopted rules will be written and entered into the official minutes of the Commission, which minutes are a public record available for examination by interested members of the public at the Commission offices. This proceeding and no other will be necessary for validity, unless otherwise required by the rulemaking procedures.

E. Effective Date. In accordance with Utah Code Ann. Section 63-46a-4.

F. Publication. Copies of adopted rules will be prepared and made available to interested parties requesting the same. Such rules may also be published periodically in booklets and bulletins. It shall be the policy of the Commission to provide for publication of all new rules at the time of each compilation of rules in the particular area. No rule, however, shall be deemed invalid by failure to prepare copies for distribution or to provide for publication in the manner herein described.

G. Petitions for Exercise of Rulemaking Power. The Commission may be petitioned to exercise its power to adopt a rule of general application. Such petition shall be submitted in writing by any party who would be substantially and directly affected by such rule. The Commission will have wide discretion in this area and will exercise this rulemaking power upon petition only when it deems that such exercise would be of substantial value to the citizens of Utah. If the Commission accepts such a petition, it may adopt such rule as it deems appropriate; however, the petitioning party may submit a proposed rule for the consideration of the Commission. If the Commission acts favorably upon such a petition, it will adopt and publish the rule in the manner hereinabove described, and in addition notify the petitioner of such adoption by mail at his last known address. If the Commission declines to act on such petition, it will so notify the petitioning party in the same manner.

H. Repeal and Amendment. The procedure above described for the enactment of rules shall also be followed for the amendment or repeal of existing rules.

**R861-1A-3. Division and Prehearing Conferences Pursuant to Utah Code Ann. Section 59-1-210 and 63-46b-1.**

A. Division Conferences. Any party directly affected by a Commission action or contemplated action may request a conference with the supervisor or designated officer of the division involved in relation to such action. Such request may be either oral or written, and such conference will be conducted in an informal manner in an effort to clarify and narrow the issues and problems involved. The party requesting such conference will be notified of the result of the same, either orally or in writing, in person or through counsel, at the conclusion of such conference or within a reasonable time thereafter. Such conference may be held at any time prior to a hearing, whether or not a petition for such hearing, appeal, or other commencement of an adjudicative proceeding has been filed.

B. Prehearing Conferences. In any matter pending before the Tax Commission, the presiding officer may, after prior written notice, require the parties to appear for a prehearing conference. Such prehearing conferences may be by telephone if the presiding officer determines that it will be more expeditious and will not adversely affect the rights of any party. Prehearing conferences will be for the purposes of encouraging settlement, clarifying the issues, simplifying the evidence,

facilitating discovery, and expediting the proceedings. In furthering those purposes, the presiding officer may request that the parties make proffers of proof or written prehearing conference statements as to what they believe the evidence will show at the hearing. After hearing such proffers of proof and reviewing written statements, the presiding officer may then advise the parties how he views each side of the evidence and state how he believes the Commission may rule if evidence at the hearing is as proffered at the prehearing conference, and then invite the parties to see if a stipulation can be reached which would settle the matter. If a settlement is reached by way of stipulation, the presiding officer may sign and enter an order in the proceeding. If a settlement is not reached, the presiding officer shall enter an order on the prehearing conference which clarifies the issues, simplifies the evidence, facilitates and limits discovery, and expedites the proceedings to a reasonable extent.

**R861-1A-9. Tax Commission as Board of Equalization Pursuant to Utah Code Ann. Sections 59-2-212, 59-2-1004, and 59-2-1006.**

A. Equalization Responsibilities. The Commission will sit as the State Board of Equalization in discharge of the equalization responsibilities given it by law. The Commission may sit on its own initiative to correct the valuation of property that has been overassessed, underassessed, or nonassessed as described in Section 59-2-212, and as a board of appeal from the various county boards of equalization described in Section 59-2-1004.

B. Proceedings. In all cases, appeals to the Commission shall be scheduled for hearing pursuant to Commission rules.

C. Appeals from county boards of equalization.

1. A notice of appeal filed by the taxpayer with the auditor pursuant to Section 59-2-1006 shall be presumed to have been timely filed unless the county provides convincing evidence to the contrary. In the absence of evidence of the date of mailing of the county board of equalization decision by the county auditor to the taxpayer, it shall be presumed that the decision was mailed three days after the meeting of the county board of equalization at which the decision was made.

2. If the county has not formally adopted board of equalization rules and procedures under Section 59-2-1001 that have been approved by the Commission, the procedures contained in this rule must be followed.

3. An appeal from a decision of a county board must be presented upon the same issues as were submitted to the county board in the first instance. The Commission shall consider, but is not limited to, the facts and evidence submitted to the county board.

4. The county board of equalization or county hearing officer shall prepare minutes of hearings held before them on property tax appeals. The minutes shall constitute the record on appeal.

a) For appeals concerning property value, the record shall include:

- (1) the name and address of the property owner;
- (2) the identification number, location, and description of the property;
- (3) the value placed on the property by the assessor;
- (4) the basis stated in the taxpayer's appeal;
- (5) facts and issues raised in the hearing before the county board that are not clearly evident from the assessor's records; and
- (6) the decision of the county board of equalization and the reasons for the decision.

b) Exempt Property. With respect to a decision affecting the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.

5. Appeals from dismissal by the county boards of

equalization.

a) Decisions by the county board of equalization are final orders on the merits, and appeals to the Commission shall be on the merits except for the following:

- (1) dismissal for lack of jurisdiction;
- (2) dismissal for lack of timeliness;
- (3) dismissal for lack of evidence to support a claim for relief.

b) On an appeal from a dismissal by a county board for the exceptions under C.5.a), the only matter that will be reviewed by the Commission is the dismissal itself, not the merits of the appeal.

c) An appeal may be dismissed for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.

6. An appeal filed with the Commission may be remanded to the county board of equalization for further proceedings if the Commission determines that:

- a) dismissal under C.5.a)(1) or (3) was improper;
- b) the taxpayer failed to exhaust all administrative remedies at the county level; or
- c) in the interest of administrative efficiency, the matter can best be resolved by the county board.

7. An appeal filed with the Commission shall be remanded to the county board of equalization for further proceedings if the Commission determines that dismissal under C.5.a)(2) is improper under R884-24P-66.

8. To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:

- a) the name and address of the property owner;
- b) the identification number, location, and description of the property;
- c) the value placed on the property by the assessor;
- d) the taxpayer's estimate of the fair market value of the property; and
- e) a signed statement providing evidence or documentation that supports the taxpayer's claim for relief.

9. If no signed statement is attached, the county will notify the taxpayer of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.

10. If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation under C.8.e), the county shall send the taxpayer a notice of intent to dismiss, and permit the taxpayer at least 20 calendar days to supply the evidence or documentation. If the taxpayer fails to provide the evidence or documentation within 20 days, the county board of equalization may dismiss the matter for lack of evidence to support a claim for relief.

11. If the minimum information required under C.8. is supplied and the taxpayer produces the evidence or documentation described in the taxpayer's signed statement under C.8.e), the county board of equalization shall render a decision on the merits of the case.

**R861-1A-10. Miscellaneous Provisions Pursuant to Utah Code Ann. Section 59-1-210.**

A. Rights of Parties. Nothing herein shall be construed to remove or diminish any right of any party under the Constitution of the United States, the Constitution of the state of Utah, or any existing law.

B. Effect of Partial Invalidation. If any part of these rules be declared unconstitutional or in conflict with existing statutory law by a court of competent jurisdiction, the remainder shall not be affected thereby and shall continue in full force and effect.

C. Enactment of Inconsistent Legislation. Any statute

passed by the Utah Legislature inconsistent with these rules or any part thereof will effect a repeal of that part of these rules with which it is inconsistent, but of no other part.

D. Presumption of Familiarity. It will be presumed that parties dealing with the Commission are familiar with:

1. these rules and the provisions thereof,
2. the revenue laws of the state of Utah, and
3. all rules enacted by the Commission in its administration thereof.

**R861-1A-11. Appeal of Corrective Action Order Pursuant to Utah Code Ann. Section 59-2-704.**

A. Appeal of Corrective Action Order. Any county appealing a corrective action order issued pursuant to Section 59-2-704, shall, within 10 days of the mailing of the order, request in writing a hearing before the Commission. The Commission shall immediately set the time and place of the hearing, which shall be held no later than June 30 of the tax year to which the corrective action order applies.

B. Hearings. Hearings on corrective action order appeals shall be conducted as formal hearings and shall be governed by the procedures contained in these rules. If the parties are able to stipulate to a modification of the corrective action order, and it is evident that there is a reasonable basis for modifying the corrective action order, an amended corrective action order may be executed by the Commission. One or more commissioners may preside at a hearing under this rule with the same force and effect as if a quorum of the Commission were present. However, a decision must be made and an order signed by a quorum of the Commission.

C. Decisions and Orders. The Commission shall render its decision and order no later than July 10 of the tax year to which the corrective action order applies. Upon reaching a decision, the Commission shall immediately notify the clerk of the county board of equalization and the county assessor of that decision.

D. Sales Information. Access to Commission property sales information shall be available by written agreement with the Commission to any clerk of the county board of equalization and county assessor appealing under this rule. All other reasonable and necessary information shall be available upon request, according to Commission guidelines.

E. Conflict with Other Rules. This rule supersedes all other rules that may otherwise govern these proceedings before the Commission.

**R861-1A-12. Policies and Procedures Regarding Public Disclosure Pursuant to Utah Code Ann. Section 59-1-210.**

This rule outlines the policies and procedures of the Commission regarding the public disclosure of and access to documents, workpapers, decisions, and other information prepared by the Commission under provisions of Utah Code Ann. Section 59-1-210.

A. Property Tax Orders. Property tax orders signed by the Commission will be mailed to the appropriately named parties in accordance with the Commission's rules of procedure. Property tax orders may also be made available to persons other than the named parties upon written request to the Commission. Nonparty requests will be subject to the following limitations.

1. If, upon consultation with the taxpayer, the Commission determines that a particular property tax order contains information which, if disclosed, would constitute a significant competitive disadvantage to the taxpayer, the Commission may either prohibit the disclosure of the order or require that applicable information be removed from the order prior to it being made publicly available.

2. The limitation in subsection 1. does not apply if the taxpayer affirmatively waives protection against disclosure of the information.

B. Other Tax Orders. Written orders signed by the

Commission relating to all tax appeals other than property tax matters will also be mailed to the appropriately named parties in accordance with the Commission rules of procedure. Copies of these orders or information about them will not be provided to any person other than the named parties except for the following circumstances:

1. if the Commission determines that the parties have affirmatively waived any claims to confidentiality; or
2. if the Commission determines that the orders may be effectively sanitized through the deletion of references to the parties, specific tax amounts, or any other information attributable to a return filed with the Commission.

C. Imposition and Waiver of Penalty and Interest.

1. All facts surrounding the imposition of penalty and interest charges as well as requests for waiver of penalty and interest charges are considered confidential and will not be disclosed to any persons other than the parties specifically involved. These facts include the names of the involved parties, the amount of penalty and interest, type of tax involved, amount of the tax owed, reasons for the imposition of the penalty and interest, and any other information relating to imposition of the penalty and interest, except as follows:
  - (a) if the Commission affirmatively determines that a finding of fraud is involved and seeks the imposition of the appropriate fraud penalties, the Commission may make all pertinent facts available to the public once legal action against the parties has been commenced; or
  - (b) if the Commission determines that the parties have affirmatively waived their rights to confidentiality, the Commission will make all pertinent facts available to the public.

D. Commission Notes and Workpapers.

1. All workpapers, notes, and other material prepared by the commissioners, as well as staff and employees of the Commission, are to be considered confidential, and access to the specific material is restricted to employees of the Commission and its legal counsel only. Examples of this restricted material include audit workpapers and notes, ad valorem appraisal worksheets, and notes taken during hearings and deliberations. In the case of information prepared as part of an audit, the auditing division will, upon request, provide summary information of the findings to the taxpayer. These items will not be available to any person or party by discovery carried out pursuant to these rules or the Utah Rules of Civil Procedure.
2. Relevant workpapers of the property tax division prepared in connection with the assessment of property by the Commission, pursuant to the provisions of Utah Code Ann. Section 59-2-217, shall be provided to the owner of the property to which the assessment relates, at the owner's request.

E. Reciprocal Agreements. Pursuant to Utah Code Ann. Sections 59-7-537, 59-10-545 and 59-12-109, the Commission may enter into individual reciprocal agreements to share specific tax information with authorized representatives of the United States Internal Revenue Service, tax officials of other states, and representatives of local governments within the state of Utah; provided, however, that no information will be provided to any governmental entity if providing such information would violate any statute or any agreement with the Internal Revenue Service.

F. Other Agreements. Pursuant to Utah Code Ann. Section 59-12-109, the Commission may provide departments and political subdivisions of the state of Utah with copies of returns and other information required by Chapter 12 of Title 59. This information is available only in official matters and must be requested in writing by the head of the department or political subdivision. The request must specifically indicate the information being sought and how the information will be used. The Commission will respond in writing to the request and shall impose conditions of confidentiality on the use of the information disclosed.

G. Multistate Tax Commission. The Commission is



authorized to share specific tax information for audit purposes with the Multistate Tax Commission.

H. Statistical Information. The Commission authorizes the preparation and publication of statistical information regarding the payment and collection of state taxes. The information will be prepared by the various divisions of the Commission and made available after review and approval of the Commission.

I. Public Record Information. Pursuant to Utah Code Ann. 59-1-403(3)(c), the Commission may publicize the name and other appropriate information, as contained in the public record, concerning delinquent taxpayers, including their addresses, the amount of money owed by tax type, as well as any legal action taken by the Commission, including charges filed, property seized, etc. No information will be released which is not part of the existing public record.

**R861-1A-13. Requests for Accommodation and Grievance Procedures Pursuant to Utah Code Ann. Section 63-46a-3(2), 28 CFR 35.107 1992 edition, and 42 USC 12201.**

A. Disabled individuals may request reasonable accommodations to services, programs, or activities, or a job or work environment in the following manner.

1. Requests shall be directed to:

Accommodations Coordinator  
Utah State Tax Commission  
210 North 1950 West  
Salt Lake City, Utah 84134

Telephone: 801-297-3811 TDD: 801-297-3819 or relay at 711

2. Requests shall be made at least three working days prior to any deadline by which the accommodation is needed.

3. Requests shall include the following information:

- a) the individual's name and address;
- b) a notation that the request is made in accordance with the Americans with Disabilities Act;
- c) a description of the nature and extent of the individual's disability;
- d) a description of the service, program, activity, or job or work environment for which an accommodation is requested; and

e) a description of the requested accommodation if an accommodation has been identified.

B. The accommodations coordinator shall review all requests for accommodation with the applicable division director and shall issue a reply within two working days.

1. The reply shall advise the individual that:

- a) the requested accommodation is being supplied; or
- b) the requested accommodation is not being supplied because it would cause an undue hardship, and shall suggest alternative accommodations. Alternative accommodations must be described; or
- c) the request for accommodation is denied. A reason for the denial must be included; or
- d) additional time is necessary to review the request. A projected response date must be included.

2. All denials of requests under Subsections (1)(b) and (1)(c) shall be approved by the executive director or designee.

3. All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

C. Disabled individuals who are dissatisfied with the reply to their request for accommodation may file a request for review with the executive director in the following manner.

1. Requests for review shall be directed to:

Executive Director  
Utah State Tax Commission  
210 North 1950 West  
Salt Lake City, Utah 84134

Telephone: 801-297-3841 TDD: 801-297-3819 or relay

at 711

2. A request for review must be filed within 180 days of the accommodations coordinator's reply.

3. The request for review shall include:

- a) the individual's name and address;
- b) the nature and extent of the individual's disability;
- c) a copy of the accommodation coordinator's reply;
- d) a statement explaining why the reply to the individual's request for accommodation was unsatisfactory;
- e) a description of the accommodation desired; and
- f) the signature of the individual or the individual's legal representative.

D. The executive director shall review all requests for review and shall issue a reply within 15 working days after receipt of the request for review.

1. If unable to reach a decision within the 15 working day period, the executive director shall notify the individual with a disability that the decision is being delayed and the amount of additional time necessary to reach a decision.

2. All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

E. The record of each request for review, and all written records produced or received as part of each request for review, shall be classified as protected under Section 63-2-304 until the executive director issues a decision.

F. Once the executive director issues a decision, any portions of the record that pertain to the individual's medical condition shall remain classified as private under Section 63-2-302 or controlled under Section 63-2-303, whichever is appropriate. All other information gathered as part of the appeal shall be classified as private information. Only the written decision of the executive director shall be classified as public information.

G. Disabled individuals who are dissatisfied with the executive director's decision may appeal that decision to the Tax Commission in the manner provided in Sections 63-46b-1 through 63-46b-22.

**R861-1A-15. Requirement of Social Security and Federal Identification Numbers Pursuant to Utah Code Ann. Section 59-1-210.**

A. Taxpayers shall provide the Tax Commission with their social security number or federal identification number, as required by the Tax Commission.

B. Sole proprietor and partnership applicants shall provide the Tax Commission with the following information for every owner or partner of the applying entity:

1. name;
2. home address;
3. social security number and federal identification number, as required by the Tax Commission.

C. Corporation and limited liability applicants shall provide the Tax Commission with the following information for every officer or managing member of the applying entity:

1. name;
2. home address; and
3. social security number and federal identification number, as required by the Tax Commission.

D. Business trust applicants shall provide the Tax Commission with the following information for the responsible trustees:

1. name;
2. home address; and
3. social security number and federal identification number, as required by the Tax Commission.

**R861-1A-16. Utah State Tax Commission Management Plan Pursuant to Utah Code Ann. Section 59-1-207.**

A. The executive director reports to the commission. The executive director shall meet with the commission periodically to report on the status and progress of this agreement, update the commission on the affairs of the agency and seek policy guidance. The chairman of the commission shall designate a liaison of the commission to coordinate with the executive director in the execution of this agreement.

B. The structure of the agency is as follows:

1. The Office of the Commission, including the commissioners and the following units that report to the commission:

- a) Internal Audit;
- b) Appeals;
- c) Economic and Statistical; and
- d) Public Information.

2. The Office of the Executive Director, including the executive director's staff and the following divisions that report to the executive director:

- a) Administration;
- b) Taxpayer Services;
- c) Motor Vehicle;
- d) Auditing;
- e) Property Tax;
- f) Technology Management;
- g) Processing; and
- h) Motor Vehicle Enforcement.

C. The commission hereby delegates full authority for the following functions to the executive director:

1. general supervision and management of the day to day operations and business of the agency conducted through the Office of the Executive Director and through the divisions set out in B.2;

2. management of the day to day relationships with the customers of the agency;

3. all original assessments, including adjustments to audit, assessment, and collection actions, except as provided in C.4. and D;

4. waivers of penalty and interest or offers in compromise agreements in amounts under \$10,000, in conformance with standards established by the commission;

5. except as provided in D.7., voluntary disclosure agreements with companies, including multilevel marketers;

6. determination of whether a county or taxing entity has satisfied its statutory obligations with respect to taxes and fees administered by the Tax Commission;

7. human resource management functions, including employee relations, final agency action on employee grievances, and development of internal policies and procedures; and

8. administration of Title 63, Chapter 2, Government Records Access and Management Act.

D. The executive director shall prepare and, upon approval by the commission, implement the following actions, agreements, and documents:

1. the agency budget;
2. the strategic plan of the agency;
3. administrative rules and bulletins;
4. waivers of penalty and interest in amounts of \$10,000 or more as per the waiver of penalty and interest policy;
5. offer in compromise agreements that abate tax, penalty and interest over \$10,000 as per the offer in compromise policy;
6. stipulated or negotiated agreements that dispose of matters on appeal; and
7. voluntary disclosure agreements that meet the following criteria:

a) the company participating in the agreement is not licensed in Utah and does not collect or remit Utah sales or corporate income tax; and

b) the agreement forgives a known past tax liability of \$10,000 or more.

E. The commission shall retain authority for the following functions:

1. rulemaking;
2. adjudicative proceedings;
3. private letter rulings issued in response to requests from individual taxpayers for guidance on specific facts and circumstances;
4. internal audit processes;
5. liaison with the governor's office;

a) Correspondence received from the governor's office relating to tax policy will be directed to the Office of the Commission for response. Correspondence received from the governor's office that relates to operating issues of the agency will be directed to the Office of the Executive Director for research and appropriate action. The executive director shall prepare a timely response for the governor with notice to the commission as appropriate.

b) The executive director and staff may have other contact with the governor's office upon appropriate notice to the commission; and

6. liaison with the Legislature.

a) The commission will set legislative priorities and communicate those priorities to the executive director.

b) Under the direction of the executive director, staff may be assigned to assist the commission and the executive director in monitoring legislative meetings and assisting legislators with policy issues relating to the agency.

F. Correspondence that has been directed to the commission or individual commissioners that relates to matters delegated to the executive director shall be forwarded to a staff member of the Office of the Executive Director for research and appropriate action. A log shall be maintained of all correspondence and periodically the executive director will review with the commission the volume, nature, and resolution of all correspondence from all sources.

G. The executive director's staff may occasionally act as support staff to the commission for purposes of conducting research or making recommendations on tax issues.

1. Official communications or assignments from the commission or individual commissioners to the staff reporting to the executive director shall be made through the executive director.

2. The commissioners and the Office of the Commission staff reserve the right to contact agency staff directly to facilitate a collegial working environment and maintain communications within the agency. These contacts will exclude direct commands, specific policy implementation guidance, or human resource administration.

H. The commission shall meet with the executive director periodically for the purpose of exchanging information and coordinating operations.

1. The commission shall discuss with the executive director all policy decisions, appeal decisions or other commission actions that affect the day to day operations of the agency.

2. The executive director shall keep the commission apprised of significant actions or issues arising in the course of the daily operation of the agency.

3. When confronted with circumstances that are not covered by established policy or by instances of real or potential conflicts of interest, the executive director shall refer the matter to the commission.

#### **R861-1A-18. Allocations of Remittances Pursuant to Utah Code Ann. Sections 59-1-210 and 59-1-705.**

A. Remittances received by the commission shall be applied first to penalty, then interest, and then to tax for the filing period and account designated by the taxpayer.

B. If no designation for period is made, the commission

shall allocate the remittance so as to satisfy all penalty, interest, and tax for the oldest period before applying any excess to other periods.

C. Fees associated with Tax Commission collection activities shall be allocated from remittances in the manner designated by statute. If a statute does not provide for the manner of allocating those fees from remittances, the commission shall apply the remittance first to the collection activity fees, then to penalty, then interest, and then to tax for the filing period.

**R861-1A-19. Definition of Bond Pursuant to Utah Code Ann. Section 59-1-505.**

A. The bond that a taxpayer may deposit with the Tax Commission pursuant to Section 59-1-505 shall consist of one of the following:

1. a surety bond;
2. an assignment of savings account; or
3. an assignment of certificate of deposit.

**R861-1A-20. Time of Appeal Pursuant to Utah Code Ann. Sections 59-1-301, 59-1-501, 59-2-1007, 59-7-517, 59-10-532, 59-10-533, 59-10-535, 59-12-114, 59-13-210, 63-46b-3, and 63-46b-14.**

A. A request for a hearing to correct a property tax assessment pursuant to Section 59-2-1007 must be in writing. The request is deemed to be timely if:

1. it is received in the Tax Commission offices on or before the close of business of the last day of the time frame provided by statute; or
2. the date of the postmark on the envelope or cover indicates that the request was mailed on or before June 1.

B. A petition for redetermination is deemed to be timely if:

1. the petition is received in the Tax Commission offices on or before the close of business of the last day of the time frame provided by statute; or
2. the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the time frame provided by statute.

C. Any party adversely affected by an order of the Commission may seek judicial review within the time frame provided by statute. Copies of the appeal shall be served upon the Commission and upon the Office of the Attorney General.

**R861-1A-21. Rulings by the Commission Pursuant to Utah Code Ann. Section 59-1-205.**

A. A quorum of the commission must participate in any order which constitutes final agency action on an adjudicative matter.

B. The party charged with the burden of proof or the burden of overcoming a statutory presumption shall prevail only if a majority of the participating commissioners rules in that party's favor.

**R861-1A-22. Petitions for Commencement of Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501, and 63-46b-3.**

A. Time for Petition. Unless otherwise provided by Utah statute, petitions for adjudicative actions shall be filed within the time frames specified in R861-1A-20. If the last day of the 30-day period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next Tax Commission business day.

B. Contents. A petition for adjudicative action need not be in any particular form, but shall be in writing and, in addition to the requirements of Utah Code Ann. Section 63-46b-3, shall contain the following:

1. name and street address and, if available, a fax number or e-mail address of petitioner or the petitioner's representative;

2. a telephone number where the petitioning party or that party's representative can be reached during regular business hours;

3. petitioner's tax identification, social security number or other relevant identification number, such as real property parcel number or vehicle identification number;

4. particular tax or issue involved, period of alleged liability, amount of tax in dispute, and, in the case of a property tax issue, the lien date;

5. if the petition results from a letter or notice, the petition will include the date of the letter or notice and the originating division or officer; and

6. in the case of property tax cases, the assessed value sought.

C. Effect of Nonconformance. The commission will not reject a petition because of nonconformance in form or content, but may require an amended or substitute petition meeting the requirements of this section when such defects are present. An amended or substitute petition must be filed within 15 days after notice of the defect from the commission.

**R861-1A-23. Designation of Adjudicative Proceedings Pursuant to Utah Code Ann. Section 63-46b-4.**

A. All matters shall be designated as formal proceedings and set for a prehearing conference, an initial hearing, or a scheduling conference pursuant to R861-1A-26.

B. A matter may be diverted to a mediation process pursuant to R861-1A-32 upon agreement of the parties and the presiding officer.

**R861-1A-24. Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-502.5, 63-46b-8, and 63-46b-10.**

A. At a formal proceeding, an administrative law judge appointed by the commission or a commissioner may preside.

1. Assignment of a presiding officer to a case will be made pursuant to agency procedures and not at the request of any party to the appeal.

2. Once assigned, the presiding officer will preside at all steps of the formal proceeding except as otherwise indicated in these rules or as internal staffing requirements dictate.

B. Unless waived by the petitioner, a formal proceeding includes an initial hearing pursuant to Section 59-1-502.5, and may also involve a formal hearing on the record.

1. Initial Hearing.

- a) An initial hearing pursuant to Section 59-1-502.5 shall be in the form of a conference.

- b) Any issue may be settled in the initial hearing, but any party has a right to a formal hearing on matters that remain in dispute at the conclusion of the initial hearing. As to those matters, a party must pursue a formal hearing and final agency action before pursuing judicial review of unsettled matters.

2. Formal Hearing on the Record.

- a) Formal hearings on the record shall be conducted by a presiding officer under 2.b) or by the commission sitting as panel under 2.c).

- b) Except as provided in 2.c., all formal hearings will be heard by the presiding officer.

- (1) Within the time period specified by statute, the presiding officer shall sign a decision and order in accordance with Section 63-46b-10 and forward the decision to the Commission for automatic agency review.

- (2) A quorum of the commission shall review the decision. If a majority of the participating commissioners concur with the decision, a statement affirming the decision shall be affixed to the decision and signed by the concurring commissioners to indicate that the decision represents final agency action. The order is subject to petition for reconsideration or to judicial review.

(3) If, on agency review, a majority of the commissioners disagree with the decision, the case may be remanded to the presiding officer for further action, amended or reversed. If the presiding officer's decision is amended or reversed, the commission shall issue its decision and order, and that decision and order shall represent final agency action on the matter.

c) The commission, on its own motion, upon petition by a party to the appeal, or upon recommendation of the presiding officer, may sit as a panel at the formal hearing on the record if the case involves an important issue of first impression, complex testimony and evidence, or testimony requiring a prolonged hearing.

(1) A panel of the commission shall consist of two or more commissioners

(2) An order issued from a hearing before a panel of commissioners shall constitute final agency action, and it is subject to petition for reconsideration or to judicial review.

**R861-1A-26. Procedures for Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501 and 63-46b-6 through 63-46b-11.**

**A. Prehearing and Scheduling Conference.**

1. At the conference, the parties and the presiding officer shall:

- a) establish ground rules for discovery;
- b) discuss scheduling;
- c) clarify other issues;
- d) determine whether to divert the action to a mediation process; and
- e) determine whether the initial hearing will be waived and whether the commission will preside as a panel at the formal hearing on the record pursuant to R861-1A-24.

2. The prehearing and scheduling conference may be converted to an initial hearing upon agreement of the parties.

**B. Notice of Hearing.** At least ten days prior to a hearing date, the Commission shall notify the petitioning party or the petitioning party's representative by mail, e-mail, or facsimile of the date, time and place of any hearing or proceeding.

**C. Proceedings Conducted by Telephone.** Any proceeding may be held with one or more of the parties on the telephone if the presiding officer determines that it will be more convenient or expeditious for one or more of the parties and does not unfairly prejudice the rights of any party. Each party to the proceeding is responsible for notifying the presiding officer of the telephone number where contact can be made for purposes of conducting the hearing.

**D. Representation.**

1. A party may pursue a petition without assistance of counsel or other representation. However, a party may be represented by legal counsel or other representation at every stage of adjudication. Failure to obtain legal representation shall not be grounds for complaint at a later stage in the adjudicative proceeding or for relief on appeal from an order of the commission.

- a) Legal counsel must enter an appearance.
- b) Any representative other than legal counsel must submit a signed power of attorney authorizing the representative to act on the party's behalf and binding the party by the representative's action.
- c) All documents will be directed to the party's representative. Documents may be transmitted by facsimile number, e-mail address or other electronic means if such transmission does not breach confidentiality. Otherwise, documents will be mailed to or served upon the representative's street address as shown in the petition for agency action.

2. Any division of the commission named as party to the proceeding may be represented by the Attorney General's Office.

**E. Subpoena Power.**

1. The presiding officer may issue subpoenas to secure the

attendance of witnesses or the production of evidence.

a) The party requesting the subpoena must prepare it and submit it to the presiding officer for signature.

b) Service of the subpoena shall be made by the party requesting it in a manner consistent with the Utah Rules of Civil Procedure.

**F. Motions.**

1. Consolidation. The presiding officer has discretion to consolidate cases when the same tax assessment, series of assessments, or issues are involved in each, or where the fact situations and the legal questions presented are virtually identical.

2. Continuance. A continuance may be granted at the discretion of the presiding officer.

3. Default. The presiding officer may enter an order of default against a party in accordance with Section 63-46b-11.

a) The default order shall include a statement of the grounds for default and shall be delivered to all parties by electronic means or, if electronic transmission is unavailable, by U.S. mail.

b) A defaulted party may seek to have the default set aside according to procedures set forth in the Utah Rules of Civil Procedure.

4. Ruling on Procedural Motions. Procedural motions may be made during the hearing or by written motion.

a) Each motion shall include the grounds upon which it is based and the relief or order sought. Copies of written motions shall be served upon all other parties to the proceeding.

b) Upon the filing of any motion, the presiding officer may:

- (1) grant or deny the motion; or
- (2) set the matter for briefing, hearing, or further proceedings.

**R861-1A-27. Discovery Pursuant to Utah Code Ann. Section 63-46b-7.**

**A.** Discovery procedures in formal proceedings shall be established during the prehearing and scheduling conference in accordance with the Utah Rules of Civil Procedure and other applicable statutory authority.

**B.** The party requesting information or documents may be required to pay in advance the costs of obtaining or reproducing such information or documents.

**R861-1A-28. Evidence in Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-210, 76-8-502, 76-8-503, 63-46b-8.**

**A.** Except as otherwise stated in this rule, formal proceedings shall be conducted in accordance with the Utah Rules of Evidence, and the degree of proof in a hearing before the commission shall be the same as in a judicial proceeding in the state courts of Utah.

**B.** Every party to an adjudicative proceeding has the right to introduce evidence. The evidence may be oral or written, real or demonstrative, direct or circumstantial.

1. The presiding officer may admit any reliable evidence possessing probative value which would be accepted by a reasonably prudent person in the conduct of his affairs.

2. The presiding officer may admit hearsay evidence. However, no decision of the commission will be based solely on hearsay evidence.

3. If a party attempts to introduce evidence into a hearing, and that evidence is excluded, the party may proffer the excluded testimony or evidence to allow the reviewing judicial authority to pass on the correctness of the ruling of exclusion on appeal.

**C.** At the discretion of the presiding officer or upon stipulation of the parties, the parties may be required to reduce their testimony to writing and to prefile the testimony.

1. Prefiled testimony may be placed on the record without being read into the record if the opposing parties have had reasonable access to the testimony before it is presented. Except upon finding of good cause, reasonable access shall be not less than ten working days.

2. Prefiled testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness.

3. The presiding officer may require the witness to present a summary of the prefiled testimony. In that case, the witness shall reduce the summary to writing and either file it with the prefiled testimony or serve it on all parties within 10 days after filing the testimony.

4. If an opposing party intends to cross-examine the witness on prefiled testimony or the summary of prefiled testimony, that party must file a notice of intent to cross-examine at least 10 days prior to the date of the hearing so that witness can be scheduled to appear or within a time frame agreed upon by the parties.

D. The presiding officer shall rule and sign orders on matters concerning the evidentiary and procedural conduct of the proceeding.

E. Oral testimony at a formal hearing will be sworn. The oath will be administered by the presiding officer or a person designated by him. Anyone testifying falsely under oath may be subject to prosecution for perjury in accordance with the provisions of Sections 76-8-502 and 76-8-503.

F. Any party appearing in an adjudicative proceeding may submit a memorandum of authorities. The presiding officer may request a memorandum from any party if deemed necessary for a full and informed consideration of the issues.

**R861-1A-29. Agency Review and Reconsideration Pursuant to Utah Code Ann. Section 63-46b-13.**

A. Agency Review.

1. All written decisions and orders shall be submitted by the presiding officer to the commission for agency review before the decision or order is issued. Agency review is automatic, and no petition is required.

B. Reconsideration. Within 20 days after the date that an order is issued, any party may file a written request for reconsideration alleging mistake of law or fact, or discovery of new evidence.

1. The commission shall respond to the petition within 20 days after the date that it was received in the appeals unit to notify the petitioner whether the reconsideration is granted or denied.

(a) If no notice is issued within the 20-day period, the commission's lack of action on the request shall be deemed to be a denial and a final order.

(b) For purposes of calculating the 30 day limitation period for pursuing judicial review, the date of the commission's order on the reconsideration or the order of denial is the date of the final agency action.

2. If no petition for reconsideration is made, the 30 day limitation period for pursuing judicial review begins to run from the date of the final agency action.

**R861-1A-30. Ex Parte Communications Pursuant to Utah Code Ann. Sections 63-46b-5 and 63-46b-8.**

A. No commissioner or administrative law judge shall make or knowingly cause to be made to any party to an appeal any communication relevant to the merits of a matter under appeal unless notice and an opportunity to be heard are afforded to all parties.

B. No party shall make or knowingly cause to be made to any commissioner or administrative law judge an ex parte communication relevant to the merits of a matter under appeal for the purpose of influencing the outcome of the appeal.

Discussion of procedural matters are not considered ex parte communication relevant to the merits of the appeal.

C. A presiding officer may receive aid from staff assistants if:

1. the assistants do not receive ex parte communications of a type that the presiding officer is prohibited from receiving, and,

2. in an instance where assistants present information which augments the evidence in the record, all parties shall have reasonable notice and opportunity to respond to that information.

D. Any commissioner or administrative law judge who receives an ex parte communication relevant to the merits of a matter under appeal shall place the communication into the case file and afford all parties an opportunity to comment on the information.

**R861-1A-31. Declaratory Orders Pursuant to Utah Code Ann. Section 63-46b-21.**

A. A party has standing to bring a declaratory action if that party is directly and adversely affected or aggrieved by an agency action within the meaning of the relevant statute. A party with standing may petition for a declaratory order to challenge:

1. the commission's interpretation of statutory language as stated in an administrative rule; or

2. the commission's grant of authority under a statute.

B. The commission shall not accept a petition for declaratory order on matters pending before the commission in an audit assessment, refund request, collections action or other agency action, or on matters pending before the court on judicial review of a commission decision.

C. The commission may refuse to render a declaratory order if the order will not completely resolve the controversy giving rise to the proceeding or if the petitioner has other remedies through the administrative appeals processes. The commission's decision to accept or reject a petition for declaratory order rests in part on the petitioner's standing to raise the issue and on a determination that the petitioner has not already incurred tax liability under the statutes or rules challenged.

D. A declaratory order that invalidates all or part of an administrative rule shall trigger the rulemaking process to amend the rule.

**R861-1A-32. Mediation Process Pursuant to Utah Code Section 63-46b-1.**

A. Except as otherwise precluded by law, a resolution to any matter of dispute may be pursued through mediation.

1. The parties may agree to pursue mediation any time before the formal hearing on the record.

2. The choice of mediator and the apportionment of costs shall be determined by agreement of the parties.

B. If mediation produces a settlement agreement, the agreement shall be submitted to the presiding officer pursuant to R861-1A-33.

1. The settlement agreement shall be prepared by the parties or by the mediator, and promptly filed with the presiding officer.

2. The settlement agreement shall be adopted by the commission if it is not contrary to law.

3. If the mediation does not resolve all of the issues, the parties shall prepare a stipulation that identifies the issues resolved and the issues that remain in dispute.

4. If any issues remain unresolved, the appeal will be scheduled for a formal hearing pursuant to R861-1A-23.

**R861-1A-33. Settlement Agreements Pursuant to Utah Code Sections 59-1-210 and 59-1-502.5.**

A. "Settlement agreement" means a stipulation, consent decree, settlement agreement or any other legally binding document or representation that resolves a dispute or issue between the parties.

B. Procedure:

1. Parties with an interest in a matter pending before a division of the Tax Commission may submit a settlement agreement for review and approval, whether or not a petition for hearing has been filed.

2. Parties to an appeal pending before the commission may submit a settlement agreement to the presiding officer for review and approval.

3. Each settlement agreement shall be in writing and executed by each party or each party's legal representative, if any, and shall contain:

- a) the nature of the claim being settled and any claims remaining in dispute;
- b) a proposed order for commission approval; and
- c) a statement that each party has been notified of, and allowed to participate in settlement negotiations.

4. A settlement agreement terminates the administrative action on the issues settled before all administrative remedies are exhausted, and, therefore, precludes judicial review of the issues. Each settlement agreement shall contain a statement that the agreement is binding and constitutes full resolution of all issues agreed upon in the settlement agreement.

5. The signed agreement shall stay further proceedings on the issues agreed upon in the settlement until the agreement is accepted or rejected by the commission or the commission's designee.

a) If approved, the settlement agreement shall take effect by its own terms.

b) If rejected, action on the claim shall proceed as if no settlement agreement had been reached. Offers made during the negotiation process will not be used as an admission against that party in further adjudicative proceedings.

**R861-1A-34. Private Letter Rulings Pursuant to Utah Code Ann. Section 59-1-210.**

A. Private letter rulings are written, informational statements of the commission's interpretation of statutes or administrative rules, or informational statements concerning the application of statutes and rules to specific facts and circumstances.

1. Private letter rulings address questions that have not otherwise been addressed in statutes, rules, or decisions issued by the commission.

2. The commission shall not knowingly issue a private letter ruling on a matter pending before the commission in an audit assessment, refund request, or other agency action, or regarding matters that are pending before the court on judicial review of a commission decision. Any private letter ruling inadvertently issued on a matter pending agency or judicial action shall be set aside until the conclusion of that action.

3. Requests for private letter rulings must be addressed to the commission in writing. If the requesting party is dissatisfied with the ruling, that party may resubmit the request along with new facts or information for commission review.

B. The weight afforded a private letter ruling in a subsequent audit or administrative appeal depends upon the degree to which the underlying facts addressed in the ruling were adequate to allow thorough consideration of the issues and interests involved.

C. A private letter ruling is not a final agency action. Petitioner must use the designated appeal process to address judiciable controversies arising from the issuance of a private letter ruling.

1. If the private letter ruling leads to a denial of a claim, an audit assessment, or some other agency action at a divisional

level, the taxpayer must use the appeals procedures to challenge that action within 30 days of the final division decision.

2. If the only matter at issue in the private letter ruling is a challenge to the commission's interpretation of statutory language or a challenge to the commission's authority under a statute, the matter may come before the commission as a petition for declaratory order submitted within 30 days of the date of the ruling challenged.

**R861-1A-35. Manner of Retaining Records Pursuant to Utah Code Ann. Sections 59-1-210, 59-5-104, 59-5-204, 59-6-104, 59-7-506, 59-8-105, 59-8a-105, 59-10-501, 59-12-111, 59-13-211, 59-13-312, 59-13-403, 59-14-303, and 59-15-105.**

A. Definitions.

1. "Database Management System" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

2. "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized, structured electronic format.

3. "Hard copy" means any documents, records, reports, or other data printed on paper.

4. "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

5. "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

6. "Taxpayer" means the person required, under Title 59 or other statutes administered by the Tax Commission, to collect, remit, or pay the tax or fee to the Tax Commission.

B. If a taxpayer retains records in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the commission in machine-sensible format upon request by the commission.

C. Nothing in this rule shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not the taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this rule. However, this does not relieve the taxpayer of the obligation to comply with B.

D. Recordkeeping requirements for machine-sensible records.

1. Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the commission upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this rule are met.

2. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format.

3. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

4. Electronic Data Interchange Requirements.

a) Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in

combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record.

b) For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, and shipping detail. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method that allows the commission to interpret the coded information.

c) The taxpayer may capture the information necessary to satisfy D.4.b) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name, i.e., they contain only codes for that information, the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the commission. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

#### 5. Electronic data processing systems requirements.

a) The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this rule.

#### 6. Business process information.

a) Upon the request of the commission, the taxpayer shall provide a description of the business process that created the retained records. The description shall include the relationship between the records and the tax documents prepared by the taxpayer, and the measures employed to ensure the integrity of the records.

b) The taxpayer shall be capable of demonstrating:

- (1) the functions being performed as they relate to the flow of data through the system;
- (2) the internal controls used to ensure accurate and reliable processing; and
- (3) the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

c) The following specific documentation is required for machine-sensible records retained pursuant to this rule:

- (1) record formats or layouts;
- (2) field definitions, including the meaning of all codes used to represent information;
- (3) file descriptions, e.g., data set name; and
- (4) detailed charts of accounts and account descriptions.

#### E. Records maintenance requirements.

1. The commission recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records. The NARA standards may be found at 36 C.F.R., Section 1234,(1995).

2. The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

#### F. Access to machine-sensible records.

1. The manner in which the commission is provided access to machine-sensible records as required in B. may be satisfied through a variety of means that shall take into account a

taxpayer's facts and circumstances through consultation with the taxpayer.

2. Access will be provided in one or more of the following manners:

a) The taxpayer may arrange to provide the commission with the hardware, software, and personnel resources necessary to access the machine-sensible records.

b) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

c) The taxpayer may convert the machine-sensible records to a standard record format specified by the commission, including copies of files, on a magnetic medium that is agreed to by the commission.

d) The taxpayer and the commission may agree on other means of providing access to the machine-sensible records.

#### G. Taxpayer responsibility and discretionary authority.

1. In conjunction with meeting the requirements of D., a taxpayer may create files solely for the use of the commission. For example, if a data base management system is used, it is consistent with this rule for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and meets the requirements of D. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

2. A taxpayer may contract with a third party to provide custodial or management services of the records. The contract shall not relieve the taxpayer of its responsibilities under this rule.

#### H. Alternative storage media.

1. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this rule to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents that may be stored on these media include general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

2. Microfilm, microfiche and other storage-only imaging systems shall meet the following requirements:

a) Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche, or other storage-only imaging system must be maintained and made available on request. This documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

b) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained.

c) Upon request by the commission, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche, or other storage-only imaging system.

d) When displayed on equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

e) All data stored on microfilm, microfiche, or other storage-only imaging systems must be maintained and arranged

in a manner that permits the location of any particular record.

f) There is no substantial evidence that the microfilm, microfiche or other storage-only imaging system lacks authenticity or integrity.

1. Effect on hard-copy recordkeeping requirements.

1. Except as otherwise provided in this section, the provisions of this rule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations. Hard-copy records may be retained on a recordkeeping medium as provided in H.

2. Hard-copy records not produced or received in the ordinary course of transacting business, e.g., when the taxpayer uses electronic data interchange technology, need not be created.

3. Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this rule. These details include those listed in D.4.a) and D.4.b).

4. Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

5. Nothing in this section shall prevent the commission from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

**R861-1A-36. Signatures Defined Pursuant to Utah Code Ann. Sections 41-1a-209, 59-10-512, 59-12-107, 59-13-206, and 59-13-307.**

A. "TaxExpress" means the filing of tax returns and tax payment information by telephone and Internet web site.

B. Taxpayers who file tax return information, other than electronic funds transfers, through the Tax Commission's TaxExpress system shall use the Tax Commission assigned personal identification number as their signature for all tax return information filed through that system.

C. Individuals who submit an application to renew their vehicle registration on the Internet web site authorized by the Tax Commission shall use the Tax Commission assigned personal identification number included with their registration renewal information as their signature for the renewal application submitted over the Internet.

D. Taxpayers who use the Tax Commission authorized Internet web site to file tax return information for tax types that may be filed on that web site shall use the personal identification number provided by the Tax Commission as their signature for the tax return information filed on that web site.

E. Taxpayers who file an individual income tax return electronically and who met the signature requirement of the Internal Revenue Service shall be deemed to meet the signature requirement of Section 59-10-512.

**R861-1A-37. Provisions Relating to Disclosure of Commercial Information Pursuant to Utah Code Ann. Section 59-1-404.**

A. The provisions of this rule apply to the disclosure of commercial information under Section 59-1-404. For disclosure of information other than commercial information, see rule R861-1A-12.

B. For purposes of Section 59-1-404, "assessed value of the property" includes any value proposed for a property.

C. For purposes of Subsection 59-1-404(2), "disclosure" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

1. named party of a decision or order;
2. party requesting a private letter ruling; or
3. designated representative of a party described in C.1. or C.2.

D. For purposes of Subsection 59-1-404(6), "published decision" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

1. named party of a decision or order;
2. party requesting a private letter ruling; or
3. designated representative of a party described in D.1. or D.2.

E. Information that may be disclosed under Section 59-1-404(3) includes:

1. the following information related to the property's tax exempt status:
  - a) information provided on the application for property tax exempt status;
  - b) information used in the determination of whether a property tax exemption should be granted or revoked; and
  - c) any other information related to a property's property tax exemption;
2. the following information related to penalty or interest relating to property taxes that the commission or county legislative body determines should be abated:
  - a) the amount of penalty or interest that is abated;
  - b) information provided on an application or request for abatement of penalty or interest;
  - c) information used in the determination of the abatement of penalty or interest; and
  - d) any other information related to the amount of penalty or interest that is abated; and
3. the following information related to the amount of property tax due on property:
  - a) the amount of taxes refunded or deducted as an erroneous or illegal assessment under Section 59-2-1321;
  - b) information provided on an application or request that property has been erroneously or illegally assessed under Section 59-2-1321; and
  - c) any other information related to the amount of taxes refunded or deducted under 3.a).

F. 1. Except as provided in F.2., commercial information disclosed during an action or proceeding may not be disclosed outside the action or proceeding by any person conducting or participating in the action or proceeding.

2. Notwithstanding F.1., commercial information contained in a decision issued by the commission may be disclosed outside the action or proceeding if all of the parties named in the decision agree in writing to the disclosure.

G. The commission may disclose commercial information in a published decision as follows.

1. If the property taxpayer that provided the commercial information does not respond in writing to the commission within 30 days of the decision's issuance, requesting that the commercial information not be published and identifying the specific commercial information the taxpayer wants protected, the commission may publish the entire decision.

2. If the property taxpayer that provided the commercial information indicates to the commission in writing the specific commercial information that the taxpayer wants protected, the commission may publish a version of the decision that contains commercial information not identified by the taxpayer under G.1.

**R861-1A-38. Class Actions Pursuant to Utah Code Ann. Section 59-1-304.**

A. Unless the limitations of Section 59-1-304(2) apply, the commission may expedite the exhaustion of administrative remedies required by individuals desiring to be included as a member of the class.

B. In expediting exhaustion of administrative remedies, the commission may take any of the following actions:

1. publish sample claim forms that provide the information



necessary to process a claim in a form that will reduce the burden on members of the putative class and expedite processing by the commission;

2. provide for waiver of initial hearings where requested by any party;

3. provide for expedited rulings on motions for summary judgment where the facts are not contested and the legal issues have been previously determined by the commission in ruling on the case brought by class representatives. The parties may waive oral hearing and have final orders issued based upon information submitted in the claims and division responses;

4. consolidate the cases for hearing at the commission, where a group of claims presents identical legal issues and it is agreed by the parties that the resolution of the legal issues would be dispositive of the claims;

5. designate a claim as a test or sample claim with any rulings on that test or sample claim to be applicable to all other similar claims, upon agreement of the claiming parties; or

6. any other action not listed in this rule if that action is not contrary to procedures required by statute.

**KEY: developmentally disabled, grievance procedures, taxation, disclosure requirements**

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**Notice of Continuation April 22, 2002**

- 41-1a-209
- 59-1-205
- 59-1-207
- 59-1-210
- 59-1-301
- 59-1-304
- 59-1-403
- 59-1-404
- 59-1-501
- 59-1-502.5
- 59-1-505
- 59-1-602
- 59-1-705
- 59-1-1004
- 59-10-512
- 59-10-532
- 59-10-533
- 59-10-535
- 59-12-107
- 59-13-206
- 59-13-210
- 59-13-307
- 59-10-544
- 59-14-404
- 59-2-212
- 59-2-701
- 59-2-705
- 59-2-1003
- 59-2-1004
- 59-2-1006
- 59-2-1007
- 59-2-704
- 59-2-924
- 59-7-517
- 63-46a-4
- 63-46b-1
- 76-8-502
- 76-8-503
- 59-2-701
- 63-46b-3
- 63-46b-4
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- 63-46b-6
- 63-46b-7
- through
- 63-46b-11

63-46b-13

63-46b-14

63-46b-21

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**R865. Tax Commission, Auditing.****R865-4D. Special Fuel Tax.****R865-4D-1. Utah Special Fuel Tax Regulation Pursuant to Utah Code Ann. Section 59-13-102.**

A. Motor vehicle means and includes every self-propelled vehicle operated or suitable for operation on the highways of the state which is designed for carrying passengers or cargo; but does not include vehicles operating on stationary rails or tracks, or implements of husbandry not operating on the highways.

B. User means any person using special fuel for the propulsion of a motor vehicle on the highways of the state, including:

1. interstate operators of trucks and buses,
2. intrastate operators of trucks and buses, and
3. contractors using special fuel in self-propelled vehicles for carrying of passengers or cargo.

**R865-4D-2. Clean Special Fuel Certificate, Refund Procedures for Undyed Diesel Fuel Used Off-Highway or to Operate a Power Take-Off Unit, and Sales Tax Liability Pursuant to Utah Code Ann. Sections 59-13-301 and 59-13-304.**

A. If the vehicle is registered in Utah, the fee for a clean special fuel certificate under Section 59-13-304 is due at the time the vehicle is placed in operation and annually thereafter on the date the vehicle's registration is renewed. Certificates may be obtained from any Tax Commission office or any local motor vehicle office. If a vehicle is not registered in Utah, the fee is due on the date the vehicle begins operation in Utah. The fee paid for a vehicle placed in operation may be pro-rated on a monthly basis if the certificate obtained for the vehicle is valid for a period of less than 12 months. Fees paid will not be refunded if a vehicle is sold or otherwise disposed of prior to the expiration date of the certificate.

B. Fuel used in a vehicle off-highway is calculated by taking off-highway miles divided by the average number of miles per gallon. Any other method of calculating undyed diesel fuel used off-highway must be supported by on-board computer information or other information that shows the number of gallons used off-highway with accuracy equal or comparable to on-board computers.

C. Where a power take-off unit is driven by the main engine of the vehicle and used to operate auxiliary equipment, a quantity, as enumerated below, of the total undyed diesel fuel delivered into the service tank of the vehicle shall be deemed to be used to operate the power take-off unit. The allowances for power take-off units are as follows:

1. concrete mixer trucks - 20 percent;
2. garbage trucks with trash compactor - 20 percent;
3. vehicles with powered pumps, conveyors or other loading or unloading devices may be individually negotiated but shall not exceed:
  - a) 3/4 gallon per 1000 gallons pumped; or
  - b) 3/4 gallon per 6000 pounds of commodities, such as coal, grain, and potatoes, loaded or unloaded.
4. Any other method of calculating the amount of undyed diesel fuel used to operate a power take-off unit must be supported by documentation and records, including on-board computer printouts or other logs showing daily power take-off activity, that establish the actual amount of power take-off activity and fuel consumption.

D. Allowances provided for in B. and C. above will be recognized only if adequate records are maintained to support the amount claimed.

E. In the case of users filing form TC-922, Fuel Tax Return For International Fuel Tax Agreement (IFTA) And Special Fuel User Tax, or form TC-922C, Refund of Tax Paid on Exempt Fuel for Non-Utah Based Carriers, the allowance provided for in C. will be refunded to the extent total gallons

allocated to Utah through IFTA exceed the actual taxable gallons used in Utah, except that in no case will refunds be allowed for power take-off use that does not occur in Utah.

F. Undyed diesel fuel used on-highway for the purpose of idling a vehicle does not qualify for a refund on special fuel tax paid since the fuel is used in the operation of a motor vehicle.

G. Diesel fuel that is purchased exempt from the special fuel tax or for which the special fuel tax has been refunded is subject to sales and use tax, unless specifically exempted under the sales and use tax statutes.

**R865-4D-3. User-Dealer's License Pursuant to Utah Code Ann. Section 59-13-302.**

A. Prior to any sale or use of special fuel in this state each user-dealer shall apply for and obtain a special fuel user-dealer's license for each bulk plant or service station from which such special fuel is to be sold or used. Application for a special user-dealer's license shall be made on a form provided by the Tax Commission. Under the law the Tax Commission may require a user-dealer to furnish a bond. Upon receipt and approval of the application, the commission will issue the license. A special fuel user-dealer's license is valid only for the user-dealer in whose name issued and for the specific bulk plant or service station named on the license. The license shall remain in force and effect unless the holder of the license ceases to act as a user-dealer, or the Tax Commission for reasonable cause terminates the license at an earlier date.

B. Upon sale or discontinuance of the sale or distribution of special fuel as defined in this rule from a bulk plant or service station for which a license has been issued, the user-dealer shall return for cancellation the license issued for the bulk plant or service station.

**R865-4D-5. Special Fuel Tax Entrance Permits Pursuant to Utah Code Ann. Section 59-13-303.**

A. Any owner or operator of a qualified motor vehicle entering or traveling within the state of Utah must:

1. carry in the cab of the vehicle a special fuel permit or license pursuant to Utah Code Ann. Sections 59-13-303, 59-13-305, and 59-13-502, or
  2. purchase a Special Fuel Tax Entrance Permit.
- B. Special Fuel Tax Entrance Permits shall:
1. state the name and address of the registered owner of the vehicle,
  2. identify the vehicle for which it is issued,
  3. be valid until the expiration of 96 hours from the time of issuance or until the vehicle exits the state, whichever occurs first, and
  4. cost \$20.

C. A person who buys a Special Fuel Tax Entrance Permit for a motor vehicle is required to pay special fuel tax to the user-dealer on purchases of special fuel which are delivered into the vehicle's fuel supply tank.

D. A licensed or permit user having occasion to buy the Special Fuel Tax Entrance Permit is required to report and pay tax on miles traveled under such permit; no credit or refund is allowed on the tax report either for miles traveled under the permit or for dollars paid for the permit.

**R865-4D-6. Invoices Pursuant to Utah Code Ann. Sections 59-13-301 and 59-13-313.**

A. If requested, a retail dealer must issue to a purchaser of special fuel an invoice that indicates the fuel taxes that have been included in the price of purchased fuel. This invoice shall serve as evidence that the special fuel tax has been paid.

B. Invoices must be numbered consecutively, made in duplicate, and contain the following information:

1. name and address of seller;
2. place of sale;

3. date of sale;  
 4. name and address of purchaser;  
 5. fuel type;  
 6. number of gallons sold;  
 7. unit number or other vehicle identification if delivered into a motor vehicle;  
 8. type of container delivered into if not a motor vehicle;  
 9. invoice number; and  
 10. amount and type of state tax paid on the special fuel, if any.

C. A retail dealer must charge sales tax on diesel fuel that is exempt from special fuel tax unless the retail dealer has received and retains on file a properly completed sales and use tax exemption certificate indicating that the transaction is exempt from sales tax.

D. A retail dealer that sells propane exempt from special fuel tax, but subject to sales tax, must at the time of each sale and delivery keep a record of the exempt sale. This record shall be in the form of an invoice or a log, and shall serve as evidence that the sale is exempt from special fuel tax.

1. If the record is in the form of an invoice, it shall contain the information required under B.

2. If the record is in the form of a log, it shall contain the following information:

- a) name and address of the retail dealer;
- b) date of sale;
- c) amount of propane sold; and
- d) purchaser's name.

E. A retail dealer that sells propane, compressed natural gas, or electricity exempt from sales tax shall retain the following information for each exempt sale:

1. the make, year, and license number of the vehicle;
2. the name and address of the purchaser;
3. the quantity (e.g., number of gallons) sold; and
4. the clean special fuel certificate number.

F. A retail dealer is not required to obtain an exemption certificate from a purchaser of dyed diesel fuel indicating that the dyed diesel fuel will be used for purposes other than to operate a motor vehicle upon the highways of the state if the retail dealer complies with the notice requirement under 26 C.F.R. Section 48.4082-2.

G. A retail dealer may not sell dyed diesel fuel exempt from special fuel tax if the retail dealer knows that the fuel will be used to operate a motor vehicle upon the highways of the state.

**R865-4D-18. Maintenance of Records Pursuant to Utah Code Ann. Sections 59-13-305(1) and 59-13-312.**

A. The records and documents maintained pursuant to Section 59-13-312 must substantiate the amount of fuel purchased and the amount of fuel used in the state and claimed on the special fuel report required by Section 59-13-305(1).

B. Every user must maintain detailed mileage records and summaries for fleets traveling in Utah, detailed fuel purchase records, and bulk disbursement records. From this information, an accurate average miles per gallon (mpg) figure can be determined for use in computing fuel tax due. No fuel entering the fuel supply tank of a motor vehicle may be excluded from the mpg computation. Refer to Tax Commission rule R865-4D-2.

C. Individual vehicle mileage records (IVMRs) separating Utah miles from non-Utah miles must be maintained. Utah miles must be separated further into taxable Utah miles and nontaxable Utah miles. An adequate IVMR will contain the following information:

1. starting and ending dates of trip;
2. trip origin and destination;
3. route of travel, beginning and ending odometer or hubometer reading, or both;

4. total trip miles;  
 5. Utah miles;  
 6. fuel purchased or drawn from bulk storage for the vehicle; and

7. other appropriate information that identifies the record, such as unit number, fleet number, record number, driver's name, and name of the user or operator of the vehicle.

D. If the user fails to maintain or provide adequate records from which the user's true liability can be determined, the Tax Commission shall, upon giving written notice, estimate the amount of liability due. Such estimate shall take into consideration any or all of the following:

1. any available records maintained and provided by the user;
2. historical filing information;
3. industry data;
4. a flat or standard average mpg figure.

a) The standard average mpg normally applied is four mpg for qualified motor vehicles and six miles per gallon for nonqualified motor vehicles.

E. Section 59-13-312(2) requires that the user be able to support credits claimed for tax-paid fuel with documents showing payment of the Utah special fuel tax. If documents and records showing payment of the Utah special fuel tax are not maintained or are not provided upon request, the credits will be disallowed.

**R865-4D-19. Refund of Special Fuel Taxes Paid by Government Entities Pursuant to Utah Code Ann. Section 59-13-301.**

A. Governmental entities entitled to a refund for special fuel taxes paid shall submit a completed Application for Government Motor Fuel and Special Fuel Tax Refund, form TC-114, to the commission.

B. A governmental entity shall retain the following records for each purchase of special fuel for which a refund of taxes paid is claimed:

1. name of the government entity making the purchase;
2. license plate number of the government vehicle for which the special fuel is purchased;
3. invoice date;
4. invoice number;
5. vendor;
6. vendor location;
7. product description;
8. number of gallons purchased; and
9. amount of state special fuel tax paid.

C. Original records supporting the refund claim must be maintained by the government entity for three years following the year of refund.

**R865-4D-20. Exemption or Refund for Exported Undyed Diesel Fuel Pursuant to Utah Code Ann. Section 59-13-301.**

A. If untaxed undyed diesel fuel is sold by a supplier directly out-of-state or is sold by a supplier to a purchaser that will deliver the fuel directly out-of-state, the fuel may be sold by the supplier exempt from the special fuel tax.

B. If untaxed undyed diesel fuel is sold tax exempt under A., the supplier shall report the fuel sold tax exempt on the export schedule of its special fuel supplier return.

C. If special fuel tax has been paid on undyed diesel fuel that is exported, the exporter may apply to the Tax Commission, on a monthly basis and on the export refund request form provided by the Tax Commission, for a refund of special fuel taxes paid.

D. Original records supporting the exemption or refund claim must be maintained by the entity claiming the exemption or refund for three years following the year of exemption or refund.

**R865-4D-21. Consistent Basis for Diesel Fuel Reporting Pursuant to Utah Code Ann. Sections 59-13-301 and 59-13-307.**

- A. Definitions.
  - 1. "Gross gallon" means the United States volumetric gallon with a liquid capacity of 231 cubic inches.
  - 2. "Net gallon" means the gross metered gallon with temperature correction in volume to 60 degrees Fahrenheit.
- B. All Utah licensed special fuel suppliers shall elect to calculate the tax liability on the Utah Special Fuel Supplier Tax Return on a consistent and strict gross gallon or net gallon basis. The election must be declared in writing and must be sent to the Tax Commission. The declared basis must be the exclusive basis used for 12 consecutive months. Any supplier failing to make an election will default to the gross gallon basis and must then report and pay the excise tax on that basis. Request for changes in the reporting basis must be submitted in writing and approved by the Tax Commission prior to any change in the reporting basis. Changes in basis may occur only on January 1 and must remain in effect 12 consecutive months.
- C. All invoices, bills of lading, and special fuel tax returns must include both the gross and net gallon amounts. Conversion from gross to net must conform to the ASTM-API-Petroleum Measurement Tables.
- D. All transactions, such as purchases, sales, or deductions, reported on the Special Fuel Supplier Tax Return must be reported on a consistent and exclusive basis. The taxpayer shall not alternate the two methods on any return or during any 12-month period.
- E. This rule shall take effect July 1, 1997.

**R865-4D-22. Reduction in Special Fuel Tax for Suppliers Subject to Navajo Nation Fuel Tax Pursuant to Utah Code Ann. Section 59-13-301.**

- A. The purpose of this rule is to provide procedures for administering the reduction of special fuel tax authorized under Section 59-13-301.
- B. The reduction shall be in the form of a refund.
- C. The refund shall be available only for special fuel:
  - 1. delivered to a retailer or consumer on the Utah portion of the Navajo Nation; and
  - 2. for which Utah special fuel tax has been paid.
- D. The refund shall be available to a special fuel supplier that is licensed as a distributor with the Office of the Navajo Tax Commission.
- E. The refund application may be filed on a monthly basis.
- F. A completed copy of the Navajo Tax Commission Monthly Fuel Distributor Tax Return, form 900, along with schedules and manifests, must be included with the Utah State Tax Commission Application for Navajo Nation Fuel Tax Refund, form TC-126.
- G. Original records supporting the refund claim must be maintained by the supplier for three years following the year of refund. These records include:
  - 1. proof of payment of Utah special fuel tax;
  - 2. proof of payment of Navajo Nation fuel tax; and
  - 3. documentation that the special fuel was delivered to a retailer or consumer on the Utah portion of the Navajo Nation.

**R865-4D-23. State Participation in the International Fuel Tax Agreement Pursuant to Utah Code Ann. Section 59-13-501.**

- A. Pursuant to Section 59-13-501, the commission entered into the International Fuel Tax Agreement ("IFTA") effective January 1, 1990.
- B. Participation in IFTA is intended to comply with 49 U.S.C. 31705.
- C. This rule incorporates by reference the 2003 edition of the IFTA:

- 1. Articles of Agreement;
- 2. Procedures Manual; and
- 3. Audit Manual.

**R865-4D-24. Off-Highway Use of Undyed Diesel Fuel Pursuant to Utah Code Ann. Section 59-13-301.**

- A. 1. "Off-highway," for purposes of determining whether undyed diesel fuel is used in a vehicle off-highway, means every way or place, of whatever nature, that is not generally open to the use of the public for the purpose of vehicular travel.
  - 2. "Off-highway" does not include:
    - a) a parking lot that the public may use; or
    - b) the curbside of a highway.
- B. The following documentation must accompany a refund request for special fuel tax paid on undyed diesel fuel used in a vehicle off-highway:
  - 1. evidence that clearly indicates that the undyed diesel fuel was used in a vehicle off-highway;
  - 2. the specific address of the off-highway use with a detailed description of the off-highway nature of the location;
  - 3. the amount of time in which the vehicle used the fuel off-highway;
  - 4. the amount of fuel the vehicle used off-highway; and
  - 5. the make and model, weight, and miles per gallon of the vehicle used off-highway.

**KEY: taxation, fuel, special fuel**

**October 19, 2004**

**Notice of Continuation March 15, 2002**

**59-13-102**  
**59-13-301**  
**59-13-302**  
**59-13-303**  
**59-13-304**  
**59-13-305**  
**59-13-307**  
**59-13-312**  
**59-13-313**  
**59-13-501**

**R865. Tax Commission, Auditing.****R865-6F. Franchise Tax.****R865-6F-1. Corporation Franchise Privilege - Right to Do Business - Nature of Liability and How Terminated Pursuant to Utah Code Ann. Sections 16-10a-1501 through 16-10a-1533.**

A. The Utah franchise tax is imposed upon corporations qualified or incorporated under the laws of Utah, whether or not they do business therein, and also upon corporations doing business in Utah, whether or not they are qualified or incorporated under the laws of Utah.

1. An unqualified foreign corporation doing business in this state is liable for Utah corporation franchise tax in the same amount as if it had duly applied for and received a certificate of authority to transact business in this state pursuant to Section 16-10a-1501.

2. An unqualified foreign corporation deriving income from this state, but not doing business in this state within the contemplation of the Utah corporation franchise tax law is subject to the Utah corporation income tax on income derived from this state under the provisions of Sections 59-7-201 to 59-7-207.

B. If a corporation received its corporate authority to do business in Utah prior to January 1, 1973, and is a member of an affiliated group filing a combined report under Section 59-7-402 or 59-7-403, and legally terminates its corporate authority, it must include its activity during the final year in the combined report of the group. The tax is imposed upon the income of the group rather than the income of the individual corporations.

C. A corporation that was incorporated, qualified, or that reinstated its corporate authority to do business in Utah after January 1, 1973 must file a corporation franchise tax return and pay the tax due with the return for the year in which it legally terminates its right to do business in this state. The Tax Commission shall not issue a tax clearance certificate until the final return has been filed and the amounts due for the final year are paid.

D. For Utah corporation franchise tax purposes, a foreign corporation terminates its corporate existence or the privileges for which the franchise tax is levied (unless it continues to do business) on the date on which:

1. a certificate of withdrawal is issued under the provisions of Section 16-10a-1520;

2. its corporate existence is legally terminated in its home state, provided authoritative evidence of that termination is filed;

3. a certificate of revocation of its authority to transact business in this state is issued under the provisions of Sections 16-10a-1530 and 16-10a-1531; or

4. the corporate powers, rights, and privileges are forfeited under the provisions of Section 59-7-534.

E. For Utah corporation franchise tax purposes, a corporation that is incorporated under the laws of this state terminates its corporate existence or the privilege of exercising its corporate franchise for which the franchise tax is levied on the date on which:

1. a certificate of dissolution is issued pursuant to a voluntary dissolution under the provisions of Section 16-10a-1401 or Sections 16-10a-1402 through 16-10a-1403;

2. a decree of dissolution is entered by the court pursuant to the provisions of Sections 16-10a-1430 through 16-10a-1433;

3. a certificate of merger or of consolidation (which effects the termination of the separate corporate existence of the Utah corporation) is issued pursuant to the provisions of Sections 16-10a-1101 through 16-10a-1107; or

4. the corporate rights and privileges are suspended under the provisions of Section 59-7-534.

F. If the corporation continues to do business in this state subsequent to any of the above dates, it is liable for franchise

tax, even though doing business is not authorized, or may even be prohibited, by law. A corporation cannot avoid the franchise tax by doing business without authority which, if legally done, would subject the corporation to the tax.

**R865-6F-2. Establishment of Taxable Year and Filing the First Return Pursuant to Utah Code Ann. Sections 59-7-501 and 59-7-505.**

A. The period for which a corporation must file its returns for corporation franchise tax purposes is the same period under which its income is computed pursuant to Section 59-7-501.

B. The first return may cover a period of less than 12-calendar months, but may not exceed 12-calendar months. The period must end on the last day of a calendar month, except that the Tax Commission will accept returns being made using the 52-53 week method of reporting under Section 441(f), Internal Revenue Code.

C. If a corporation elects for federal purposes to end its filing period on a date that does not fall on the last day of a calendar month, the filing period for the purposes of effective dates of Utah laws ends on the last day of the month nearest to the federal year end. The Utah net income is computed based on the filing period for federal purposes, notwithstanding the Utah filing period ends on the last day of the month.

D. Except as provided in Section 59-7-505(8)(a), in the case of a domestic corporation, the first return period begins with the date of incorporation. Activity prior to date of incorporation must be reported on individual income or partnership returns or of such other entity as may be appropriate.

E. Except as provided in Section 59-7-505(8)(a), in the case of a foreign corporation, the first return period begins with the date the corporation is qualified to do business in Utah under Title 16, Chapter 10a, Part 15, or the date business within the state is commenced, whichever is the earlier.

**R865-6F-6. Application of Corporation Franchise or Income Tax Acts to Qualified Corporations and to Nonqualified Foreign Corporations Pursuant to Utah Code Ann. Section 59-7-104.****A. Definitions.**

1. "Ancillary activities" means those activities that serve no independent business function for the seller apart from their connection to the solicitation of orders.

2. "De minimis activities" means those activities that, when taken together, establish only a trivial connection with the taxing state. An activity conducted within Utah on a regular or systematic basis or pursuant to a company policy, whether or not in writing, shall not normally be considered trivial.

3. "In-home office" means an office or place of business located within the residence of the employee or representative of a company that satisfies the following conditions:

a) The office may not be publicly attributed to the company, or to the employee or representative of the company in an employee or representative capacity.

b) The use of the office shall be limited to soliciting and receiving orders from customers; transmitting orders outside the state for acceptance or rejection by the company; or for other activities that are protected under Public Law 86-272, 15 U.S.C. 381-384 (hereafter P.L. 86-272) and this rule.

c) Neither the company nor the employee or representative shall maintain a telephone listing or other public listing for the company within the state, nor use advertising or business literature indicating that the company or its employee or representative can be contacted at a specific address within the state. However, the normal distribution and use of business cards and stationery identifying the employee's or representative's name, address, telephone, and fax numbers and affiliation with the company shall not, by itself, be considered

as advertising or otherwise publicly attributing an office to the company or its employee or representative.

4. "Solicitation" means:

a) speech or conduct that explicitly or implicitly invites an order; and

b) activities that neither explicitly nor implicitly invite an order, but are entirely ancillary to requests for an order.

B. Every corporation doing business in Utah whether qualified or not, and every corporation incorporated or qualified in Utah whether or not doing business therein is subject to the Utah corporation franchise tax, unless exempted under the provisions of Section 59-7-102. If liability for the tax exists, the tax must be computed under the provisions of Section 59-7-104, at the rate provided by statute, but in no case shall the tax be less than the minimum tax prescribed.

C. Foreign corporations not qualified in Utah which ship goods to customers in this state from points outside this state, pursuant to orders solicited but not accepted by agents or employees in this state, and which are not doing business in Utah are not taxable under the Utah Corporation Franchise Tax Act if:

1. they maintain no office nor stocks of goods in Utah, and
2. they engage in no other activities in Utah.

D. Foreign corporations not qualified in Utah that make deliveries from stocks of goods located in this state are doing business in this state and are taxable under the Corporation Franchise Tax Act, even though they have no office or regular place of business in this state.

E. Foreign corporations not qualified in Utah are subject to the franchise tax if performing the necessary duties to fulfill contracts or subcontracts in Utah, whether through their own employees or by furnishing of supervisory personnel.

F. Corporations that own real property within this state and rent or lease such properties to others are subject to the franchise tax whether or not qualified under the laws of this state. This also applies to corporations deriving royalty, lease, or rental income from properties located within this state, whether or not such properties are owned by the corporation.

G. Foreign corporations not qualified in Utah are subject to the franchise or income tax if they derive income from revenue-producing properties located in Utah or moving through Utah or from services performed by personnel in this state. This includes, but is not limited to, freight and transportation operations, sales of real property having a Utah situs, leasing or sales of franchises, sporting or entertaining events, etc.

H. Corporations that participate in joint ventures or working and operating agreements which are performed in this state are subject to the franchise tax whether qualified or not.

I. Foreign corporations qualified in Utah are subject to the franchise tax even though engaged solely in interstate commerce.

J. P.L. 86-272 restricts a state from imposing a net income tax on income derived within its borders from interstate commerce if the only business activity of the company within the state consists of the solicitation of orders for sales of tangible personal property, which orders are sent outside the state for acceptance or rejection, and, if accepted, are filled by shipment or delivery from a point outside the state. The term "net income tax" includes a franchise tax measured by net income. If any sales of tangible personal property are made from Utah into a state which is precluded by P.L. 86-272 from taxing the income of the seller, such sales remain subject to throwback to Utah pursuant to Section 59-7-318(2). Similarly, a sale into Utah from another state would not subject a corporation to the Utah tax if the corporation's activities do not exceed those allowed under P.L. 86-272.

1. Only the solicitation to sell personal property is afforded immunity under P.L. 86-272; therefore, the leasing, renting licensing or other disposition of tangible personal property, or

transactions involving intangibles such as franchises, patents, copyrights, trade marks, service marks and the like, or any other type of property are not protected activities under P. L. 86-272. The sale or delivery and the solicitation for the sale or delivery of any type of service that is not either (1) ancillary to solicitation, or (2) otherwise set forth as a protected activity below is also not protected under P.L. 86-272 or this rule.

2. For the in-state activity to be a protected activity under P.L. 86-272, it must be limited solely to solicitation, except for de minimis activities and activities conducted by independent contractors as described below.

K. The following in-state activities, assuming they are not of a de minimis level, will constitute doing business in Utah under P.L. 86-272 and will subject the corporation to the Utah corporation franchise tax:

1. making repairs or providing maintenance or service to the property sold or to be sold;
2. collecting current or delinquent accounts, whether directly or by third parties, through assignment or otherwise;
3. investigating credit worthiness;
4. installation or supervision of installation at or after shipment or delivery;
5. conducting training courses, seminars, or lectures for personnel other than personnel involved only in solicitation;
6. providing any kind of technical assistance or service including engineering assistance or design service, when one of the purposes thereof is other than the facilitation of the solicitation of orders;
7. investigating, handling, or otherwise assisting in resolving customer complaints, other than mediating direct customer complaints when the sole purpose of such mediation is to ingratiate the sales personnel with the customer;
8. approving or accepting orders;
9. repossessing property;
10. securing deposits on sales;
11. picking up or replacing damaged or returned property;
12. hiring, training, or supervising personnel, other than personnel involved only in solicitation;
13. using agency stock checks or any other instrument or process by which sales are made within this state by sales personnel;
14. maintaining a sample or display room in excess of two weeks (14 days) at any one location within the state during the tax year;
15. carrying samples for sale, exchange or distribution in any manner for consideration or other value;
16. owning, leasing, using, or maintaining any of the following facilities or property in-state:
  - (a) repair shop;
  - (b) parts department;
  - (c) any kind of office other than an in-home office;
  - (d) warehouse;
  - (e) meeting place for directors, officers, or employees;
  - (f) stock of goods other than samples for sales personnel or that are used entirely ancillary to solicitation;
  - (g) telephone answering service that is publicly attributed to the company or to employees or agents of the company in their representative status;
  - (h) mobile stores, i.e., vehicles with drivers who are sales personnel making sales from the vehicles;
  - (i) real property or fixtures to real property of any kind.
17. consigning stocks of goods or other tangible personal property to any person, including an independent contractor, for sale;
18. maintaining, by either an in-state or an out-of-state resident employee, an office or place of business (in-home or otherwise) of any kind other than an in-home office;
  - (b) The maintenance of any office or other place of business in this state that does not strictly qualify as an in-home

office under this subsection shall, by itself cause the loss of protection under this rule.

(c) For purposes of this subsection it is not relevant whether the company pays directly, indirectly, or not at all for the cost of maintaining the in-home office.

19. entering into franchising or licensing agreements; selling or otherwise disposing of franchises and licenses; or selling or otherwise transferring tangible personal property pursuant to such franchise or license by the franchisor or licensor to its franchisee or licensee within the state;

20. shipping or delivering of goods into this state by means of private vehicle, rail, water, air or other carrier, irrespective of whether a shipment of delivery fee or other charge is imposed, directly or indirectly, upon the purchaser;

21. conducting any activity not listed as a protected activity below which is not entirely ancillary to requests for orders, even if such activity helps to increase purchases.

L. The following in-state activities will not cause the loss of protection for otherwise protected sales;

1. soliciting orders for sales by any type of advertising;

2. soliciting of orders by an in-state resident employee or representative of the company, so long as such person does not maintain or use any office or other place of business in the state other than an in-home office;

3. carrying samples and promotional materials only for display or distribution without charge or other consideration;

4. furnishing and setting up display racks and advising customers on the display of the company's products without charge or other consideration;

5. providing automobiles to sales personnel for their use in conducting protected activities;

6. passing orders, inquiries and complaints on to the home office;

7. missionary sales activities, i.e. the solicitation of indirect customers for the company's goods. For example, a manufacturer's solicitation of retailers to buy the manufacturer's goods from the manufacturer's wholesale customers would be protected if such solicitation activities are otherwise immune;

8. coordinating shipment or delivery without payment or other consideration and providing information relating thereto either prior or subsequent to the placement of an order;

9. checking of customer's inventories without a charge therefore if performed for reorder, but not for other purposes such as a quality control;

10. maintaining a sample or display room for two weeks (14 days) or less at any one location within the state during the tax year;

11. recruiting, training or evaluating sales personnel, including occasionally using homes, hotels or similar places for meetings with sales personnel;

12. mediating direct customer complaints when the purpose thereof is solely for ingratiating the sales personnel with the customer and facilitating requests for orders;

13. owning, leasing, using or maintaining personal property for use in the employee or representative's in-home office or automobile that is solely limited to the conducting of protected activities. Therefore, the use of personal property such as a cellular telephone, facsimile machine, duplicating equipment, personal computer and computer software that is limited to the carrying on of protected solicitation and activity entirely ancillary to such solicitation or permitted by the provisions of this rule shall not, by itself, remove the protection of P.L. 86-272.

M. P.L. 86-272 provides protection to certain in-state activities if conducted by an independent contractor that would not be afforded if performed by the company or its employees or other representatives.

1. Independent contractors may engage in the following limited activities in the state without the company's loss of

immunity;

a) soliciting sales;

b) making sales;

c) maintaining an office.

2. Sales representatives who represent a single principal are not considered to be independent contractors and are subject to the same limitations as those provided under P.L. 86-272 and this rule.

3. Maintenance of stock of goods in the state by the independent contractor under consignment or any other type of arrangement with the company, except for purposes of display and solicitation, shall remove the protection.

N. The Tax Commission will apply the provisions of P.L. 86-272 and of this rule to business activities conducted in foreign commerce. Therefore, whether business activities are conducted by (i) a foreign or domestic company selling tangible personal property into a county outside of the United States from a point within this state or by (ii) either company selling such property into this state from a point outside of the United States, the principles under this rule apply equally to determine whether the sales transactions are protected and the company immune from taxation in either this state or in the foreign county, as the case might be, and whether, if applicable, the throwback provisions of Section 59-7-318(2) will apply.

O. The protection afforded by P.L. 86-272 and the provisions of this rule do not apply to any corporation that is incorporated or domiciled in this state.

P. A company that registers or otherwise formally qualifies to do business within this state does not, by that fact alone, lose its protection under P.L. 86-272. Where, separate from or ancillary to such registration or qualification, the company receives and seeks to use or protect any additional benefit or protection from this state through activity not otherwise protected under P.L. 86-272 or this rule, such protection shall be removed.

Q. The protection afforded under P.L. 86-272 and the provisions of this rule shall be determined on a year by year tax basis. Therefore, if at any time during a tax year the company conducts activities that are not protected under P.L. 86-272 or this rule, no sales in this state or income earned by the company attributed to this state during any part of said tax year shall be protected from taxation for purposes of the corporate franchise tax.

**RM65-6F-8. Allocation and Apportionment of Net Income (Uniform Division of Income for Tax Purposes Act) Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.**

A. Business and Nonbusiness Income Defined. Section 59-7-302 defines business income as income arising from transactions and activity in the regular course of the taxpayer's trade or business operations. In essence, all income that arises from the conduct of trade or business operations of a taxpayer is business income. For purposes of administration of the Uniform Division of Income for Tax Purposes Act (UDITPA), the income of the taxpayer is business income unless clearly classifiable as nonbusiness income.

1. Nonbusiness income means all income other than business income and shall be narrowly construed.

2. The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, and nonoperating income, is of no aid in determining whether income is business or nonbusiness income. Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. Accordingly, the critical element in determining whether income is business income or nonbusiness income is the identification of the transactions and activity that are the elements of a particular trade or business.

In general, all transactions and activities of the taxpayer that are dependent upon or contribute to the operation of the taxpayer's economic enterprise as a whole constitute the taxpayer's trade or business and will be transactions and activity arising in the regular course of business, and will constitute integral parts of a trade or business.

3. Business and Nonbusiness Income. Application of Definitions. The following are rules for determining whether particular income is business or nonbusiness income:

a) Rents from real and tangible personal property. Rental income from real and tangible property is business income if the property with respect to which the rental income was received is used in the taxpayer's trade or business or is incidental thereto and therefore is includable in the property factor under G.1.a).

b) Gains or Losses from Sales of Assets. Gain or loss from the sale, exchange or other disposition of real or tangible or intangible personal property constitutes business income if the property while owned by the taxpayer was used in the taxpayer's trade or business. However, if the property was utilized for the production of nonbusiness income the gain or loss will constitute nonbusiness income. See G.1.b).

c) Interest. Interest income is business income where the intangible with respect to which the interest was received arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the intangible is related to or incidental to trade or business operations.

d) Dividends. Dividends are business income where the stock with respect to which the dividends are received arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the stock is related to or incidental to the trade or business operations. Because of the regularity with which most corporate taxpayers engage in investment activities, because the source of capital for those investments arises in the ordinary course of a taxpayer's business, because the income from those investments is utilized in the ordinary course of the taxpayer's business and because those investment assets are used for general credit purposes, income arising from the ownership or sale or other disposition of investments is presumptively business income. This presumption may be rebutted if the taxpayer can prove that the investment is unrelated to the regular trade or business activities.

e) Proration of Deductions. In most cases an allowable deduction of a taxpayer will be applicable only to the business income arising from the trade or business or to a particular item of nonbusiness income. In some cases an allowable deduction may be applicable to the business income and to nonbusiness income. In those cases the deduction shall be prorated among the business and nonbusiness income in a manner that fairly distributes the deduction among the classes of income to which it is applicable.

f) A schedule must be submitted with the return showing:

(1) the gross income from each class of income being allocated;

(2) the amount of each class of applicable expenses, together with explanation or computations showing how amounts were arrived at;

(3) the total amount of the applicable expenses for each income class; and

(4) the net income of each income class. The schedules should provide appropriate columns as set forth above for items allocated to this state and for items allocated outside this state.

g) In filing returns with this state, if the taxpayer departs from or modifies the manner of prorating any such deduction used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

h) If the returns or reports filed by a taxpayer with all

states to which the taxpayer reports under UDITPA are not uniform in the application or proration of any deduction, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

B. Definitions.

1. "Taxpayer," for purposes of this rule, is as defined in Section 59-7-101.

2. "Apportionment" means the division of business income between states by the use of a formula containing apportionment factors.

3. "Allocation" means the assignment of nonbusiness income to a particular state.

4. "Business activity" refers to the transactions and activity occurring in the regular course of the trade or business of a taxpayer.

5. "Gross receipts" are the gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital (including rents, royalties, interest and dividends) in a transaction that produces business income, in which the income or loss is recognized (or would be recognized if the transaction were in the United States) under the Internal Revenue Code. Amounts realized on the sale or exchange of property are not reduced for the cost of goods sold or the basis of property sold.

a) Gross receipts, even if business income, do not include such items as, for example:

(1) repayment, maturity, or redemption of the principal of a loan, bond, or mutual fund or certificate of deposit or similar marketable instrument;

(2) the principal amount received under a repurchase agreement or other transaction properly characterized as a loan;

(3) proceeds from issuance of the taxpayer's own stock or from sale of treasury stock;

(4) damages and other amounts received as the result of litigation;

(5) property acquired by an agent on behalf of another;

(6) tax refunds and other tax benefit recoveries;

(7) pension reversions;

(8) contributions to capital (except for sales of securities by securities dealers);

(9) income from forgiveness of indebtedness; or

(10) amounts realized from exchanges of inventory that are not recognized by the Internal Revenue Code.

b) Exclusion of an item from the definition of "gross receipts" is not determinative of its character as business or nonbusiness income. Nothing in this definition shall be construed to modify, impair or supersede any provision of J.

C. Apportionment.

1. If the business activity with respect to the trade or business of a taxpayer occurs both within and without this state, and if by reason of that business activity the taxpayer is taxable in another state, the portion of the net income (or net loss) arising from the trade or business derived from sources within this state shall be determined by apportionment in accordance with Sections 59-7-311 to 59-7-319.

2. Allocation. Any taxpayer subject to the taxing jurisdiction of this state shall allocate all of its nonbusiness income or loss within or without this state in accordance with Sections 59-7-306 to 59-7-310.

D. Consistency and Uniformity in Reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner in which income has been classified as business income or nonbusiness income in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by a taxpayer for all states to which the taxpayer reports under UDITPA are not uniform in the classification of income as business or nonbusiness income, the taxpayer shall disclose



in its return to this state the nature and extent of the variance.

**E. Taxable in Another State.**

1. In General. Under Section 59-7-303 the taxpayer is subject to the allocation and apportionment provisions of UDITPA if it has income from business activity that is taxable both within and without this state. A taxpayer's income from business activity is taxable without this state if the taxpayer, by reason of business activity (i.e., the transactions and activity occurring in the regular course of the trade or business), is taxable in another state within the meaning of Section 59-7-305. A taxpayer is taxable within another state if it meets either one of two tests:

a) if by reason of business activity in another state the taxpayer is subject to one of the types of taxes specified in Section 59-7-305(1), namely: a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

b) if by reason of business activity another state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether the state imposes that tax on the taxpayer. A taxpayer is not taxable in another state with respect to the trade or business merely because the taxpayer conducts activities in that state pertaining to the production of nonbusiness income.

2. When a Taxpayer Is Subject to a Tax Under Section 59-7-305. A taxpayer is subject to one of the taxes specified in Section 59-7-305(1) if it carries on business activity in a state and that state imposes such a tax thereon. Any taxpayer that asserts that it is subject to one of the taxes specified in Section 59-7-305(1) in another state shall furnish to the Tax Commission, upon its request, evidence to support that assertion. The Tax Commission may request that the evidence include proof that the taxpayer has filed the requisite tax return in the other state and has paid any taxes imposed under the law of the other state. The taxpayer's failure to produce that proof may be taken into account in determining whether the taxpayer is subject to one of the taxes specified in Section 59-7-305(1) in the other state. If the taxpayer voluntarily files and pays one or more taxes when not required to do so by the laws of that state or pays a minimal fee for qualification, organization, or for the privilege of doing business in that state, but

a) does not actually engage in business activity in that state, or

b) does actually engage in some business activity, not sufficient for nexus, and the minimum tax bears no relation to the taxpayer's business activity within that state, the taxpayer is not subject to one of the taxes specified within the meaning of Section 59-7-305(1).

3. When a State Has Jurisdiction to Subject a Taxpayer to a Net Income Tax. The second test, that of Section 59-7-305(2), applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of business activity under the Constitution and statutes of the United States. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provisions of Public Law 86-272, 15 U. S. C. A. Sec. 381-385 (P.L. 86-272). In the case of any state as defined in Section 59-7-302(6), other than a state of the United States or political subdivision of a state, the determination of whether a state has jurisdiction to subject the taxpayer to a net income tax shall be made as though the jurisdictional standards applicable to a state of the United States applied in that state. If jurisdiction is otherwise present, the state is not considered as without jurisdiction by reason of the provisions of a treaty between that state and the United States.

**F. Apportionment Formula.** All business income of the taxpayer shall be apportioned to this state by use of the apportionment formula set forth in Section 59-7-311. The elements of the apportionment formula are the property factor, see G. below, the payroll factor, see H. below, and the sales

factor, see I. below, of the trade or business of the taxpayer. For exceptions see J. below.

**G. Property Factor.**

1. In General.

a) The property factor of the apportionment formula shall include all real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of its trade or business. Real and tangible personal property includes land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property but does not include coin or currency.

b) Property used in connection with the production of nonbusiness income shall be excluded from the property factor. Property used both in the regular course of the taxpayer's trade or business and in the production of nonbusiness income shall be included in the factor only to the extent the property is used in the regular course of the taxpayer's trade or business. The method of determining the portion of the value to be included in the factor will depend upon the facts of each case.

c) The property factor shall reflect the average value of property includable in the factor. Refer to G.6.

2. Property Used for the Production of Business Income. Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period in the regular course of the trade or business of the taxpayer. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. Property or equipment under construction during the tax period, except inventoriable goods in process, shall be excluded from the factor until the property is actually used in the regular course of the trade or business of the taxpayer. If the property is partially used in the regular course of the trade or business of the taxpayer while under construction, the value of the property to the extent used shall be included in the property factor.

3. Consistency in Reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property, or of excluding or including property in the property factor, used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the valuation of property and in the exclusion or inclusion of property in the property factor, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

4. Numerator. The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period in the regular course of the trade or business of the taxpayer. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller that is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or movable property such as construction equipment, trucks, or leased electronic equipment that are located within and without this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of total time within the state during the tax period. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

5. Valuation of Owned Property.

a) Property owned by the taxpayer shall be valued at its original cost. As a general rule original cost is deemed to be the basis of the property for state franchise or income tax purposes (prior to any adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reasons including sale, exchange, and abandonment. However, capitalized intangible drilling and development costs shall be included in the property factor whether or not they have been expensed for either federal or state tax purposes.

b) Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for state tax purposes.

c) Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation.

6. Valuation of Rented Property.

a) Property rented by the taxpayer is valued at eight times its net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for the property, less the aggregate annual subrental rates paid by subtenants of the taxpayer. See J.2. for special rules where the use of the net annual rental rate produces a negative or clearly inaccurate value or where property is used by the taxpayer at no charge or rented at a nominal rental rate.

b) Subrents are not deducted when the subrents constitute business income because the property that produces the subrents is used in the regular course of the trade or business of the taxpayer when it is producing the income. Accordingly there is no reduction in its value.

c) Annual rental rate is the amount paid as rental for property for a 12-month period; i.e., the amount of the annual rent. Where property is rented for less than a 12-month period, the rent paid for the actual period of rental shall constitute the annual rental rate for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the rent paid for the short tax period shall be annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month to month basis.

d) Annual rent is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

(1) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

(2) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items that are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, and janitor services. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and other items.

e) Annual rent does not include:

(1) incidental day-to-day expenses such as hotel or motel accommodations, or daily rental of automobiles;

(2) royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property that constitutes a sharing of current or future production of natural resources from that property, irrespective of the method of payment or how that consideration may be characterized, whether as a royalty, advance royalty, rental, or otherwise.

f) Leasehold improvements shall, for the purposes of the

property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor.

7. Averaging Property Values. As a general rule, the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and end of the tax period. However, the Tax Commission may require or allow averaging by monthly values if that method of averaging is required to properly reflect the average value of the taxpayer's property for the tax period.

a) Averaging by monthly values will generally be applied if substantial fluctuations in the values of the property exist during the tax period or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

b) Example: The monthly value of the taxpayer's property was as follows:

TABLE

January	\$ 2,000
February	2,000
March	3,000
April	3,500
May	4,500
June	10,000
July	15,000
August	17,000
September	23,000
October	25,000
November	13,000
December	2,000
Total	\$120,000

The average value of the taxpayer's property includable in the property factor for the income year is determined as follows:  
 $\$120,000 / 12 = \$10,000$

c) Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of the property as set forth in G.6.a).

H. Payroll Factor.

1. The payroll factor of the apportionment formula shall include the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax period.

2. The total amount paid to employees is determined upon the basis of the taxpayer's accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting, at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report compensation under that method for unemployment compensation purposes. The compensation of any employee on account of activities that are connected with the production of nonbusiness income shall be excluded from the factor.

3. The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services.

a) The term "employee" means:

(1) any officer of a corporation; or

(2) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person will be

considered to be an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act. However, since certain individuals are included within the term employees in the Federal Insurance Contributions Act who would not be employees under the usual common law rules, it may be established that a person who is included as an employee for purposes of the Federal Insurance Contributions Act is not an employee for purposes of this rule.

b) In filing returns with this state, if the taxpayer departs from or modifies the treatment of compensation paid used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(1) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the treatment of compensation paid, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

4. Denominator. The denominator of the payroll factor is the total compensation paid everywhere during the tax period. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation, for example, by P.L. 86-272, are included in the denominator of the payroll factor.

5. Numerator. The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. The tests in Section 59-7-316 to be applied in determining whether compensation is paid in this state are derived from the Model Unemployment Compensation Act. Accordingly, if compensation paid to employees is included in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report compensation under that method for unemployment compensation purposes, it shall be presumed that the total wages reported by the taxpayer to this state for unemployment compensation purposes constitute compensation paid in this state except for compensation excluded under H. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to this state for unemployment compensation purposes.

6. Compensation Paid in this State. Compensation is paid in this state if any one of the following tests applied consecutively are met:

a) The employee's service is performed entirely within the state.

b) The employee's service is performed entirely within and without the state, but the service performed without the state is incidental to the employee's service within the state. The word incidental means any service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction.

c) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(1) if the employee's base of operations is in this state; or

(2) if there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state; or

(3) if the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state.

d) The term "base of operations" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his trade or profession at some other

point or points. The term "place from which the service is directed or controlled" means the place from which the power to direct or control is exercised by the taxpayer.

I. Sales Factor. In General.

1. Section 59-7-302(5) defines the term "sales" to mean all gross receipts of the taxpayer not allocated under Section 59-7-306 through 59-7-310. Thus, for purposes of the sales factor of the apportionment formula for the trade or business of the taxpayer, the term sales means all gross receipts derived by the taxpayer from transactions and activity in the regular course of the trade or business. The following are rules determining sales in various situations.

a) In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, sales includes all gross receipts from the sales of goods or products (or other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales, less returns and allowances and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to sales. Federal and state excise taxes (including sales taxes) shall be included as part of receipts if taxes are passed on to the buyer or included as part of the selling price of the product.

b) In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, sales includes the entire reimbursed cost, plus the fee.

c) In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, or research and development contracts, sales includes the gross receipts from the performance of services including fees, commissions, and similar items.

d) In the case of a taxpayer engaged in renting real or tangible property, sales includes the gross receipts from the rental, lease or licensing of the use of the property.

e) In the case of a taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, sales includes the gross receipts therefrom.

f) If a taxpayer derives receipts from the sale of equipment used in its business, those receipts constitute sales. For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks are included in the sales factor.

g) In some cases certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this state the income of the taxpayer's trade or business. See J.3.

h) In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

i) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the inclusion or exclusion of gross receipts, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

2. Denominator. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under J.3.

3. Numerator. The numerator of the sales factor shall include gross receipts attributable to this state and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges,

carrying charges, or time-price differential charges incidental to gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

4. Sales of Tangible Personal Property in this State.

a) Gross receipts from the sales of tangible personal property (except sales to the United States government; see I.5.) are in this state:

(1) if the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of sale; or

(2) if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.

b) Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

c) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

d) The term "purchaser within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.

e) When property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, the sales are in this state.

f) If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state.

g) If a taxpayer whose salesman operates from an office located in this state makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply:

(1) If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in that state.

(2) If the taxpayer is not taxable in the state from which the property is shipped, the sale is in this state.

5. Sales of Tangible Personal Property to United States Government in this state.

a) Gross receipts from the sales of tangible personal property to the United States government are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. For purposes of this rule, only sales for which the United States government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States government, do not constitute sales to the United States government.

6. Sales Other than Sales of Tangible Personal Property in this State.

a) In general, Section 59-7-319(1) provides for the inclusion in the numerator of the sales factor of gross receipts from transactions other than sales of tangible personal property (including transactions with the United States government). Under Section 59-7-319(1), gross receipts are attributed to this state if the income producing activity that gave rise to the receipts is performed wholly within this state. Also, gross receipts are attributed to this state if, with respect to a particular item of income, the income producing activity is performed within and without this state but the greater proportion of the income producing activity is performed in this state, based on costs of performance.

b) The term "income producing activity" applies to each separate item of income and means the transactions and activity

directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. Income producing activity does not include transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, the income producing activity includes the following:

(1) the rendering of personal services by employees or the utilization of tangible and intangible property by the taxpayer in performing a service;

(2) the sale, rental, leasing, or licensing or other use of real property;

(3) the rental, leasing, licensing or other use of intangible personal property; or

(4) the sale, licensing or other use of intangible personal property. The mere holding of intangible personal property is not, of itself, an income producing activity.

c) The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

d) Receipts (other than from sales of tangible personal property) in respect to a particular income producing activity are in this state if:

(1) the income producing activity is performed wholly within this state; or

(2) the income producing activity is performed both in and outside this state and a greater proportion of the income producing activity is performed in this state than in any other state, based on costs of performance.

e) The following are special rules for determining when receipts from the income producing activities described below are in this state:

(1) Gross receipts from the sale, lease, rental or licensing of real property are in this state if the real property is located in this state.

(2) Gross receipts from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state. The rental, lease, licensing or other use of tangible personal property in this state is a separate income producing activity from the rental, lease, licensing or other use of the same property while located in another state. Consequently, if the property is within and without this state during the rental, lease or licensing period, gross receipts attributable to this state shall be measured by the ratio that the time the property was physically present or was used in this state bears to the total time or use of the property everywhere during the period.

(3) Gross receipts for the performance of personal services are attributable to this state to the extent services are performed in this state. If services relating to a single item of income are performed partly within and partly without this state, the gross receipts for the performance of services shall be attributable to this state only if a greater portion of the services were performed in this state, based on costs of performance. Usually where services are performed partly within and partly without this state, the services performed in each state will constitute a separate income producing activity. In that case, the gross receipts for the performance of services attributable to this state shall be measured by the ratio that the time spent in performing services in this state bears to the total time spent in performing services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation that gives rise to gross receipts. Personal service not directly connected with the performance of the contract or other obligations, as for example, time expended in negotiating the contract, is excluded from the computations.

J. Special Rules:

1. Section 59-7-320 provides that if the allocation and

apportionment provisions of UDITPA do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for, or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- a) separate accounting;
- b) the exclusion of any one or more of the factors;
- c) the inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in this state; or
- d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

#### 2. Property Factor.

The following special rules are established in respect to the property factor of the apportionment formula:

a) If the subrents taken into account in determining the net annual rental rate under G.6.b) produce a negative or clearly inaccurate value for any item of property, another method that will properly reflect the value of rented property may be required by the Tax Commission or requested by the taxpayer. In no case however, shall the value be less than an amount that bears the same ratio to the annual rental rate paid by the taxpayer for property as the fair market value of that portion of property used by the taxpayer bears to the total fair market value of the rented property.

b) If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for the property shall be determined on the basis of a reasonable market rental rate for that property.

#### 3. Sales Factors.

The following special rules are established in respect to the sales factor of the apportionment formula:

a) Where substantial amounts of gross receipts arise from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business, those gross receipts shall be excluded from the sales factor. For example, gross receipts from the sale of a factory or plant will be excluded.

b) Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless exclusion would materially affect the amount of income apportioned to this state. For example, the taxpayer ordinarily may include or exclude from the sales factor gross receipts from such transactions as the sale of office furniture, and business automobiles.

c) Where the income producing activity in respect to business income from intangible personal property can be readily identified, that income is included in the denominator of the sales factor and, if the income producing activity occurs in this state, in the numerator of the sales factor as well. For example, usually the income producing activity can be readily identified in respect to interest income received on deferred payments on sales of tangible property, see I.1.a), and income from the sale, licensing or other use of intangible personal property, see I.6.b)(4).

(1) Where business income from intangible property cannot readily be attributed to any particular income producing activity of the taxpayer, the income cannot be assigned to the numerator of the sales factor for any state and shall be excluded from the denominator of the sales factor. For example, where business income in the form of dividends received on stock, royalties received on patents or copyrights, or interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, such dividends and interest shall be excluded from the denominator of the sales factor.

(2) Exclude from the denominator of the sales factor, receipts from the sales of securities unless the taxpayer is a dealer therein.

d) Where gains and losses on the sale of liquid assets are

not excluded from the sales factor by other provisions under J.3.a) through c), such gains or losses shall be treated as provided in this J.3.d). This J.3.d) does not provide rules relating to the treatment of other receipts produced from holding or managing such assets.

(1) If a taxpayer holds liquid assets in connection with one or more treasury functions of the taxpayer, and the liquid assets produce business income when sold, exchanged or otherwise disposed, the overall net gain from those transactions for each treasury function for the tax period is included in the sales factor. For purposes of this J.3.d), each treasury function will be considered separately.

(2) For purposes of this J.3.d), a liquid asset is an asset (other than functional currency or funds held in bank accounts) held to provide a relatively immediate source of funds to satisfy the liquidity needs of the trade or business. Liquid assets include:

(a) foreign currency (and trading positions therein) other than functional currency used in the regular course of the taxpayer's trade or business;

(b) marketable instruments (including stocks, bonds, debentures, options, warrants, futures contracts, etc.); and

(c) mutual funds which hold such liquid assets.

(3) An instrument is considered marketable if it is traded in an established stock or securities market and is regularly quoted by brokers or dealers in making a market. Stock in a corporation which is unitary with the taxpayer, or which has a substantial business relationship with the taxpayer, is not considered marketable stock.

(4) For purposes of this J.3.d), a treasury function is the pooling and management of liquid assets for the purpose of satisfying the cash flow needs of the trade or business, such as providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, business acquisitions, etc. A taxpayer principally engaged in the trade or business of purchasing and selling instruments or other items included in the definition of liquid assets set forth herein is not performing a treasury function with respect to income so produced.

(5) Overall net gain refers to the total net gain from all transactions incurred at each treasury function for the entire tax period, not the net gain from a specific transaction.

4. Domestic International Sales Corporation (DISC). In any case in which a corporation, subject to the income tax jurisdiction of Utah, owns 50 percent or more of the voting power of the stock of a corporation classified as a DISC under the provisions of Sec. 992 Internal Revenue Code, a combined filing with the DISC corporation is required.

5. Partnership or Joint Venture Income. Income or loss from partnership or joint venture interests shall be included in income and apportioned to Utah through application of the three-factor formula consisting of property, payroll and sales. For apportionment purposes, the portion of partnership or joint venture property, payroll and sales to be included in the corporation's property, payroll and sales factors shall be computed on the basis of the corporation's ownership interest in the partnership or joint venture, and otherwise in accordance with other applicable provisions of this rule.

#### **R865-6F-14. Extent to Which Federal Income Tax Provisions Are Followed for Corporation Franchise Tax Purposes Pursuant to Utah Code Ann. Sections 59-7-106, 59-7-108, 59-7-501, and 59-7-502.**

A. It is the policy of the Tax Commission, in matters involving the determination of net income for Utah corporation franchise tax purposes, to follow as closely as possible federal requirements with respect to the same matters. In some instances, of course, the federal and state statutes differ; and due to such conflict, the federal rulings, regulations, and decisions cannot be followed. Furthermore, in some instances, the Tax

Commission may disagree with the federal determinations and does not consider them controlling for Utah corporation franchise tax purposes.

1. The items of major importance ordinarily allowed in conformity with federal requirements are:
    - a. depreciation (see rule R865-6F-9),
    - b. depletion,
    - c. exploration and development expenses,
    - d. intangible drilling costs,
    - e. accounting methods and periods (see rule R865-6F-2),
- and
- f. Subpart F income.

2. The following are the major items which require different treatment under the state and federal statutes:

- a. installment sales (see rule R865-6F-15),
- b. consolidated returns (see rule R865-6F-4),
- c. liquidating dividends,
- d. municipal bond interest,
- e. capital loss deduction,
- f. loss carry-overs and carry-backs, and
- g. gross-up on foreign dividends.

Note: The only reserves permitted in determining net-income for Utah corporation franchise tax purposes are depreciation, depletion, and bad debts.

**R865-6F-15. Installment Basis of Reporting Income in Year of Termination Pursuant to Utah Code Ann. Section 59-7-112.**

A. The Corporation Franchise Tax Act allows a corporation, under certain conditions and under rules prescribed by the Tax Commission, to report income arising from the sale or other disposition of property on a deferred or so-called installment basis. Thus, a gain technically realized at the time the sale is made may, at the election of the taxpayer, be reported on a deferred basis in accordance with the law and the following sections of this rule. The rule allowing deferment of reporting such income is only one of postponement of the tax, and not one of exemption from a tax otherwise lawfully due. Thus, the privilege of deferment is terminated if the taxpayer ceases to be subject to tax prior to the reporting of the entire amount of installment income. When a taxpayer elects to report income arising from the sale or other disposition of property as provided in Section 59-7-112, and the entire income therefrom has not been reported prior to the year that the taxpayer ceases to be subject to the tax imposed under the Utah Corporation Income and Franchise Tax Acts, the unreported income is included in the return for the last year in which the taxpayer is subject to the tax. This rule applies to all corporations which elect to report on the installment basis. If a corporation on this basis desires to dissolve or to withdraw, it must comply with the provisions hereof prior to issuance of the tax clearance certificate.

B. Income reported under the provisions of Section 59-7-112 and this rule shall be subject to the same treatment in the allocation of income; i.e., specific allocation or apportionment, as would have been accorded the original income from the sale under the provisions of the Uniform Division of Income for Tax Purposes Act. In case such income is subject to apportionment, the apportionment fraction for the year in which the income is reported applies rather than the year in which the sale was made.

**R865-6F-16. Apportionment of Income of Long-Term Construction Contractors Pursuant to Utah Code Ann. Sections 59-7-302 through 321, and 59-7-501.**

A. When a taxpayer elects to use the percentage-of-completion method of accounting, or the completed contract method of accounting for long-term contracts, and has income from sources both within and without this state, the amount of business income derived from such long-term contracts from sources within this state is determined pursuant to this rule.

B. Business income is apportioned to this state by a three-factor formula consisting of property, payroll, and sales--regardless of the method of accounting for long-term contracts elected by the taxpayer. The total of the property, payroll, and sales percentages is divided by three to determine the apportionment percentage. The apportionment percentage is then applied to business income to determine the amount apportioned to this state.

1. Percentage-of-completion method. Under this method of accounting for long-term contracts, the amount included each year as business income from each contract is the amount by which the gross contract price (which corresponds to the percentage of the entire contract completed during the income years) exceeds all expenditures made during the income year in connection with the contract. Beginning and ending material and supplies inventories must be appropriately accounted for in reporting expenditures.

2. Completed-contract method. Under this method of accounting, business income derived from long-term contracts is reported for the income year in which the contract is completed. A special computation is required to compute the amount of business income attributable to this state from each completed contract. All receipts and expenditures applicable to the contracts, whether complete or incomplete at the end of the income year, are excluded from other business income, which are apportioned by the regular three-factor formula of property, payroll, and sales.

C. Property factor. In general, the numerator and denominator of the property factor is determined as set forth in Utah Code Ann. Sections 59-7-312, 59-7-313, and 59-7-314 and the rules thereunder. However, the following special rules are also applicable:

1. The average value of the taxpayer's cost (including materials and labor) of construction in progress, to the extent these costs exceed progress billings, are included in the denominator of the property factor. The value of those construction costs attributable to construction projects in this state are included in the numerator of the property factor. It may be necessary to use monthly averages if yearly averages do not properly reflect the average value of the taxpayer's equity.

2. Rent paid for the use of equipment directly attributable to a particular construction project is included in the property factor at eight times the net annual rental rate, even though the rental expense may be capitalized into the cost of construction.

3. The property factor is computed in the same manner for all long-term-contract methods of accounting and is computed for each income year, even though under the completed-contract method of accounting business income is computed separately.

D. Payroll factor. In general, the numerator and denominator of the payroll factor are determined as set forth in Utah Code Ann. Sections 59-7-315 and 59-7-316 and the rules thereunder. However, the following special rules are also applicable.

1. Compensation paid to employees attributable to a particular construction project is included in the payroll factor even though capitalized into the cost of construction.

2. Compensation paid to employees who, in the aggregate, perform most of their services in a state to which their employer does not report them for unemployment tax purposes, is attributed to the state where the services are performed. For example, a taxpayer engaged in a long-term contract in State X sends several key employees to that state to supervise the project. The taxpayer, for unemployment tax purposes reports these employees to State Y where the main office is maintained and where the employees reside. For payroll factor purposes and in accordance with Utah Code Ann. Section 59-7-316 and the rule thereunder, the compensation is assigned to the numerator of State X.

3. The payroll factor is computed in the same manner for

all long-term-contract methods of accounting and is computed for each income year, even though under the completed contract method of accounting, business income is computed separately.

E. Sales Factor. In general, the numerator and denominator of the sales factor shall be determined as set forth in Utah Code Ann. Sections 59-7-317, 59-7-318, and 59-7-319 and the rules thereunder. However, the following special rules are also applicable.

1. Gross receipts derived from the performance of a contract are attributable to this state if the construction project is located in this state. If the construction project is located partly within and partly without this state, the gross receipts attributable to this state are based upon the ratio which construction costs for the project in this state incurred during the coming year bears to the total of such construction costs for the entire project during the income year. Progress billings are ordinarily used to reflect gross receipts and must be shown in both the numerator and denominator of the sales factor.

2. If the percentage-of-completion method is used, the sales factor includes only that portion of the gross contract price which corresponds to the percentage of the entire contract which was completed during the income year. For example, a construction contractor which had elected the percentage-of-completion method of accounting entered into a \$9,000,000 long-term construction contract. At the end of its current income year (the second since starting the project) it estimated that the project was 30 percent completed. The amount of gross receipts included in the sales factor for the current income year is \$2,700,000 (30 percent of \$9,000,000), regardless of whether the taxpayer uses the accrual method or the cash method of accounting for receipts and disbursements.

3. If the completed-contract method of accounting is used, the sales factor includes the portion of the gross receipts (progress billings) received under the cash basis or accrued, whichever is applicable, during the income year attributable to each contract. For example, a construction contractor which elected the completed-contract method of accounting entered into a long-term construction contract. At the end of its current income year (the second since starting the project) it had billed, and accrued on its books a total of \$5,000,000 of which \$2,000,000 had accrued in the first year the contract was undertaken, and \$3,000,000 in the current (second) year. The amount of gross receipts included in the sales factor for the current income year is \$3,000,000. If the taxpayer keeps its books on the cash basis, and as of the end of its current income year has received only \$2,500,000 of the \$3,000,000 billed during the current year, the amount of gross receipts to be included in the sales factor for the current year is \$2,500,000.

4. The sales factor, except as noted above in subparagraphs 2. and 3., is computed in the same manner for all long-term contract methods of accounting and is computed for each income year--even though under the completed-contract method of accounting, business income is computed separately.

F. The total of the property, payroll, and sales percentages is divided by three to determine the apportionment percentage which is then applied to business income to establish the amount apportioned to this state.

G. The completed-contract method of accounting provides that the reporting of income (or loss) is deferred until the year the construction project is completed. In order to determine the amount of income which is attributable to sources within this state, a separate computation is made for each contract completed during the income year, regardless of whether the project is located within or without this state. The amount of income from each contract completed during the income year apportioned to this state is added to other business income apportioned to this state by the regular three-factor formula, and that total together with all nonbusiness income allocated to this state becomes the measure of tax for the income year. The

amount of income (or loss) from each contract which is derived from sources within this state using the completed-contract method of accounting is computed as follows.

1. In the income year the contract is completed, the income (or loss) therefrom is determined.

2. The income (or loss) determined at Paragraph G.1. is apportioned to this state by the following method:

(a) a fraction is determined for each year the contract was in progress (the numerator of which is the amount of construction costs paid or accrued each year the contract was in progress, and the denominator of which is the total of all construction costs for the project);

(b) each percentage determined in (a) is multiplied by the apportionment formula percentage for that particular year;

(c) these factors are totaled; and

(d) the total income is multiplied by this combined percentage, and the resulting income (or loss) is the amount of contract business income assigned to this state.

3. A corporation using the completed-contract method of accounting is required to include income derived from sources within this state from contracts within or without this state or income from incomplete contracts in progress outside this state in the year of withdrawal, dissolution, or cessation of business pursuant to Paragraph G.4.

4. The amount of income (or loss) from each such contract apportioned to this state is determined as if the percentage-of-completion method of accounting were used for all such contracts on the date of withdrawal, dissolution, or cessation of business. The amount of business income (or loss) for each such contract is the amount by which the gross contract price from each such contract from the commencement thereof to the date of withdrawal, dissolution, or cessation of business exceeds all expenditures made during such period in connection with each such contract. Beginning and ending material and supplies inventories must be appropriately accounted for in reporting expenditures in connection with each contract.

**R865-6F-18. Exemptions from Corporate Franchise and Income Tax Pursuant to Utah Code Ann. Sections 59-7-101 and 59-7-102.**

A. The following definitions apply to the exemption for corporate franchise and income tax for a farmers' cooperative.

1. "Member" means a person who shares in the profits of a cooperative association and is entitled to participate in the management of the association.

2. "Producer" means a person who, as owner or tenant, bears the risk of production and receives income based on farm production rather than fixed compensation.

B. In order to claim an exemption from corporate franchise and income tax provided for by Section 59-7-102, a corporation must submit to the Tax Commission form TC-161, Utah Registration for Exemption from Corporate Franchise or Income Tax, along with any information that form requires, for the Tax Commission's determination that the corporation satisfies the requirements of Section 59-7-102.

C. A corporation shall notify the Tax Commission of any change that affects its tax exempt status under Section 59-7-102.

D. For purposes of the Section 59-7-102 exemption for a farmers' cooperative, an association, corporation, or other organization similar to an association, corporation, or other organization of farmers or fruit growers includes establishments primarily engaged in growing crops, raising animals, harvesting timber, and harvesting fish and other animals from a farm, ranch, or their natural habitat.

**R865-6F-19. Taxation of Trucking Companies Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.**

A. Definitions:

1. "Average value" of property means the amount

determined by averaging the values of real and personal property at the beginning and end of the income tax year. The Tax Commission may require the averaging of monthly values during the income year or other averaging as necessary to reflect properly the average value of the trucking company's property.

2. "Business and nonbusiness income" are as defined in R865-6F-8(A).

3. "Mobile property" means all motor vehicles, including trailers, engaged directly in the movement of tangible personal property.

4. "Mobile property mile" means the movement of a unit of mobile property a distance of one mile, whether loaded or unloaded.

5. "Original cost" means the basis of the property for federal income tax purposes (prior to any federal income tax adjustments, except for subsequent capital additions, improvements thereto, or partial dispositions); or if the property has no such basis, or if the valuation of the property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer.

6. "Property used during the course of the income year" means property that is available for use in the taxpayer's trade or business during the income year.

7. "Trucking company" means a corporation engaged in or transacting the business of transporting freight, merchandise, or other property for hire.

8. "Value of owned real and tangible personal property" means the original cost of owned real and tangible personal property.

9. "Value of rented real and tangible personal property" means the product of eight times the net annual rental rate of rented real and tangible personal property.

B. When a trucking company has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the trucking company's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

C. In general, the property factor shall be determined in accordance with R865-6F-8(G), the payroll factor in accordance with R865-6F-8(H), and the sales factor in accordance with R865-6F-8(I), except as modified by this rule.

D. The denominator of the property factor shall be the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used, or available for use, within this state during the income year.

1. In the determination of the numerator of the property factor, all property, except mobile property, shall be included in the numerator of the property factor.

2. Mobile property located within and without this state during the income year shall be included in the numerator of the property factor in the ratio that the mobile property's miles within this state bear to the total miles of mobile property within and without this state.

E. The denominator of the payroll factor is the compensation paid within and without this state by the taxpayer during the income year for the production of business income.

The numerator of the payroll factor is the compensation paid within this state during the income year by the taxpayer for the production of business income.

1. With respect to all personnel, except those performing services within and without this state, compensation shall be included in the numerator as provided in R865-6F-8(H).

2. With respect to personnel performing services within and without this state, compensation shall be included in the numerator of the payroll factor in the ratio that their services performed within this state bear to their services performed within and without this state.

F. In general, all revenue derived from transactions and activities in the regular course of the taxpayer's trade or business that produce business income shall be included in the denominator of the revenue factor. The numerator of the revenue factor is the total revenue of the taxpayer in this state during the income year.

1. The total state revenue of the taxpayer, other than revenue from hauling freight, mail, and express, shall be attributable to this state in accordance with R865-6F-8(I).

2. The total revenue of the taxpayer attributable to this state during the income year from hauling freight, mail, and express shall be:

a) Intrastate: all receipts from any shipment that both originates and terminates within this state; and

b) Interstate: that portion of the receipts from movements or shipments passing through, into, or out of this state as determined by the ratio that the mobile property miles traveled by the movements or shipments within this state bear to the total mobile property miles traveled by the movements or shipments within and without this state.

G. The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by mobile property. These records are subject to review by the Tax Commission or its agents.

H. This rule requires apportionment of income to this state if during the course of the income tax year, the trucking company:

1. owned or rented any real or personal property in this state;

2. made any pickups or deliveries within this state;

3. traveled more than 25,000 mobile property miles within this state, provided that the total mobile property miles traveled within this state during the income tax year exceeded three percent of the total mobile property miles traveled in all states by the trucking company during the period; or

4. made more than 12 trips into this state.

**R865-6F-22. Treatment of Loss Carrybacks and Carryforwards Spanning a Change in Reporting Methods Pursuant to Utah Code Ann. Sections 59-7-402 and 59-7-403.**

A. For purposes of this rule, "worldwide year" means a year in which a corporation filed a worldwide combined report as set forth in Sections 59-7-101(34) and 59-7-403.

B. For purposes of this rule, "water's edge year" means a year in which a corporation filed a combined report as set forth in Sections 59-7-101(33) and 59-7-402.

C. A corporation that receives permission from the Tax Commission to change its filing method to the water's edge method after having elected the worldwide method will be required to forfeit any unused loss carryovers that were generated in any worldwide year as a condition precedent to making that change. Any losses generated in a subsequent water's edge year may not be carried back against income earned in any year prior to the change to the water's edge method, but must be carried to a post-change water's edge year.

D. A corporation that elects the worldwide filing method subsequent to adoption of this rule will be required to forfeit any unused loss carryovers that were generated in any water's



edge year. Any losses generated in a subsequent worldwide year may not be carried back against income earned in any year prior to the change to the worldwide election method, but must be carried to a post-change worldwide year.

**R865-6F-23. Utah Steam Coal Tax Credit Pursuant to Utah Code Ann. Section 59-7-604.**

A. Definitions.

1. "Permitted mine" means a mine for which a permit has been issued by the Division of Oil, Gas, and Mining pursuant to Title 40, Chapter 10, Coal Mining and Reclamation.

2. "Purchaser outside of the United States" means any company that purchases coal for shipment outside of the fifty states or the District of Columbia.

B. To qualify for the steam coal tax credit for taxable years beginning on or after January 1, 1993, sales to a purchaser outside of the United States must exceed the permitted mine's sales to a purchaser outside of the United States in the taxable year beginning on or after January 1, 1992, regardless of any change in ownership of the mine.

C. To qualify for the steam coal tax credit the coal must be exported outside of the United States, within a reasonable period of time. A reasonable period of time is considered to be within 90 days after the end of the tax year.

**R865-6F-24. Attribution of Sales of Tangible Property to the Sales Factor for Apportionment of Business Income Pursuant to Utah Code Ann. Section 59-7-317.**

A. For purposes of 15 U.S.C. Section 381, the phrase "activities within such state by or on behalf of such person" means the activities of any member of a unitary business as that term is defined in Section 59-7-302.

B. If the activity in this state of any member of a unitary business exceeds the activity protected by 15 U.S.C. Section 381, sales of tangible property into this state, from an out-of-state location by any member of the unitary business shall be included in this state's sales factor numerator under Section 59-7-317.

C. If any member of a unitary business is taxable in another state under Section 59-7-305, sales of tangible property from a Utah location, into that state by any member of the unitary business shall not be thrown back to this state as ordinarily provided under Section 59-7-318.

D. This rule is effective for taxable years beginning after December 31, 1992.

**R865-6F-26. Historic Preservation Tax Credits Pursuant to Utah Code Ann. Section 59-7-609.**

A. Definitions:

1. "Qualified rehabilitation expenditures" includes architectural, engineering, and permit fees.

2. "Qualified rehabilitation expenditures" does not include movable furnishings.

3. "Residential" as used in Section 59-7-609 applies only to the use of the building after the project is completed.

B. Taxpayers shall file an application for approval of all proposed rehabilitation work with the Division of State History prior to the completion of restoration or rehabilitation work on the project. The application shall be on a form provided by the Division of State History.

C. Rehabilitation work must receive a unique certification number from the State Historic Preservation Office in order to be eligible for the tax credit.

D. In order to receive final certification and be issued a unique certification number for the project, the following conditions must be satisfied:

1. The project approved under B. must be completed.

2. Upon completion of the project, taxpayers shall notify the State Historic Preservation Office and provide that office an

opportunity to review, examine, and audit the project. In order to be certified, a project shall be completed in accordance with the approved plan and the Secretary of the Interior's Standards for Rehabilitation.

3. Taxpayers restoring buildings not already listed on the National Register of Historic Places shall submit a complete National Register Nomination Form. If the nomination meets National Register criteria, the State Historic Preservation Office shall approve the nomination.

4. Projects must be completed, and the \$10,000 expenditure threshold required by Section 59-7-609 must be met, within 36 months of the approval received pursuant to B.

5. During the course of the project and for three years thereafter, all work done on the building shall comply with the Secretary of the Interior's Standards for Rehabilitation.

E. Proof of State Historic Preservation Office certification shall be made by:

1. receiving an authorization form from the State Historic Preservation Office containing the certification number;

2. attaching that authorization form to the tax return for the year in which the credit is claimed.

F. Credit amounts shall be applied against Utah corporate franchise tax due in the tax year in which the project receives final certification under D.

G. Credit amounts greater than the amount of Utah corporate franchise tax due in a tax year shall be carried forward to the extent provided by Section 59-7-609.

H. Carryforward historic preservation tax credits shall be applied against Utah franchise tax due before the application of any historic preservation credits earned in the current year and on a first-earned, first-used basis.

I. Original records supporting the credit claimed must be maintained for three years following the date the return was filed claiming the credit.

**R865-6F-27. Order of Credits Applied Against Utah Corporate Franchise Tax Due Pursuant to Utah Code Ann. Sections 9-2-413, 59-6-102, 59-7-601 through 59-7-614, and 59-13-202.**

A. Taxpayers shall deduct credits authorized by Sections 9-2-413, 59-6-102, 59-7-601 through 59-7-614, and 59-13-202 against Utah corporate franchise tax due in the following order:

1. nonrefundable credits;

2. nonrefundable credits with a carryforward;

3. refundable credits.

**R865-6F-28. Enterprise Zone Corporate Franchise Tax Credits Pursuant to Utah Code Ann. Sections 9-2-401 through 9-2-415.**

A. Definitions:

1. "Business engaged in retail trade" means a business that makes a retail sale as defined in Section 59-12-102.

2. "Construction work" does not include facility maintenance or repair work.

3. "Employee" means a person who qualifies as an employee under Internal Revenue Service Regulation 26 CFR 31.3401(c)(1).

4. "Public utilities business" means a public utility under Section 54-2-1.

5. "Qualifying investment" in the case of a business firm that is a member of a unitary group, does not include an investment made by that business firm in plant, equipment, or other depreciable property of another member of the unitary group.

6. "Transfer" pursuant to Section 9-2-411, means the relocation of assets and operations of a business, including personnel, plant, property, and equipment.

7. "Unitary group" is as defined in Section 59-7-101.

B. For purposes of the investment tax credit, an investment

is a qualifying investment if:

1. The plant, equipment, or other depreciable property for which the credit is taken is located within the boundaries of the enterprise zone.

2. The plant, equipment, or other depreciable property for which the investment tax credit is taken is in a business that is operational within the enterprise zone.

C. The calculation of the number of full-time positions for purposes of the credits allowed under Section 9-2-413(1)(a) through (d) shall be based on the average number of employees reported to the Department of Workforce Services for the four quarters prior to the area's designation as an enterprise zone.

D. To determine whether at least 51 percent of the business firm's employees reside in the county in which the enterprise zone is located, the business firm shall consider every employee reported to the Department of Workforce Services for the tax year for which an enterprise zone credit is sought.

E. A business firm that conducts non-retail operations and is engaged in retail trade qualifies for the credits under Section 9-2-413 if the retail trade operations constitute a de minimis portion of the business firm's total operations.

F. An employee whose duties include both non-construction work and construction work does not perform a construction job if the construction work performed by the employee constitutes a de minimis portion of the employee's total duties.

G. Corporate franchise tax credits may not be used to offset or reduce the \$100 minimum tax per corporation.

H. Records and supporting documentation shall be maintained for three years after the date any returns are filed to support the credits taken. For example: If credits are originally taken in 1988 and unused portions are carried forward to 1992, records to support the original credits taken in 1988 must be maintained for three years after the date the 1992 return is filed.

I. If an enterprise zone designation is revoked prior to the expiration of the period for which it was designated, only tax credits earned prior to the loss of that designation will be allowed.

#### **R865-6F-29. Taxation of Railroads Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.**

##### **A. Definitions.**

1. "Average value" of property means the amount determined by averaging the values of real and personal property at the beginning and ending of the income tax year. The Tax Commission may require the averaging of monthly values during the income year or other averaging as necessary to reflect properly the average value of the railroad's property.

2. "Business and nonbusiness income" are as defined in R865-6F-8(A).

3. "Car-mile" means a movement of a unit of car equipment a distance of one mile.

4. "Locomotive" means a self-propelled unit of equipment designed solely for moving other equipment.

5. "Locomotive-mile" means the movement of a locomotive a distance of one mile under its own power.

6. "Net annual rental rate" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

7. "Original cost" means the basis of the property for federal income tax purposes (prior to any federal income tax adjustments except for subsequent capital additions, improvements thereto or partial dispositions). If the original cost of property is unascertainable under the foregoing valuation standards, the property is included in the property factor at its fair market value as of the date of acquisition by the taxpayer.

8. "Property used during the income year" means property that is available for use in the taxpayer's trade or business during the income year.

9. "Rent" does not include the per diem and mileage charges paid by the taxpayer for the temporary use of railroad cars owned or operated by another railroad.

10. "Value of owned real and tangible personal property" means the original cost of owned real and tangible personal property.

11. "Value of rented real and tangible personal property" means the product of eight times the net annual rental rate of rented real and tangible personal property.

B. When a railroad has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the railroad's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

C. In general, the property factor shall be determined in accordance with R865-6F-8(G), the payroll factor in accordance with R865-6F-08(H), and the sales factor in accordance with R865-6F-8(I), except as modified by this rule.

D. The denominator of the property factor shall be the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the income year. The numerator of the property factor shall be the average value of the taxpayer's real and tangible personal property owned or rented and used within this state during the income year.

1. In determining the numerator of the property factor, all property except mobile or movable property such as passenger cars, freight cars, locomotives and freight containers located within and without this state during the income year shall be included in the numerator of the property factor.

2. Mobile or movable property such as passenger cars, freight cars, locomotives and freight containers located within and without this state during the income year shall be included in the numerator of the property factor in the ratio that locomotive-miles and car-miles in the state bear to the total of locomotive-miles and car-miles both within and without this state.

E. The denominator of the payroll factor is the total compensation paid within and without this state by the taxpayer during the income year for the production of business income. The numerator of the payroll factor is the amount of compensation paid within this state during the income year for the production of business income.

1. With respect to all personnel except engine men and trainmen performing services on interstate trains, compensation shall be included in the numerator as provided in R865-6F-8(H).

2. With respect to engine men and trainmen performing services on interstate trains, compensation shall be included in the numerator of the payroll factor in the ratio that their services performed in this state bear to their services performed within and without this state.

3. Compensation for services performed in this state shall be deemed to be the compensation reported or required to be reported by employees for determination of their income tax liability to this state.

F. In general, all revenue derived from transactions and activities in the regular course of the taxpayer's trade or business within and without this state that produce business income, except per diem and mileage charges that are calculated by the

taxpayer, shall be included in the denominator of the revenue factor. The numerator of the revenue factor is the total revenue of the taxpayer within this state during the income year.

1. The total revenue of the taxpayer in this state during the income year, other than revenue from hauling freight, passengers, mail and express, shall be attributable to this state in accordance with R865-6F-8(I).

2. The total revenue of the taxpayer attributable to this state during the income year for the numerator of the revenue factor from hauling freight, mail and express shall be attributable to this state as follows:

a) Intrastate: all receipts from shipments that both originate and terminate within this state; and

b) Interstate: that portion of the receipts from each movement or shipment passing through, into, or out of this state is determined by the ratio that the miles traveled by the movement or shipment in this state bears to the total miles traveled by the movement or shipment from point of origin to destination.

3. The total revenue of the taxpayer attributable to this state during the income year for the numerator of the revenue factor from hauling passengers shall be attributable to this state as follows:

a) Intrastate: all receipts from the transportation of passengers, including mail and express handled in passenger service, that both originate and terminate within this state; and

b) Interstate: that portion of the receipts from the transportation of interstate passengers, including mail and express handled in passenger service, determined by the ratio that passenger miles in this state bear to the total of passenger miles within and without this state.

G. The taxpayer shall maintain the records necessary to identify mobile property and to enumerate by state the mobile property miles traveled by mobile property. These records are subject to review by the Tax Commission or its agents.

**R865-6F-30. Higher Education Savings Incentive Program Tax Deduction Pursuant to Utah Code Ann. Sections 53B-8a-112, 59-7-105, and 59-7-106.**

A. "Trust" means the Utah Educational Savings Plan Trust created pursuant to Section 53B-8a-103.

B. The trustee of the trust shall file a form TC-675H, Statement of Account with the Utah Educational Savings Plan Trust, with the commission, for each trust participant. The TC-675H shall contain the following information for the calendar year:

1. the amount contributed to the trust by the participant;

2. the income earned on the participant's contributions to the trust; and

3. the amount refunded to the participant pursuant to Section 53B-8a-109.

C. The trustee of the trust shall file form TC-675H with the commission on or before January 31 of the year following the calendar year on which the forms are based.

D. The trustee of the trust shall provide each trust participant with a copy of the form TC-675H on or before January 31 of the year following the calendar year on which the TC-675H is based.

E. The trustee of the trust shall maintain original records supporting the amounts listed on the TC-675H for the current year filing and the three previous year filings.

F. Trust participants must attach a copy of the TC-675H to their state tax return to qualify for the deduction allowed under Section 59-7-106.

**R865-6F-31. Taxation of Publishing Companies Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.**

A. Definitions.

1. "Outer-jurisdictional property" means certain types of

tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of publishing, licensing, selling or otherwise distributing printed material, but that are not physically located in any particular state.

2. "Print" or "printed material" means the physical embodiment or printed version of any thought or expression, including a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of print or printed material shall be made without regard to its content. Printed material may take the form of a book, newspaper, magazine, periodical, trade journal, or any other form of printed matter and may be contained on any medium or property.

3. "Purchaser" and "subscriber" mean the individual, residence, business or other outlet that is the ultimate or final recipient of the print or printed material. Neither term shall mean or include a wholesaler or other distributor of print or printed material.

4. "Terrestrial facility" shall include any telephone line, cable, fiber optic, microwave, earth station, satellite dish, antennae, or other relay system or device that is used to receive, transmit, relay or carry any data, voice, image or other information that is transmitted from or by any outer-jurisdictional property to the ultimate recipient thereof.

B. When a taxpayer in the business of publishing, selling, licensing or distributing books, newspapers, magazines, periodicals, trade journals, or other printed material has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this rule. In those cases, the first step is to determine what portion of the taxpayer's income constitutes business income and what portion constitutes nonbusiness income. Nonbusiness income is directly allocable to specific states and business income is apportioned among the states in which the business is conducted and pursuant to the property, payroll, and sales apportionment factors set forth in this rule. The sum of the items of nonbusiness income directly allocated to this state, plus the amount of business income apportioned to this state, constitutes the amount of the taxpayer's entire net income subject to tax in this state.

C. In general, the property factor shall be determined in accordance with R865-6F-8(G), the payroll factor in accordance with R865-6F-8(H), and the sales factor in accordance with R865-6F-8(I), except as modified by this rule.

D. All real and tangible personal property, including outer-jurisdictional property, whether owned or rented, that is used in the business shall be included in the denominator of the property factor.

E. All real and tangible personal property owned or rented by the taxpayer and used within this state during the tax period shall be included in the numerator of the property factor.

1. Outer-jurisdictional property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor in the ratio that the value of the property attributable to its use by the taxpayer in business activities within this state bears to the value of the property attributable to its use in the taxpayer's business activities within and without this state.

a) The value of outer-jurisdictional property attributed to the numerator of the property factor of this state shall be determined by the ratio that the number of uplinks and downlinks, or half-circuits, used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the number of uplinks and downlinks or half-circuits used for transmissions within and without this state.

b) If information regarding uplink and downlink or half-

circuit usage is not available or if measurement of activity is not applicable to the type of outer-jurisdictional property used by the taxpayer, the value of that property attributed to the numerator of the property factor of this state shall be determined by the ratio that the amount of time, in terms of hours and minutes of use, or other measurement of use of outer-jurisdictional property that was used during the tax period to transmit from this state and to receive within this state any data, voice, image or other information bears to the total amount of time or other measurement of use that was used for transmissions within and without this state.

c) Outer-jurisdictional property shall be considered to have been used by the taxpayer in its business activities within this state when that property, wherever located, has been employed by the taxpayer in any manner in the publishing, sale, licensing or other distribution of books, newspapers, magazines or other printed material, and any data, voice, image or other information is transmitted to or from this state either through an earth station or terrestrial facility located within this state.

(i) One example of the use of outer-jurisdictional property is when the taxpayer owns its own communications satellite or leases the use of uplinks, downlinks or circuits or time on a communications satellite for the purpose of sending messages to its newspaper printing facilities or employees. The states in which any printing facility that receives the satellite communications are located and the state from which the communications were sent would, under this rule, apportion the cost of the owned or rented satellite to their respective property factors based upon the ratio of the in-state use of the satellite to its usage within and without the state.

(ii) Assume that ABC Newspaper Co. owns a total of \$400,000,000 of property and, in addition, owns and operates a communication satellite for the purpose of sending news articles to its printing plant in this state, as well as for communicating with its printing plants and facilities or news bureaus, employees and agents located in other states and throughout the world. Also assume that the total value of its real and tangible personal property that was permanently located in this state for the entire income year was valued at \$3,000,000. Assume also that the original cost of the satellite is \$100,000,000 for the tax period and that of the 10,000 uplinks and downlinks or half-circuits of satellite transmissions used by the taxpayer during the tax period, 200 or 2% are attributable to its satellite communications received in and sent from this state. Assume further that the company's mobile property that was used partially within this state, consisting of 40 delivery trucks, was determined to have an original cost of \$4,000,000 and was used in this state for 95 days. The total value of property attributed to this state is determined as follows:

TABLE

Value of property permanently in state =	\$3,000,000
Value of mobile property: 95/365 or (.260274) x \$4,000,000 =	\$1,041,096
Value of leased satellite property used in-state: (.02) x \$100,000,000 =	\$2,000,000
Total value of property attributable to state =	\$6,041,096
Total property factor percentage: \$6,041,096/\$500,000,000 =	1.2082%

F. The payroll factor shall be determined in accordance with Sections 59-7-315 and 59-7-316.

G. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts that may be excluded under R865-6F-8(J)(3).

H. The numerator of the sales factor shall include all gross

receipts of the taxpayer from sources within this state, including the following:

1. Gross receipts derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser or a subscriber in this state; and

2. Except as provided in H.2.b), gross receipts derived from advertising and the sale, rental, or other use of the taxpayer's customer lists or any portion thereof shall be attributed to this state as determined by the taxpayer's circulation factor during the tax period. The circulation factor shall be determined for each publication of printed material containing advertising and shall be equal to the ratio that the taxpayer's in-state circulation to purchasers and subscribers of its printed material bears to its circulation to purchasers and subscribers within and without the state.

a) The circulation factor for an individual publication shall be determined by reference to the rating statistics as reflected in such sources as Audit Bureau of Circulations or other comparable sources, provided that the source selected is consistently used from year to year for that purpose. If none of the foregoing sources are available, or, if available, not in form or content sufficient for these purposes, the circulation factor shall be determined from the taxpayer's books and records.

b) When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area in which this state is located, the taxpayer may petition, or the Tax Commission may require, that a portion of those receipts be attributed to the sales factor numerator of this state on the basis of a regional or local geographic area circulation factor and not upon the basis of the circulation factor provided by H.2.a). This attribution shall be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in this state of the printed material containing specific items of advertising bears to its total circulation of printed material to purchasers and subscribers located within the regional or local geographic area. This alternative attribution method shall be permitted only upon the condition that receipts are not double counted or otherwise included in the numerator of any other state.

c) If the purchaser or subscriber is the United States government or if the taxpayer is not taxable in a state, the gross receipts from all sources, including the receipts from the sale of printed material, from advertising, and from the sale, rental or other use of the taxpayer's customer lists, or any portion thereof that would have been attributed by the circulation factor to the numerator of the sales factor for that state, shall be included in the numerator of the sales factor of this state if the printed material or other property is shipped from an office, store, warehouse, factory, or other place of storage or business in this state.

**R865-6F-32. Taxation of Financial Institutions Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.**

**A. Definitions.**

1. "Billing address" means the location indicated in the books and records of the taxpayer on the first day of the taxable year, or on the later date in the taxable year when the customer relationship began, where any notice, statement or bill relating to a customer's account is mailed.

2. "Borrower or credit card holder located in this state" means:

a) a borrower, other than a credit card holder, that is engaged in a trade or business that maintains its commercial domicile in this state; or

b) a borrower that is not engaged in a trade or business, or a credit card holder, whose billing address is in this state.

3. "Commercial domicile" means:

a) the place from which the trade or business is principally managed and directed; or

b) if a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, that taxpayer's commercial domicile shall be deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which that taxpayer's trade or business in the United States is principally managed and directed. It shall be presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of those employees are performed, as of the last day of the taxable year.

4. "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services that are included in the employee's gross income under the federal Internal Revenue Code. In the case of employees not subject to the federal Internal Revenue Code, the determination of whether payments constitute gross income under the federal Internal Revenue Code shall be made as though those employees were subject to the federal Internal Revenue Code.

5. "Credit card" means a credit, travel, or entertainment card.

6. "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

7. "Employee" means, with respect to a particular taxpayer, any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

8. "Financial institution" means:

a) any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;

b) a national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. Sections 21 et seq.;

c) a savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. Section 1813(b)(1);

d) any bank, industrial loan corporation, or thrift institution incorporated or organized under the laws of any state;

e) any corporation organized under the provisions of 12 U.S.C. Sections 611 through 631.

f) any agency or branch of a foreign depository as defined in 12 U.S.C. Section 3101;

g) a production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired;

h) any corporation whose voting stock is more than 50 percent owned, directly or indirectly, by any person or business entity described in A.8.a) through A.8.g), other than an insurance company taxable under Title 59, Chapter 9, Taxation of Admitted Insurers;

i) a corporation or other business entity that derives more than 50 percent of its total gross income for financial accounting purposes from finance leases. For purposes of this subsection, a "finance lease" shall mean any lease transaction that is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. The phrase shall include any direct financing lease or leverage lease that meets the criteria of Financial Accounting Standards Board Statement No. 13, Accounting for Leases, or any other lease that is accounted for

as a financing lease by a lessor under generally accepted accounting principles. For this classification to apply:

(1) the average of the gross income in the current tax year and immediately preceding two tax years must satisfy the more than 50 percent requirement; and

(2) gross income from incidental or occasional transactions shall be disregarded;

j) any other person or business entity, other than an insurance company, a credit union exempt from the corporation franchise tax under Section 59-7-102, a real estate broker, or a securities dealer, that derives more than 50 percent of its gross income from activities that a person described in A.8.b) through A.8.g) and A.8.i) is authorized to transact.

(1) For purposes of this subsection, the computation of gross income shall not include income from non-recurring, extraordinary items; and

(2) The Tax Commission is authorized to exclude any person from the application of A.8.j) upon receipt of proof, by clear and convincing evidence, that the income-producing activity of that person is not in substantial competition with those persons described in A.8.b) through A.8.g) and A.8.i).

9. "Gross rents" means the actual sum of money or other consideration payable for the use or possession of property.

a) Gross rents includes:

(1) any amount payable for the use or possession of real property or tangible property whether designated as a fixed sum of money or as a percentage of receipts, profits or otherwise;

(2) any amount payable as additional rent or in lieu of rent, such as interest, taxes, insurance, repairs or any other amount required to be paid by the terms of a lease or other arrangement; and

(3) a proportionate part of the cost of any improvement to real property, made by or on behalf of the taxpayer, that reverts to the owner or lessor upon termination of a lease or other arrangement. The amount included in gross rents is the amount of amortization or depreciation allowed in computing the taxable income base for the taxable year. However, where a building is erected on leased land by or on behalf of the taxpayer, the value of the land is determined by multiplying the gross rent by eight and the value of the building is determined in the same manner as if owned by the taxpayer.

b) Gross rents does not include:

(1) reasonable amounts payable as separate charges for water and electric service furnished by the lessor;

(2) reasonable amounts payable as service charges for janitorial services furnished by the lessor;

(3) reasonable amounts payable for storage, provided those amounts are payable for space not designated and not under the control of the taxpayer; and

(4) that portion of any rental payment applicable to the space subleased from the taxpayer and not used by the taxpayer.

10. "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and the taxpayer's customer, or the purchase, in whole or in part, of an extension of credit from another.

a) Loan includes participations, syndications, and leases treated as loans for federal income tax purposes.

b) Loan does not include properties treated as loans under Section 595 of the federal Internal Revenue Code, futures or forward contracts, options, notional principal contracts such as swaps, credit card receivables, including purchased credit card relationships, non-interest bearing balances due from depository institutions, cash items in the process of collection, federal funds sold, securities purchased under agreements to resell, assets held in a trading account, securities, interests in a real estate mortgage investment conduit as defined in Section 860D of the Internal Revenue Code, or other mortgage-backed or asset-backed security, and other similar items.

11. "Loans secured by real property" means that fifty

percent or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property.

12. "Merchant discount" means the fee, or negotiated discount, charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

13. "Participation" means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

14. "Person" means an individual, estate, trust, partnership, corporation, and any other business entity.

15. "Principal base of operations" means:

a) with respect to transportation property, the place of more or less permanent nature from which that property is regularly directed or controlled; and

b) with respect to an employee, the place of more or less permanent nature from which the employee regularly:

(1) starts his work and to which he customarily returns in order to receive instructions from his employer;

(2) communicates with his customers or other persons; or

(3) performs any other functions necessary to the exercise of his trade or profession at some other point or points.

16. a) "Real property owned" and "tangible personal property owned" mean real and tangible personal property, respectively:

(1) on which the taxpayer may claim depreciation for federal income tax purposes; or

(2) property to which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes, or could claim depreciation if subject to federal income tax.

b) Real and tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a foreclosure.

17. "Regular place of business" means an office at which the taxpayer carries on business in a regular and systematic manner and is continuously maintained, occupied, and used by employees of the taxpayer.

18. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country.

19. "Syndication" means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

20. "Taxable" means:

a) a taxpayer is subject in another state to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, a corporate stock tax, including a bank shares tax, a single business tax, an earned surplus tax, or any tax imposed upon or measured by net income; or

b) another state has jurisdiction to subject the taxpayer to taxes regardless of whether that state actually imposes those taxes.

21. "Transportation property" means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels and motor vehicles, as well as any equipment or containers attached to that property, such as rolling stock, barges, and trailers.

B. Apportionment and Allocation.

1. A financial institution whose business activity is taxable both within and without this state, or a financial institution whose business activity is taxable within this state and is a member of a unitary group that includes one or more financial

institutions where any member of the group is taxable without this state, shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States, whose effectively connected income, as defined under the federal Internal Revenue Code, is taxable both within this state and within another state, other than the state in which it is organized, shall allocate and apportion its net income as provided in this rule.

2. All business income shall be apportioned to this state by multiplying that income by the apportionment percentage. The apportionment percentage is determined by adding the taxpayer's receipts factor described in C., property factor described in D., and payroll factor described in E., and dividing that sum by three. If one of the factors is missing, the two remaining factors are added and the sum is divided by two. If two of the factors are missing, the remaining factor is the apportionment percentage. A factor is missing if both its numerator and denominator are zero, but not merely because its numerator is zero.

3. Each factor shall be computed according to the cash or accrual method of accounting as used by the taxpayer for the taxable year.

4. If a unitary group of corporations filing a combined report includes one or more corporations meeting the definition of financial institution and one or more corporations that do not meet that definition, the provisions of this rule regarding the calculation of the property, payroll, and receipts factors of the apportionment fraction shall apply only to those corporations meeting the definition of financial institution. Those corporations not meeting the definition of financial institution shall compute their apportionment data based on Tax Commission rule R865-6f-8 or such other industry apportionment rule adopted by the Tax Commission that may be applicable. The apportionment data of all members of the unitary group shall be included in calculating a single apportionment fraction for the unitary group. The numerators and denominators of the property, payroll, and receipts factors of the financial institutions shall be added to the numerators and denominators, respectively, of the property, payroll, and sales factors of the nonfinancial institutions to determine the property, payroll, and sales factors of the unitary group.

C. Receipts Factor.

1. In general. The receipts factor is a fraction, the numerator of which is the receipts of the taxpayer in this state during the taxable year and the denominator of which is the receipts of the taxpayer within and without this state during the taxable year. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator. The receipts factor shall include only those receipts that constitute business income and are included in the computation of the apportionable income base for the taxable year.

2. Receipts from the lease of real property. The numerator of the receipts factor includes receipts from the lease or rental of real property owned by the taxpayer and receipts from the sublease of real property, if the property is located within this state.

3. Receipts from the lease of tangible personal property.

a) Except as described in C.4., the numerator of the receipts factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within this state when it is first placed in service by the lessee.

b) Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the receipts factor to the extent that the property is used in

this state.

(1) The extent an aircraft will be deemed to be used in this state and the amount of receipts that shall be included in the numerator of this state's receipts factor are determined by multiplying all the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft.

(2) If the extent of the use of any transportation property within this state cannot be determined, that property will be deemed to be used wholly in the state in which the property has its principal base of operations.

(3) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

4. Interest from loans secured by real property.

a) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the receipts described in this subsection are included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, the receipts described in this subsection shall be included in the numerator of the receipts factor if the borrower is located in this state.

b) The determination of whether the real property securing a loan is located within this state shall be made as of the time the original agreement was made, and any and all subsequent substitutions of collateral shall be disregarded.

5. Interest from loans not secured by real property. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.

6. Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the Internal Revenue Code.

a) The amount of net gains, but not less than zero, from the sale of loans secured by real property included in the numerator is determined by multiplying the net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to C.4., and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

b) The amount of net gains, but not less than zero, from the sale of loans not secured by real property included in the numerator is determined by multiplying the net gains by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to C.5., and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

7. Receipts from credit card receivables. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and receipts from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

8. Net gains from the sale of credit card receivables. The numerator of the receipts factor includes net gains, but not less than zero, from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to C.7., and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

9. Credit card issuer's reimbursement fees. The numerator of the receipts factor includes all credit card issuer's

reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to C.7., and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

10. Receipts from merchant discount. The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. The receipts shall be computed net of any cardholder charge backs, but shall not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

11. Loan servicing fees.

a) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to C.4., and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

b) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction the numerator of which is the amount included in the numerator of the receipts factor pursuant to C.5., and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

c) In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor shall include those fees if the borrower is located in this state.

12. Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this section if the service is performed in this state. If the service is performed both within and without this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this section if a greater proportion of the income-producing activity is performed in this state based on cost of performance.

13. Receipts from investment assets and activities and trading assets and activities.

a) Interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and activities shall be included in the receipts factor.

b) Investment assets and activities and trading assets and activities include investments securities, trading account assets, federal funds, securities purchased and sold under agreements to resell or repurchase, options, futures contracts, forward contracts, notional principal contracts such as swaps, equities, and foreign currency transactions.

c) The receipts factor shall include the following investment and trading assets and activities:

(1) The receipts factor shall include the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(2) The receipts factor shall include the amount by which interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from those assets and activities.

d) The numerator of the receipts factor includes interest, dividends, net gains, but not less than zero, and other income from investment assets and activities and from trading assets and activities described in C.13. that are attributable to this state.

(1) The amount of interest, dividends, net gains, but not

less than zero, and other income from investment assets and activities in the investment accounts attributed to this state and included in the numerator is determined by multiplying all such income from assets and activities by a fraction, the numerator of which is the average value of the assets properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those assets.

(2) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount of those funds and securities described in C.13.c)(1) by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those funds and securities.

(3) The amount of interest, dividends, gains, and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book and foreign currency transactions, but excluding amounts described in C.13.d)(1) and C.13.d)(2), attributable to this state and included in the numerator is determined by multiplying the amount described in C.13.c)(2) by a fraction, the numerator of which is the average value of those trading assets that are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all those assets.

(4) For purposes of this subsection, average value shall be determined using the rules for determining the average value of tangible personal property set forth in D.3. and D.4.

e) In lieu of using the method set forth in C.13.d), the taxpayer may elect, or the Tax Commission may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this subsection.

(1) The amount of interest, dividends, net gains, but not less than zero, and other income from investment assets and activities in the investment account attributed to this state and included in the numerator is determined by multiplying all income from those assets and activities by a fraction, the numerator of which is the gross income from those assets and activities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those assets and activities.

(2) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount of those funds and securities described in C.13.c)(1) by a fraction, the numerator of which is the gross income from those funds and securities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those funds and securities.

(3) The amount of interest, dividends, gains and other income from trading assets and activities, including assets and activities in the matched book and arbitrage book and foreign currency transactions, but excluding amounts described in C.13.e)(1) or C.13.e)(2), attributable to this state and included in the numerator is determined by multiplying the amount described in C.13.c)(2) by a fraction, the numerator of which is the gross income from those trading assets and activities properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all those assets and activities.

f) If the taxpayer elects or is required by the Tax Commission to use the method set forth in C.13.e), the taxpayer shall use this method on all subsequent returns unless the

taxpayer receives prior permission from the Tax Commission to use, or the Tax Commission requires, a different method.

g) The taxpayer shall have the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one regular place of business is in this state and one regular place of business is outside this state, that asset or activity shall be considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, policies and guidelines shall be presumed to be established at the commercial domicile of the taxpayer.

14. All other receipts. The numerator of the receipts factor includes all other receipts pursuant to the rules set forth in Rule R865-6F-8(I) and (J).

15. Attribution of certain receipts to commercial domicile.

a) Except as provided in C.15.b), all receipts that would be assigned under this section to a state in which the taxpayer is not taxable shall be included in the numerator of the receipts factor if the taxpayer's commercial domicile is in this state.

b) (1) If a unitary group includes one or more financial institutions, and if any member of the unitary group is subject to the taxing jurisdiction of this state, the receipts of each financial institution in the unitary group shall be included in the numerator of this state's receipts factor as provided in C.1. through C.14, rather than being attributed to the commercial domicile of the financial institution as provided in C.15.a).

(2) If a unitary group includes one or more financial institutions whose commercial domicile is in this state, and if any member of the unitary group is taxable in another state under section 59-7-305, the receipts of each financial institution in the unitary group that would be included in the numerator of the other state's receipts factor under C.1. through C.14, may not be included in the numerator of this state's receipts factor.

D. Property Factor.

1. In General.

a) For taxpayers that do not elect to include the property described in D.7. through D.9. within the property factor, the property factor is a fraction, the numerator of which is the average value of real property and tangible personal property owned by or rented to the taxpayer that is located or used within this state during the taxable year, and the denominator of which is the average value of all that property located or used within and without this state during the taxable year.

b) For taxpayers that elect to include the property described in D.7. through D.9. within the property factor, the property factor is a fraction, the numerator of which is the average value of real property and tangible personal property owned by or rented to the taxpayer that is located or used within this state during the taxable year, and the average value of the taxpayer's loans and credit card receivables that are located within this state during the taxable year, and the denominator of which is the average value of all that property located or used within and without this state during the taxable year.

2. Property included. The property factor shall include only property the income or expenses of which are included, or would have been included if not fully depreciated or expensed, or depreciated or expensed to a nominal amount, in the computation of the apportionable income base for the taxable year.

3. Value of property owned by the taxpayer.

a) For taxpayers that do not elect to include the property described in D.7. through D.9. within the property factor, the



value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of that property for federal income tax purposes without regard to depletion, depreciation or amortization.

b) For taxpayers that elect to include the property described in D.7. through D.9. within the property factor:

(1) The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of that property for federal income tax purposes without regard to depletion, depreciation or amortization.

(2) Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged-off in whole or in part for federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines that is treated as charged-off for federal income tax purposes shall be treated as charged-off for purposes of this rule.

(3) Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged-off in whole or in part for federal income tax purposes, the portion of the receivable charged-off is not outstanding.

4. Average value of property owned by the taxpayer. The average value of property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable year and the value on the last day of the taxable year and dividing the sum by two.

a) If averaging on this basis does not properly reflect average value, the Tax Commission may require averaging on a more frequent basis, or the taxpayer may elect to average on a more frequent basis.

b) When averaging on a more frequent basis is required by the Tax Commission or is elected by the taxpayer, the same method of valuation must be used consistently by the taxpayer with respect to property within and without this state and on all subsequent returns unless the taxpayer receives prior permission from the Tax Commission to use a different method, or the Tax Commission requires a different method of determining average value.

5. Average value of real property and tangible personal property rented to the taxpayer.

a) The average value of real property and tangible personal property that the taxpayer has rented from another and are not treated as property owned by the taxpayer for federal income tax purposes, shall be determined annually by multiplying the gross rents payable during the taxable year by eight.

b) If the use of the general method described in this subsection results in inaccurate valuations of rented property, any other method that properly reflects the value may be adopted by the Tax Commission or by the taxpayer when approved in writing by the Tax Commission. Once approved, that other method of valuation must be used on all subsequent returns unless the taxpayer receives prior approval from the Tax Commission to use a different method, or the Tax Commission requires a different method of valuation.

6. Location of real property and tangible personal property owned or rented to the taxpayer.

a) Except as described in D.6.b), real property and tangible personal property owned by or rented to the taxpayer are considered located within this state if they are physically located, situated, or used within this state.

b) Transportation property is included in the numerator of the property factor to the extent that the property is used in this state.

(1) The extent an aircraft will be deemed to be used in this state and the amount of value that shall be included in the numerator of this state's property factor is determined by multiplying the average value of the aircraft by a fraction, the

numerator of which is the number of landings of the aircraft in this state and the denominator of which is the total number of landings of the aircraft everywhere.

(2) If the extent of the use of any transportation property within this state cannot be determined, the property will be deemed to be used wholly in the state in which the property has its principal base of operations.

(3) A motor vehicle will be deemed to be used wholly in the state in which it is registered.

#### 7. Location of Loans.

a) A loan is considered located within this state if it is properly assigned to a regular place of business of the taxpayer within this state.

b) A loan is properly assigned to the regular place of business with which it has a preponderance of substantive contacts. A loan assigned by the taxpayer to a regular place of business without the state shall be presumed to have been properly assigned if:

(1) the taxpayer has assigned, in the regular course of its business, the loan on its records to a regular place of business consistent with federal or state regulatory requirements;

(2) the assignment on its records is based upon substantive contacts of the loan to the regular course of business; and

(3) the taxpayer uses the records reflecting assignment of loans for the filing of all state and local tax returns for which an assignment of loans to a regular place of business is required.

c) The presumption of proper assignment of a loan provided in D.7.b) may be rebutted upon a showing by the Tax Commission, supported by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur at the regular place of business to which it was assigned on the taxpayer's records. When the presumption has been rebutted, the loan shall then be located within this state if:

(1) the taxpayer had a regular place of business within this state at the time the loan was made; and

(2) the taxpayer fails to show, by a preponderance of the evidence, that the preponderance of substantive contacts regarding the loan did not occur within this state.

d) In the case of a loan assigned by the taxpayer to a place without this state that is not a regular place of business, it shall be presumed, subject to rebuttal by the taxpayer on a showing supported by the preponderance of the evidence, that the preponderance of substantive contacts regarding the loan occurred within this state if, at the time the loan was made the taxpayer's commercial domicile, as defined in this rule, was within this state.

e) To determine the state in which the preponderance of substantive contacts relating to a loan have occurred, the facts and circumstances regarding the loan at issue shall be reviewed on a case-by-case basis, and consideration shall be given to activities such as the solicitation, investigation, negotiation, approval, and administration of the loan.

(1) Solicitation. Solicitation is either active or passive.

(a) Active solicitation occurs when an employee of the taxpayer initiates the contact with the customer. The activity is located at the regular place of business at which the taxpayer's employee is regularly connected or working out of, regardless of where the services of the employee were actually performed.

(b) Passive solicitation occurs when the customer initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is determined by the facts in each case.

(2) Investigation. Investigation is the procedure whereby employees of the taxpayer determine the credit-worthiness of the customer as well as the degree of risk involved in making a particular agreement. The activity is located at the regular place of business at which the taxpayer's employees are regularly

connected or working out of, regardless of where the services of those employees were actually performed.

(3) Negotiation. Negotiation is the procedure whereby employees of the taxpayer and its customer determine the terms of the agreement, such as amount, duration, interest rate, frequency of repayment, currency denomination, and security required. The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(4) Approval. Approval is the procedure whereby employees or the board of directors of the taxpayer make the final determination whether to enter into the agreement.

(a) The activity is located at the regular place of business at which the taxpayer's employees are regularly connected or working out of, regardless of where the services of those employees were actually performed.

(b) If the board of directors makes the final determination, the activity is located at the commercial domicile of the taxpayer.

(5) Administration. Administration is the process of managing the account.

(a) Administration includes bookkeeping, collecting the payments, corresponding with the customer, reporting to management regarding the status of the agreement and proceeding against the borrower or the security interest if the borrower is in default.

(b) The activity is located at the regular place of business that oversees this activity.

8. Location of credit card receivables. For purposes of determining the location of credit card receivables, credit card receivables shall be treated as loans and shall be subject to the provisions of D.7.

9. Period for which properly assigned loan remains assigned. A loan that has been properly assigned to a state shall, absent any change of material fact, remain assigned to that state for the length of the original term of the loan. Thereafter, the loan may be properly assigned to another state if the loan has a preponderance of substantive contact to a regular place of business in that state.

10. Each taxpayer shall make an initial election on whether to include the property described in D.7. through D.9. within the property factor. The initial election is the election made or the filing position taken on the first return filed after the effective date of this rule. This election is irrevocable for a period of three years from the time the initial election is made, except in the case where a substantial ownership change occurs and commission approval is obtained to change the election. After the initial three-year period, the election may be revocable only with the prior approval of the commission and shall require the showing of a significant change in circumstance.

#### E. Payroll factor.

1. In general. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation paid by the taxpayer both within and without this state during the taxable year. The payroll factor shall include only that compensation included in the computation of the apportionable income tax base for the taxable year.

2. Compensation relating to nonbusiness income and independent contractors. The compensation of any employee for services or activities connected with the production of nonbusiness income, and payments made to any independent contractor or any other person not properly classifiable as an employee, shall be excluded from both the numerator and denominator of this factor.

3. When compensation paid in this state. Compensation is paid in this state if any one of the following tests, applied

consecutively, is met:

a) The employee's services are performed entirely within this state.

b) The employee's services are performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The term "incidental" means any service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction.

c) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(1) if the employee's principal base of operations is within this state;

(2) if there is no principal base of operations in any state in which some part of the services are performed, but the place from which the services are directed or controlled is in this state; or

(3) if the principal base of operations and the place from which the services are directed or controlled are not in any state in which some part of the service is performed but the employee's residence is in this state.

F. This rule is effective for taxable years beginning after December 31, 1997.

### **R865-6F-33. Taxation of Telecommunications Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.**

#### A. Definitions.

1. "Call" means a specific telecommunications transmission as described in A.6.

2. "Channel termination point" means the point at which information can enter or leave the telecommunications network.

3. "Communications channel" means a communications path, which can be one-way or two-way, depending on the channel, between two or more points. The path may be designed for the transmission of signals representing human speech, digital or analog data, facsimile, or images.

4. "Outerjurisdictional property" means tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in a telecommunications business, but that are not physically located in any particular state.

5. "Private telecommunications service" means a dedicated telephone service that entitles the subscriber to the exclusive or priority use of a communications channel or groups of communications channels from one or more channel termination points to another channel termination point.

6. "Telecommunications" means the electronic transmission of voice, data, image, and other information through the use of any medium such as wires, cables, electromagnetic waves, light waves, or any combination of those or similar media now in existence or that might be devised, but telecommunications does not include the information content of any such transmission.

7. "Telecommunications service" means providing telecommunications, including services provided by telecommunication service resellers, for a charge and includes telephone service, telegraph service, paging service, personal communication services and mobile or cellular telephone service, but does not include electronic information service or Internet access service.

#### B. Apportionment and Allocation.

1. A corporation engaged in the business of telecommunications that is taxable both within and without this state, shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306.

2. All business income shall be apportioned to this state by multiplying that income by the apportionment percentage. The

apportionment percentage is determined by adding the taxpayer's receipts factor, property factor and payroll factor and dividing that sum by three. If one of the factors is missing, the remaining factors are added and that sum is divided by two. If two of the factors are missing, the remaining factor is the apportionment percentage. A factor is missing if both its numerator and denominator are zero.

3. Except as otherwise provided in this rule, the property factor shall be determined in accordance with Tax Commission rule R865-6F-8(G), the payroll factor in accordance with rule R865-6F-8(H) and the sales factor in accordance with rule R865-6F-8(I).

C. Property Factor.

1. Outerjurisdictional property that is used by a taxpayer in providing a telecommunications service shall be attributed to this state based on the ratio of property within this state used in providing that service, to property everywhere used in providing the service, exclusive of property not located in any state. The term "property" as used herein refers to property includable in the property factor of the Utah apportionment fraction as defined in Tax Commission rule R865-6F-8(G).

D. Sales Factor Numerator.

1. The following sales and receipts from telecommunications service other than interstate or international private telecommunications service, shall be included in the Utah sales and receipts numerator:

a) receipts derived from charges for providing telephone "access" from a location within Utah. "Access" means that a call can be made or received from a point within this state. An example of this type of receipt is a monthly subscriber fee billed with reference to equipment located in Utah;

b) receipts derived from charges for unlimited calling privileges, if the charges are billed by reference to equipment located in Utah;

c) receipts derived from charges for individual toll calls that originate and terminate in Utah;

d) receipts derived from charges for individual toll calls that either originate or terminate in Utah and are billed by reference to a customer or equipment located in Utah;

e) receipts derived from any other charges if the charges are not includable in another state's sales factor numerator under that state's law, and the customer's billing address is in Utah.

2. Gross receipts derived from providing interstate and international private telecommunications services shall be determined as follows:

a) If the segment of the interstate or international channel between each termination point is separately billed, 100 percent of the charge imposed at each termination point in this state and for service in this state between those points is includable in the Utah sales factor. In addition, 50 percent of the charge imposed for service between a channel termination point outside this state and a point inside the state shall be included in the Utah sales factor. For purposes of this paragraph, termination points shall be measured by the nearest termination point inside the state to the first termination point outside the state.

b) If each segment of the interstate or international channel is not separately billed, the Utah sales shall be the same portion of the interstate or international channel charge that the number of channel termination points within this state bears to the total number of channel termination points within and without this state.

**R865-6F-34. Qualified Subchapter S Subsidiaries Pursuant to Utah Code Ann. Section 59-7-701.**

A. "Qualified subchapter S subsidiary" means a qualified subchapter S subsidiary as defined in Section 1361(b), Internal Revenue Code.

B. For purposes of Title 59, Chapter 7, Part 7, a qualified subchapter S subsidiary shall be treated in the same manner as

it is treated for federal tax purposes under Section 1361(b), Internal Revenue Code.

C. An S corporation that owns one or more qualified subchapter S subsidiaries must take into account the activities of each qualified subchapter S subsidiary in determining whether the S corporation parent is doing business in Utah. For purposes of this determination, all of a subsidiary's activities will be attributed to the S corporation parent.

D. For purposes of Title 59, Chapter 7, Part 7:

1. the Utah property, payroll, and sales of each qualified subchapter S subsidiary shall be added, respectively, to the Utah property, payroll, and sales of the S corporation parent to determine the numerators of the property, payroll, and sales factors; and

2. the total property, payroll, and sales of each qualified subchapter S subsidiary shall be added, respectively, to the total property, payroll, and sales of the S corporation parent to determine the denominators of the property, payroll, and sales factors.

E. Except as provided in D., the apportionment fraction for an S corporation shall be calculated based on Sections 59-7-311 through 59-7-321 and as provided in Tax Commission rule R865-6F-8.

**R865-6F-35. S Corporation Determination of Tax Pursuant to Utah Code Ann. Section 59-7-703.**

A. For purposes of Section 59-7-703(1)(a)(i), "items of income or loss from Schedule K of the 1120S federal form" shall be calculated by:

1. adding back to the line on the Schedule K labeled "Income (loss)" the amount included on that schedule for:

a) charitable contributions; and

b) total foreign taxes paid or accrued.

2. If the S corporation was not required to complete the line labeled "Income (loss)" on the Schedule K, a pro forma calculation of the amounts for charitable contributions and foreign taxes paid or accrued, and of the amount that would have been entered on the "Income (loss)" line shall be used for purposes of this rule.

B. The rate that the S corporation shall withhold for nonresident shareholders shall be computed as follows:

1. A deduction equal to 15 percent of the Utah income attributable to nonresident shareholders shall be allowed in place of a standard deduction, itemized deductions, personal exemptions, federal tax determined for the same period, or any other deductions.

a) An S corporation that is entitled to subtract a loss carryforward and that elected, under the laws in effect prior to January 1, 1994, to use Option A as the method to pay its taxes, shall apply the 15 percent deduction to Utah income attributable to nonresident shareholders after the subtraction for loss carryforwards.

2. The tax shall be computed using the maximum Utah individual income tax rate applied to the combined nonresident shareholders' share of the S corporation's income after deduction of the amount allowed under B.1.

C. An S corporation with nonresident shareholders shall complete Schedule N of form TC-20S, and shall provide the following information for each nonresident shareholder:

1. name;

2. social security number;

3. percentage of S corporation held; and

4. amount of Utah tax paid or withheld on behalf of that shareholder.

**R865-6F-36. Taxation of Registered Securities or Commodities Broker or Dealer Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.**

A. Definitions.

1. "Brokerage commission income" means income earned by a registered securities or commodities broker or dealer from the purchase and sale of securities or commodities by the broker or dealer:

- a) for which the broker or dealer does not take title; and
- b) as an agent for a customer's account.

2. "Commodity" is as defined in Section 475(e)(2), Internal Revenue Code.

3. "Principal transaction" means a transaction where the registered securities or commodities broker or dealer acts as a principal or underwriter for the broker or dealer's own account, rather than as an agent for the customer.

4. "Registered securities or commodities broker or dealer" means a corporation registered as a broker or dealer with the Securities and Exchange Commission or the Commodities Futures Trading Commission.

5. "Security" is as defined in Section 475(c)(2), Internal Revenue Code.

6. "Securities or commodities used to produce income" means securities or commodities that are purchased and held by a registered securities or commodities broker or dealer as a principal or underwriter for resale to its customers.

**B. Apportionment and allocation.**

1. A registered securities or commodities broker or dealer whose business activity is taxable both within and without this state shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306.

2. All business income shall be apportioned to this state by multiplying that income by the apportionment percentage. The apportionment percentage is determined by adding the taxpayer's property factor, payroll factor, and sales factor, and dividing that sum by three. If one of the factors is missing, the remaining factors are added and that sum is divided by two. If two of the factors are missing, the remaining factor is the apportionment percentage. A factor is missing if both its numerator and denominator are zero.

3. Except as otherwise provided in this rule, the property factor shall be determined in accordance with R865-6F-8(G), the payroll factor in accordance with R865-6F-8(H), and the sales factor in accordance with R865-6F-8(I).

**C. Property factor.**

1. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used, or available for use, within this state during the taxable year, plus the average value of securities or commodities used to produce income during the taxable year that are held for resale exclusively through a branch, office, or other place of business in this state. The denominator is the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the taxable year, plus the average value of all securities or commodities used to produce income during the taxable year.

2. Securities or commodities used to produce income shall be valued at original cost.

**D. Sales factor.**

1. The sales factor is a fraction, the numerator of which is the total revenue that is derived from transactions and activities in the regular course of the taxpayer's trade or business within this state during the taxable year. The denominator is the total revenue that is derived from transactions and activities in the regular course of the taxpayer's trade or business within and without this state during the taxable year.

2. Brokerage commission income shall be included in the denominator of the sales factor. Brokerage commission income shall be included in the numerator of the sales factor if the customer that is paying the commission is located in Utah. A customer is located in Utah if the mailing address of the

customer as it appears in the broker or dealer's records is in Utah.

3. Gross receipts from principal transactions shall be included in the denominator of the sales factor. Gross receipts from principal transactions shall be included in the numerator of the sales factor if the sale is made through a branch, office, or other place of business in Utah. Gross receipts from principal transactions shall be determined after the deduction of any cost incurred by the taxpayer to acquire the securities or commodities.

4. Other gross receipts such as margin interest on brokerage accounts and account maintenance fees shall be included in the denominator of the sales factor, and, if the customer that is paying the amounts or fees is located in Utah based on the customer address as it appears in the broker or dealer's records, in the numerator of the sales factor.

**KEY: taxation, franchises, historic preservation, trucking industries**

**October 19, 2004**

**Notice of Continuation April 3, 2002**

**9-2-401  
through  
9-2-415  
16-10a-1501  
through  
16-10a-1533  
53B-8a-112  
59-6-102  
59-7-101  
59-7-102  
59-7-104  
through  
59-7-106  
59-7-108  
59-7-109  
59-7-110  
59-7-112  
59-7-302  
through  
59-7-321  
59-7-402  
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59-7-601  
through  
59-7-614  
59-7-608  
59-7-701  
59-7-703  
59-10-603  
59-13-202**

**R865. Tax Commission, Auditing.****R865-19S. Sales and Use Tax.****R865-19S-1. Sales and Use Taxes Distinguished Pursuant to Utah Code Ann. Section 59-12-103.**

A. The tax imposed on amounts paid or charged for transactions under Title 59, Chapter 12 is a:

1. sales tax, if the tax is collected and remitted by a seller on the seller's in-state or out-of-state sales; or
2. use tax, if the tax is remitted by a purchaser.

B. The two taxes are compensating taxes, one supplementing the other, but both cannot be applicable to the same transaction. The rate of tax is the same.

**R865-19S-2. Nature of Tax Pursuant to Utah Code Ann. Section 59-12-103.**

A. The sales and use taxes are transaction taxes imposed upon certain retail sales and leases of tangible personal property, as well as upon certain services.

B. The tax is not upon the articles sold or furnished, but upon the transaction, and the purchaser is the actual taxpayer. The vendor is charged with the duty of collecting the tax from the purchaser and of paying the tax to the state.

**R865-19S-4. Collection of Tax Pursuant to Utah Code Ann. Section 59-12-107.**

A. An invoice or receipt issued by a vendor shall show the sales tax collected as a separate item on the invoice or receipt.

B. If an invoice or receipt issued by a vendor does not show the sales tax collected as required in A., sales tax will be assessed on the vendor based on the amount of the invoice or receipt.

C. A vendor that collects an excess amount of sales or use tax must either refund the excess to the purchasers from whom the vendor collected the excess or remit the excess to the Commission.

1. A vendor may offset an undercollection of tax on sales against any excess tax collected in the same reporting period.

2. A vendor may not offset an underpayment of tax on the vendor's purchases against an excess of tax collected.

**R865-19S-6. Tax Collection Pursuant to Utah Code Ann. Section 59-12-107.**

A. The vendor shall collect sales or use tax at the rate set by law. Rule R865-19S-30 defines sales price.

B. The Tax Commission furnishes tables that may be used to determine the proper amount of tax on each transaction. These tables reflect the appropriate amount, including applicable local taxes, for the various taxing jurisdictions.

**R865-19S-7. Sales Tax License Pursuant to Utah Code Ann. Section 59-12-106.**

A.1. A separate sales and use tax license must be obtained for each place of business, but where more than one place of business is operated by the same person, one application may be filed giving the required information about each place of business.

2. Each license must be posted in a conspicuous place in the place of business for which it is issued.

B. The holder of a license issued under Section 59-12-106 shall notify the commission:

1. of any change of address of the business;
2. of a change of character of the business, or
3. if the license holder ceases to do business.

C. The commission may determine that a person has ceased to do business or has changed that person's business address if:

1. mail is returned as undeliverable as addressed and unable to forward;
2. the person fails to file four consecutive monthly or

quarterly sales tax returns, or two consecutive annual sales tax returns;

3. the person fails to renew its annual business license with the Department of Commerce; or

4. the person fails to renew its local business license.

D. If the requirements of C. are met, the commission shall notify the license holder that the license will be considered invalid unless the license holder provides evidence within 15 days that the license should remain valid.

E. A person may request the commission to reopen a sales and use tax license that has been determined invalid under D.

F. The holder of a license issued under Section 59-12-106 shall be responsible for any sales and use tax, interest, and penalties incurred under that license whether those taxes and fees are incurred during the time the license is valid or invalid.

**R865-19S-8. Bonds and Securities Pursuant to Utah Code Ann. Section 59-12-107.**

A. Factors the commission will consider in determining whether a vendor must post security to ensure compliance with the provisions of Title 59, Chapter 12, include:

1. failure to file returns;
2. failure to make payments;
3. filing of returns that are improper; and
4. payment of sales tax with a check that is not honored.

B. The Tax Commission may accept as security a valid corporate surety bond, United States treasury bond, or other negotiable security it deems adequate.

C. The bond will be released only upon written request and after a review of all circumstances or upon cessation of business if no liability exists.

**R865-19S-12. Filing of Returns Pursuant to Utah Code Ann. Sections 59-12-107 and 59-12-118.**

A. Every person responsible for the collection of the tax under the act shall file a return with the Tax Commission whether or not sales tax is due.

B. If the due date for a return falls on a Saturday, Sunday, or legal holiday, the return will be considered timely filed if it is received on the next business day.

C. If a return is transmitted through the United States mail, a legible cancellation mark on the envelope, or the date of registration of certification thereof by a United States post office, is considered the date the return is filed.

D. Sales and use tax returns shall be filed and paid monthly or quarterly with the following exceptions:

1. New businesses that expect annual sales and use tax liability less than \$1,000, shall be assigned an annual filing status unless quarterly filing status is requested.

2.a) Businesses currently assigned a quarterly filing status, in good standing and reporting less than \$1,000 in tax for the preceding calendar year may be changed to annual filing status.

b) The Tax Commission will notify businesses, in writing, if their filing status is changed to annual.

3.a) Businesses assigned an annual filing status reporting in excess of \$1,000 for a calendar year, will be changed to quarterly filing status.

b) The Tax Commission will notify businesses, in writing, if their filing status is changed to quarterly.

E. Annual returns are due on January 31 following the calendar year end. The Tax Commission may revoke the annual filing status if sales tax collections are in excess of \$1,000 or as a result of delinquent payment history.

**R865-19S-13. Confidential Nature of Returns Pursuant to Utah Code Ann. Section 59-12-109.**

A. The returns filed are confidential and the information contained therein will not be divulged by the Tax Commission, its agents, clerks, or employees except in accordance with

judicial order or upon proper application of a federal, state, or local agency. The returns will not be produced in any court proceeding except where such proceeding directly involves provisions of the sales tax act.

B. However, any person or his duly authorized representative who files returns under this act may obtain copies of the same upon proper application and presentation of proper picture identification.

**R865-19S-16. Failure to Remit Excess Tax Collection Pursuant to Utah Code Ann. Section 59-12-107.**

A. The amount paid by any vendor to the Tax Commission with each return is the greater of:

1. the actual tax collections for the reporting period, or
2. the amount computed at the rates imposed by law against the total taxable sales for that period.

B. Space is available on the return forms for inserting figures and the words "excess collections," if needed.

**R865-19S-20. Basis for Reporting Tax Pursuant to Utah Code Ann. Section 59-12-107.**

A. "Total sales" means the total amount of all cash, credit, installment, and conditional sales made during the period covered by the return.

B. Amounts shown on returns must include the total sales made during the period of the returns, and the tax must be reported and paid upon that basis.

C. Justified adjustments may be made and credit allowed for cash discounts, returned goods, bad debts, and repossessions that result from sales upon which the tax has been reported and paid in full by retailers to the Tax Commission.

1. Adjustments and credits will be allowed only if the retailer has not reimbursed himself in the full amount of the tax except as noted in C.6.a) and can establish that fact by records, receipts or other means.

2. In no case shall the credit be greater than the sales tax on that portion of the purchase price remaining unpaid at the time the goods are returned, the account is charged off, or the repossession occurs.

3. Any refund or credit given to the purchaser must include the related sales tax.

4. Sales tax credits for bad debts are allowable only on accounts determined to be worthless and actually charged off for income tax purposes. Recoveries made on bad debts and repossessions for which credit has been claimed must be reported and the tax paid.

5. Sales tax credit for repossessions is allowable on the basis of the original amount subject to tax, less down payment. This amount is multiplied by the ratio of the number of monthly payments not made, divided by the total number of monthly payments required by the contract.

a) For example: the credit allowed on a taxable \$30,000 car sale with a \$5,000 down payment financed on a 60-month contract and repossessed after 20 full payments were made would be \$16,667 as computed and shown below. The number of unpaid full payments is determined by dividing the total received on the contract by the monthly payment amount.

TABLE

Example:

(1) Original amount subject to tax	\$30,000
(2) Down payment	(5,000)
(3) Balance of taxable base financed	25,000
(4) Number of full payments unpaid at the time of repossession	

40

(5) Total contract period (no. of months)	60
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Line 4 divided by line 5 times taxable base financed equals repossession credit

$$(40/60) \times \$25,000 = \$16,667$$

b) In cases where a contract assignment creates a partial (part of the loan amount) recourse obligation to the seller, any repossession credit must be calculated in the same manner as shown above.

c) The credit for repossession shall be reported on the dealer's or vendor's sales tax return with an attached schedule showing computations and appropriate adjustments for any tax rate changes between the date of sale and the date of repossession.

6. Credit for tax on repossessions is allowed only to the selling dealer or vendor.

a) This does not preclude arrangements between the dealer or vendor and third party financial institutions wherein sales tax credits for repossessions by financial institutions may be taken by the dealer or vendor who will in turn reimburse the financial institution.

b) In the event the applicable vehicle dealer is no longer in business, and there are no outstanding delinquent taxes, the third party financial institution may apply directly to the Tax Commission for a refund of the tax in the amount that would have been credited to the dealer.

D. Adjustments in sales price, such as allowable discounts or rebates, cannot be anticipated. The tax must be based upon the original price unless adjustments were made prior to the close of the reporting period in which the tax upon the sale is due. If the price upon which the tax is computed and paid is subsequently adjusted, credit may be taken against the tax due on a subsequent return.

E. If a sales tax rate change takes place prior to the reporting period when the credit is claimed, the tax credit must be determined and deducted rather than deducting the sales price adjustments.

F. Commissions to agents are not deductible under any conditions for purposes of tax computation.

**R865-19S-22. Sales and Use Tax Records Pursuant to Utah Code Ann. Section 59-12-111.**

A. Every retailer, lessor, lessee, and person doing business in this state or storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer, shall keep and preserve complete and adequate records as may be necessary to determine the amount of sales and use tax for which such person or entity is liable. Unless the Tax Commission authorizes in writing an alternative method of record keeping, these records shall:

1. show gross receipts from sales, or rental payments from leases, of tangible personal property or services performed in connection with tangible personal property made in this state, irrespective of whether the retailer regards the receipts to be taxable or nontaxable;

2. show all deductions allowed by law and claimed in filing returns;

3. show bills, invoices or similar evidence of all tangible personal property purchased for sale, consumption, or lease in this state; and

4. include the normal books of account maintained by an ordinarily prudent business person engaged in such business, together with supporting documents of original entry such as: bills, receipts, invoices, and cash register tapes. All schedules or working papers used in connection with the preparation of tax returns must also be maintained.

B. Records may be microfilmed or microfiched. However, microfilm reproductions of general books of account--such as cash books, journals, voucher registers, ledgers, and like documents--are not acceptable as original records. Where microfilm or microfiche reproductions of supporting records are maintained--such as sales invoices, purchase invoices, credit memoranda and like documents--the following conditions must be met:

1. appropriate facilities must be provided for preservation of the films or fiche for the periods required and open to examination,

2. microfilm rolls and microfiche must be systematically filed, indexed, cross referenced, and labeled to show beginning and ending numbers and to show beginning and ending alphabetical listing of documents included,

3. upon request of the Tax Commission, the taxpayer shall provide transcriptions of any information contained on microfilm or microfiche which may be required for verification of tax liability,

4. proper facilities must be provided for the ready inspection and location of the particular records, including machines for viewing and copying the records,

5. a posting reference must appear on each invoice. Credit memoranda must carry a reference to the document evidencing the original transaction. Documents necessary to support exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in such order so as to relate to exempt transactions claimed.

C. Any automated data processing (ADP) tax accounting system must be capable of producing visible and legible records for verification of taxpayer's tax liability.

1. ADP records shall provide an opportunity to trace any transaction back to the original source or forward to a final total. If detailed printouts are not made of transactions at the time they are processed, the systems must have the ability to reconstruct these transactions.

2. A general ledger with source references should be prepared to coincide with financial reports for tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be prepared periodically.

3. The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the Tax Commission upon request. The system should be so designed that supporting documents--such as sales invoices, purchase invoices, credit memoranda, and like documents--are readily available.

4. A description of the ADP portion of the accounting system shall be made available. The statements and illustrations as to the scope of operations shall be sufficiently detailed to indicate:

(a) the application being performed;

(b) the procedures employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output procedures); and

(c) the controls used to insure accurate and reliable processing and important changes, together with their effective dates, in order to preserve an accurate chronological record.

D. All records pertaining to transactions involving sales or use tax liability shall be preserved for a period of not less than three years.

E. All of the foregoing records shall be made available for examination on request by the Tax Commission or its authorized representatives.

F. Upon failure of the taxpayer, without reasonable cause, to substantially comply with the requirements of this rule, the Tax Commission may:

1. Prohibit the taxpayer from introducing in any protest or refund claim proceeding those microfilm, microfiche, ADP, or any records which have not been prepared and maintained in substantial compliance with the requirements of this rule.

2. Dismiss any protest or refund claim proceeding in which the taxpayer bases its claim upon any microfilm, microfiche, ADP, or any records which have not been prepared and maintained in substantial compliance with the requirements of this rule.

3. Enter such other order necessary to obtain compliance with this rule in the future.

4. Revoke taxpayer's license upon evidence of continued failure to comply with the requirements of this rule.

**R865-19S-23. Exemption Certificates Pursuant to Utah Code Ann. Sections 59-12-106 and 59-12-104.**

A. Taxpayers selling tangible personal property or services to customers exempt from sales tax are required to keep records verifying the nontaxable status of those sales.

B. The Tax Commission will furnish samples of acceptable exemption certificate forms on request. Stock quantities are not furnished, but taxpayers may reproduce samples as needed in whole or in part.

C. A seller may retain a copy of a purchase order, check, or voucher in place of the exemption certificate as evidence of exemption for a federal, state, or local government entity, including public schools.

D. If a purchaser is unable to segregate tangible personal property or services purchased for resale from tangible personal property or services purchased for the purchaser's own consumption, everything should be purchased tax-free. The purchaser must then report and pay the tax on the cost of goods or services purchased tax-free for resale that the purchaser uses or consumes.

E. A seller may provide evidence of a sales and use tax exemption electronically if the seller uses the standard sales and use tax exemption form adopted by the governing board of the agreement.

F. A seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurs.

**R865-19S-25. Sale of Business Pursuant to Utah Code Ann. Section 59-12-112.**

A. Every sales tax license holder who discontinues business, is required to notify the Tax Commission immediately and return the sales tax license for cancellation.

B. Every person discontinuing business shall retain records for a period of three years unless a release from such provision is obtained from the Tax Commission.

**R865-19S-27. Retail Sales Defined Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103(1)(g).**

A. The term retail sale has a broader meaning than the sale of tangible personal property. It includes any transfers, exchanges, or barter whether conditional or for a consideration by a person doing business in such commodity or service, either as a regularly organized principal endeavor or as an adjunct thereto. The price of the service or tangible personal property, the quantity sold, or the extent of the clientele are not factors which determine whether or not it is a retail sale.

B. Retail sale also includes certain leases and rentals of tangible personal property as defined in Rule R865-19S-32, accommodations as defined in Rule R865-19S-79, services performed on tangible personal property as defined in Rules R865-19S-51 and R865-19S-78, services that are part of a sale or repair, admissions as defined in Rules R865-19S-33 and R865-19S-34, sales of meals as defined in Rules R865-19S-61 and R865-19S-62, and sales of certain public utility services.

C. A particular retail sale or portion of the selling price may not be subject to a sales or use tax. The status of the exemption is governed by the circumstances in each case. See other rules for specific and general exemption definitions, Rule R865-19S-30 for definition of sales price and Rule R865-19S-72 covering trade-ins.

**R865-19S-29. Wholesale Sale Defined Pursuant to Utah Code Ann. Section 59-12-102.**

A. "Wholesale sale" means any sale by a wholesaler, retailer, or any other person, of tangible personal property or services to a retailer, jobber, dealer, or another wholesaler for resale.

1. All sales of tangible personal property or services which enter into and become an integral or component part of tangible personal property or product which is further manufactured or compounded for sale, or the container or the shipping case thereof, are wholesale sales.

2. All sales of poultry, dairy, or other livestock feed and the components thereof and all seeds and seedlings are deemed to be wholesale sales where the eggs, milk, meat, or other livestock products, plants, or plant products are produced for resale.

3. Sprays and insecticides used in the control of insect pests, diseases, and weeds for the commercial production of fruit, vegetables, feeds, seeds, and animal products shall be wholesale sales. Also baling ties and twine for baling hay and straw and fuel sold to farmers and agriculture producers for use in heating orchards and providing power in off-highway type farm machinery shall be wholesale sales.

B. Tangible personal property or services which are purchased by a manufacturer or compounder which do not become and remain an integral part of the article being manufactured or compounded are subject to sales or use tax.

1. For example, sales to a knitting factory of machinery, lubricating oil, pattern paper, office supplies and equipment, laundry service, and repair labor are for consumption and are taxable. These services and tangible personal property do not become component parts of the manufactured products. On the other hand, sales of wool, thread, buttons, linings, and yarns, to such a manufacturer that do become component parts of the products manufactured are not taxable.

C. The price of tangible personal property or services sold or the quantity sold are not factors which determine whether or not the sale is a wholesale sale.

D. All vendors who make wholesale sales are required to obtain an exemption certificate from the purchaser as evidence of the nature of the sale, as required by Rule R865-19S-23.

**R865-19S-30. Sale of a Vehicle or Vessel by a Person Not Regularly Engaged in Business Pursuant to Utah Code Ann. Section 59-12-104.**

A. This rule provides guidance on the sale of a vehicle or vessel by a person not regularly engaged in business for purposes of Subsections 59-12-104(13) and (18).

B. For purposes of calculating sales and use tax on the sale of a vehicle where no trade in was involved, the bill of sale or other written evidence of value shall contain the names and addresses of the purchaser and the seller, and the sales price and vehicle identification number of the vehicle.

C. For purposes of calculating sales and use tax on the sale of a vehicle when the seller has received a trade-in vehicle as payment or partial payment, the bill of sale or other written evidence of value shall contain all of the following:

1. the names and addresses of the buyer and the seller;
2. the purchase price of the vehicle;
3. the value allowed for the trade-in vehicle;
4. the net difference between the vehicle traded and the vehicle purchased;
5. the signature of the seller; and
6. the vehicle identification numbers of the vehicle traded in and the vehicle purchased.

D. In the absence of a bill of sale or other written evidence of value, the fair market value of the vehicle or vessel shall be determined by industry accepted vehicle pricing guides.

**R865-19S-31. Time and Place of Sale Pursuant to Utah Code Ann. Section 59-12-102.**

A. Ordinarily, the time and place of a sale are determined by the contract of sale between the seller and buyer. The intent of the parties is the governing factor in determining both time and place of sale subject to the general law of contracts. If the contract of sale requires the seller to deliver or ship goods to a buyer, title to the property passes upon delivery to the place agreed upon unless the contract of sale provides otherwise.

**R865-19S-32. Leases and Rentals Pursuant to Utah Code Ann. Section 59-12-103.**

A. The lessor shall compute sales or use tax on all amounts received or charged in connection with a lease or rental.

B. When a lessee has the right to possession, operation, or use of tangible personal property, the tax applies to the amount paid pursuant to the lease agreement, regardless of the duration of the agreement. The tax applies when situs of the property is in Utah or if the lessee takes possession in Utah. However, if the leased property is used exclusively outside Utah and an affidavit is furnished to the lessor to this effect, the tax does not apply. Examples of taxable leases include neon signs and custom made signs on the premises of the lessee, automobiles, and construction equipment leased for use in Utah.

C. Lessors of tangible personal property shall furnish an exemption certificate when purchasing tangible personal property subject to the sales or use tax on rental receipts. Costs of repairs and renovations to tangible personal property are exempt if paid for by the lessor since it is assumed that those costs are recovered by the lessor in his rental receipts.

D. Persons who furnish an operator with the rental equipment and charge for the use of the equipment and personnel are regarded as the consumers of the property leased or rented. An example of this type of rental is the furnishing of a crane and its operating personnel to a building erector. Sales or use tax then applies to the purchase of the equipment by the lessor rather than to the rental revenue.

E. Rentals to be applied on a future sale or purchase are subject to sales or use tax.

F. A lessee may, at its option, treat a conditional sale lease as either a sale or lease for sales or use tax purposes.

A conditional sale lease is a lease in which:

1. the consideration the lessee is to pay the lessor for the right to possession and use of the property is an obligation for the term of the lease not subject to termination by the lessee, and

2. the total consideration to be paid by the lessee is fixed at the time the lease is executed and cannot be modified by use, condition, or market value, and either:

a. the lessee is bound to become the owner of the property; or

b. the lessee has an option to become the owner of the property for no additional consideration or nominal additional consideration upon compliance with the lease agreement. Nominal consideration in this sense means ten percent or less of the original lease amount.

G. If the lessee treats a conditional sale lease as a sale, and if the lessor is also the vendor of the property, the sales price for sales tax purposes must be at least equal to the average sales price of similar property.

H. If the lessee treats a conditional sale lease as a sale, the sales tax must be collected by the lessor on the full purchase price of the property at the time of the purchase.

**R865-19S-33. Admissions and User Fees Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.**

A. "Admission" means the right or privilege to enter into a place. Admission includes the amount paid for the right to use a reserved seat or any seat in an auditorium, theater, circus, stadium, schoolhouse, meeting house, or gymnasium to view any type of entertainment. Admission also includes the right to



use a table at a night club, hotel, or roof garden whether such charge is designated as a cover charge, minimum charge, or any such similar charge.

1. This applies whether the charge made for the use of the seat, table, or similar accommodation is combined with an admission charge to form a single charge, or is separate and distinct from an admission charge, or is the sole charge.

B. "Annual membership dues paid to a private organization" includes only those dues paid by members who, directly or indirectly, establish the level of the dues.

C. "Season passes" include amounts paid to participate in specific activities, once annual membership dues have been paid.

D. If the original admission charge carries the right to remain in a place, or to use a seat or table, or other similar accommodation for a limited time only, and an additional charge is made for an extension of such time, the extra charge is paid for admission within the meaning of the law. Where a person or organization acquires the sole right to use any place or the right to dispose of all of the admissions to any place for one or more occasions, the amount paid is not subject to the tax on admissions. Such a transaction constitutes a rental of the entire place and if the person or organization in turn sells admissions, sales tax applies to amounts paid for such admissions.

E. Annual membership dues may be paid in installments during the year.

F. Amounts paid for the following activities are not admissions or user fees:

1. lessons, public or private;

2. sign up for amateur athletics if the activity is sponsored by a state governmental entity, or a nonprofit corporation or organization, the primary purpose of which, as stated in the corporation's or organization's articles or bylaws, is the sponsoring, promoting, and encouraging of amateur athletics;

3. sign up for participation in school activities. Sign up for participation in school activities excludes attendance as a spectator at school activities.

G. If amounts charged for activities listed in F. are billed along with admissions or user fees, the amounts not subject to the sales tax must be listed separately on the invoice in order to remain untaxed.

**R865-19S-34. Admission to Places of Amusement Pursuant to Utah Code Ann. Section 59-12-103.**

A. The phrase "place of amusement, entertainment, or recreation" is broad in meaning but conveys the basic idea of a definite location.

B. The amount paid for admission to such a place is subject to the tax, even though such charge includes the right of the purchaser to participate in some activity within the place. For example, the sale of a ticket for a ride upon a mechanical or self-operated device is an admission to a place of amusement.

C. Charges for admissions to swimming pools, skating rinks, and other places of amusement are subject to tax. Charges for towel rentals, swimming suit rentals, skate rentals, etc., are also subject to tax. Locker rental fees are subject to sales tax if the lockers are tangible personal property.

**R865-19S-35. Residential or Commercial Use of Gas, Electricity, Heat, Coal, Fuel Oils or Other Fuels Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.**

A. "Residential use" is as defined in Section 59-12-102, and includes use in nursing homes or other similar establishments that serve as the permanent residence for a majority of the patients because they are unable to live independently.

B. Explosives or material used as active ingredients in explosive devices are not fuels.

C. If a firm has activities that are commercial and

industrial and all fuels are furnished at given locations through single meters, the predominant use of the fuels shall determine taxable status of the fuels.

D. Fuel oil and other fuels must be used in a combustion process in order to qualify for the exemption from sales tax for industrial use of fuels pursuant to Section 59-12-104.

**R865-19S-37. Exempt Sales of Commercials, Audio Tapes, and Video Tapes by or to Motion Pictures Exhibitors and Distributors Pursuant to Utah Code Ann. Section 59-12-104.**

A. The purpose of this rule is to clarify the sales tax exemption for sales of commercials, motion picture films, prerecorded audio program tapes or records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture exhibitor, distributor, or commercial television or radio broadcaster.

B. Definitions.

1. "Commercials," "audio tapes," and "video tapes" mean tapes, films, or discs used by television or radio stations in regular broadcasting activities but do not include blank tapes purchased for newscasts or other similar uses by radio and television stations.

2. "Motion picture exhibitor" means any person engaged in the business of operating a theater or establishment in which motion pictures are regularly exhibited to the public for a charge.

3. "Distributor" means any person who purchases or sells motion picture films and video tapes that are used by a commercial television broadcaster or a motion picture exhibitor.

C. The sales tax exemption will be administered according to the provisions of Section 59-12-104 and this rule.

**R865-19S-38. Isolated and Occasional Sales Pursuant to Utah Code Ann. Section 59-12-104.**

A.1. Except as provided in A.2., sales made by officers of a court, pursuant to court orders, are occasional sales.

2. Notwithstanding A.1., sales made by trustees, receivers, or assignees in connection with the liquidation or conduct of a regularly established place of business are not occasional sales.

3. Examples of occasional sales are those made by sheriffs in foreclosing proceedings and sales of confiscated property.

B. If a sale is an integral part of a business the primary function of which is not the sale of tangible personal property, the sale is not isolated or occasional. For example, the sale of repossessed radios or refrigerators by a finance company is not isolated or occasional.

C.1. Except as provided in C.2., sales of vehicles required to be titled or registered under the laws of this state are not isolated or occasional sales.

2. Notwithstanding C.1., a transfer of a vehicle where the ownership of the vehicle before and after the transfer is substantially the same is an isolated or occasional sale.

D.1. Isolated or occasional sales made by persons not regularly engaged in business are not subject to sales and use tax.

2. For purposes of D.1., "business" refers to an enterprise engaged in selling tangible personal property or taxable services notwithstanding the fact that the sales may be few or infrequent.

3. The sale of an entire business to a single buyer is an isolated or occasional sale.

a) Except as provided in D.3.b), no tax applies to the sale of any assets that are part of a sale described in D.3.

b) If a sale described in D.3. includes the sale of a vehicle subject to registration, that vehicle is subject to sales and use tax.

E. The sale of used fixtures, machinery, and equipment items is not an occasional sale if the sale is one of a series of sales sufficient in number, amount, and character to indicate that the seller deals in the sale of those items.

F. Sales of items at public auctions do not qualify as isolated or occasional sales.

G. Wholesalers, manufacturers, and processors that primarily sell at other than retail are not making isolated or occasional sales when they sell tangible personal property for use or consumption.

**R865-19S-40. Exchange of Agricultural Produce For Processed Agricultural Products Pursuant to Utah Code Ann. Section 59-12-102.**

A. When a raiser or grower of agricultural products exchanges his produce for a more finished product capable of being made from the produce exchanged with the processor, the more finished product is not subject to the tax within limitations of the value of the raised produce exchanged.

**R865-19S-41. Sales to The United States Government and Its Instrumentalities Pursuant to Utah Code Ann. Sections 59-12-104 and 59-12-106.**

A. Sales to the United States government are exempt if federal law or the United States Constitution prohibits the collection of sales or use tax.

B. If the United States government pays for merchandise or services with funds held in trust for nonexempt individuals or organizations, sales tax must be charged.

C. Sales made directly to the United States government or any authorized instrumentality thereof are not taxable, provided the sale is paid for directly by the federal government. If an employee of the federal government pays for the purchase with his own funds and is reimbursed by the federal government, that sale is not made to the federal government and does not qualify for the exemption.

D. Vendors making exempt sales to the federal government are subject to the recordkeeping requirements of Tax Commission rule R865-19S-23.

**R865-19S-42. Sales to The State of Utah and Its Subdivisions Pursuant to Utah Code Ann. Section 59-12-104.**

A. Sales made to the state of Utah, its departments and institutions, or to its political subdivisions such as counties, municipalities, school districts, drainage districts, irrigation districts, and metropolitan water districts are exempt from tax if the purchase is for use in the exercise of an essential governmental function.

B. A sale is considered made to the state, its departments and institutions, or to its political subdivisions if the purchase is paid for directly by the purchasing state or local entity. If an employee of a state or local entity pays for a purchase with his own funds and is reimbursed by the state or local entity, that sale is not made to the state or local entity and does not qualify for the exemption.

C. Vendors making exempt sales to the state, its departments and institutions, or to its political subdivisions are subject to the recordkeeping requirements of Tax Commission rule R865-19S-23.

**R865-19S-43. Sales to or by Religious and Charitable Institutions Pursuant to Utah Code Ann. Section 59-12-104.**

A. In order to qualify for an exemption from sales tax as a religious or charitable institution, an organization must be recognized by the Internal Revenue Service as exempt from tax under Section 501(c)(3) of the Internal Revenue Code.

B. Religious and charitable institutions must collect sales tax on any sales income arising from unrelated trades or businesses and report that sales tax to the Tax Commission unless the sales are otherwise exempted by law.

1. The definition of the phrase "unrelated trades or businesses" shall be the definition of that phrase in 26 U.S.C.A. Section 513 (West Supp. 1993), which is adopted and

incorporated by reference.

C. Every institution claiming exemption from sales tax under this rule must submit form TC-160, Application for Sales Tax Exemption Number for Religious or Charitable Institutions, along with any other information that form requires, to the Tax Commission for its determination. Vendors making sales to institutions exempt from sales tax are subject to the requirements of Rule R865-19S-23.

**R865-19S-44. Sales In Interstate Commerce Pursuant to Utah Code Ann. Section 59-12-104.**

A. Sales made in interstate commerce are not subject to the sales tax imposed. However, the mere fact that commodities purchased in Utah are transported beyond its boundaries is not enough to constitute the transaction of a sale in interstate commerce. When the commodity is delivered to the buyer in this state, even though the buyer is not a resident of the state and intends to transport the property to a point outside the state, the sale is not in interstate commerce and is subject to tax.

B. Before a sale qualifies as a sale made in interstate commerce, the following must be complied with:

1. the transaction must involve actual and physical movement of the property sold across the state line;

2. such movement must be an essential and not an incidental part of the sale;

3. the seller must be obligated by the express or unavoidable implied terms of the sale, or contract to sell, to make physical delivery of the property across a state boundary line to the buyer;

C. Where delivery is made by the seller to a common carrier for transportation to the buyer outside the state of Utah, the common carrier is deemed to be the agent of the vendor for the purposes of this section regardless of who is responsible for the payment of the freight charges.

D. If property is ordered for delivery in Utah from a person or corporation doing business in Utah, the sale is taxable even though the merchandise is shipped from outside the state to the seller or directly to the buyer.

**R865-19S-48. Sales Tax Exemption For Coverings and Containers Pursuant to Utah Code Ann. Section 59-12-104.**

A. Sales of containers, labels, bags, shipping cases, and casings are taxable when:

1. sold to the final user or consumer;

2. sold to a manufacturer, processor, wholesaler, or retailer for use as a returnable container that is ordinarily returned to and reused by the manufacturer, processor, wholesaler, or retailer for storing or transporting their product; or

3. sold for internal transportation or accounting control purposes.

B. Returnable containers may include water bottles, carboys, drums, beer kegs for draft beer, dairy product containers, and gas cylinders.

1. Labels used for accounting, pricing, or other control purposes are also subject to tax.

C. For the purpose of this rule, soft drink bottles and similar containers that are ultimately destroyed or retained by the final user or consumer are not considered returnable and are exempt from the tax when purchased by the processor.

D. When tangible personal property sold in containers, for example soft drinks, is assessed a deposit or other container charge, that charge is subject to the tax. Upon refund of this charge, the retailer may take credit on a sales tax return if the tax is refunded to the customer.

**R865-19S-49. Sales to and by Farmers and Other Agricultural Producers Pursuant to Utah Code Ann. Section 59-12-104.**

A. 1. For purposes of the sales and use tax exemption for

tangible personal property used or consumed primarily and directly in farming operations, a person is engaged in "farming operations" if that person may deduct farm related expenses under Sections 162 or 212, Internal Revenue Code.

2. To determine whether a person may deduct farm related expenses under Sections 162 or 212 of the Internal Revenue Code, the commission shall consider Treas. Reg. Sections 1.183-1 and 1.183-2.

B. The purchase of feed, medicine, and veterinary supplies by a farmer or other agricultural producer qualify for the sales and use tax exemption for tangible personal property used or consumed primarily and directly in farming operations if the feed, medicine, or veterinary supplies are used:

1. to produce or care for agricultural products that are for sale;
2. to feed or care for working dogs and working horses in agricultural use;
3. to feed or care for animals that are marketed.

C. Fur-bearing animals that are kept for breeding or for their products are agricultural products.

D. A vendor making sales to a farmer or other agricultural producer is liable for the tax unless that vendor obtains from the purchaser a certificate as set forth in Rule R865-19S-23.

E. Poultry, eggs, and dairy products are not seasonal products for purposes of the sales and use tax exemption for the exclusive sale of locally grown seasonal crops, seedling plants, or garden, farm, or other agricultural produce sold by a producer during the harvest season.

**R865-19S-50. Florists Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.**

A. Flowers, trees, bouquets, plants, and other similar items of tangible personal property are agricultural products and are, therefore, subject to the rules concerning the sale of those products as set forth in Rule R865-19S-49.

B. Where florists conduct transactions through a florist telegraphic delivery association, the following rules apply in computation of tax liability:

1. the florist must collect tax from the customer if the flower order is telegraphed to a second florist in Utah;
2. if a Utah florist receives an order pursuant to which he gives telegraphic instructions outside Utah, the Utah florist must collect tax from his customer upon the total charges;
3. if a Utah florist receives telegraphic instructions from a florist either within or outside of Utah for the delivery of flowers, the receiving vendor is not liable for the tax. In this instance, if the order originated in Utah, the tax is due from and payable by the Utah florist who first received the order.

**R865-19S-51. Fabrication and Installation Labor in Connection With Retail Sales of Tangible Personal Property Pursuant to Utah Code Ann. Section 59-12-103.**

A. The amount charged for fabrication or installation which is part of the process of creating a finished article of tangible personal property must be included in the amount upon which tax is collected. This type of labor and service charge may not be deducted from the selling price used for taxation purposes even though billed separately to the consumer and regardless of whether the articles are commonly carried in stock or made up on special order.

B. Casting, forging, cutting, drilling, heat treating, surfacing, machining, constructing, and assembling are examples of steps in the process resulting in the creation or production of a finished article.

C. Charges for labor to install personal property in connection with other personal property are taxable (see Rule R865-19S-78) whether material is furnished by seller or not.

D. Labor to install tangible personal property to real property is exempt, whether the personal property becomes part

of the realty or not. See Rule R865-19S-58, dealing with improvements to or construction of real property, to determine the applicable tax on personal property which becomes a part of real property.

E. Tangible personal property which is attached to real property, but remains personal property, is subject to sales tax on the retail selling price of the personal property, and installation charges are exempt if separately stated. If the retailer does not segregate the selling price and installation charges, the sales tax applies to the entire sales price, including installation charges.

F. This rule primarily covers manufacturing and assembling labor. Other rules deal with other types of labor and should be referred to whenever necessary.

**R865-19S-52. Federal, State and Local Taxes Pursuant to Utah Code Ann. Section 59-12-102.**

A. Federal excise tax involved in a transaction which is subject to sales or use tax is exempt from sales and use tax provided the federal tax is separately stated on the invoice or sales ticket and collected from the purchaser.

B. State and local taxes are taxable as a part of the sales price of an article if the tax is levied on the manufacturer or the seller.

**R865-19S-53. Sale by Finance Companies Pursuant to Utah Code Ann. Section 59-12-102.**

A. Sales of tangible personal property acquired by repossession or foreclosure are subject to tax. Persons making such sales must secure a license and collect and remit tax on the sales made.

**R865-19S-54. Governmental Exemption Pursuant to Utah Code Ann. Section 59-12-104.**

A. Tax does not apply to sales to the state of Utah, or to any political subdivision of the state, where such property is for use in the exercise of an essential governmental function. Also, certain sales are not taxed because of federal law or the United States Constitution.

B. Sales to the following state and federal agencies, institutions, and instrumentalities are exempt:

1. federal agencies and instrumentalities
2. state institutions and departments
3. counties
4. municipalities
5. school districts, public schools
6. special taxing districts
7. federal land banks
8. federal reserve banks
9. activity funds within the armed services
10. post exchanges
11. Federally chartered credit unions

C. The following are taxable:

1. national banks
2. federal building and loan associations
3. joint stock land banks
4. state banks (whether or not members of the Federal Reserve System)
5. state building and loan associations
6. private irrigation companies
7. rural electrification projects
8. sales to officers or employees of exempt instrumentalities

D. No sales tax immunity exists solely by virtue of the fact that the sale was made on federal property.

E. Sales made by governmental units are subject to sales tax.

**R865-19S-56. Sales by Employers to Employees Pursuant to**

**Utah Code Ann. Section 59-12-102.**

A. Sales to employees are subject to tax on the amount charged for goods and taxable services. If tangible personal property is given to employees with no charge, the employer is deemed to be the consumer and must pay tax on his cost of the merchandise. Examples of this type of transaction are meals furnished to waitresses and other employees, contest prizes given to salesmen, merchandise bonuses given to clerks, and similar items given away.

**R865-19S-57. Ice Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.**

A. In general, sales of ice to be used by the purchaser for refrigeration or cooling purposes are taxable. Sales to restaurants, taverns, or the like to be placed in drinks consumed by customers at the place of business are sales for resale and are not taxable.

B. Where ice is sold in fulfillment of a contract for icing or reicing property in transit by railroads or other freight lines, the entire amount of the sale is taxable, and no deduction for services is allowed.

**R865-19S-58. Materials and Supplies Sold to Owners, Contractors and Repairmen of Real Property Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.**

A. Sales of construction materials and other items of tangible personal property to real property contractors and repairmen of real property are generally subject to tax if the contractor or repairman converts the materials or items to real property.

1. "Construction materials" include items of tangible personal property such as lumber, bricks, nails and cement that are used to construct buildings, structures or improvements on the land and typically lose their separate identity as personal property once incorporated into the real property.

2. Fixtures or other items of tangible personal property such as furnaces, built-in air conditioning systems, built-in appliances, or other items that are appurtenant to or incorporated into real property and that become an integral part of a real property improvement are treated as construction materials for purposes of this rule.

B. The sale of real property is not subject to sales tax, nor is the labor performed on real property. For example, the sale of a completed home or building is not subject to the tax, but sales of materials and supplies to contractors for use in building the home or building are taxable transactions as sales to final consumers.

1. The contractor or repairman who converts the personal property to real property is the consumer of tangible personal property regardless of the type of contract entered into--whether it is a lump sum, time and material, or a cost-plus contract.

2. Except as otherwise provided in B.4, the contractor or repairman who converts the construction materials, fixtures or other items to real property is the consumer of the personal property whether the contract is performed for an individual, a religious or charitable institution, or a government entity.

3. Sales of construction materials or fixtures made to religious or charitable institutions are exempt only if the items are sold as tangible personal property.

4. Sales of materials are considered made to religious or charitable institutions and, therefore, exempt from sales tax, if:

a) the religious or charitable institution makes payment for the materials directly to the vendor; or  
b) the materials are purchased on behalf of the religious or charitable institution.

(i) Materials are purchased on behalf of the religious or charitable institution if the materials are clearly identified and segregated and installed or converted to real property owned by the religious or charitable institution.

5. Purchases not made pursuant to B.4. are assumed to have been made by the contractor and are subject to sales tax.

C. If the contractor or repairman purchases all materials and supplies from vendors who collect the Utah tax, no sales tax license is required unless the contractor makes direct sales of tangible personal property in addition to the work on real property.

1. If direct sales are made, the contractor shall obtain a sales tax license and collect tax on all sales of tangible personal property to final consumers.

2. The contractor must accrue and remit tax on all merchandise bought tax-free and converted to real property. Books and records must be kept to account for both material sold and material consumed.

D. This rule does not apply to contracts where the retailer sells and installs personal property that does not become part of the real property. Examples of items that remain tangible personal property even when attached to real property are:

1. moveable items that are attached to real property merely for stability or for an obvious temporary purpose;

2. manufacturing equipment and machinery and essential accessories appurtenant to the manufacturing equipment and machinery; and

3. items installed for the benefit of the trade or business conducted on the property that are affixed in a manner that facilitates removal without substantial damage to the real property or to the item itself.

**R865-19S-59. Sales of Materials and Services to Repairmen Pursuant to Utah Code Ann. Section 59-12-103.**

A. Sales of tangible personal property and services to persons engaged in repairing or renovating tangible personal property are for resale, provided the tangible personal property or service becomes a component part of the repair or renovation sold. For example, paint sold to a body and fender shop and used to paint an automobile is exempt from sales tax since it becomes a component part of the repair work.

1. Sandpaper, masking tape, and similar supplies are subject to sales tax when sold to a repairman since these items are consumed by the repairman rather than being sold to his customer as an ingredient part of the repair job. These items shall be taxed at the time of sale if it is known that they are to be consumed. However, if this is not determinable at the time of sale, these items should be purchased tax free, as set forth in Rule R865-19S-23 and sales tax reported on the repairman's sales tax return covering the period during which consumption takes place.

**R865-19S-60. Sales of Machinery, Fixtures and Supplies to Manufacturers, Businessmen and Others Pursuant to Utah Code Ann. Section 59-12-103.**

A. Unless specifically exempted by statute, sales of machinery, tools, equipment, and supplies to a manufacturer or producer are taxable.

B. Sales of furniture, supplies, stationery, equipment, appliances, tools, and instruments to stores, shops, businesses, establishments, offices, and professional people for use in carrying on their business and professional activities are taxable.

C. Sales of trade fixtures to a business owner are taxable as sales of tangible personal property even if the fixtures are temporarily attached to real property.

1. Trade fixtures are items of tangible personal property used for the benefit of the business conducted on the property.

2. Trade fixtures tend to be transient in nature in that the fixtures installed in a commercial building may vary from one tenant to the next without substantial alteration of the building, and the building itself is readily adaptable to multiple uses.

3. Examples of trade fixtures include cases, shelves and racks used to store or display merchandise.

D. Sales tax treatment or charges for installing trade fixtures to real property are dealt with in R865-19S-78.

E. Sales described in A. through C. of this rule are sales to final buyers or ultimate consumers and therefore not sales for resale.

**R865-19S-61. Meals Furnished Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.**

A. The following definitions apply to the sales and use tax exemption authorized under Section 59-12-104 for inpatient meals provided at a medical facility or nursing facility.

1. "Medical facility" means a facility:

a) described in SIC codes 8062 through 8069 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; and

b) licensed under Section 26-21-8.

2. "Nursing facility" means a facility:

a) described in SIC codes 8051 through 8059 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; and

b) licensed under Section 26-21-8.

B. The following definition applies to the sales and use tax exemption authorized under Section 59-12-104 for sales of meals served by an institution of higher education.

1. "Student meal plan" means an arrangement:

a) between an institution of higher education and a student;

b) available only to a student;

c) whose duration is the entire term, semester, or similar unit of study;

d) paid in advance of the term, semester, or similar unit of study; and

e) providing for specified meals at eating facilities of the institution of higher education.

C. Except as provided in Section 59-12-104, sales and use tax is imposed upon the amount paid for meals furnished by any restaurant, cafeteria, eating house, hotel, drug store, diner, private club, boarding house, or other place, regardless of whether meals are regularly served to the public.

D. Ingredients that become a component part of meals subject to tax are construed to be purchased for resale, and as such the purchase of those ingredients is exempt from sales and use tax.

E. Where a meal is given away on a complementary basis, the provider of the meal is considered to be the consumer of the items used in preparing the meal.

F. Meals served by religious or charitable institutions and institutions of higher education are not available to the general public if:

1. access to the restaurant, cafeteria, or other facility is restricted to:

a) in the case of a religious or charitable institution:

(1) employees of the institution;

(2) volunteers of the institution;

(3) guests of the institution; and

(4) other individuals that constitute a limited class of people; or

b) in the case of an institution of higher education:

(1) students of the institution;

(2) employees of the institution;

(3) guests of the institution; and

(4) other individuals that constitute a limited class of people; and

2. the restricted access is enforced.

G. Sales of meals at occasional church or charity bazaars or fund raisers, and other similar functions are considered isolated and occasional sales and therefore exempt from sales

and use tax.

**R865-19S-62. Meal Tickets, Coupon Books, and Merchandise Cards Pursuant to Utah Code Ann. Section 59-12-103.**

A. Meal tickets, coupon books, or merchandise cards sold by persons engaged in selling taxable commodities or services are taxable, and the tax shall be billed or collected on the selling price at the time the tickets, books, or cards are sold. Tax is to be added at the subsequent selection and delivery of the merchandise or services if an additional charge is made.

**R865-19S-63. Sales of Memorial Markers Pursuant to Utah Code Ann. Section 59-12-103.**

A. Sales of tombstones and grave markers, which are embedded in sod or a concrete foundation, are considered to be improvements to real property. If the seller furnishes and installs the marker, tax applies to his cost of the marker and to his cost of installation material. If the seller does not install the marker, the transaction is a sale of tangible personal property and the seller must collect tax on the full selling price, including cutting, shaping, lettering, and polishing.

**R865-19S-64. Morticians, Undertakers and Funeral Directors Pursuant to Utah Code Ann. Section 59-12-103.**

A. Morticians, undertakers, and funeral directors make taxable sales of caskets, vaults, clothing, etc. They also render nontaxable services to their patrons. Their purchase of antiseptics, cosmetics, embalming fluids, and other chemicals used in rendering professional services is taxable.

B. If the books are kept in such a manner as to reflect the sales of tangible personal property separate from the services rendered, the tax attaches only to the sale of tangible personal property. If no separation is made of the tangible personal property and the services rendered, the sales tax is collected upon one-half of the total price of a standard funeral service. This includes the casket, professional services, care of remains, funeral coach, floral car, use of funeral car, use of funeral chapel, and the securing of permits.

1. Clothing, an outside grave vault, and other tangible personal property furnished in addition to the casket must be billed separately and the sales tax collected thereon.

**R865-19S-65. Newspapers Pursuant to Utah Code Ann. Section 59-12-103.**

A. "Newspaper" means a publication that appears to be a newspaper in the general or common sense. In addition, the publication:

1. must be published at short intervals, daily, or weekly;

2. must not, when its successive issues are put together, constitute a book;

3. must be intended for circulation among the general public; and

4. must contain matters of general interest and report on current events.

B. Purchases of tangible personal property by a newspaper publisher are subject to sales and use tax if the property will be used or consumed in the printing or distribution of the newspaper.

C. A newspaper publisher may purchase tax free for resale any tangible personal property that becomes a component part of the newspaper.

1. Examples of tangible personal property that becomes a component part of the newspaper include newsprint, ink, staples, plastic or paper protective coverings, and rubber bands distributed with the newspaper.

D. Purchases of advertising inserts that will be distributed with a newspaper are exempt from sales and use tax if the inserts are identified with the name and date of distribution of

the newspaper. The identification may include a multiple listing of all newspapers that will carry the insert and the corresponding distribution dates.

1. Advertising inserts that are not identified as provided in D. are exempt from sales and use tax if the newspaper maintains a log at its place of business that lists by date and name the inserts included in each publication. The log may reflect all inserts or only the inserts not otherwise identified with the newspaper in accordance with D.

**R865-19S-66. Optometrists, Opticians, and Ophthalmologists Pursuant to Utah Code Ann. Section 59-12-103.**

A. Optometrists and ophthalmologists are deemed to be persons engaged primarily in rendering personal services. These services consist of the examination and treatment of eyes. Glasses, contact lenses, or other tangible personal property such as sunglasses, or cleaning solutions sold by optometrists and ophthalmologists are taxable and tax must be collected from the patient or buyer. Invoices or receipts must show the charges for personal services separate from the charges for tangible personal property and the sales tax thereon. If an optometrist or ophthalmologist does not provide separate charges for personal services and sales of tangible personal property, sales tax shall be charged on the entire amount.

B. All sales of tangible personal property to optometrists or ophthalmologists for use or consumption in connection with their services are subject to sales or use tax.

C. Opticians are makers of or dealers in optical items and instruments and fill prescriptions written by optometrists and ophthalmologists. Opticians are engaged in the business of selling tangible personal property and personal services rendered by them are considered as merely incidental thereto. Opticians are required to collect the sales tax on all their sales of tangible personal property.

**R865-19S-68. Premiums, Gifts, Rebates, and Coupons Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103.**

A. Donors of articles of tangible personal property, which are given away as premiums or otherwise, are regarded as the users or consumers thereof and the sale to them is a taxable sale. Exceptions to this treatment are items of tangible personal property donated to or provided for use by exempt organizations who would qualify for exemption under R865-19S-43 or R865-19S-54 if a sale of such items were made to them. An item given away as a sales incentive is exempt to the donor if the sale of that item would have been exempt. An example is prescribed medicine given away by a drug manufacturer.

B. When a retailer making a retail sale of tangible personal property which is subject to tax gives a premium together with the tangible personal property sold, the transaction is regarded as a sale of both articles to the purchaser, provided the delivery of such premium is certain and does not depend upon chance.

C. Where a retailer is engaged in selling tangible personal property which is not subject to tax and furnishes a premium with the property sold, the retailer is the consumer of the premium furnished.

D. If a retailer accepts a coupon for part or total payment for a taxable product and is reimbursed by a manufacturer or another party, the total sales value, including the coupon amount, is subject to sales tax.

E. A coupon for which no reimbursement is received is considered to be a discount and the taxable amount is the net amount paid by the customer after deducting the value of the coupon.

F. Manufacturer rebates on sales of tangible personal property are considered as a discount and the taxable amount is the net amount paid by the customer after deducting the rebate.

If the manufacturer's rebate is certain at the time of sale, tax should be charged only on the net amount of the sale; otherwise, tax is charged on the total before the rebate credit, and then later refunded to the customer when proof of rebate is given to the dealer for his file.

1. If the rebate is applied as part of the down payment, it must be segregated on the buyer's order, invoice, or other sales document from any cash down payment. Since the tax base for collection is reduced by the amount of the rebate, the rebate must be shown separately and identified for sales tax computation and subsequent audit verification. Care must be taken to avoid a double deduction if the gross sales price on the sales document has already been reduced by the rebate amount.

G. If a retailer agrees to furnish a free item in conjunction with the sale of an item, the sales tax applies only to the net amount due. If sales tax is computed on both items and only the sales value of the free item is deducted from the bill, excess collection of sales tax results. The vendor is then required to follow the procedure outlined in R865-19S-16 and remit any excess sales tax collected.

H. Any coupon with a fixed price limit must be deducted from the total bill and sales tax computed on the difference. For example, if a coupon is redeemed for two \$6 meals, but the value of the free meal is limited to \$5, the \$12 is rung up and the \$5 deducted, resulting in a taxable sale of \$7.

**R865-19S-70. Sales Incidental To The Rendition of Services Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.**

A. Persons engaged in occupations and professions that primarily involve the rendition of services upon the client's person and incidentally dispense items of tangible personal property are regarded as the consumers of the tangible personal property dispensed with the services.

B. Physicians, dentists, beauticians, and barbers are examples of persons described in A.

**R865-19S-71. Transportation Charges in Connection With the Sale of Tangible Personal Property Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.**

A. To qualify for the sales tax exemption for movements of freight by common carrier, transportation charges must satisfy all of the following conditions:

1. Shipment must take place by means of common carrier.
2. Charges must be segregated and listed separately.
3. Charges must reflect the actual cost of shipping the particular tangible personal property by common carrier.
4. Shipment of the tangible personal property must take place after passage of title.

a) Shipment of the tangible personal property takes place after passage of title if the terms of the sale or lease are F.O. B. origin or F.O.B. shipping point.

b) If the invoice does not indicate an F.O.B. point, and a common carrier is used, it is assumed the terms are F.O.B. origin.

c) In all other cases, the shipment of tangible personal property takes place before passage of title.

B. If shipment of the tangible personal property occurs before the passage of title, shipping costs, to the extent included in the sales price of the item, and regardless of whether they are segregated on the invoice, shall be included in the sales and use tax base.

**R865-19S-72. Trade-ins and Exchanges Pursuant to Utah Code Ann. Section 59-12-102.**

A. An even exchange of tangible personal property for tangible personal property is exempt from tax. When a person takes tangible personal property as part payment on a sale of tangible personal property, sales or use tax applies only to any

consideration valued in money which changes hands.

B. For example, if a car is sold for \$8,500 and a credit of \$6,500 is allowed for a used car taken in trade, the sales or use tax applies to the difference, or \$2,000 in this example. Subsequently, when the used car is sold, tax applies to the selling price less any trade-in at that time.

C. An actual exchange of tangible personal properties between two persons must be made before the exemption applies. For example, there is no exchange if a person sells his car to a dealer and the dealer holds the credit to apply on a purchase at a later date; there are two separate transactions, and tax applies to the full amount of the subsequent purchase if and when it takes place.

**R865-19S-73. Trustees, Receivers, Executors, Administrators, Etc. Pursuant to Utah Code Ann. Section 59-12-103.**

A. Trustees, receivers, assignees, executors, and administrators, who -- by virtue of their appointment -- operate, manage, or control a business making taxable sales or leases of tangible personal property, or performing taxable services, must collect and remit sales tax on the total taxable sales even though such sales are made in liquidation.

**R865-19S-74. Vending Machines Pursuant to Utah Code Ann. Section 59-12-104.**

A. Persons operating vending machines are deemed to be retailers and selling articles of tangible personal property. The total sales from vending machine operations are considered the total selling price of the tangible personal property distributed in connection with their operations and must be reported as the amount of sales subject to tax.

B. Persons operating vending machines selling food, beverages, and dairy products in which the proceeds of each sale do not exceed \$1, and who do not report an amount equal to 150% of the cost of items as goods consumed, are subject to the requirements of A.

C. For purposes of the 150% of cost formula in Section 59-12-104(3), "cost" is defined as follows.

1. In the case of retailers, cost is the total purchase price paid for products, including any packaging and incoming freight.

2. In the case of a manufacturer, cost includes the following items:

- a) acquisition costs of materials and packaging, including freight;
- b) direct manufacturing labor; and
- c) utility expenses, if a sales tax exemption has been granted on utility purchases.

D. Operators of vending machines, if they so desire, may divide the tax out and sell items at fractional parts of a cent, providing their records so indicate.

E. Where machines vending taxable items are owned by persons other than the proprietor of a place of business in which the machine is placed and the person owning the machine has control over the sales made by the machine, evidenced by collection of the money, the owner is required to secure a sales tax license. One license is sufficient for all such machines. A statement in substantially the following form must be conspicuously affixed upon each vending machine:

"This machine is operated under Utah Sales Tax License No. "

**R865-19S-75. Sales by Photographers, Photo Finishers, and Photostat Producers and Engravers Pursuant to Utah Code Ann. Section 59-12-103.**

A. Photographers, photofinishers, and photostat producers are engaged in selling tangible personal property and rendering services such as developing, retouching, tinting, or coloring

photographs belonging to others.

1. Persons described in this rule must collect tax on all of the above services and on all sales of tangible personal property, such as films, frames, cameras, prints, etc.

B. Sales of tangible personal property by photoengravers, electrotypers, and wood engravers to printers, advertisers, or other persons who do not resell such property but use or consume it in the process of producing printed matter are taxable sales. The value or worth of the services or processing which go into their production is of no moment, and it is immaterial that each sale is upon a special order for a particular customer.

1. Electrotypes and engravings are manufactured articles of merchandise and are sold as such and not as a service. No deduction is allowed on account of the cost of the property sold, labor, service, or any other expense.

**R865-19S-76. Painters, Polishers, Car Washers, Etc. Pursuant to Utah Code Ann. Section 59-12-103 and 59-12-104.**

A. Charges for painting, polishing, washing, cleaning, and waxing tangible personal property are subject to tax, and no deduction is allowed for the service involved.

B. Sales of paint, wax, or other material which becomes a part of the customer's tangible personal property, to persons engaged in the business of painting and polishing of tangible personal property are exempt as sales for resale. However, the vendor of these items must be given a resale certificate as provided for in Rule R865-19S-23.

C. Sales of soap, washing mitts, polishing cloths, spray equipment, sand paper, and similar items to painters, polishers, car washes, etc., are sales to the final consumer and are subject to tax.

**R865-19S-78. Charges for Labor to Repair, Renovate, and Install Tangible Personal Property Pursuant to Utah Code Ann. Section 59-12-103.**

A. Charges for installation labor.

1. Amounts paid or charged for labor for installing tangible personal property in connection with other tangible personal property are subject to tax.

2. Separately stated charges for labor to install personal property to real property are not subject to tax, regardless of whether the personal property becomes part of the real property. On-site assembly that does not involve affixing the tangible personal property to real property is not installation within the meaning of this rule.

B. Charges for labor to repair, renovate, wash, or clean.

1. Charges for labor to repair, renovate, wash, or clean tangible personal property are subject to sales tax. Parts or materials used to repair, renovate, wash, or clean tangible personal property that are exempt from sales tax pursuant to Section 59-12-104 must be separately stated on the invoice or the entire charge for labor and parts is taxable.

a) Labor for cleaning and blocking hats is taxable under the provisions of the act imposing a tax on dry cleaning services.

b) Motor vehicles, trailers, contractors' equipment, drilling equipment, commercial equipment, railroad cars and engines, radio and television sets, watches, jewelry, clothing and accessories, shoes, tires and tubes, office equipment, furniture, bicycles, sporting equipment, boats and household appliances not permanently attached to a house or building are examples of tangible personal property upon which the sales or use tax applies when repaired, washed, cleaned, renovated, or installed in connection with other tangible personal property.

c) Labor charges for cleaning and washing tangible personal property held in resale inventory are not taxable. An example is the cleaning, washing, or detailing of a new or used car in a dealer's inventory.

2. Charges for labor to service, repair or renovate real property, improvements, or items of personal property that are attached to real property so as to be considered real property are not subject to sales tax. The determination of whether parts, materials or other items are sold or used in the service, repair, or renovation of real property shall be made in accordance with R865-19S-58. Exempt labor charges must be separately stated on the invoice or the entire charge for labor and parts is taxable.

a) For purposes of B., fixtures, trade fixtures, equipment, or machinery permanently attached to real property shall be treated as real property while so attached, but shall revert to personal property when severed from the real property.

b) Mere physical attachment is not enough to indicate permanent attachment. Portable or movable items that are attached merely for convenience, stability or for an obvious temporary purpose are considered personal property, even when attached to real property.

c) An item is considered permanently attached if:

(i) attachment is essential to the operation or use of the item and the manner of attachment suggests that the item will remain affixed in the same place over the useful life of the item; or

(ii) removal would cause substantial damage to the item itself or require substantial alteration or repair of the structure to which it is affixed.

d) If an item is attached to real property so that it is treated as real property for purposes of this rule, its accessories are also treated as real property if the accessories are essential to the operation of the item and installed solely to serve the operation of the item.

e) An item or part of an item may be temporarily detached from real property for on-site repairs without losing its real property status, but an item that is detached from the premises and removed from the site temporarily or permanently reverts to personal property.

C. Charges made for lubrication of motor vehicles are taxable as sales of tangible personal property.

D. Sales of extended warranty agreements.

1. Sales of extended warranty agreements or service plans are taxable, and tax must be collected at the time of the sale of the agreement. The payment is considered to be for future repair, which would be taxable. If the extended warranty agreement covers parts as well as labor, any parts that are exempt from sales tax pursuant to Section 59-12-104 must be separately stated on the invoice or the entire charge under the extended warranty agreement is taxable. Repairs made under an extended warranty plan are exempt from tax, even if the plan was sold in another state.

a) Repair parts provided and services rendered under the warranty agreements or service plans are not taxable because the tax is considered prepaid as a result of taxing the sale of the warranty or service plan when it was sold.

b) If the customer is required to pay for any parts or labor at the time of warranty service, sales tax must be collected on the amount charged to the customer. Sales tax must also be collected on any deductibles charged to customers for their share of the repair work done under the warranty agreement. Parts or materials that are exempt from sales tax pursuant to Section 59-12-104 must be separately stated on the invoice or the entire charge for labor and parts is taxable.

2. Extended warranties on items of tangible personal property that are converted to real property are not taxable. However, the taxable nature of parts and other items of tangible personal property provided in conjunction with labor under an extended warranty service shall be determined in accordance with R865-19S-58.

**R865-19S-79. Tourist Home, Hotel, Motel, or Trailer Court Accommodations and Services Defined Pursuant to Utah**

**Code Ann. Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353.**

A. The following definitions shall be used for purposes of administering the sales tax on accommodations and transient room taxes provided for in Sections 59-12-103, 59-12-301, 59-12-352, and 59-12-353.

1. "Tourist home," "hotel," or "motel" means any place having rooms, apartments, or units to rent by the day, week, or month.

2. "Trailer court" means any place having trailers or space to park a trailer for rent by the day, week, or month.

3. "Trailer" means house trailer, travel trailer, and tent trailer.

4. "Accommodations and services charges" means any charge made for the room, apartment, unit, trailer, or space to park a trailer, and includes charges made for local telephone, electricity, propane gas, or similar services.

**R865-19S-80. Printers' Purchases and Sales Pursuant to Utah Code Ann. Section 59-12-103.**

A. Definitions.

1.a) "Pre-press materials" means materials that:

- (1) are reusable;
- (2) are used in the production of printed matter;
- (3) do not become part of the final printed matter; and
- (4) are sold to the customer.

b) Pre-press materials include film, magnetic media, compact disks, typesetting paper, and printing plates.

2.a) "Printer" means a person that reproduces multiple copies of images, regardless of the process employed or the name by which that person is designated.

b) A printer includes a person that employs the processes of letterpress, offset, lithography, gravure, engraving, duplicating, silk screen, bindery, or lettership.

B. Purchases by a printer.

1. Purchases of tangible personal property by a printer are subject to sales and use tax if the property will be used or consumed by the printer.

a) Examples of tangible personal property used or consumed by the printer include conditioners, solvents, developers, and cleaning agents.

2. A printer may purchase tax free for resale any tangible personal property that becomes a component part of the finished goods for resale.

a) Examples of tangible personal property that becomes a component part of the finished goods for resale include glue, stitcher wire, paper, and ink.

3. A printer may purchase pre-press materials tax free if the printer's invoice, or other written material provided to the purchaser, states that reusable pre-press materials are included with the purchase. A description and the quantity of the actual items used in the order is not necessary. The statement must not restrict the customer from taking physical possession of the pre-press materials.

4. The tax treatment of a printer's purchase of graphic design services shall be determined in accordance with rule R865-19S-111.

C. Sales by a printer.

1. Except as provided in this Subsection C., a printer shall collect sales and use tax on the following:

- a) charges for printed material, even though the paper may be furnished by the customer;
- b) charges for envelopes;
- c) charges for services performed in connection with the printing or the sale of printed matter, such as cutting, folding, binding, addressing, and mailing;
- d) charges for pre-press materials purchased tax exempt by the printer; and
- e) charges for reprints and proofs.



2. Charges for postage are not subject to sales and use tax.
3. Sales by a printer are exempt from sales and use tax if:
  - a) the sale qualifies for exemption under Section 59-12-104; and
  - b) the printer obtains from the purchaser a certificate as set forth in rule R865-19S-23.
4. If the printer's customer is purchasing printed material for resale, but will not resell the pre-press materials, the printer must collect sales and use tax on the pre-press materials.
5. If printed material is shipped outside of the state, charges for pre-press materials are exempt from sales tax as a sale of goods sold in interstate commerce only if the pre-press materials are physically shipped out of state with the printed material. If pre-press materials are retained in the state by the printer for any reason, the pre-press materials do not qualify for the sales tax exemption for goods sold in interstate commerce, and as such, the printer must collect sales tax on the part of the transaction relating to the pre-press materials.

D. If a sale by a printer consists of items that are subject to sales and use tax as well as items or services that are not taxable, the nontaxable items or services must be separately stated on the invoice or the entire sale is subject to sales and use tax.

**R865-19S-81. Sale of Art Pursuant to Utah Code Ann. Section 59-12-103.**

A. Art dealers and artists selling paintings, drawings, etchings, statues, figurines, etc., to final consumers must collect tax, whether an object is sold from an inventory or is created upon special order. The value or worth of the services to produce the art object are an integral part of the value of the tangible personal property upon completion and no deduction for such services may be made in determining the amount which is subject to tax.

B. Paints, canvases, frames, sculpture ingredients, and items becoming part of the finished product may be purchased tax-free if used in a painting or other work of art for resale.

1. Brushes, easels, tools, and similar items are consumed by the artist, and tax must be paid on the purchase of these items.

**R865-19S-82. Demonstration, Display, and Trial Pursuant to Utah Code Ann. Section 59-12-104.**

A. Tangible personal property purchased by a wholesaler or a retailer and held for display, demonstration or trial in the regular course of business is not subject to tax.

Examples of this are a desk bought by an office supply firm and placed in a window display, or an automobile purchased by an auto dealer and assigned to a salesman as a demonstrator. Sales tax applies to any rental charges made to the salesman for use of a demonstrator.

B. Sales tax applies to these charges even though all or part of the charge may be waived if such waiver is dependent upon the salesman performing certain services or reaching a certain sales quota or some similar contingency.

C. Sales tax applies to items purchased primarily for company or personal use and only casually used for demonstration purposes.

1. For example, wreckers or service trucks used by a parts department, are subject to tax even though they are demonstrated occasionally. Also, automobiles assigned to nonsales personnel such as a service manager, an office manager, an accountant, an officer's spouse, or a lawyer are subject to tax.

a. For motor vehicle dealers using certain vehicles withdrawn from inventory for periods not exceeding one year, the tax liability is deemed satisfied if the dealer remits sales or use tax on each such vehicle based on its lease value while so used.

(1) Only motor vehicles provided or assigned to company

personnel or to exempt entities qualify for this treatment. For vehicles donated to religious, charitable, or government institutions, see Rule R865-19S-68.

(2) The monthly lease value is the manufacturer's invoice price to the dealer, divided by 60.

(3) Records must be maintained to show when each vehicle is placed in use, to whom assigned or provided, lease value computation, tax remitted, when removed from service and when returned to inventory for resale.

(4) Vehicles used for periods exceeding one year are subject to tax on the dealer's acquisition cost.

2. An exception is an item held for resale in the regular course of business and used for demonstration a substantial amount of time. Records must be maintained to show the manner of demonstration involved if exemption is claimed.

D. Normally, vehicles will not be allowed as demonstrators if they are used beyond the new model year by a new-car dealer or if used for more than six months by a used-car dealer.

1. Tax will apply if these conditions are not met, unless it is shown that these guidelines are not applicable in a given instance. In this case consideration will be given to the circumstances surrounding the need for a demonstrator for a longer period of time.

**R865-19S-83. Pollution Control Facilities Pursuant to Utah Code Ann. Section 59-12-104.**

A. Since certification of a pollution control facility may not occur until a firm contract has been entered into or construction has begun, tax should be paid on all purchases of tangible personal property or taxable services that become part of a pollution control facility until the facility is certified, and invoices and records should be retained to show the amount of tax paid. Upon verification of the amount of tax paid for pollution control facilities and verification that a certificate has been obtained, the Tax Commission will refund the taxes paid on these purchases.

1. Claims for refund of tax paid prior to certification must be filed within 180 days after certification of a facility. Refund claims filed within this time period will have interest added at the rate prescribed in Section 59-1-402 from the date of the overpayment.

2. If claims for refund are not filed within 180 days after certification of a facility, it is assumed the delay was for investment purposes, and interest shall be added at the rate prescribed in Section 59-1-402 however, interest will not begin to accrue until 30 days after receipt of the refund request.

B. After the facility is certified, qualifying purchases should be made without paying tax by providing an exemption certificate to the vendor.

1. If sales tax is paid on qualifying purchases for certified pollution control facilities, it will be deemed that the overpayment was made for the purpose of investment. Accordingly, interest, at the rate prescribed in Section 59-1-402, will not begin to accrue until 30 days after receipt of the refund request.

C. In the event part of the pollution control facility is constructed under a real property contract by someone other than the owner, the owner should obtain a statement from the contractor certifying the amount of Utah sales and use tax paid by the contractor and the location of the vendors to whom tax was paid, and the owner will then be entitled to a refund of the tax paid and included in the contract.

D. The owner shall apply to the Tax Commission for a refund using forms furnished by the Tax Commission. The claim for refund must contain sufficient information to support the amount claimed for credit and show that the tax has in fact been paid.

E. The owner shall retain records to support the claim that

the project is qualified for the exemption.

**R865-19S-85. Sales and Use Tax Exemptions for New or Expanding Operations and Normal Operating Replacements Pursuant to Utah Code Ann. Section 59-12-104.**

A. Definitions:

1. "Establishment" means an economic unit of operations, that is generally at a single physical location in Utah, where qualifying manufacturing processes are performed. If a business operates in more than one location (e.g., branch or satellite offices), each physical location is considered separately from any other locations operated by the same business.

2. "Machinery and equipment" means:

a) electronic or mechanical devices incorporated into a manufacturing process from the initial stage where actual processing begins, through the completion of the finished end product, and including final processing, finishing, or packaging of articles sold as tangible personal property. This definition includes automated material handling and storage devices when those devices are part of the integrated continuous production cycle; and

b) any accessory that is essential to a continuous manufacturing process. Accessories essential to a continuous manufacturing process include:

(i) bits, jigs, molds, or devices that control the operation of machinery and equipment; and

(ii) gas, water, electricity, or other similar supply lines installed for the operation of the manufacturing equipment, but only if the primary use of the supply line is for the operation of the manufacturing equipment.

3. "Manufacturer" means a person who functions within a manufacturing facility.

4a) "New or expanding operations" means:

(i) the creation of a new manufacturing operation in this state; or

(ii) the expansion of an existing Utah manufacturing operation if the expanded operation increases production capacity or is substantially different in nature, character, or purpose from that manufacturer's existing Utah manufacturing operation.

b) The definition of new or expanding operations is subject to limitations on normal operating replacements.

c) A manufacturer who closes operations at one location in this state and reopens the same operation at a new location does not qualify for the new or expanding operations sales and use tax exemption without demonstrating that the move meets the conditions set forth in A.4.a). Acquisitions of machinery and equipment for the new location may qualify for the normal operating replacements sales and use tax exemption if they meet the definition of normal operating replacements in A.5.

5. "Normal operating replacements" includes:

a) new machinery and equipment or parts, whether purchased or leased, that have the same or similar purpose as machinery or equipment retired from service due to wear, damage, destruction, or any other cause within 12 months before or after the purchase date, even if they improve efficiency or increase capacity.

b) if existing machinery and equipment or parts are kept for backup or infrequent use, any new, similar machinery and equipment or parts purchased and used for the same or similar function.

B. The sales and use tax exemptions for new or expanding operations and normal operating replacements apply only to purchases or leases of tangible personal property used in the actual manufacturing process.

1. The exemptions do not apply to purchases of real property or items of tangible personal property that become part of the real property in which the manufacturing operation is conducted.

2. Purchases of qualifying machinery and equipment or normal operating replacements are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

C. Machinery and equipment or normal operating replacements used for a nonmanufacturing activity qualify for the exemption if the machinery and equipment or normal operating replacements are primarily used in manufacturing activities. Examples of nonmanufacturing activities include:

1. research and development;

2. refrigerated or other storage of raw materials, component parts, or finished product; or

3. shipment of the finished product.

D. Where manufacturing activities and nonmanufacturing activities are performed at a single physical location, machinery and equipment or normal operating replacements purchased for use in the manufacturing operation are eligible for the sales and use tax exemption for new or expanding operations or for normal operating replacements if the manufacturing operation constitutes a separate and distinct manufacturing establishment.

1. Each activity is treated as a separate and distinct establishment if:

a) no single SIC code includes those activities combined;

or

b) each activity comprises a separate legal entity.

2. Machinery and equipment or normal operating replacements used in both manufacturing activities and nonmanufacturing activities qualify for the exemption for new or expanding operations or for normal operating replacements only if the machinery and equipment or normal operating replacements are primarily used in manufacturing activities.

E. Charges for labor to repair, renovate, or install tangible personal property shall be taxable or tax exempt as provided in R865-19S-78.

F. The manufacturer shall retain records to support the claim that the machinery and equipment or normal operating replacements are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

G. Vendors are required to obtain a tax exemption certificate upon which the purchaser certifies that the use of the machinery and equipment or normal operating replacements qualifies for exemption under Title 59, Chapter 12. Vendors must obtain a separate tax exemption certificate, or a purchase order that incorporates the appropriate language, including authorized signature, date and title, of the tax exemption certificate, from the purchaser for each purchase of exempt machinery and equipment, at the time of purchase.

H. If a purchase consists of items that are exempt from sales and use tax under this rule and Section 59-12-104, and items that are subject to tax, the tax exempt items must be separately stated on the invoice or the entire purchase will be subject to tax.

**R865-19S-86. Monthly Payment of Sales Taxes Pursuant to Utah Code Ann. Section 59-12-108.**

A. Definitions:

1. "Cash equivalent" means either:

a) cash;

b) wire transfer; or

c) cashier's check drawn on the bank in which the Tax Commission deposits sales tax receipts.

2. "Fiscal year" means the year commencing on July 1 and ending the following June 30.

3. "Mandatory filer" means a seller that meets the threshold requirements for monthly filing and remittance of sales taxes or for electronic funds transfer (EFT) remittance of sales taxes.

4. For purposes of the monthly filing and the electronic remittance of sales taxes, the term "tax liability for the previous

year" means the tax liability for the previous calendar year.

B. The determination that a seller is a mandatory filer shall be made by the Tax Commission at the end of each calendar year and shall be effective for the fiscal year.

C. A seller that meets the qualifications for a mandatory filer but does not receive notification from the Tax Commission to that effect, is not excused from the requirements of monthly filing and remittance or EFT remittance.

D. Mandatory filers shall also file and remit any waste tire fees and transient room, resort communities, and tourism, recreation, cultural, and convention facilities taxes to the commission on a monthly basis or by EFT, respectively.

E. Sellers that are not mandatory filers may elect to file and remit their sales taxes to the commission on a monthly basis, or remit sales taxes by EFT, or both.

1. The election to file and remit sales taxes on a monthly basis or to remit sales taxes by EFT is effective for the immediate fiscal year and every fiscal year thereafter unless the Tax Commission receives written notification prior to the commencement of a fiscal year that the seller no longer elects to file and remit sales taxes on a monthly basis, or to remit sales taxes by EFT, respectively.

2. Sellers that elect to file and remit sales taxes on a monthly basis, or to remit sales taxes by EFT, are subject to the same requirements and penalties as mandatory filers.

F. Sellers that are mandatory filers may request deletion of their mandatory filer designation if they do not expect to accumulate a \$50,000 sales tax liability for the current calendar year.

1. The request must be accompanied by documentation clearly evidencing that the business that led to the \$50,000 tax liability for the previous year will not recur.

2. The request must be made prior to the commencement of a fiscal year.

3. If a seller's request is approved and the seller does accumulate a \$50,000 sales tax liability, a similar request by that seller the following year shall be denied.

G. Sellers that are required to remit sales tax by EFT may, following approval by the Tax Commission, remit a cash equivalent in lieu of the EFT.

1. Approval for remittance by cash equivalent shall be limited to those sellers that are able to establish that remittance by EFT would cause a hardship to their organization.

2. Requests for approval shall be directed to the Deputy Executive Director of the Tax Commission.

3. Sellers that receive approval to remit their sales taxes by cash equivalent shall ensure that the cash equivalent is received at the Tax Commission's main office no later than three working days prior to the due date of the sales tax.

H. Sellers that are required to remit sales taxes by EFT, but remit these taxes by some means other than EFT or a Tax Commission approved cash equivalent, are not entitled to reimbursement for the cost of collecting and remitting sales taxes and are subject to penalties.

I. Prior to remittance of sales taxes by EFT, a vendor shall complete an EFT agreement with the Tax Commission. The EFT Agreement shall indicate that all EFT payments shall be made in one of the following manners.

1. Except as provided in I.2., sellers shall remit their EFT payment by an ACH-debit transaction through the National Automated Clearing House Association (NACHA) system CCD application.

2. If an organization's bylaws prohibit third party access to its bank account or extenuating circumstances exist, a seller may remit its EFT payment by an ACH-credit with tax payment addendum transaction through the NACHA system CCD Plus application.

J. In unusual circumstances, a particular EFT payment may be accomplished in a manner other than that specified in I. Use

of any manner of remittance other than that specified in I. must be approved by the Tax Commission prior to its use.

K. If a seller that is required to remit sales taxes by EFT is unable to remit a payment of sales taxes by EFT because the system for remitting payments by EFT fails, the seller may remit its sales taxes by cash equivalent. A seller shall notify the Waivers Unit of the Tax Commission if this condition arises.

**R865-19S-87. Government-Owned Tooling and Equipment Exemption Pursuant to Utah Code Ann. Section 59-12-104.**

A. As used in Utah Code Ann. Section 59-12-104(6), and for the purpose of this rule:

1. "Tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, other equipment, and other similar manufacturing aids generally available as stock items.

2. "Special Tooling" means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, and all components of these items that are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or performing particular services.

3. "Support equipment" means implements or devices that are required to inspect, test, service, adjust, calibrate, appraise, transport, safeguard, record, gauge, measure, repair, overhaul, assemble, disassemble, handle, store, actuate or otherwise maintain the intended functional operation status of an aerospace electronic system.

4. "Special test equipment" means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. These testing units may be electrical, electronic, hydraulic, pneumatic, or mechanical. Or they may be items or assemblies of equipment that are mechanically, electrically, or electronically interconnected so as to become a new functional entity, causing the individual item or items to become interdependent and essential in performing special purpose testing in the development or production of peculiar supplies or services.

B. The effective date of this rule is July 1, 1986.

**R865-19S-90. Telephone Service Pursuant to Utah Code Ann. Section 59-12-103.**

A. Definitions.

1. "Interstate" means a transmission that originates in this state but terminates in another state, or a transmission that originates in another state but terminates in this state.

2. "Intrastate" means a transmission that originates and terminates in this state, even if the route of the transmission signal itself leaves and reenters the state. Prepaid telephone services or service contracts are presumed to be used for intrastate telephone services unless the service contract is sold exclusively for use in interstate communications.

3. "Two-way transmission" includes any services provided over a public switched network.

B. Taxable telephone service charges include:

1. subscriber access fees;

2. charges for optional telephone features, such as call waiting, caller ID, and call forwarding; and

3. nonrecurring charges that are ordinarily charged to subscribers only once or only under exceptional circumstances, including charges to:

a) establish, change, or disconnect telephone service or optional features; and

b) install or repair telephone equipment that retains its character as tangible personal property under R865-19S-58 and R865-19S-78.

C. Nontaxable charges include:

1. refundable subscriber deposits, interest, and late payment penalties;

2. charges for interstate long distance or toll calls;
3. telephone answering services received or relayed by a human operator;
4. charges to install or repair subscriber equipment that is regarded as real property under R865-19S-58 and R865-19S-78;
5. charges levied on subscribers to fund or subsidize special telephone services, including 911 service, special communications services for the deaf, and special telephone service for low income subscribers;
6. contributions in aid of construction, land development fees, payments in lieu of land development fees, and special plant construction and relocation charges; and
7. charges for one-way pager services.

**R865-19S-91. Sales of Tangible Personal Property to Government Project Managers and Supply Contractors Pursuant to Utah Code Ann. Sections 59-12-102, 59-12-103, and 59-12-104.**

A. Sales of tangible personal property or services as defined in Sections 59-12-102 and 59-12-103 to federal, state, or municipal government facilities managers or supply contractors, who are not employees or agents of that government entity, are subject to sales or use tax if the manager or contractor uses or consumes the property. Tax is due even though a contract vests title in the government.

B. A person qualifies as an agent for purchasing on behalf of a government entity if the person and the government entity enter into a contract that includes the following conditions:

1. The person is officially designated as the government entity's purchasing agent by resolution of the government entity;
2. The person identifies himself as a purchasing agent for the government entity;
3. The purchase is made on purchase orders that indicate the purchase is made by or on behalf of the government entity and the government entity is responsible for the purchase price;
4. The transaction is approved by the government entity; and
5. Title passes directly to the government entity upon purchase.

C. If the government entity makes a direct payment to the vendor for the tangible personal property or services, the sale is made to the government entity and not to the facilities manager or the supply contractor. In that case, the sale is not subject to sales tax.

D. Certain purchases made by aerospace or electronic industry contractors dealing with the United States are exempted by Section 59-12-104(15) and further covered by R865-19S-87. Therefore, these industry purchases are not covered by this rule.

**R865-19S-92. Computer Software and Other Related Transactions Pursuant to Utah Code Ann. Section 59-12-103.**

A. "Computer-generated output" means the microfiche, microfilm, paper, discs, tapes, molds, or other tangible personal property generated by a computer.

B. The sale, rental or lease of prewritten computer software constitutes a sale of tangible personal property and is subject to the sales or use tax regardless of the form in which the software is purchased or transferred.

C. The sale, rental or lease of custom computer software constitutes a sale of personal services and is exempt from the sales or use tax, regardless of the form in which the software is purchased or transferred. Charges for services such as software maintenance, consultation in connection with a sale or lease, enhancements, or upgrading of custom software are not taxable.

D. The sale of computer generated output is subject to the sales or use tax if the primary object of the sale is the output and not the services rendered in producing the output.

**R865-19S-93. Waste Tire Recycling Fee Pursuant to Utah**

**Code Ann. Section 19-6-808.**

A. The waste tire recycling fee shall be paid by the retailer to the State Tax Commission at the same time and in the same manner as sales and use tax returns are filed. The sales tax account number will also be the recycling fee account number. A separate return form will be provided.

1. The tire recycling fee will be imposed at the same time the sales tax is imposed. For example, if tires are purchased for resale either as part of a vehicle sale or to be sold separately by a vehicle dealer, the recycling fee and the sales tax would be collected by the dealer at the time the vehicle is sold. If sales tax is paid to a tire retailer by a vehicle dealer when tires are purchased, the recycling fee will also be paid by the vehicle dealer to the tire retailer.

2. Where tires are sold to entities exempt from sales tax, the exempt entity must still pay the recycling fee.

B. The recycling fee is not considered part of the sales price of the tire and is not subject to sales or use tax.

C. Wholesalers purchasing tires for resale are not subject to the fee.

D. Tires sold and delivered out of state are not subject to the fee.

E. Tires purchased from out of state vendors are subject to the fee. The fee must be reported and paid directly to the Tax Commission in conjunction with the use tax.

**R865-19S-94. Tips, Gratuities and Cover Charges Pursuant to Utah Code Ann. Section 59-12-103.**

A. Restaurants, cafes, clubs, private clubs, and similar businesses must collect sales tax on tips or gratuities included on a patron's bill and which are required to be paid, unless the total amount of the gratuity or tip is passed on to the waiter or waitress who served the customer. Tax on the required gratuity is due from private clubs, even though the club is not open to the public. Voluntary tips left on the table or added to a credit card charge slip are not subject to sales tax.

B. Cover charges to enter a restaurant, tavern, club or similar facility are taxable as an admission to a place of recreation, amusement or entertainment.

**R865-19S-96. Transient Room Tax Collection Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-301.**

A. Utah Code Ann. Section 59-12-301 authorizes any board of county commissioners to impose a transient room tax. The transient room tax shall be charged in addition to sales tax authorized in 59-12-103(1)(i).

B. The transient room tax shall be charged on the rental price of any motor court, motel, hotel, inn, tourist home, campground, mobile home park, recreational vehicle park or similar business where the rental period is less than 30 consecutive days.

C. The transient room tax is not subject to sales tax.

**R865-19S-98. Sales to Nonresidents of Vehicles, Off-highway Vehicles, and Boats Required to be Registered, and Sales to Nonresidents of Boat Trailers and Outboard Motors Pursuant to Utah Code Ann. Section 59-12-104.**

A. "Use" means mooring, slipping, and dry storage as well as the actual operation of vehicles.

B. In order to qualify as a nonresident for the purpose of exempting vehicles from sales tax under Subsections 59-12-104(9) and 59-12-104(31), a person may not:

1. be a resident of this state. The fact that a person leaves the state temporarily is not sufficient to terminate residency;
2. be engaged in intrastate business within this state;
3. maintain a vehicle with this state designated as the home state;
4. except in the case of a tourist temporarily within this state, own, lease, or rent a residence or a place of business

within this state, or occupy or permit to be occupied a Utah residence or place of business;

5. except in the case of an employee who can clearly demonstrate that the use of the vehicle in this state is to commute to work from another state, be engaged in a trade, profession, or occupation or accept gainful employment in this state;

6. allow the purchased vehicle to be kept or used by a resident of this state; or

7. declare residency in Utah to obtain privileges not ordinarily extended to nonresidents, such as attending school or placing children in school without paying nonresident tuition or fees, or maintaining a Utah driver's license.

C. A nonresident owner of a vehicle described in Section 59-12-104(9) may continue to qualify for the exemption provided by that section if use of the vehicle in this state is infrequent, occasional, and nonbusiness in nature.

D. A nonresident owner of a vehicle described in Subsection 59-12-104(31) may continue to qualify for the exemption provided by that section if use of the vehicle in this state does not exceed 14 days in any calendar year and is nonbusiness in nature.

E. Vehicles are deemed not used in this state beyond the necessity of transporting them to the borders of this state if purchased by:

1. a nonresident student who will be permanently leaving the state within 30 days of the date of purchase; or

2. a nonresident member of the military stationed in Utah, but with orders to leave the state permanently within 30 days of the date of purchase.

F. Each purchaser, both buyer and co-buyer, claiming this exemption must complete a nonresident affidavit. False, misleading, or incomplete responses shall invalidate the affidavit and subject the purchaser to tax, penalties, and interest.

G. A dealer of vehicles who accepts an incomplete affidavit, may be held liable for the appropriate tax, interest, and penalties.

H. A dealer of vehicles who accepts an affidavit with information that the dealer knows or should have known is false, misleading or inappropriate may be held liable for the appropriate tax, interest, and penalties.

**R865-19S-99. Sales and Use Taxes on Vehicles Purchased in Another State Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104(26), (28).**

A. No sales or use tax is due on vehicles purchased in another state by a resident of that state and transferred into this state if all sales or use taxes required by the prior state for the purchase of the vehicle have been paid. A valid, nontemporary registration card shall serve as evidence of such payment.

**R865-19S-100. Procedures for Exemption from and Refund of Sales and Use Taxes Paid by Religious and Charitable Institutions Pursuant to Utah Code Ann. Section 59-12-104.1.**

A. For purposes of Section 59-12-104.1(2)(b)(iii), "contract" does not include a purchase order.

B. Religious and charitable institutions may apply to the Tax Commission for a refund of Utah sales and use taxes paid no more often than on a monthly basis. Refund applications should be returned to the Tax Commission by the tenth day of the month for a timely refund.

C. Applications for refund of sales and use taxes shall be made on forms provided by the Tax Commission.

D. Religious and charitable institutions shall substantiate requests for refunds of sales and use taxes paid by retaining a copy of a receipt or invoice indicating the amount of sales or use taxes paid for each purchase for which a refund of taxes paid is claimed.

E. All supporting receipts required by D. must be provided to the Tax Commission upon request.

F. Original records supporting the refund claim must be maintained for three years following the date of refund.

G. Failure to pay any penalties and interest assessed by the Tax Commission may subject the institution to a deduction from future refunds of amounts owed, or revocation of the institution's exempt status as a religious or charitable institution, or both.

**R865-19S-101. Application of Sales Tax to Fees Assessed in Conjunction with the Retail Sale of a Motor Vehicle Pursuant to Utah Code Ann. Section 59-12-103.**

A. Document preparation fees assessed in conjunction with the retail sale of a motor vehicle are not subject to the sales tax if they satisfy both of the following conditions:

1. Fees must be separately identified and segregated.

2. Fees may not be included in the total sale price upon which sales tax is calculated and collected.

B. State-mandated fees and taxes assessed in conjunction with the retail sale of a motor vehicle are not subject to the sales tax and must be separately identified and segregated on the invoice as required by Tax Commission rule R877-23V-14.

**R865-19S-102. Calculation of Qualifying Exempt Electricity Sales to Ski Resorts Pursuant to Utah Code Ann. Section 59-12-104.**

A. When the sale of exempt electricity to a ski resort is not separately metered and accounted for in utility billings, the ski resort shall identify a methodology for the calculation of exempt electricity purchases, and shall submit that methodology to Internal Customer Support, Customer Service Division, of the Tax Commission for approval prior to its use.

B. When exempt electricity is not separately metered and accounted for in utility billings, a ski resort shall pay sales tax on all electricity at the time of purchase. The ski resort may then take a credit on its sales tax return for taxes paid on electricity that is determined to be exempt under this rule.

C. The provisions of this rule shall be retrospective to July 1, 1996.

**R865-19S-103. Municipal Energy Sales and Use Tax Pursuant to Utah Code Ann. Sections 10-1-303, 10-1-306, and 10-1-307.**

A. Definitions.

1. "Gas" means natural gas in which those hydrocarbons, other than oil and natural gas liquids separated from natural gas, that occur naturally in the gaseous phase in the reservoir are produced and removed at the wellhead in gaseous form.

2. "Supplying taxable energy" means the selling of taxable energy to the user of the taxable energy.

B. Except as provided in C., the delivered value of taxable energy for purposes of Title 10, Chapter 1, Part 3, shall be the arm's length sales price for that taxable energy.

C. If the arm's length sales price does not include all components of delivered value, any component of the delivered value that is not included in the sales price shall be determined with reference to the most applicable tariffed price of the gas corporation or electrical corporation in closest proximity to the taxpayer.

D. The point of sale or use of the taxable energy shall normally be the location of the taxpayer's meter unless the taxpayer demonstrates that the use is not in a municipality imposing the municipal energy sales and use tax.

E. An energy supplier shall collect the municipal energy sales and use tax on all component parts of the delivered value of the taxable energy for which the energy supplier bills the user of the taxable energy.

F. A user of taxable energy is liable for the municipal

energy sales and use tax on any component of the delivered value of the taxable energy for which the energy supplier does not collect the municipal energy sales and use tax.

G. A user of taxable energy who is required to pay the municipal energy sales and use tax on any component of the delivered value of taxable energy shall remit that tax to the Tax Commission:

1. on forms provided by the Tax Commission, and
2. at the time and in the manner sales and use tax is remitted to the Tax Commission.

H. A person that delivers taxable energy to the point of sale or use of the taxable energy shall provide the following information to the Tax Commission for each user for whom the person does not supply taxable energy, but provides only the transportation component of the taxable energy's delivered value:

1. the name and address of the user of the taxable energy;
2. the volume of taxable energy delivered to the user; and
3. the entity from which the taxable energy was purchased.

I. The information required under H. shall be provided to the Tax Commission:

1. on or before the last day of the month following each calendar quarter; and
2. for each user for whom, during the preceding calendar quarter, the person did not supply taxable energy, but provided only the transportation component of the taxable energy's delivered value.

**R865-19S-104. County Option Sales Tax Distribution Pursuant to Utah Code Ann. Section 59-12-1102.**

A. The \$75,000 minimum annual distribution required under Section 59-12-1102 shall be based on sales tax amounts collected by the counties from January 1 through December 31.

B. Any adjustments made to ensure the required minimum distribution shall be reflected in the February distribution immediately following the end of the calendar year.

**R865-19S-105. Procedures for Refund of Sales and Use Taxes Paid on Food Donated to a Qualified Emergency Food Agency Pursuant to Utah Code Ann. Section 59-12-902.**

A. A qualified emergency food agency may apply to the Tax Commission for a refund of Utah sales and use taxes paid on food donated to that entity no more often than on a monthly basis. Refund applications should be submitted to the Tax Commission by the tenth day of the month for a timely refund.

B. Applications for refund of sales and use taxes shall be made on forms provided by the Tax Commission.

C. Original records supporting the refund claim must be maintained by the qualified emergency food agency for three years following the date of refund.

D. Failure to pay any penalties and interest assessed by the Tax Commission may subject the qualified emergency food agency to a deduction from future refunds of amounts owed.

**R865-19S-107. Reporting of Exempt Sales or Purchases Pursuant to Utah Code Ann. Section 59-12-105.**

The amount of purchases or uses exempt under Sections 59-12-104(14) and 59-12-104(51) shall be reported to the commission by the person that purchases the items exempt from sales or use tax under those subsections.

**R865-19S-108. User Fee Defined Pursuant to Utah Code Ann. Section 59-12-103.**

A. For purposes of administering the sales or use tax on admission or user fees provided for in Section 59-12-103, "user fees" includes charges imposed on an individual for access to the following, if that access occurs at any location other than the individual's residence:

1. video or video game;

2. television program; or
3. cable or satellite broadcast.

B. The provisions of this rule are effective for transactions occurring on or after October 1, 1999.

**R865-19S-109. Sales Tax Nature of Veterinarians' Purchases and Sales Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.**

A. Purchases of tangible personal property by a veterinarian are exempt from sales and use tax if the property will be resold by the veterinarian.

1. Except as provided in E., a veterinarian must collect sales tax on tangible personal property that the veterinarian resells.

B. Purchases of tangible personal property by a veterinarian are subject to sales and use tax if the property will be used or consumed in the veterinarian's practice.

C. The determination of whether a veterinarian's purchase of food, medicine, or vitamins is a sale for resale or a purchase that will be used or consumed in the veterinarian's practice shall be made by the veterinarian.

1. For food, medicine, or vitamins that the veterinarian will resell, the veterinarian shall comply with A.

2. For food, medicine, or vitamins that the veterinarian will use or consume in the veterinarian's practice, the veterinarian shall comply with B.

D. A veterinarian is not required to collect sales and use tax on:

1. medical services;
2. boarding services; or
3. grooming services required in connection with a medical procedure.

E. Sales of tangible personal property by a veterinarian are exempt from sales and use tax if:

1. the sales are exempt from sales and use tax under Section 59-12-104; and

2. the veterinarian obtains from the purchaser a certificate as set forth in rule R865-19S-23.

F. If a sale by a veterinarian consists of items that are subject to sales and use tax as well as items or services that are not taxable, the nontaxable items or services must be separately stated on the invoice or the entire sale is subject to sales and use tax.

**R865-19S-110. Advertisers' Purchases and Sales Pursuant to Utah Code Ann. Section 59-12-103.**

A. "Advertiser" means a person that places advertisements in a publication, broadcast, or electronic medium, regardless of the name by which that person is designated.

1. A person is an advertiser only with respect to items actually placed in a publication, broadcast, or electronic medium.

B. All purchases of tangible personal property by an advertiser are subject to sales and use tax as property used or consumed by the advertiser.

C. The tax treatment of an advertiser's purchase of graphic design services shall be determined in accordance with rule R865-19S-111.

D. An advertiser's charges for placement of advertisements are not subject to sales and use tax.

**R865-19S-111. Graphic Design Services Pursuant to Utah Code Ann. Section 59-12-103.**

A. Graphic design services are not subject to sales and use tax:

1. if the graphic design is the object of the transaction; and
2. even though a representation of the design is incorporated into a sample or template that is itself tangible personal property.

B. Except as provided in C., if a vendor provides both graphic design services and tangible personal property that incorporates the graphic design:

1. there is a rebuttable presumption that the tangible personal property is the object of the transaction; and
2. the vendor must collect sales and use tax on the graphic design services and the tangible personal property.

C. A vendor that provides both graphic design services and tangible personal property that incorporates the graphic design is not required to collect sales tax on the graphic design services if the vendor subcontracts the production of the tangible personal property to an independent third party.

D. A vendor that provides nontaxable graphic design services and taxable tangible personal property under C. must separately state the nontaxable graphic design services or the entire sale is subject to sales and use tax.

**R865-19S-112. Confirmation of Purchase of Admission or User Fee Relating to the Olympic Winter Games of 2002 Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.**

A. For purposes of the sales and use tax exemption for amounts paid or charged as admission or user fees relating to the Olympic Winter Games of 2002:

1. Except as provided in 2., the Salt Lake Organizing Committee (SLOC), or a person designated by SLOC, is deemed to have sent a purchaser confirmation of the purchase of an admission or user fee relating to the Olympic Winter Games of 2002 at the time SLOC or its designee receives a payment for the purchase.

2. In the case of a purchase of tickets designated as lottery tickets by SLOC, SLOC or its designee are deemed to have sent confirmation of the purchase at the time the purchaser accepts the tickets available to him or her through that process.

**R865-19S-113. Sales Tax Obligations of Jeep, Snowmobile, and Boat Tour Operators, River Runners, Outfitters, and Other Sellers Providing Similar Services Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-107.**

A. The provisions of this rule apply to jeep, snowmobile, and boat tour operators, river runners, outfitters, and other sellers providing similar services.

B. If payment for a service provided by a seller described in A. occurs in Utah and the service originates or terminates in Utah, the seller shall collect Utah sales and use tax on the entire amount of the transaction.

C. If payment for a service provided by a seller described in A. occurs outside Utah and the entire service occurs in Utah, the seller shall collect Utah sales and use tax on the entire amount of the transaction.

D. If payment for a service provided by a seller described in A. occurs outside Utah and the service originates or terminates outside Utah, the seller is not required to collect Utah sales and use tax on the transaction.

E. Payment occurs in Utah if the purchaser:

1. while at a business location of the seller in the state, presents payment to the seller; or
2. does not meet the criteria under E.1. and is billed for the service at an address within the state.

F. For purposes of this rule, there is a rebuttable presumption that payment for a service provided by a seller described in A. occurs in Utah.

**R865-19S-114. Items that Constitute Clothing Pursuant to Utah Code Ann. Section 59-12-102.**

- A. "Clothing" includes:
1. aprons for use in a household or shop;
  2. athletic supporters;
  3. baby receiving blankets;

4. bathing suits and caps;
  5. beach capes and coats;
  6. belts and suspenders;
  7. boots;
  8. coats and jackets;
  9. costumes;
  10. diapers, including disposable diapers, for children and adults;
  11. ear muffs;
  12. footlets;
  13. formal wear;
  14. garters and garter belts;
  15. girdles;
  16. gloves and mittens for general use;
  17. hats and caps;
  18. hosiery;
  19. insoles for shoes;
  20. lab coats;
  21. neckties;
  22. overshoes;
  23. pantyhose;
  24. rainwear;
  25. rubber pants;
  26. sandals;
  27. scarves;
  28. shoes and shoe laces;
  29. slippers;
  30. sneakers;
  31. socks and stockings;
  32. steel toed shoes;
  33. underwear;
  34. uniforms, both athletic and non-athletic; and
  35. wearing apparel.
- B. "Clothing" does not include:
1. belt buckles sold separately;
  2. costume masks sold separately;
  3. patches and emblems sold separately;
  4. sewing equipment and supplies, including:
    - a) knitting needles;
    - b) patterns;
    - c) pins;
    - d) scissors;
    - e) sewing machines;
    - f) sewing needles;
    - g) tape measures; and
    - h) thimbles; and
  5. sewing materials that become part of clothing, including:
    - a) buttons;
    - b) fabric;
    - c) lace;
    - d) thread;
    - e) yarn; and
    - f) zippers.

**R865-19S-115. Items that Constitute Protective Equipment Pursuant to Utah Code Ann. Section 59-12-102.**

- "Protective equipment" includes:
- A. breathing masks;
  - B. clean room apparel and equipment;
  - C. ear and hearing protectors;
  - D. face shields;
  - E. hard hats;
  - F. helmets;
  - G. paint or dust respirators;
  - H. protective gloves;
  - I. safety glasses and goggles;
  - J. safety belts;
  - K. tool belts; and

L. welders gloves and masks.

10-1-307

10-1-405

19-6-808

**R865-19S-116. Items that Constitute Sports or Recreational Equipment Pursuant to Utah Code Ann. Section 59-12-102.**

26-32a-101 through 26-32a-113

"Sports or recreational equipment" includes:

59-1-210

59-12

A. ballet and tap shoes;

59-12-102

B. cleated or spiked athletic shoes;

C. gloves, including:

59-12-103

(i) baseball gloves;

59-12-104

(ii) bowling gloves;

59-12-105

(iii) boxing gloves;

59-12-106

(iv) hockey gloves; and

59-12-107

(v) golf gloves;

59-12-108

D. goggles;

59-12-118

E. hand and elbow guards;

59-12-301

F. life preservers and vests;

59-12-352

G. mouth guards;

59-12-353

H. roller skates and ice skates;

I. shin guards;

J. shoulder pads;

K. ski boots;

L. waders; and

M. wetsuits and fins.

**R865-19S-117. Use of Rounding in Determining Sales and Use Tax Liability Pursuant to Utah Code Ann. Section 59-12-118.**

A. The computation of sales and use tax must be:

1. carried to the third place; and

2. rounded to a whole cent pursuant to B.

B. The tax shall be rounded up to the next cent whenever the third decimal place of the tax liability calculated under A. is greater than four.

C. Sellers may compute the tax due on a transaction on an:

1. item basis; or

2. invoice basis.

D. The rounding required under this rule may be applied to aggregated state and local taxes.

**R865-19S-118. Collection of Municipal Telecommunications License Tax Pursuant to Utah Code Ann. Section 10-1-405.**

A. The commission shall transmit monies collected under Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act:

1. monthly; and

2. by electronic funds transfer to the municipality that imposes the tax.

B. The commission shall conduct audits of the municipal telecommunications license tax with the same frequency and diligence as it does with the state sales and use tax.

C. The commission shall charge a municipality for the commission's services in an amount:

1. sufficient to reimburse the commission for the commission's cost of administering, collecting, and enforcing the municipal telecommunications license tax; and

2. not to exceed an amount equal to 1.5 percent of the municipal telecommunications license tax imposed by the ordinance of the municipality.

D. The commission shall collect, enforce, and administer the municipal telecommunications license tax pursuant to the same procedures used in the administration, collection, and enforcement of the state sales and use tax as provided in Subsection 10-1-405(1)(a).

**KEY: charities, tax exemptions, religious activities, sales tax October 19, 2004**

9-2-1702

**Notice of Continuation April 5, 2002**

9-2-1703

10-1-303

10-1-306



**R884. Tax Commission, Property Tax.****R884-24P. Property Tax.****R884-24P-5. Abatement or Deferral of Property Taxes of Indigent Persons Pursuant to Utah Code Ann. Sections 59-2-1107 through 59-2-1109 and 59-2-1202(5).**

A. "Household income" includes net rents, interest, retirement income, welfare, social security, and all other sources of cash income.

B. Absence from the residence due to vacation, confinement to hospital, or other similar temporary situation shall not be deducted from the ten-month residency requirement of Section 59-2-1109(3)(a)(ii).

C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

**R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.****A. Definitions.**

1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale.

a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs.

b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).

c) For purposes of the capitalized net revenue method, allowable costs shall include straight-line depreciation of capital expenditures in addition to those items outlined in A.1.a).

d) Allowable costs does not include interest, depletion, depreciation other than allowed in A.1.c), amortization, corporate overhead other than allowed in A.1.a), or any expenses not related to the ownership or operation of the mining property being valued.

e) To determine applicable federal and state income taxes, straight line depreciation, cost depletion, and amortization shall be used.

2. "Asset value" means the value arrived at using generally accepted cost approaches to value.

3. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:

- a) purchase price of an asset and its components;
- b) transportation costs;
- c) installation charges and construction costs; and
- d) sales tax.

4. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.

5. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable properties in the mining industry, taking into account the

industry's current and projected market, financial, and economic conditions.

6. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability is not being utilized.

7. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

8. "Expected annual production" means the economic production from a mine for each future year as estimated by an analysis of the life-of-mine mining plan for the property.

9. "Fair market value" is as defined in Section 59-2-102.

10. "Federal and state income taxes" mean regular taxes based on income computed using the marginal federal and state income tax rates for each applicable year.

11. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

12. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.

13. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts from the sale of minerals (or if self-consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.

14. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.

15. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.

16. "Product price" for each mineral means the price that is most representative of the price expected to be received for the mineral in future periods.

a) Product price is determined using one or more of the following approaches:

(1) an analysis of average actual sales prices per unit of production for the minerals sold by the taxpayer for up to five years preceding the lien date; or,

(2) an analysis of the average posted prices for the minerals, if valid posted prices exist, for up to five calendar years preceding the lien date; or,

(3) the average annual forecast prices for each of up to five years succeeding the lien date for the minerals sold by the taxpayer and one average forecast price for all years thereafter for those same minerals, obtained from reputable forecasters, mutually agreed upon between the Property Tax Division and the taxpayer.

b) If self-consumed, the product price will be determined by one of the following two methods:

(1) Representative unit sales price of like minerals. The representative unit sales price is determined from:

- (a) actual sales of like mineral by the taxpayer;
- (b) actual sales of like mineral by other taxpayers; or
- (c) posted prices of like mineral; or

(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate to adjust to a cost that includes profit, and dividing the resulting figure by the number of units mined.

17. "Related revenue cash flows" mean non-product related cash flows related to the ownership or operation of the mining property being valued. Examples of related revenue cash flows include royalties and proceeds from the sale of mining equipment.

18. "Self consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilizes for the manufacture or construction of other goods and services.

19. "Straight line depreciation" means depreciation computed using the straight line method applicable in calculating the regular federal tax. For this purpose, the applicable recovery period shall be seven years for depreciable tangible personal mining property and depreciable tangible personal property appurtenant to a mine, and 39 years for depreciable real mining property and depreciable real property appurtenant to a mine.

#### B. Valuation.

1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:

- a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and
- b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.

2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.

3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method. This method is outlined as follows:

- a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.

- b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.

- c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.

- d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.

4. The discount rate shall be determined by the Property Tax Division.

- a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or

any combination thereof.

- b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model, discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.

5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.

6. A non-operating mine will be valued at fair market value consistent with other taxable property.

7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.

8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.

9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

C. When the fair market value of a productive mining property in more than one tax area exceeds the asset value, the fair market value will be divided into two components and apportioned as follows:

- 1. Asset value that includes machinery and equipment, improvements, and land surface values will be apportioned to the tax areas where the assets are located.

- 2. The fair market value less the asset value will give an income increment of value. The income increment will be apportioned as follows:

- a) Divide the asset value by the fair market value to determine a quotient. Multiply the quotient by the income increment of value. This value will be apportioned to each tax area based on the percentage of the total asset value in that tax area.

- b) The remainder of the income increment will be apportioned to the tax areas based on the percentage of the known mineral reserves according to the mine plan.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

#### **R884-24P-8. Security for Property Tax on Uranium and Vanadium Mines Pursuant to Utah Code Ann. Section 59-2-211.**

A. The security deposit allowed by Section 59-2-211 shall be requested from the mine owners or operators by giving notice in the manner required by Section 59-2-211. A list of mine owners and operators who have made lump sum security deposits with the Tax Commission will be furnished annually by the Tax Commission to any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah.

B. At the option of the mine owner or operator, within 30 days after receiving proper notice from the Tax Commission, or if the mine owner or operator has not complied with the request within the 30 day period, the Tax Commission may implement the following procedure:

1. Any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah shall withhold 4 percent, or any higher amount set by the Tax Commission, of the gross proceeds due to the mine operator or owner.

2. All amounts withheld shall be remitted to the Tax Commission by the last day of April, July, October, and January for the immediately preceding calendar quarter, in the manner set forth by the Tax Commission.

3. Not later than the last day of February, owners or operators of uranium and vanadium mines who have not made lump sum security deposits with the Tax Commission shall be provided with a statement from the Tax Commission showing all security deposit amounts withheld from their gross proceeds during the previous calendar year.

4. The Tax Commission shall provide the county treasurers with a list of all uranium and vanadium mine owners and operators who have had security deposit amounts withheld. The county treasurers shall then advise the Tax Commission in writing of the amount of taxes due from each mine owner or operator on the Tax Commission's list.

5. Once all county treasurers have responded, the Tax Commission shall forward to each county treasurer the taxes due, or the pro rata portion thereof, to the extent taxes have been withheld and remitted to the Tax Commission.

a. Any amount withheld in excess of the total taxes due to all counties shall be refunded to the appropriate mine owner or operator by the Tax Commission.

b. If the amount withheld is not sufficient to pay the full amount of taxes due, the county treasurers shall collect the balance of taxes directly from the mine owner or operator.

**R884-24P-10. Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201 and 59-2-210.**

A. Definitions.

1. "Person" is as defined in Section 68-3-12.

2. "Working interest owner" means the owner of an interest in oil, gas, or other hydrocarbon substances burdened with a share of the expenses of developing and operating the property.

3. "Unit operator" means a person who operates all producing wells in a unit.

4. "Independent operator" means a person operating an oil or gas producing property not in a unit.

5. One person can, at the same time, be a unit operator, a working interest owner, and an independent operator and must comply with all requirements of this rule based upon the person's status in the respective situations.

6. "Expected annual production" means the future economic production of an oil and gas property as estimated by the Property Tax Division using decline curve analysis. Expected annual production does not include production used on the same well, lease, or unit for the purpose of repressuring or pressure maintenance.

7. "Product price" means:

a) Oil: The weighted average posted price for the calendar year preceding January 1, specific for the field in which the well is operating as designated by the Division of Oil, Gas, and Mining. The weighted average posted price is determined by weighing each individual posted price based on the number of days it was posted during the year, adjusting for gravity, transportation, escalation, or deescalation.

b) Gas:

(1) If sold under contract, the price shall be the stated price as of January 1, adjusted for escalation and deescalation.

(2) If sold on the spot market or to a direct end-user, the price shall be the average price received for the 12-month period immediately preceding January 1, adjusted for escalation and deescalation.

8. "Future net revenue" means annual revenues less costs of the working interests and royalty interest.

9. "Revenue" means expected annual gross revenue, calculated by multiplying the product price by expected annual production for the remaining economic life of the property.

10. "Costs" means expected annual allowable costs applied against revenue of cost-bearing interests:

a) Examples of allowable costs include management salaries; labor; payroll taxes and benefits; workers' compensation insurance; general insurance; taxes (excluding income and property taxes); supplies and tools; power; maintenance and repairs; office; accounting; engineering; treatment; legal fees; transportation; miscellaneous; capital expenditures; and the imputed cost of self consumed product.

b) Interest, depreciation, or any expense not directly related to the unit will shall not be included as allowable costs.

11. "Production asset" means any asset located at the well site that is used to bring oil or gas products to a point of sale or transfer of ownership.

B. The discount rate shall be determined by the Property Tax Division using methods such as the weighted cost of capital method.

1. The cost of debt shall consider market yields. The cost of equity shall be determined by the capital asset pricing model, risk premium model, discounted cash flow model, a combination thereof, or any other accepted methodology.

2. The discount rate shall reflect the current yield requirements of investors purchasing similar properties, taking into consideration income, income taxes, risk, expenses, inflation, and physical and locational characteristics.

3. The discount rate shall contain the same elements as the expected income stream.

C. Assessment Procedures.

1. Underground rights in lands containing deposits of oil or gas and the related tangible property shall be assessed by the Property Tax Division in the name of the unit operator, the independent operator, or other person as the facts may warrant.

2. The taxable value of underground oil and gas rights shall be determined by discounting future net revenues to their present value as of the lien date of the assessment year and then subtracting the value of applicable exempt federal, state, and Indian royalty interests.

3. The reasonable taxable value of productive underground oil and gas rights shall be determined by the methods described in C.2. of this rule or such other valuation method that the Tax Commission believes to be reasonably determinative of the property's fair market value.

4. The value of the production assets shall be considered in the value of the oil and gas reserves as determined in C.2. above. Any other tangible property shall be separately valued at fair market value by the Property Tax Division.

5. The minimum value of the property shall be the value of the production assets.

D. Collection by Operator.

1. The unit operator may request the Property Tax Division to separately list the value of the working interest, and the value of the royalty interest on the Assessment Record. When such a request is made, the unit operator is responsible to provide the Property Tax Division with the necessary information needed to compile this list. The unit operator may make a reasonable estimate of the ad valorem tax liability for a given period and may withhold funds from amounts due to royalty. Withheld funds shall be sufficient to ensure payment of

the ad valorem tax on each fractional interest according to the estimate made.

a) If a unit operating agreement exists between the unit operator and the fractional working interest owners, the unit operator may withhold or collect the tax according to the terms of that agreement.

b) In any case, the unit operator and the fractional interest owner may make agreements or arrangements for withholding or otherwise collecting this tax. This may be done whether or not that practice is consistent with the preceding paragraphs so long as all requirements of the law are met. When a fractional interest owner has had funds withheld to cover the estimated ad valorem tax liability and the operator fails to remit such taxes to the county when due, the fractional interest owner shall be indemnified from any further ad valorem tax liability to the extent of the withholding.

c) The unit operator shall compare the amount withheld to the taxes actually due, and return any excess amount to the fractional interest owner within 60 days after the delinquent date of the tax. At the request of the fractional interest owner the excess may be retained by the unit operator and applied toward the fractional interest owner's tax liability for the subsequent year.

2. The penalty provided for in Section 59-2-210 is intended to ensure collection by the county of the entire tax due. Any unit operator who has paid this county imposed penalty, and thereafter collects from the fractional interest holders any part of their tax due, may retain those funds as reimbursement against the penalty paid.

3. Interest on delinquent taxes shall be assessed as set forth in Section 59-2-1331.

4. Each unit operator may be required to submit to the Property Tax Division a listing of all fractional interest owners and their interests upon specific request of the Property Tax Division. Working interest owners, upon request, shall be required to submit similar information to unit operators.

**R884-24P-14. Valuation of Real Property Encumbered by Preservation Easements Pursuant to Utah Code Ann. Section 59-2-303.**

A. The assessor shall take into consideration any preservation easements attached to historically significant real property and structures when determining the property's value.

B. After the preservation easement has been recorded with the county recorder, the property owner of record shall submit to the county assessor and the Tax Commission a notice of the preservation easement containing the following information:

1. the property owner's name;
2. the address of the property; and
3. the serial number of the property.

C. The county assessor shall review the property and incorporate any value change due to the preservation easement in the following year's assessment roll.

**R884-24P-16. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-25.**

A. Definitions:

1. "Utah fair market value" means the fair market value of that portion of the property of a project entity located within Utah upon which the fee in lieu of ad valorem property tax may be calculated.

2. "Fee" means the annual fee in lieu of ad valorem property tax payable by a project entity pursuant to Section 11-13-25.

3. "Energy supplier" means an entity that purchases any capacity, service or other benefit of a project to provide electrical service.

4. "Exempt energy supplier" means an energy supplier

whose tangible property is exempted by Article XIII, Sec. 2. of the Constitution of Utah from the payment of ad valorem property tax.

5. "Optimum operating capacity" means the capacity at which a project is capable of operating on a sustained basis taking into account its design, actual operating history, maintenance requirements, and similar information from comparable projects, if any. The determination of the projected and actual optimum operating capacities of a project shall recognize that projects are not normally operated on a sustained basis at 100 percent of their designed or actual capacities and that the optimum level for operating a project on a sustained basis may vary from project to project.

6. "Property" means any electric generating facilities, transmission facilities, distribution facilities, fuel facilities, fuel transportation facilities, water facilities, land, water or other existing facilities or tangible property owned by a project entity and required for the project which, if owned by an entity required to pay ad valorem property taxes, would be subject to assessment for ad valorem tax purposes.

7. "Sold," for the purpose of interpreting D, means the first sale of the capacity, service, or other benefit produced by the project without regard to any subsequent sale, resale, or lay-off of that capacity, service, or other benefit.

8. "Taxing jurisdiction" means a political subdivision of this state in which any portion of the project is located.

9. All definitions contained in the Interlocal Cooperation Act, Section 11-13-3, as in effect on December 31, 1989, apply to this rule.

B. The Tax Commission shall determine the fair market value of the property of each project entity. Fair market value shall be based upon standard appraisal theory and shall be determined by correlating estimates derived from the income and cost approaches to value described below.

1. The income approach to value requires the imputation of an income stream and a capitalization rate. The income stream may be based on recognized indicators such as average income, weighted income, trended income, present value of future income streams, performance ratios, and discounted cash flows. The imputation of income stream and capitalization rate shall be derived from the data of other similarly situated companies. Similarity shall be based on factors such as location, fuel mix, customer mix, size and bond ratings. Estimates may also be imputed from industry data generally. Income data from similarly situated companies will be adjusted to reflect differences in governmental regulatory and tax policies.

2. The cost approach to value shall consist of the total of the property's net book value of the project's property. This total shall then be adjusted for obsolescence if any.

3. In addition to, and not in lieu of, any adjustments for obsolescence made pursuant to B.2., a phase-in adjustment shall be made to the assessed valuation of any new project or expansion of an existing project on which construction commenced by a project entity after January 1, 1989 as follows:

a) During the period the new project or expansion is valued as construction work in process, its assessed valuation shall be multiplied by the percentage calculated by dividing its projected production as of the projected date of completion of construction by its projected optimum operating capacity as of that date.

b) Once the new project or expansion ceases to be valued as construction work in progress, its assessed valuation shall be multiplied by the percentage calculated by dividing its actual production by its actual optimum operating capacity. After the new project or expansion has sustained actual production at its optimum operating capacity during any tax year, this percentage shall be deemed to be 100 percent for the remainder of its useful life.

C. If portions of the property of the project entity are located in states in addition to Utah and those states do not apply a unit valuation approach to that property, the fair market value of the property allocable to Utah shall be determined by computing the cost approach to value on the basis of the net book value of the property located in Utah and imputing an estimated income stream based solely on the value of the Utah property as computed under the cost approach. The correlated value so determined shall be the Utah fair market value of the property.

D. Before fixing and apportioning the Utah fair market value of the property to the respective taxing jurisdictions in which the property, or a portion thereof is located, the Utah fair market value of the property shall be reduced by the percentage of the capacity, service, or other benefit sold by the project entity to exempt energy suppliers.

E. For purposes of calculating the amount of the fee payable under Section 11-13-25(3), the percentage of the project that is used to produce the capacity, service or other benefit sold shall be deemed to be 100 percent, subject to adjustments provided by this rule, from the date the project is determined to be commercially operational.

F. In computing its tax rate pursuant to the formula specified in Section 59-2-913(2), each taxing jurisdiction in which the project property is located shall add to the amount of its budgeted property tax revenues the amount of any credit due to the project entity that year under Section 11-13-25(3), and shall divide the result by the sum of the taxable value of all property taxed, including the value of the project property apportioned to the jurisdiction, and further adjusted pursuant to the requirements of Section 59-2-913.

G. B.1. and B.2. are retroactive to the lien date of January 1, 1984. B.3. is effective as of the lien date of January 1, 1989. The remainder of this rule is retroactive to the lien date of January 1, 1988.

**R884-24P-17. Reappraisal of Real Property by County Assessors Pursuant to Utah Constitution, Article XIII, Subsection 11, and Utah Code Ann. Sections 59-2-303, 59-2-302, and 59-2-704.**

A. The following standards shall be followed in sequence when performing a reappraisal of all classes of locally-assessed real property within a county.

1. Conduct a preliminary survey and plan.
  - a) Compile a list of properties to be appraised by property class.
  - b) Assemble a complete current set of ownership plats.
  - c) Estimate personnel and resource requirements.
  - d) Construct a control chart to outline the process.
2. Select a computer-assisted appraisal system and have the system approved by the Property Tax Division.
3. Obtain a copy of all probable transactions from the recorder's office for the three-year period ending on the effective date of reappraisal.
4. Perform a use valuation on agricultural parcels using the most recent set of aerial photographs covering the jurisdiction.
  - a) Perform a field review of all agricultural land, dividing up the land by agricultural land class.
  - b) Transfer data from the aerial photographs to the current ownership plats, and compute acreage by class on a per parcel basis.
  - c) Enter land class information and the calculated agricultural land use value on the appraisal form.
5. Develop a land valuation guideline.
6. Perform an appraisal on improved sold properties considering the three approaches to value.
7. Develop depreciation schedules and time-location modifiers by comparing the appraised value with the sale price of sold properties.

8. Organize appraisal forms by proximity to each other and by geographical area. Insert sold property information into the appropriate batches.

9. Collect data on all nonsold properties.
  10. Develop capitalization rates and gross rent multipliers.
  11. Estimate the value of income-producing properties using the appropriate capitalization method.
  12. Input the data into the automated system and generate preliminary values.
  13. Review the preliminary figures and refine the estimate based on the applicable approaches to value.
  14. Develop an outlier analysis program to identify and correct clerical or judgment errors.
  15. Perform an assessment/sales ratio study. Include any new sale information.
  16. Make a final review based on the ratio study including an analysis of variations in ratios. Make appropriate adjustments.
  17. Calculate the final values and place them on the assessment role.
  18. Develop and publish a sold properties catalog.
  19. Establish the local Board of Equalization procedure.
  20. Prepare and file documentation of the reappraisal program with the local Board of Equalization and Property Tax Division.
- B. The Tax Commission shall provide procedural guidelines for implementing the above requirements.

**R884-24P-19. Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702.**

A. "State Licensed Appraiser", "State Certified General Appraiser," and "State Certified Residential Appraiser" are as defined in Section 61-2b-2.

B. The ad valorem training and designation program consists of several courses and practica.

1. Certain courses must be sanctioned by either the International Association of Assessing Officers (IAAO) or the Western States Association of Tax Administrators (WSATA).
2. Most courses are one week in duration, with an examination held on the final day. The courses comprising the basic designation program are:
  - a) Course A - Assessment Practice in Utah;
  - b) Course B - Fundamentals of Real Property Appraisal (IAAO 101);
  - c) Course C - Mass Appraisal of Land;
  - d) Course D - Building Analysis and Valuation;
  - e) Course E - Income Approach to Valuation (IAAO 102);
  - f) Course G - Development and Use of Personal Property Schedules;
  - g) Course H - Appraisal of Public Utilities and Railroads (WSATA); and
  - h) Course J - Uniform Standards of Professional Appraisal Practice (USPAP).
3. The Tax Commission may allow equivalent appraisal education to be submitted in lieu of Course B, Course E, and Course J.

C. Candidates must attend 90 percent of the classes in each course and pass the final examination for each course with a grade of 70 percent or more to be successful.

D. There are four recognized ad valorem designations: Ad Valorem Residential Appraiser, Ad Valorem General Real Property Appraiser, Ad Valorem Personal Property Auditor/Appraiser, and Ad Valorem Centrally Assessed Valuation Analyst.

1. These designations are granted only to individuals working as appraisers, review appraisers, valuation auditors, or analysts/administrators providing oversight and direction to appraisers and auditors.
2. An assessor, county employee, or state employee must

hold the appropriate designation to value property for ad valorem taxation purposes.

E. Ad Valorem Residential Appraiser.

1. To qualify for this designation, an individual must:

- a) successfully complete Courses A, B, C, D, and J;
- b) successfully complete a comprehensive residential field practicum; and
- c) attain and maintain state licensed or state certified appraiser status.

2. Upon designation, the appraiser may value residential, vacant, and agricultural property for ad valorem taxation purposes.

F. Ad Valorem General Real Property Appraiser.

1. In order to qualify for this designation, an individual must:

- a) successfully complete Courses A, B, C, D, E, and J;
- b) successfully complete a comprehensive field practicum including residential and commercial properties; and
- c) attain and maintain state licensed or state certified appraiser status.

2. Upon designation, the appraiser may value all types of locally assessed real property for ad valorem taxation purposes.

G. Ad Valorem Personal Property Auditor/Appraiser.

1. To qualify for this designation, an individual must successfully complete:

- a) Courses A, B, G, and J; and
- b) a comprehensive auditing practicum.

2. Upon designation, the auditor/appraiser may value locally assessed personal property for ad valorem taxation purposes.

H. Ad Valorem Centrally Assessed Valuation Analyst.

1. In order to qualify for this designation, an individual must:

- a) successfully complete Courses A, B, E, H, and J;
- b) successfully complete a comprehensive valuation practicum; and
- c) attain and maintain state licensed or state certified appraiser status.

2. Upon designation, the analyst may value centrally assessed property for ad valorem taxation purposes.

1. If a candidate fails to receive a passing grade on a final examination, one re-examination is allowed. If the re-examination is not successful, the individual must retake the failed course. The cost to retake the failed course will not be borne by the Tax Commission.

J. A practicum involves the appraisal or audit of selected properties. The candidate's supervisor must formally request that the Property Tax Division administer a practicum.

1. Emphasis is placed on those types of properties the candidate will most likely encounter on the job.

2. The practicum will be administered by a designated appraiser assigned from the Property Tax Division.

K. An appraiser trainee referred to in Section 59-2-701 shall be designated an ad valorem associate if the appraiser trainee:

- 1. has completed all Tax Commission appraiser education and practicum requirements for designation under E., F., and H.; and
- 2. has not completed the requirements for licensure or certification under Title 71, Chapter 2b, Real Estate Appraiser Licensing and Certification.

L. An individual holding a specified designation can qualify for other designations by meeting the additional requirements outlined above.

M. Maintaining designated status requires completion of 28 hours of Tax Commission approved classroom work every two years.

N. Upon termination of employment from any Utah assessment jurisdiction, or if the individual no longer works

primarily as an appraiser, review appraiser, valuation auditor, or analyst/administrator in appraisal matters, designation is automatically revoked.

1. Ad valorem designation status may be reinstated if the individual secures employment in any Utah assessment jurisdiction within four years from the prior termination.

2. If more than four years elapse between termination and rehire, and

a) the individual has been employed in a closely allied field, then the individual may challenge the course examinations. Upon successfully challenging all required course examinations, the prior designation status will be reinstated; or

b) if the individual has not been employed in real estate valuation or a closely allied field, the individual must retake all required courses and pass the final examinations with a score of 70 percent or more.

O. All appraisal work performed by Tax Commission designated appraisers shall meet the standards set forth in section 61-2b-27.

P. If appropriate Tax Commission designations are not held by assessor's office personnel, the appraisal work must be contracted out to qualified private appraisers. An assessor's office may elect to contract out appraisal work to qualified private appraisers even if personnel with the appropriate designation are available in the office. If appraisal work is contracted out, the following requirements must be met.

1. The private sector appraisers contracting the work must hold the State Certified Residential Appraiser or State Certified General Appraiser license issued by the Division of Real Estate of the Utah Department of Commerce. Only State Certified General Appraisers may appraise nonresidential properties.

2. All appraisal work shall meet the standards set forth in Section 61-2b-27.

Q. The completion and delivery of the assessment roll required under Section 59-2-311 is an administrative function of the elected assessor.

1. There are no specific licensure, certification, or educational requirements related to this function.

2. An elected assessor may complete and deliver the assessment roll as long as the valuations and appraisals included in the assessment roll were completed by persons having the required designations.

**R884-24P-20. Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301.**

A. For purposes of this rule:

1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.

2. Project means any undertaking involving construction, expansion or modernization.

3. "Construction" means:

- a) creation of a new facility;
- b) acquisition of personal property; or
- c) any alteration to the real property of an existing facility other than normal repairs or maintenance.

4. Expansion means an increase in production or capacity as a result of the project.

5. Modernization means a change or contrast in character or quality resulting from the introduction of improved techniques, methods or products.

6. Functionally complete means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. In the case of a cost-regulated utility, a project shall be deemed to be functionally complete when the operating property associated with the

project has been capitalized on the books and is part of the rate base of that utility.

7. Allocable preconstruction costs means expenditures associated with the planning and preparation for the construction of a project. To be classified as an allocable preconstruction cost, an expenditure must be capitalized.

8. Cost regulated utility means a power company, oil and gas pipeline company, gas distribution company or telecommunication company whose earnings are determined by a rate of return applied to rate base. Rate of return and rate base are set and approved by a state or federal regulatory commission.

9. Residential means single-family residences and duplex apartments.

10. Unit method of appraisal means valuation of the various physical components of an integrated enterprise as a single going concern. The unit method may employ one or more of the following approaches to value: the income approach, the cost approach, and the stock and debt approach.

B. All construction work in progress shall be valued at "full cash value" as described in this rule.

C. Discount Rates

For purposes of this rule, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.

D. Appraisal of Allocable Preconstruction Costs.

1. If requested by the taxpayer, preconstruction costs associated with properties, other than residential properties, may be allocated to the value of the project in relation to the relative amount of total expenditures made on the project by the lien date. Allocation will be allowed only if the following conditions are satisfied by January 30 of the tax year for which the request is sought:

a) a detailed list of preconstruction cost data is supplied to the responsible agency;

b) the percent of completion of the project and the preconstruction cost data are certified by the taxpayer as to their accuracy.

2. The preconstruction costs allocated pursuant to D.1. of this rule shall be discounted using the appropriate rate determined in C. The discounted allocated value shall either be added to the values of properties other than residential properties determined under E.1. or shall be added to the values determined under the various approaches used in the unit method of valuation determined under F.

3. The preconstruction costs allocated under D. are subject to audit for four years. If adjustments are necessary after examination of the records, those adjustments will be classified as property escaping assessment.

E. Appraisal of Properties not Valued under the Unit Method.

1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential properties, shall be reduced by the value of the allocable preconstruction costs determined D. This reduced full cash value shall be referred to as the "adjusted full cash value."

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

a) The full cash value of the project expected upon completion.

b) The expected date of functional completion of the project currently under construction.

(1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

c) The percent of the project completed as of the lien date.

(1) Determination of percent of completion for residential

properties shall be based on the following percentage of completion:

(a) 10 - Excavation-foundation

(b) 30 - Rough lumber, rough labor

(c) 50 - Roofing, rough plumbing, rough electrical, heating

(d) 65 - Insulation, drywall, exterior finish

(e) 75 - Finish lumber, finish labor, painting

(f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical

(g) 100 - Floor covering, appliances, exterior concrete, misc.

(2) In the case of all other projects under construction and valued under this section the percent of completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,

b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;

c) adjust the resulting product of E.3.a) or E.3.b) for the expected time of completion using the discount rate determined under C.

F. Appraisal of Properties Valued Under the Unit Method of Appraisal.

1. No adjustments under this rule shall be made to the income indicator of value for a project under construction that is owned by a cost-regulated utility when the project is allowed in rate base.

2. The full cash value of a project under construction as of January 1 of the tax year, shall be determined by adjusting the cost and income approaches as follows:

a) Adjustments to reflect the time value of money in appraising construction work in progress valued under the cost and income approaches shall be made for each approach as follows:

(1) Each company shall report the expected completion dates and costs of the projects. A project expected to be completed during the tax year for which the valuation is being determined shall be considered completed on January 1 or July 1, whichever is closest to the expected completion date. The Tax Commission shall determine the expected completion date for any project whose completion is scheduled during a tax year subsequent to the tax year for which the valuation is being made.

(2) If requested by the company, the value of allocable preconstruction costs determined in D. shall then be subtracted from the total cost of each project. The resulting sum shall be referred to as the adjusted cost value of the project.

(3) The adjusted cost value for each of the future years prior to functional completion shall be discounted to reflect the present value of the project under construction. The discount rate shall be determined under C.

(4) The discounted adjusted cost value shall then be added to the values determined under the income approach and cost approach.

b) No adjustment will be made to reflect the time value of money for a project valued under the stock and debt approach to value.

G. This rule shall take effect for the tax year 1985.

**R884-24P-24. Form for Notice of Property Valuation and**

**Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918 through 59-2-924.**

A. The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

1. If a county desires to use a modified version of the Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

a) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax changes.

b) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-22.

2. The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property description may be included at the option of the county.

B. The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

1. New property is created by a new legal description; or

2. The status of the improvements on the property has changed.

3. In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of the Notice of Property Valuation and Tax Changes.

4. If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in A.

C. Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value based upon Farmland Assessment Act rates shown parenthetically.

D. All completion dates specified for the disclosure of property tax information must be strictly observed.

1. Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in A.

E. If the proposed rate exceeds the certified rate, jurisdictions in which the fiscal year is the calendar year are required to hold public hearings even if budget hearings have already been held for that fiscal year.

F. If the cost of public notice required under Sections 59-2-918 and 59-2-919 is greater than one percent of the property tax revenues to be received, an entity may combine its advertisement with other entities, or use direct mail notification.

G. Calculation of the amount and percentage increase in property tax revenues required by Sections 59-2-918 and 59-2-919, shall be computed by comparing property taxes levied for the current year with property taxes collected the prior year, without adjusting for revenues attributable to new growth.

H. If a taxing district has not completed the tax rate setting process as prescribed in Sections 59-2-919 and 59-2-920 by August 17, the county auditor must seek approval from the Tax Commission to use the certified rate in calculating taxes levied.

I. The value of property subject to the uniform fee under Section 59-2-405 is excluded from taxable value for purposes of calculating new growth, the certified tax rate, and the proposed tax rate.

J. The value and taxes of property subject to the uniform fee under Section 59-2-405, as well as tax increment distributions and related taxable values of redevelopment

agencies, are excluded when calculating the percentage of property taxes collected as provided in Section 59-2-913.

K. The following formulas and definitions shall be used in determining new growth:

1. Actual new growth shall be computed as follows:

a) the taxable value for the current year adjusted for redevelopment minus year-end taxable value for the previous year adjusted for redevelopment; then

b) plus or minus changes in value as a result of factoring; then

c) plus or minus changes in value as a result of reappraisal; then

d) plus or minus any change in value resulting from a legislative mandate or court order.

2. Net annexation value is the taxable value for the current year adjusted for redevelopment of all properties annexed into an entity during the previous calendar year minus the taxable value for the previous year adjusted for redevelopment for all properties annexed out of the entity during the previous calendar year.

3. New growth is equal to zero for an entity with:

a) an actual new growth value less than zero; and

b) a net annexation value greater than or equal to zero.

4. New growth is equal to actual new growth for:

a) an entity with an actual new growth value greater than or equal to zero; or

b) an entity with:

(1) an actual new growth value less than zero; and

(2) the actual new growth value is greater than or equal to the net annexation value.

5. New growth is equal to the net annexation value for an entity with:

a) a net annexation value less than zero; and

b) the actual new growth value is less than the net annexation value.

6. Adjusted new growth equals new growth multiplied by the mean collection rate for the previous five years.

L. 1. For purposes of determining the certified tax rate, ad valorem property tax revenues budgeted by a taxing entity for the prior year are calculated by:

a) increasing or decreasing the adjustable taxable value from the prior year Report 697 by the average of the percentage net change in the value of taxable property for the equalization period for the three calendar years immediately preceding the current calendar year; and

b) multiplying the result obtained in L.1.a) by:

(1) the percentage of property taxes collected for the five calendar years immediately preceding the current calendar year; and

(2) the prior year approved tax rate.

2. If a taxing entity levied the prior year approved tax rate, the budgeted revenues determined under L.1. are reflected in the budgeted revenue column of the prior year Report 693.

M. 1. Entities required to set levies for more than one fund must compute an aggregate certified rate. The aggregate certified rate is the sum of the certified rates for individual funds for which separate levies are required by law. The aggregate certified rate computation applies where:

a) the valuation bases for the funds are contained within identical geographic boundaries; and

b) the funds are under the levy and budget setting authority of the same governmental entity.

2. Exceptions to M.1. are the county assessing and collecting levy, as described in Section 59-2-906.1(3), and the additional levies for property valuation and reappraisal, as described in Section 59-2-906.3.

a) These levies may not be included as part of a county's aggregate certified rate. Instead, they must be segregated into a separate aggregate certified rate.



b) The separate aggregate certified rate representing these levies is subject to the proposed tax increase requirements of Sections 59-2-918 and 59-2-919.

N. For purposes of determining the certified tax rate of a municipality incorporated on or after July 1, 1996, the levy imposed for municipal-type services or general county purposes shall be the certified tax rate for municipal-type services or general county purposes, as applicable.

O. No new entity, including a new city, may have a certified tax rate or levy a tax for any particular year unless that entity existed on the first day of that calendar year.

**R884-24P-27. Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Sections 59-2-704 and 59-2-704.5.**

A. Definitions.

1. "Coefficient of dispersion (COD)" means the average deviation of a group of assessment ratios taken around the median and expressed as a percent of that measure.

2. "Coefficient of variation (COV)" means the standard deviation expressed as a percentage of the mean.

3. "Division" means the Property Tax Division of the State Tax Commission.

4. "Nonparametric" means data samples that are not normally distributed.

5. "Parametric" means data samples that are normally distributed.

6. "Urban counties" means counties classified as first or second class counties pursuant to Section 17-50-501.

B. The Tax Commission adopts the following standards of assessment performance.

1. For assessment level in each property class, subclass, and geographical area in each county, the measure of central tendency shall meet one of the following measures.

a) The measure of central tendency shall be within 10 percent of the legal level of assessment.

b) The 95 percent confidence interval of the measure of central tendency shall contain the legal level of assessment.

2. For uniformity of the property being appraised under the cyclical appraisal plan for the current year, the measure of dispersion shall be within the following limits.

a) In urban counties:

(1) a COD of 15 percent or less for primary residential and commercial property, and 20 percent or less for vacant land and secondary residential property; and

(2) a COV of 19 percent or less for primary residential and commercial property, and 25 percent or less for vacant land and secondary residential property.

b) In rural counties:

(1) a COD of 20 percent or less for primary residential and commercial property, and 25 percent or less for vacant land and secondary residential property; and

(2) a COV of 25 percent or less for primary residential and commercial property, and 31 percent or less for vacant land and secondary residential property.

3. Statistical measures.

a) The measure of central tendency shall be the mean for parametric samples and the median for nonparametric samples.

b) The measure of dispersion shall be the COV for parametric samples and the COD for nonparametric samples.

c) To achieve statistical accuracy in determining assessment level under B.1. and uniformity under B.2. for any property class, subclass, or geographical area, the minimum sample size shall consist of 10 or more ratios.

C. Each year the Division shall conduct and publish an assessment-to-sale ratio study to determine if each county complies with the standards in B.

1. To meet the minimum sample size, the study period may be extended.

2. A smaller sample size may be used if:

a) that sample size is at least 10 percent of the class or subclass population; or

b) both the Division and the county agree that the sample may produce statistics that imply corrective action appropriate to the class or subclass of property.

3. If the Division, after consultation with the counties, determines that the sample size does not produce reliable statistical data, an alternate performance evaluation may be conducted, which may result in corrective action. The alternate performance evaluation shall include review and analysis of the following:

a) the county's procedures for collection and use of market data, including sales, income, rental, expense, vacancy rates, and capitalization rates;

b) the county-wide land, residential, and commercial valuation guidelines and their associated procedures for maintaining current market values;

c) the accuracy and uniformity of the county's individual property data through a field audit of randomly selected properties; and

d) the county's level of personnel training, ratio of appraisers to parcels, level of funding, and other workload and resource considerations.

4. All input to the sample used to measure performance shall be completed by March 31 of each study year.

5. The Division shall conduct a preliminary annual assessment-to-sale ratio study by April 30 of the study year, allowing counties to apply adjustments to their tax roll prior to the May 22 deadline.

6. The Division shall complete the final study immediately following the closing of the tax roll on May 22.

D. The Division shall order corrective action if the results of the final study do not meet the standards set forth in B.

1. Assessment level adjustments, or factor orders, shall be calculated by dividing the legal level of assessment by one of the following:

a) the measure of central tendency, if the uniformity of the ratios meets the standards outlined in B.2.; or

b) the 95 percent confidence interval limit nearest the legal level of assessment, if the uniformity of the ratios does not meet the standards outlined in B.2.

2. Uniformity adjustments, or reappraisal orders, shall only apply to the property being appraised under the cyclical appraisal plan for the current year. A reappraisal order shall be issued if the property fails to meet the standards outlined in B.2. Prior to implementation of reappraisal orders, counties shall submit a preliminary report to the Division that includes the following:

a) an evaluation of why the standards of uniformity outlined in B.2. were not met; and

b) a plan for completion of the reappraisal that is approved by the Division.

3. A corrective action order may contain language requiring a county to create, modify, or follow its cyclical appraisal plan.

4. All corrective action orders shall be issued by June 10 of the study year.

E. The Tax Commission adopts the following procedures to insure compliance and facilitate implementation of ordered corrective action.

1. Prior to the filing of an appeal, the Division shall retain authority to correct errors and, with agreement of the affected county, issue amended orders or stipulate with the affected county to any appropriate alternative action without Tax Commission approval. Any stipulation by the Division subsequent to an appeal is subject to Tax Commission approval.

2. A county receiving a corrective action order resulting from this rule may file and appeal with the Tax Commission

pursuant to Tax Commission rule R861-1A-11.

3. A corrective action order will become the final Tax Commission order if the county does not appeal in a timely manner, or does not prevail in the appeals process.

4. The Division may assist local jurisdictions to ensure implementation of any corrective action orders by the following deadlines.

a) Factor orders shall be implemented in the current study year prior to the mailing of valuation notices.

b) Other corrective action, including reappraisal orders, shall be implemented prior to May 22 of the year following the study year. The preliminary report referred to in D.2. shall be completed by November 30 of the current study year.

5. The Division shall complete audits to determine compliance with corrective action orders as soon after the deadlines set forth in E.4. as practical. The Division shall review the results of the compliance audit with the county and make any necessary adjustments to the compliance audit within 15 days of initiating the audit. These adjustments shall be limited to the analysis performed during the compliance audit and may not include review of the data used to arrive at the underlying factor order. After any adjustments, the compliance audit will then be given to the Tax Commission for any necessary action.

6. The county shall be informed of any adjustment required as a result of the compliance audit.

**R884-24P-28. Reporting Requirements For Leased or Rented Personal Property, Pursuant to Utah Code Ann. Section 59-2-306.**

A. The procedure set forth herein is required in reporting heavy equipment leased or rented during the tax year.

1. On forms or diskette provided by the Tax Commission, the owner of leased or rented heavy equipment shall file semi-annual reports with the Tax Commission for the periods January 1 through June 30, and July 1 through December 31 of each year. The reports shall contain the following information:

- a) a description of the leased or rented equipment;
- b) the year of manufacture and acquisition cost;
- c) a listing, by month, of the counties where the equipment has situs; and
- d) any other information required.

2. For purposes of this rule, situs is established when leased or rented equipment is kept in an area for thirty days. Once situs is established, any portion of thirty days during which that equipment stays in that area shall be counted as a full month of situs. In no case may situs exceed twelve months for any year.

3. The completed report shall be submitted to the Property Tax Division of the Tax Commission within thirty days after each reporting period.

- a) Noncompliance will require accelerated reporting.

**R884-24P-29. Taxable Household Furnishings Pursuant to Utah Code Ann. Section 59-2-1113.**

A. Household furnishings, furniture, and equipment are subject to property taxation if:

- 1. the owner of the abode commonly receives legal consideration for its use, whether in the form of rent, exchange, or lease payments; or
- 2. the abode is held out as available for the rent, lease, or use by others.

**R884-24P-32. Leasehold Improvements Pursuant to Utah Code Ann. Section 59-2-303.**

A. The value of leasehold improvements shall be included in the value of the underlying real property and assessed to the owner of the underlying real property.

B. The combined valuation of leasehold improvements and

underlying real property required in A. shall satisfy the requirements of Section 59-2-103(1).

C. The provisions of this rule shall not apply if the underlying real property is owned by an entity exempt from tax under Section 59-2-1101.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2000.

**R884-24P-33. 2005 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.**

A. Definitions.

1. "Acquisition cost" means all costs required to put an item into service, including purchase price, freight and shipping costs; installation, engineering, erection or assembly costs; and excise and sales taxes.

a) Indirect costs such as debugging, licensing fees and permits, insurance or security are not included in the acquisition cost.

b) Acquisition cost may correspond to the cost new for new property, or cost used for used property.

2. "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

a) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

3. "Cost new" means the actual cost of the property when purchased new.

a) Except as otherwise provided in this rule, the Tax Commission and assessors shall rely on the following sources to determine cost new:

- (1) documented actual cost of the new or used vehicle; or
- (2) recognized publications that provide a method for approximating cost new for new or used vehicles.

b) For the following property purchased used, the taxing authority may determine cost new by dividing the property's actual cost by the percent good factor for that class:

- (1) class 6 heavy and medium duty trucks;
- (2) class 9 off-highway vehicles;
- (3) class 11 street motorcycles;
- (4) class 13 heavy equipment;
- (5) class 14 motor homes;
- (6) class 17 boats;
- (7) class 18 travel trailers/truck campers;
- (8) class 21 commercial and utility trailers;
- (9) class 23 aircraft subject to the aircraft uniform fee and not listed in the aircraft bluebook price digest; and
- (10) class 26 personal watercraft.

4. "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

a) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.

b) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, other data sources or research, and vehicle valuation guides such as NADA.

B. Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

1. Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

2. A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

3. County assessors may deviate from the schedules when warranted by specific conditions affecting an item of personal

property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

4. A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value.

C. Other taxable personal property that is not included in the listed classes includes:

1. Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight-in.

2. Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.

3. Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.

D. Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.

E. All taxable personal property is classified by expected economic life as follows:

1. Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.

a) Examples of property in the class include:

- (1) barricades/warning signs;
- (2) library materials;
- (3) patterns, jigs and dies;
- (4) pots, pans, and utensils;
- (5) canned computer software;
- (6) hotel linen;
- (7) wood and pallets;
- (8) video tapes, compact discs, and DVDs; and
- (9) uniforms.

b) With the exception of video tapes, compact discs, and DVDs, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

c) A licensee of canned computer software shall use one of the following substitutes for acquisition cost of canned computer software if no acquisition cost for the canned computer software is stated:

- (1) retail price of the canned computer software;
- (2) if a retail price is unavailable, and the license is a nonrenewable single year license agreement, the total sum of expected payments during that 12-month period; or
- (3) if the licensing agreement is a renewable agreement or is a multiple year agreement, the present value of all expected licensing fees paid pursuant to the agreement.

d) Video tapes, compact discs, and DVDs are valued at \$15.00 per tape or disc for the first year and \$3.00 per tape or disc thereafter.

TABLE 1

Year of Acquisition	Percent Good of Acquisition Cost
04	69%
03	40%
02 and prior	10%

2. Class 2 - Computer Integrated Machinery.

a) Machinery shall be classified as computer integrated machinery if all of the following conditions are met:

(1) The equipment is sold as a single unit. If the invoice breaks out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.

(2) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.

(3) The machine can perform multiple functions and is controlled by a programmable central processing unit.

(4) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.

(5) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.

b) Examples of property in this class include:

- (1) CNC mills;
- (2) CNC lathes;
- (3) MRI equipment;
- (4) CAT scanners; and
- (5) mammography units.

c) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 2

Year of Acquisition	Percent Good of Acquisition Cost
04	86%
03	71%
02	60%
01	51%
00	44%
99	35%
98	25%
97 and prior	16%

3. Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.

a) Examples of property in this class include:

- (1) office machines;
- (2) alarm systems;
- (3) shopping carts;
- (4) ATM machines;
- (5) small equipment rentals;
- (6) rent-to-own merchandise;
- (7) telephone equipment and systems;
- (8) music systems;
- (9) vending machines;
- (10) video game machines; and
- (11) cash registers and point of sale equipment.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 3

Year of Acquisition	Percent Good of Acquisition Cost
04	82%
03	67%
02	51%
01	34%
00 and prior	17%

4. Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.

a) Examples of property in this class include:

- (1) furniture;
- (2) bars and sinks;
- (3) booths, tables and chairs;
- (4) beauty and barber shop fixtures;
- (5) cabinets and shelves;

- (6) displays, cases and racks;
  - (7) office furniture;
  - (8) theater seats;
  - (9) water slides; and
  - (10) signs, mechanical and electrical.
- b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

Year of Acquisition	Percent Good of Acquisition Cost
04	91%
03	84%
02	77%
01	68%
00	61%
99	53%
98	44%
97	36%
96	27%
95	19%
94 and prior	10%

TABLE 5

Year of Acquisition	Percent Good of Acquisition Cost
04	89%
03	81%
02	72%
01	61%
00	52%
99	42%
98	32%
97	21%
96 and prior	11%

5. Class 6 - Heavy and Medium Duty Trucks.
- a) Examples of property in this class include:
- (1) heavy duty trucks;
  - (2) medium duty trucks;
  - (3) crane trucks;
  - (4) concrete pump trucks; and
  - (5) trucks with well-boring rigs.
- b) Taxable value is calculated by applying the percent good factor against the cost new.
- c) Cost new of vehicles in this class is defined as follows:
- (1) the documented actual cost of the vehicle for new vehicles; or
  - (2) 75 percent of the manufacturer's suggested retail price.
- d) For state assessed vehicles, cost new shall include the value of attached equipment.
- e) The 2005 percent good applies to 2005 models purchased in 2004.
- f) Trucks weighing two tons or more have a residual taxable value of \$1,750.

TABLE 6

Model Year	Percent Good of Cost New
05	90%
04	73%
03	67%
02	61%
01	55%
00	49%
99	43%
98	37%
97	31%
96	25%
95	19%
94	13%
93	7%
92 and prior	5%

6. Class 7 - Medical and Dental Equipment. Class 7 property is subject to a high degree of technological development by the health industry.
- a) Examples of property in this class include:
- (1) medical and dental equipment and instruments;
  - (2) exam tables and chairs;
  - (3) high-tech hospital equipment;
  - (4) microscopes; and
  - (5) optical equipment.
- b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 7

Year of Acquisition	Percent Good
04	91%
03	84%
02	77%
01	68%
00	61%
99	53%
98	44%
97	36%
96	27%
95	19%
94 and prior	10%

7. Class 8 - Machinery and Equipment. Property in this class is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available.

- a) Examples of property in this class include:
- (1) manufacturing machinery;
  - (2) amusement rides;
  - (3) bakery equipment;
  - (4) distillery equipment;
  - (5) refrigeration equipment;
  - (6) laundry and dry cleaning equipment;
  - (7) machine shop equipment;
  - (8) processing equipment;
  - (9) auto service and repair equipment;
  - (10) mining equipment;
  - (11) ski lift machinery;
  - (12) printing equipment;
  - (13) bottling or cannery equipment; and
  - (14) packaging equipment.
- b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 8

Year of Acquisition	Percent Good of Acquisition Cost
04	91%
03	84%
02	77%
01	68%
00	61%
99	53%
98	44%
97	36%
96	27%
95	19%
94 and prior	10%

8. Class 9 - Off-Highway Vehicles.
- a) Examples of property in this class include:
- (1) dirt and trail motorcycles;
  - (2) all terrain vehicles;
  - (3) golf carts; and
  - (4) snowmobiles.
- b) Taxable value is calculated by applying the percent good factor against the cost new.
- c) The 2005 percent good applies to 2005 models purchased in 2004.
- d) Off-Highway Vehicles have a residual taxable value of \$500.

TABLE 9

Model Year	Percent Good of Cost New
05	90%
04	65%
03	61%
02	57%
01	53%
00	49%
99	45%
98	41%

97	37%
96	33%
95	29%
94	25%
93	21%
92 and prior	17%

9. Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property.

a) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 10

Year of Acquisition	Percent Good of Acquisition Cost
04	92%
03	87%
02	82%
01	75%
00	69%
99	63%
98	56%
97	50%
96	43%
95	37%
94	31%
93	24%
92	16%
91 and prior	8%

10. Class 11 - Street Motorcycles.

a) Examples of property in this class include:

- (1) street motorcycles;
- (2) scooters;
- (3) mopeds; and
- (4) low-speed electric vehicles.

b) Taxable value is calculated by applying the percent good factor against the cost new.

c) The 2005 percent good applies to 2005 models purchased in 2004.

d) Street motorcycles have a residual taxable value of \$500.

TABLE 11

Model Year	Percent Good of Cost New
05	90%
04	67%
03	65%
02	62%
01	59%
00	56%
99	54%
98	51%
97	48%
96	46%
95	43%
94	40%
93	37%
92	35%
91	32%
90	29%
89	27%
88 and prior	24%

11. Class 12 - Computer Hardware.

a) Examples of property in this class include:

- (1) data processing equipment;
- (2) personal computers;
- (3) main frame computers;
- (4) computer equipment peripherals;
- (5) cad/cam systems; and
- (6) copiers.

b) Taxable value is calculated by applying the percent

good factor against the acquisition cost of the property.

TABLE 12

Year of Acquisition	Percent Good of Acquisition Cost
04	62%
03	46%
02	21%
01	9%
00 and prior	7%

12. Class 13 - Heavy Equipment.

a) Examples of property in this class include:

- (1) construction equipment;
- (2) excavation equipment;
- (3) loaders;
- (4) batch plants;
- (5) snow cats; and
- (6) pavement sweepers.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

c) 2005 model equipment purchased in 2004 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
04	53%
03	50%
02	47%
01	44%
00	41%
99	38%
98	35%
97	32%
96	29%
95	26%
94	24%
93	21%
92	18%
91 and prior	15%

13. Class 14 - Motor Homes.

a) Taxable value is calculated by applying the percent good against the cost new.

b) The 2005 percent good applies to 2005 models purchased in 2004.

c) Motor homes have a residual taxable value of \$1,000.

TABLE 14

Model Year	Percent Good of Cost New
05	90%
04	70%
03	67%
02	64%
01	60%
00	57%
99	54%
98	50%
97	47%
96	44%
95	40%
94	37%
93	34%
92	30%
91	27%
90	24%
89 and prior	20%

14. Class 15 - Semiconductor Manufacturing Equipment. Class 15 applies only to equipment used in the production of semiconductor products. Equipment used in the semiconductor manufacturing industry is subject to significant economic and functional obsolescence due to rapidly changing technology and

economic conditions.

a) Examples of property in this class include:

- (1) crystal growing equipment;
- (2) die assembly equipment;
- (3) wire bonding equipment;
- (4) encapsulation equipment;
- (5) semiconductor test equipment;
- (6) clean room equipment;
- (7) chemical and gas systems related to semiconductor manufacturing;
- (8) deionized water systems;
- (9) electrical systems; and
- (10) photo mask and wafer manufacturing dedicated to semiconductor production.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 15

Year of Acquisition	Percent Good of Acquisition Cost
04	47%
03	34%
02	24%
01	15%
00 and prior	6%

15. Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.

a) Examples of property in this class include:

- (1) billboards;
- (2) sign towers;
- (3) radio towers;
- (4) ski lift and tram towers;
- (5) non-farm grain elevators; and
- (6) bulk storage tanks.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 16

Year of Acquisition	Percent Good of Acquisition Cost
04	94%
03	91%
02	87%
01	82%
00	78%
99	74%
98	69%
97	64%
96	60%
95	56%
94	52%
93	47%
92	42%
91	36%
90	31%
89	25%
88	20%
87	14%
86 and prior	7%

16. Class 17 - Boats.

a) Examples of property in this class include:

- (1) boats; and
- (2) outboard boat motors.

b) Taxable value is calculated by applying the percent good factor against the cost new of the property.

c) The Tax Commission and assessors shall rely on the following sources to determine cost new for property in this class:

- (1) the following publications or valuation methods:
  - (a) the manufacturer's suggested retail price listed in the ABOS Marine Blue Book;

(b) for property not listed in the ABOS Marine Blue Book but listed in the NADA Marine Appraisal Guide, the NADA average value for the property divided by the percent good factor; or

(c) for property not listed in the ABOS Marine Blue Book or the NADA Appraisal Guide:

- i) the manufacturer's suggested retail price for comparable property; or
- ii) the cost new established for that property by a documented valuation source; or

(2) the documented actual cost of new or used property in this class.

d) The 2005 percent good applies to 2005 models purchased in 2004.

e) Boats have a residual taxable value of \$500.

TABLE 17

Model Year	Percent Good of Cost New
05	90%
04	67%
03	64%
02	62%
01	59%
00	56%
99	54%
98	51%
97	49%
96	46%
95	43%
94	41%
93	38%
92	36%
91	33%
90	31%
89	28%
88	25%
87	23%
86	20%
85 and prior	18%

17. Class 18 - Travel Trailers/Truck Campers.

a) Examples of property in this class include:

- (1) travel trailers;
- (2) truck campers; and
- (3) tent trailers.

b) Taxable value is calculated by applying the percent good factor against the cost new.

c) The 2005 percent good applies to 2005 models purchased in 2004.

d) Trailers and truck campers have a residual taxable value of \$500.

TABLE 18

Model Year	Percent Good of Cost New
05	90%
04	69%
03	66%
02	62%
01	59%
00	56%
99	52%
98	49%
97	46%
96	42%
95	39%
94	35%
93	32%
92	29%
91	25%
90	22%
89 and prior	19%

18. Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to

significant functional and economic obsolescence due to the volatile nature of the petroleum industry.

a) Examples of property in this class include:

- (1) oil and gas exploration equipment;
- (2) distillation equipment;
- (3) wellhead assemblies;
- (4) holding and storage facilities;
- (5) drill rigs;
- (6) reinjection equipment;
- (7) metering devices;
- (8) cracking equipment;
- (9) well-site generators, transformers, and power lines;
- (10) equipment sheds;
- (11) pumps;
- (12) radio telemetry units; and
- (13) support and control equipment.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 20

Year of Acquisition	Percent Good of Acquisition Cost
04	92%
03	86%
02	80%
01	74%
00	68%
99	61%
98	53%
97	47%
96	39%
95	32%
94	25%
93	17%
92 and prior	9%

19. Class 21 - Commercial and Utility Trailers.

a) Examples of property in this class include:

- (1) commercial trailers;
- (2) utility trailers;
- (3) cargo utility trailers;
- (4) boat trailers;
- (5) converter gears;
- (6) horse and stock trailers; and
- (7) all trailers not included in Class 18.

b) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state assessed vehicles, cost new shall include the value of attached equipment.

c) The 2005 percent good applies to 2005 models purchased in 2004.

d) Commercial and utility trailers have a residual taxable value of \$500.

TABLE 21

Model Year	Percent Good of Cost New
05	95%
04	61%
03	58%
02	55%
01	52%
00	49%
99	46%
98	43%
97	41%
96	38%
95	35%
94	32%
93	29%
92	26%
91	23%
90	20%
89 and prior	17%

20. Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

a) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.

b) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary for this class.

21. Class 23 - Aircraft Subject to the Aircraft Uniform Fee and Not Listed in the Aircraft Bluebook Price Digest.

a) Examples of property in this class include:

- (1) kit-built aircraft;
- (2) experimental aircraft;
- (3) gliders;
- (4) hot air balloons; and
- (5) any other aircraft requiring FAA registration.

b) Aircraft subject to the aircraft uniform fee, but not listed in the Aircraft Bluebook Price Digest, are valued by applying the percent good factor against the acquisition cost of the aircraft.

c) Aircraft requiring Federal Aviation Agency registration and kept in Utah must be registered with the Motor Vehicle Division of the Tax Commission.

TABLE 23

Year of Acquisition	Percent Good of Acquisition Cost
04	75%
03	71%
02	67%
01	63%
00	59%
99	55%
98	51%
97	47%
96	43%
95	39%
94	35%
93 and prior	31%

22. Class 24 - Leasehold Improvements.

a) This class includes leasehold improvements to real property installed by a tenant. The Class 24 schedule is to be used only with leasehold improvements that are assessed to the lessee of the real property pursuant to Tax Commission rule R884-24P-32. Leasehold improvements include:

- (1) walls and partitions;
- (2) plumbing and roughed-in fixtures;
- (3) floor coverings other than carpet;
- (4) store fronts;
- (5) decoration;
- (6) wiring;
- (7) suspended or acoustical ceilings;
- (8) heating and cooling systems; and
- (9) iron or millwork trim.

b) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.

c) The Class 3 schedule is used to value short life leasehold improvements.

TABLE 24

Year of Installation	Percent of Installation Cost
04	94%
03	88%
02	82%
01	77%
00	71%
99	65%
98	59%
97	54%

96	48%
95	42%
94	36%
93 and prior	30%

23. Class 25 - Aircraft Parts Manufacturing Tools and Dies. Property in this class is generally subject to rapid physical, functional, and economic obsolescence due to rapid technological and economic shifts in the airline parts manufacturing industry. Heavy wear and tear is also a factor in valuing this class of property.

a) Examples of property in this class include:

- (1) aircraft parts manufacturing jigs and dies;
- (2) aircraft parts manufacturing molds;
- (3) aircraft parts manufacturing patterns;
- (4) aircraft parts manufacturing taps and gauges;
- (5) aircraft parts manufacturing test equipment; and
- (6) aircraft parts manufacturing fixtures.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 25

Year of Acquisition	Percent Good of Acquisition Cost
04	83%
03	68%
02	52%
01	35%
00	19%
99 and prior	4%

24. Class 26 - Personal Watercraft.

a) Examples of property in this class include:

- (1) motorized personal watercraft; and
- (2) jet skis.

b) Taxable value is calculated by applying the percent good factor against the cost new.

c) The 2005 percent good applies to 2005 models purchased in 2004.

d) Personal watercraft have a residual taxable value of \$500.

TABLE 26

Model Year	Percent Good of Cost New
05	90%
04	64%
03	60%
02	56%
01	52%
00	48%
99	44%
98	39%
97	35%
96	31%
95	27%
94	23%
93	19%
92 and prior	15%

25. Class 27 - Electrical Power Generating Equipment and Fixtures

a) Examples of property in this class include:

- (1) electrical power generators; and
- (2) control equipment.

b) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 27

Year of Acquisition	Percent Good of Acquisition Cost
04	97%
03	95%

02	92%
01	90%
00	87%
99	84%
98	82%
97	79%
96	77%
95	74%
94	71%
93	69%
92	66%
91	64%
90	61%
89	58%
88	56%
87	53%
86	51%
85	48%
84	45%
83	43%
82	40%
81	38%
80	35%
79	32%
78	30%
77	27%
76	25%
75	22%
74	19%
73	17%
72	14%
71	12%
70 and prior	9%

F. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2005.

**R884-24P-34. Use of Sales or Appraisal Information Gathered in Conjunction With Assessment/Sales Ratio Studies Pursuant to Utah Code Ann. Section 59-2-704.**

A. Market data gathered for purposes of an assessment/sales ratio study may be used for valuation purposes only as part of a systematic reappraisal program whereby all similar properties are given equitable and uniform treatment.

B. Sales or appraisal data gathered in conjunction with a ratio study shall not be used for an isolated reappraisal of the sold or appraised properties.

C. Information derived from ratio studies regarding the values assigned to real property and personal property shall not be used to establish the apportionment between real and personal property in future assessments.

**R884-24P-35. Annual Statement for Certain Exempt Uses of Property Pursuant to Utah Code Ann. Section 59-2-1102.**

A. The purpose of this rule is to provide guidance to property owners required to file an annual statement under Section 59-2-1102 in order to claim a property tax exemption under Section 59-2-1101 (2)(d) or (e).

B. The annual statement filed pursuant to Section 59-2-1102 shall contain the following information for the specific property for which an exemption is sought:

1. the owner of record of the property;
2. the property parcel, account, or serial number;
3. the location of the property;
4. the tax year in which the exemption was originally granted;
5. a description of any change in the use of the real or personal property since January 1 of the prior year;
6. the name and address of any person or organization conducting a business for profit on the property;
7. the name and address of any organization that uses the real or personal property and pays a fee for that use that is greater than the cost of maintenance and utilities associated with the property;
8. a description of any personal property leased by the owner of record for which an exemption is claimed;
9. the name and address of the lessor of property described



in B.8.;

10. the signature of the owner of record or the owner's authorized representative; and

11. any other information the county may require.

C. The annual statement shall be filed:

1. with the county legislative body in the county in which the property is located;

2. on or before March 1; and

3. using:

a) Tax Commission form PT-21, Annual Statement for Continued Property Tax Exemption; or

b) a form that contains the information required under B.

**R884-24P-36. Contents of Real Property Tax Notice Pursuant to Utah Code Ann. Section 59-2-1317.**

A. In addition to the information required by Section 59-2-1317, the tax notice for real property shall specify the following:

1. the property identification number;

2. the appraised value of the property and, if applicable, any adjustment for residential exemptions expressed in terms of taxable value;

3. if applicable, tax relief for taxpayers eligible for blind, veteran, or poor abatement or the circuit breaker, which shall be shown as credits to total taxes levied; and

4. itemized tax rate information for each taxing entity and total tax rate.

**R884-24P-37. Separate Values of Land and Improvements Pursuant to Utah Code Ann. Sections 59-2-301 and 59-2-305.**

A. The county assessor shall maintain an appraisal record of all real property subject to assessment by the county. The record shall include the following information:

1. owner of the property;

2. property identification number;

3. description and location of the property; and

4. full market value of the property.

B. Real property appraisal records shall show separately the value of the land and the value of any improvements.

**R884-24P-38. Nonoperating Railroad Properties Pursuant to Utah Code Ann. Section 59-2-201(4).**

A. Definitions.

1. "Railroad right of way" (RR-ROW) means a strip of land upon which a railroad company constructs the road bed.

a. RR-ROW within incorporated towns and cities shall consist of 50 feet on each side of the main line main track, branch line main track or main spur track. Variations to the 50-foot standard shall be approved on an individual basis.

b. RR-ROW outside incorporated towns and cities shall consist of the actual right-of-way owned if not in excess of 100 feet on each side of the center line of the main line main track, branch line main track, or main spur track. In cases where unusual conditions exist, such as mountain cuts, fills, etc., and more than 100 feet on either side of the main track is required for ROW and where small parcels of land are otherwise required for ROW purposes, the necessary additional area shall be reported as RR-ROW.

B. Assessment of nonoperating railroad properties. Railroad property formerly assessed by the unitary method which has been determined to be nonoperating, and which is not necessary to the conduct of the business, shall be assessed separately by the local county assessor. For purposes of this rule:

C. Assessment procedures.

1. Properties charged to nonoperating accounts are reviewed by the Property Tax Division, and if taxable, are assessed and placed on the local county assessment rolls separately from the operating properties.

2. RR-ROW is considered as operating and as necessary

to the conduct and contributing to the income of the business. Any revenue derived from leasing of property within the RR-ROW is considered as railroad operating revenues.

3. Real property outside of the RR-ROW which is necessary to the conduct of the railroad operation is considered as part of the unitary value. Some examples are: company homes occupied by superintendents and other employees on 24-hour call, storage facilities for railroad operations, communication facilities, and spur tracks outside of RR-ROW.

4. Abandoned RR-ROW is considered as nonoperating and shall be reported as such by the railroad companies.

5. Real property outside of the RR-ROW which is not necessary to the conduct of the railroad operations is classified as nonoperating and therefore assessed by the local county assessor. Some examples are: land leased to service station operations, grocery stores, apartments, residences, and agricultural uses.

6. RR-ROW obtained by government grant or act of Congress is deemed operating property.

D. Notice of Determination. It is the responsibility of the Property Tax Division to provide a notice of determination to the owner of the railroad property and the assessor of the county where the railroad property is located immediately after such determination of operating or nonoperating status has been made. If there is no appeal to the notice of determination, the Property Tax Division shall notify the assessor of the county where the property is located so the property may be placed on the roll for local assessment.

E. Appeals. Any interested party who wishes to contest the determination of operating or nonoperating property may do so by filing a request for agency action within ten days of the notice of determination of operating or nonoperating properties. Request for agency action may be made pursuant to Utah Code Ann. Title 63, Chapter 46b.

**R884-24P-40. Exemption of Parsonages, Rectories, Monasteries, Homes and Residences Pursuant to Utah Code Annotated 59-2-1101(d) and Article XIII, Section 2 of the Utah Constitution.**

A. Parsonages, rectories, monasteries, homes and residences if used exclusively for religious purposes, are exempt from property taxes if they meet all of the following requirements:

1. The land and building are owned by a religious organization which has qualified with the Internal Revenue Service as a Section 501(c)(3) organization and which organization continues to meet the requirements of that section.

2. The building is occupied only by persons whose full time efforts are devoted to the religious organization and the immediate families of such persons.

3. The religious organization, and not the individuals who occupy the premises, pay all payments, utilities, insurance, repairs, and all other costs and expenses related to the care and maintenance of the premises and facilities.

B. The exemption for one person and the family of such person is limited to the real estate that is reasonable for the residence of the family and which remains actively devoted exclusively to the religious purposes. The exemption for more than one person, such as a monastery, is limited to that amount of real estate actually devoted exclusively to religious purposes.

C. Vacant land which is not actively used by the religious organization, is not deemed to be devoted exclusively to religious purposes, and is therefore not exempt from property taxes.

1. Vacant land which is held for future development or utilization by the religious organization is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt.

2. Vacant land is tax exempt after construction commences

or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes.

**R884-24P-41. Adjustment or Deferral of Property Taxes Pursuant to Utah Code Ann. Section 59-2-1347.**

A. Requested adjustments to taxes for past years may not be made under Utah Code Ann. Section 59-2-1347 if the requested adjustment is based only on property valuation.

B. Utah Code Ann. Section 59-2-1347 applies only to taxes levied but unpaid and may not serve as the basis for refunding taxes already paid.

C. Utah Code Ann. Section 59-2-1347 may only be applied to taxes levied for the five most recent tax years except where taxes levied remain unpaid as a result of administrative action or litigation.

**R884-24P-42. Farmland Assessment Audits and Personal Property Audits Pursuant to Utah Code Ann. Subsection 59-2-508(2), and Section 59-2-705.**

A. The Tax Commission is responsible for auditing the administration of the Farmland Assessment Act to verify proper listing and classification of all properties assessed under the act. The Tax Commission also conducts routine audits of personal property accounts.

1. If an audit reveals an incorrect assignment of property, or an increase or decrease in value, the county assessor shall correct the assessment on the assessment roll and the tax roll.

2. A revised assessment notice or tax notice or both shall be mailed to the taxpayer for the current year and any previous years affected.

3. The appropriate tax rate for each year shall be applied when computing taxes due for previous years.

B. Assessors shall not alter results of an audit without first submitting the changes to the Tax commission for review and approval.

C. The Tax Commission shall review assessor compliance with this rule. Noncompliance may result in an order for corrective action.

**R884-24P-44. Farm Machinery and Equipment Exemption Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-1101.**

A. The use of the machinery and equipment, whether by the claimant or a lessee, shall determine the exemption.

1. For purposes of this rule, the term owner includes a purchaser under an installment purchase contract or capitalized lease where ownership passes to the purchaser at the end of the contract without the exercise of an option on behalf of the purchaser or seller.

B. Farm machinery and equipment is used primarily for agricultural purposes if it is used primarily for the production or harvesting of agricultural products.

C. The following machinery and equipment is used primarily for the production or harvesting of agricultural products:

1. Machinery and equipment used on the farm for storage, cooling, or freezing of fruits or vegetables;

2. Except as provided in C.3., machinery and equipment used in fruit or vegetable growing operations if the machinery and equipment does not physically alter the fruit or vegetables; and

3. Machinery and equipment that physically alters the form of fruits or vegetables if the operations performed by the machinery or equipment are reasonable and necessary in the preparation of the fruit or vegetables for wholesale marketing.

D. Machinery and equipment used for processing of agricultural products are not exempt.

**R884-24P-47. Uniform Tax on Aircraft Pursuant to Utah**

**Code Ann. Sections 59-2-404, 59-2-1005, 59-2-1302, and 59-2-1303.**

A. Registration of aircraft requires payment of a uniform tax in lieu of ad valorem personal property tax. This tax shall be collected by the county assessor at the time of registration at the rate prescribed in Section 59-2-404.

B. The average wholesale market value of the aircraft is the arithmetic mean of the average low wholesale book value and the average high wholesale book value. This average price will be used as the basis for the initial assessment. These amounts are obtained from the fall edition of the Aircraft Bluebook Price Digest in the year preceding the year of registration for all aircraft listed in that publication.

1. The average wholesale market value of aircraft subject to registration but not shown in the Aircraft Bluebook Price Digest will be assessed according to the annual depreciation schedule for aircraft valuation set forth in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules."

2. Instructions for interpretation of codes are found inside the Aircraft Bluebook Price Digest.

a) Average low wholesale values are found under the heading "Average equipped per base avg change/invtry."

b) Average high wholesale values are found under the heading "change mktbl."

c) Aircraft values not in accordance with "average" may be adjusted by the assessor following the instructions in the Bluebook. Factors that have the greatest impact on value include: high engine time, air worthiness directives not complied with, status of annual inspection, crash damage, paint condition, and interior condition.

C. The uniform tax is due each year the aircraft is registered in Utah. If the aircraft is sold within the same registration period, no additional uniform tax shall be due. However, the purchaser shall pay any delinquent tax as a condition precedent to registration.

D. If an aircraft is purchased or moved to Utah during the year and newly registered in Utah, the uniform tax shall be prorated based on the number of months remaining in the registration period.

1. Any portion of a month shall be counted as a full month. For example, if registration is required during July, 50 percent of the uniform tax shall be paid as a condition of registration.

2. If the aircraft is moved to Utah during the year, and property tax was paid to another state prior to moving the aircraft into Utah, any property tax paid shall be allowed as a credit against the prorated uniform tax due in Utah.

a) This credit may not be refunded if the other state property tax exceeds the uniform tax due in Utah for the comparable year.

b) Proof of payment shall be submitted before credit is allowed.

E. The uniform tax collected by county assessors shall be distributed to the taxing districts of the county in which the aircraft is located as shown on the registration application. If the aircraft is registered in a county other than the county of the aircraft location, the tax collected shall be forwarded to the appropriate county within five working days.

F. The Tax Commission shall supply registration forms and numbered decals to the county assessors. Forms to assess the uniform tax shall be prepared by the counties each year. The Tax Commission shall maintain an owners' data base and supply the counties with a list of registrations by county after the first year and shall also supply registration renewal forms preprinted with the prior year's registration information.

G. The aircraft owner or person or entity in possession thereof shall immediately provide access to any aircraft hangar or other storage area or facility upon request by the assessor or

the assessor's designee in order to permit the determination of the status of registration of the aircraft, and the performance of any other act in furtherance of the assessor's duties.

H. The provisions applicable to securing or collecting personal property taxes set forth in Sections 59-2-1302 and 59-2-1303 shall apply to the collection of delinquent uniform taxes.

1. If the aircraft owner and the county assessor cannot reach agreement concerning the aircraft valuation, the valuation may be appealed to the county board of equalization under Section 59-2-1005.

**R884-24P-49. Calculating the Utah Apportioned Value of a Rail Car Fleet Pursuant to Utah Code Ann. Section 59-2-201.**

A. Definitions.

1. "Average market value per rail car" means the fleet rail car market value divided by the number of rail cars in the fleet.

2. "Fleet rail car market value" means the sum of:

a)(1) the yearly acquisition costs of the fleet's rail cars;  
(2) multiplied by the appropriate percent good factors contained in Class 10 of R884-24P- 33, Personal Property Valuation Guides and Schedules; and

b) the sum of betterments by year.

(1) Except as provided in A.2.b)(2), the sum of betterments by year shall be depreciated on a 14-year straight line method.

(2) Notwithstanding the provisions of A.2.b)(1), betterments shall have a residual value of two percent.

3. "In-service rail cars" means the number of rail cars in the fleet, adjusted for out-of- service rail cars.

4. a) "Out-of-service rail cars" means rail cars:

(1) out-of-service for a period of more than ten consecutive hours; or

(2) in storage.

b) Rail cars cease to be out-of-service once repaired or removed from storage.

c) Out-of-service rail cars do not include rail cars idled for less than ten consecutive hours due to light repairs or routine maintenance.

5. "System car miles" means both loaded and empty miles accumulated in the U.S., Canada, and Mexico during the prior calendar year by all rail cars in the fleet.

6. "Utah car miles" mean both loaded and empty miles accumulated within Utah during the prior calendar year by all rail cars in the fleet.

7. "Utah percent of system factor" means the Utah car miles divided by the system car miles.

B. The provisions of this rule apply only to private rail car companies.

C. To receive an adjustment for out-of-service rail cars, the rail car company must report the number of out-of-service days to the commission for each of the company's rail car fleets.

D. The out-of-service adjustment is calculated as follows.

1. Divide the out-of-service days by 365 to obtain the out-of-service rail car equivalent.

2. Subtract the out-of-service rail car equivalent calculated in D.1. from the number of rail cars in the fleet.

E. The taxable value for each rail car fleet apportioned to Utah, for which the Utah percent of system factor is more than 50 percent, shall be determined by multiplying the Utah percent of system factor by the fleet rail car market value.

F. The taxable value for each rail car company apportioned to Utah, for which the Utah percent of system factor is less than or equal to 50 percent, shall be determined in the following manner.

1. Calculate the number of fleet rail cars allocated to Utah under the Utah percent of system factor. The steps for this calculation are as follows.

a) Multiply the Utah percent of system factor by the in-service rail cars in the fleet.

b) Multiply the product obtained in F.1.a) by 50 percent.

2. Calculate the number of fleet rail cars allocated to Utah under the time speed factor. The steps for this calculation are as follows.

a) Divide the fleet's Utah car miles by the average rail car miles traveled in Utah per year. The Commission has determined that the average rail car miles traveled in Utah per year shall equal 200,000 miles.

b) Multiply the quotient obtained in F.2.a) by the percent of in-service rail cars in the fleet.

c) Multiply the product obtained in F.2.b) by 50 percent.

3. Add the number of fleet rail cars allocated to Utah under the Utah percent of system factor, calculated in F.1.b), and the number of fleet rail cars allocated to Utah under the time speed factor, calculated in F.2.c), and multiply that sum by the average market value per rail car.

**R884-24P-50. Apportioning the Utah Proportion of Commercial Aircraft Valuations Pursuant to Utah Code Ann. Section 59-2-201.**

A. Definitions.

1. "Commercial air carrier" means any air charter service, air contract service or airline as defined by Section 59-2-102.

2. "Ground time" means the time period beginning at the time an aircraft lands and ending at the time an aircraft takes off.

B. The commission shall apportion to a tax area the assessment of the mobile flight equipment owned by a commercial air carrier in the proportion that the ground time in the tax area bears to the total ground time in the state.

C. The provisions of this rule shall be implemented and become binding on taxpayers beginning with the 1999 calendar year.

**R884-24P-52. Criteria for Determining Primary Residence Pursuant to Utah Code Ann. Sections 59-2-102, 59-2-103, and 59-2-103.5.**

A. "Household" is as defined in Section 59-2-1202.

B. "Primary residence" means the location where domicile has been established.

C. Except as provided in D. and F.3., the residential exemption provided under Section 59-2- 103 is limited to one primary residence per household.

D. An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.

E. Factors or objective evidence determinative of domicile include:

1. whether or not the individual voted in the place he claims to be domiciled;

2. the length of any continuous residency in the location claimed as domicile;

3. the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;

4. the presence of family members in a given location;

5. the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;

6. the physical location of the individual's place of business or sources of income;

7. the use of local bank facilities or foreign bank institutions;

8. the location of registration of vehicles, boats, and RVs;

9. membership in clubs, churches, and other social organizations;

10. the addresses used by the individual on such things as:

a) telephone listings;

b) mail;

c) state and federal tax returns;

d) listings in official government publications or other

- correspondence;
  - e) driver's license;
  - f) voter registration; and
  - g) tax rolls;
- 11. location of public schools attended by the individual or the individual's dependents;
- 12. the nature and payment of taxes in other states;
- 13. declarations of the individual:
  - a) communicated to third parties;
  - b) contained in deeds;
  - c) contained in insurance policies;
  - d) contained in wills;
  - e) contained in letters;
  - f) contained in registers;
  - g) contained in mortgages; and
  - h) contained in leases.
- 14. the exercise of civil or political rights in a given location;
- 15. any failure to obtain permits and licenses normally required of a resident;
- 16. the purchase of a burial plot in a particular location;
- 17. the acquisition of a new residence in a different location.

F. Administration of the Residential Exemption.

1. Except as provided in F.2., F.4., and F.5., the first one acre of land per residential unit shall receive the residential exemption.

2. If a parcel has high density multiple residential units, such as an apartment complex or a mobile home park, the amount of land, up to the first one acre per residential unit, eligible to receive the residential exemption shall be determined by the use of the land. Land actively used for residential purposes qualifies for the exemption.

3. If the county assessor determines that a property under construction will qualify as a primary residence upon completion, the property shall qualify for the residential exemption while under construction.

4. A property assessed under the Farmland Assessment Act shall receive the residential exemption only for the homesite.

5. A property with multiple uses, such as residential and commercial, shall receive the residential exemption only for the percentage of the property that is used as a primary residence.

6. If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.

7.a) An application for the residential exemption required by an ordinance enacted under Section 59-2-103.5 shall contain the following information for the specific property for which the exemption is requested:

- (1) the owner of record of the property;
  - (2) the property parcel number;
  - (3) the location of the property;
  - (4) the basis of the owner's knowledge of the use of the property;
  - (5) a description of the use of the property;
  - (6) evidence of the domicile of the inhabitants of the property; and
  - (7) the signature of all owners of the property certifying that the property is residential property.
- b) The application under F.7.a) shall be:
- (1) on a form provided by the county; or
  - (2) in a writing that contains all of the information listed in F.7.a).

**R884-24P-53. 2004 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.**

A. Each year the Property Tax Division shall update and

publish schedules to determine the taxable value for land subject to the Farmland Assessment Act on a per acre basis.

1. The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.

2. Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.

3. County assessors may not deviate from the schedules.

4. Not all types of agricultural land exist in every county. If no taxable value is shown for a particular county in one of the tables, that classification of agricultural land does not exist in that county.

B. All property defined as farmland pursuant to Section 59-2- 501 shall be assessed on a per acre basis as follows:

1. Irrigated farmland shall be assessed under the following classifications.

a) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed below:

TABLE 1  
Irrigated I

1) Box Elder	830
2) Cache	680
3) Carbon	550
4) Davis	815
5) Emery	530
6) Iron	805
7) Kane	475
8) Millard	790
9) Salt Lake	705
10) Utah	740
11) Washington	665
12) Weber	775

b) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed below:

TABLE 2  
Irrigated II

1) Box Elder	730
2) Cache	580
3) Carbon	450
4) Davis	715
5) Duchesne	495
6) Emery	430
7) Grand	410
8) Iron	705
9) Juab	430
10) Kane	375
11) Millard	690
12) Salt Lake	605
13) Sanpete	540
14) Sevier	575
15) Summit	470
16) Tooele	440
17) Utah	640
18) Wasatch	510
19) Washington	565
20) Weber	675

c) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed below:

TABLE 3  
Irrigated III

1) Beaver	565
2) Box Elder	580
3) Cache	430
4) Carbon	300
5) Davis	565
6) Duchesne	345
7) Emery	280
8) Garfield	210
9) Grand	260
10) Iron	555
11) Juab	280
12) Kane	225
13) Millard	540

14) Morgan	380
15) Piute	355
16) Rich	210
17) Salt Lake	455
18) San Juan	185
19) Sanpete	390
20) Sevier	425
21) Summit	320
22) Tooele	290
23) Uintah	370
24) Utah	490
25) Wasatch	360
26) Washington	415
27) Wayne	365
28) Weber	525

d) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed below:

TABLE 4  
Irrigated IV

1) Beaver	465
2) Box Elder	480
3) Cache	330
4) Carbon	200
5) Daggett	230
6) Davis	465
7) Duchesne	245
8) Emery	180
9) Garfield	110
10) Grand	160
11) Iron	455
12) Juab	180
13) Kane	125
14) Millard	440
15) Morgan	280
16) Piute	255
17) Rich	110
18) Salt Lake	355
19) San Juan	85
20) Sanpete	290
21) Sevier	325
22) Summit	220
23) Tooele	190
24) Uintah	270
25) Utah	390
26) Wasatch	260
27) Washington	315
28) Wayne	265
29) Weber	425

2. Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5  
Fruit Orchards

1) Beaver	600
2) Box Elder	650
3) Cache	600
4) Carbon	600
5) Davis	640
6) Duchesne	600
7) Emery	600
8) Garfield	600
9) Grand	600
10) Iron	600
11) Juab	600
12) Kane	600
13) Millard	600
14) Morgan	600
15) Piute	600
16) Salt Lake	600
17) San Juan	600
18) Sanpete	600
19) Sevier	600
20) Summit	600
21) Tooele	600
22) Uintah	600
23) Utah	630
24) Wasatch	600
25) Washington	760
26) Wayne	600
27) Weber	640

3. Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6  
Meadow IV

1) Beaver	230
2) Box Elder	240
3) Cache	255
4) Carbon	130
5) Daggett	170
6) Davis	260
7) Duchesne	160
8) Emery	125
9) Garfield	95
10) Grand	125
11) Iron	225
12) Juab	140
13) Kane	100
14) Millard	190
15) Morgan	175
16) Piute	160
17) Rich	110
18) Salt Lake	225
19) Sanpete	185
20) Sevier	200
21) Summit	195
22) Tooele	175
23) Uintah	180
24) Utah	230
25) Wasatch	210
26) Washington	215
27) Wayne	160
28) Weber	285

4. Dry land shall be classified as one of the following two categories and shall be assessed on a per acre basis as follows:

a) Dry III. The following counties shall assess Dry III property based upon the per acre values listed below:

TABLE 7  
Dry III

1) Beaver	40
2) Box Elder	70
3) Cache	65
4) Carbon	40
5) Davis	50
6) Duchesne	40
7) Garfield	40
8) Grand	40
9) Iron	40
10) Juab	40
11) Kane	40
12) Millard	45
13) Morgan	50
14) Rich	45
15) Salt Lake	40
16) San Juan	40
17) Sanpete	40
18) Summit	40
19) Tooele	40
20) Uintah	40
21) Utah	40
22) Washington	40
23) Weber	45

b) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed below:

TABLE 8  
Dry IV

1) Beaver	5
2) Box Elder	35
3) Cache	30
4) Carbon	5
5) Davis	15
6) Duchesne	5
7) Garfield	5
8) Grand	5
9) Iron	5
10) Juab	5
11) Kane	5
12) Millard	10
13) Morgan	15

14) Rich	10
15) Salt Lake	5
16) San Juan	5
17) Sanpete	5
18) Summit	5
19) Tooele	5
20) Uintah	5
21) Utah	5
22) Washington	5
23) Weber	10

5. Grazing land shall be classified as one of the following four categories and shall be assessed on a per acre basis as follows:

a) Graze I. The following counties shall assess Graze I property based upon the per acre values listed below:

TABLE 9  
GR I

1) Beaver	57
2) Box Elder	56
3) Cache	61
4) Carbon	56
5) Daggett	65
6) Davis	60
7) Duchesne	64
8) Emery	56
9) Garfield	58
10) Grand	67
11) Iron	57
12) Juab	62
13) Kane	71
14) Millard	70
15) Morgan	52
16) Piute	54
17) Rich	65
18) Salt Lake	65
19) San Juan	56
20) Sanpete	62
21) Sevier	60
22) Summit	52
23) Tooele	72
24) Uintah	58
25) Utah	50
26) Wasatch	51
27) Washington	56
28) Wayne	63
29) Weber	61

b) Graze II. The following counties shall assess Graze II property based upon the per acre values listed below:

TABLE 10  
GR II

1) Beaver	16
2) Box Elder	16
3) Cache	17
4) Carbon	16
5) Daggett	18
6) Davis	17
7) Duchesne	18
8) Emery	16
9) Garfield	16
10) Grand	19
11) Iron	16
12) Juab	18
13) Kane	20
14) Millard	20
15) Morgan	15
16) Piute	15
17) Rich	18
18) Salt Lake	18
19) San Juan	16
20) Sanpete	17
21) Sevier	17
22) Summit	15
23) Tooele	20
24) Uintah	17
25) Utah	14
26) Wasatch	14
27) Washington	16
28) Wayne	18
29) Weber	17

c) Graze III. The following counties shall assess Graze III

property based upon the per acre values below:

TABLE 11  
GR III

1) Beaver	10
2) Box Elder	10
3) Cache	11
4) Carbon	10
5) Daggett	12
6) Davis	11
7) Duchesne	12
8) Emery	10
9) Garfield	11
10) Grand	12
11) Iron	10
12) Juab	11
13) Kane	13
14) Millard	13
15) Morgan	10
16) Piute	10
17) Rich	12
18) Salt Lake	12
19) San Juan	10
20) Sanpete	11
21) Sevier	11
22) Summit	10
23) Tooele	13
24) Uintah	11
25) Utah	9
26) Wasatch	9
27) Washington	10
28) Wayne	12
29) Weber	11

d) Graze IV. The following counties shall assess Graze IV property based upon the per acre values listed below:

TABLE 12  
GR IV

1) Beaver	5
2) Box Elder	5
3) Cache	5
4) Carbon	5
5) Daggett	5
6) Davis	5
7) Duchesne	5
8) Emery	5
9) Garfield	5
10) Grand	6
11) Iron	5
12) Juab	5
13) Kane	6
14) Millard	6
15) Morgan	5
16) Piute	5
17) Rich	5
18) Salt Lake	5
19) San Juan	5
20) Sanpete	5
21) Sevier	5
22) Summit	5
23) Tooele	6
24) Uintah	5
25) Utah	5
26) Wasatch	5
27) Washington	5
28) Wayne	5
29) Weber	5

6. Land classified as nonproductive shall be assessed as follows on a per acre basis:

TABLE 13  
Nonproductive Land

a) Nonproductive Land	
1) All Counties	5

**R884-24P-55. Counties to Establish Ordinance for Tax Sale Procedures Pursuant to Utah Code Ann. Section 59-2-1351.1.**

A. "Collusive bidding" means any agreement or understanding reached by two or more parties that in any way

alters the bids the parties would otherwise offer absent the agreement or understanding.

B. Each county shall establish a written ordinance for real property tax sale procedures.

C. The written ordinance required under B. shall be displayed in a public place and shall be available to all interested parties.

D. The tax sale ordinance shall address, as a minimum, the following issues:

1. bidder registration procedures;
2. redemption rights and procedures;
3. prohibition of collusive bidding;
4. conflict of interest prohibitions and disclosure requirements;
5. criteria for accepting or rejecting bids;
6. sale ratification procedures;
7. criteria for granting bidder preference;
8. procedures for recording tax deeds;
9. payments methods and procedures;
10. procedures for contesting bids and sales;
11. criteria for striking properties to the county;
12. procedures for disclosing properties withdrawn from the sale for reasons other than redemption; and
13. disclaimers by the county with respect to sale procedures and actions.

**R884-24P-56. Assessment, Collection, and Apportionment of Property Tax on Commercial Transportation Property Pursuant to Utah Code Ann. Sections 41-1a-301 and 59-2-801.**

A. For purposes of Section 59-2-801, the previous year's statewide rate shall be calculated as follows:

1. Each county's overall tax rate is multiplied by the county's percent of total lane miles of principal routes.
2. The values obtained in A.1. for each county are summed to arrive at the statewide rate.

B. The assessment of vehicles apportioned under Section 41-1a-301 shall be apportioned at the same percentage ratio that has been filed with the Motor Vehicle Division of the State Tax Commission for determining the proration of registration fees.

C. For purposes of Section 59-2-801(2), principal route means lane miles of interstate highways and clover leaves, U.S. highways, and state highways extending through each county as determined by the Commission from current state Geographic Information System databases.

**R884-24P-57. Judgment Levies Pursuant to Utah Code Ann. Sections 59-2-918.5, 59-2-924, 59-2-1328, and 59-2-1330.**

A. Definitions.

1. "Issued" means the date on which the judgment is signed.
2. "One percent of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year" includes any revenues collected by a judgment levy imposed in the prior year.

B. A taxing entity's share of a judgment or order shall include the taxing entity's share of any interest that must be paid with the judgment or order.

C. The judgment levy public hearing required by Section 59-2-918.5 shall be held as follows:

1. For taxing entities operating under a July 1 through June 30 fiscal year, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.
2. For taxing entities operating under a January 1 through December 31 fiscal year:
  - a) for judgments issued from the prior June 1 through December 15, the public hearing shall be held at the same time as the hearing at which the annual budget is adopted;

b) for judgments issued from the prior December 16 through May 31, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

3. If the taxing entity is required to hold a hearing under Section 59-2-919, the judgment levy hearing required by C.1. and C.2.b) shall be held at the same time as the hearing required under Section 59-2-919.

D. If the Section 59-2-918.5 advertisement is combined with the Section 59-2-918 or 59-2-919 advertisement, the combined advertisement shall aggregate the general tax increase and judgment levy information.

E. In the case of taxing entities operating under a January 1 through December 31 fiscal year, the advertisement for judgments issued from the previous December 16 through May 31 shall include any judgments issued from the previous June 1 through December 15 that the taxing entity advertised and budgeted for at its December budget hearing.

F. All taxing entities imposing a judgment levy shall file with the Tax Commission a signed statement certifying that all judgments for which the judgment levy is imposed have met the statutory requirements for imposition of a judgment levy.

1. The signed statement shall contain the following information for each judgment included in the judgment levy:

- a) the name of the taxpayer awarded the judgment;
- b) the appeal number of the judgment; and
- c) the taxing entity's pro rata share of the judgment.

2. Along with the signed statement, the taxing entity must provide the Tax Commission the following:

- a) a copy of all judgment levy newspaper advertisements required;
- b) the dates all required judgment levy advertisements were published in the newspaper;
- c) a copy of the final resolution imposing the judgment levy;
- d) a copy of the Notice of Property Valuation and Tax Changes, if required; and
- e) any other information required by the Tax Commission.

G. The provisions of House Bill 268, Truth in Taxation - Judgment Levy (1999 General Session), do not apply to judgments issued prior to January 1, 1999.

**R884-24P-58. One-Time Decrease in Certified Rate Based on Estimated County Option Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.**

A. The estimated sales tax revenue to be distributed to a county under Section 59-12-1102 shall be determined based on the following formula:

1. sharedown of the commission's sales tax econometric model based on historic patterns, weighted 40 percent;
2. time series models, weighted 40 percent; and
3. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, weighted 20 percent.

**R884-24P-59. One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.**

A. The estimated additional resort communities sales tax revenue to be distributed to a municipality under Section 59-12-402 shall be determined based on the following formula:

1. time series model, econometric model, or simple average, based upon the availability of and variation in the data, weighted 75 percent; and
2. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Section 59-12-402, weighted 25 percent.

**R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.**

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;
2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;
3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;
4. mobile and manufactured homes;
5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-405.1, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the age of the vehicle under E. on the first day of the registration period for which the registrant:

1. in the case of an original registration, registers the vehicle; or
2. in the case of a renewal of registration, renews the registration of the vehicle in accordance with Section 41-1a-216.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.
2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon

agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

**R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.**

A. Definitions.

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle.

a) Recreational vehicle includes a travel trailer, a camping trailer, a motor home, and a fifth wheel trailer.

b) Recreational vehicle does not include a van unless specifically designed or modified for use as a temporary dwelling.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state; and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;
2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;
3. any personal property that is neither required to be



registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2-405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market value of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2-217 and 59-2-309 as a condition precedent to registration.

J. The situs of personal property subject to the Section 59-2-405 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased personal property shall be the tax area of the purchaser's domicile, unless the personal property will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may

submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all personal property subject to state registration and its corresponding taxable situs.

4. Section 59-2-405 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

#### **R884-24P-62. Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201.**

A. Purpose. The purpose of this rule is to:

1. specify consistent mass appraisal methodologies to be used by the Property Tax Division (Division) in the valuation of tangible property assessable by the Commission; and

2. identify preferred valuation methodologies to be considered by any party making an appraisal of an individual unitary property.

B. Definitions:

1. "Cost regulated utility" means any public utility assessable by the Commission whose allowed revenues are determined by a rate of return applied to a rate base set by a state or federal regulatory commission.

2. "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.

3. "Rate base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

4. "Unitary property" means operating property that is assessed by the Commission pursuant to Section 59-2-201(1)(a) through (c).

a) Unitary properties include:

(1) all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state; and

(2) all property of public utilities as defined in Section 59-2-102.

b) These properties, some of which may be cost regulated utilities, are defined under one of the following categories.

(1) "Telecommunication properties" include the operating property of local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, and other similar properties.

(2) "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid

petroleum products pipelines, and electric corporations, including electric generation, transmission, and distribution companies, and other similar entities.

(3) "Transportation properties" include the operating property of all airlines, air charter services, air contract services, including major and small passenger carriers and major and small air freighters, long haul and short line railroads, and other similar properties.

C. All tangible operating property owned, leased, or used by unitary companies is subject to assessment and taxation according to its fair market value as of January 1, and as provided in Utah Constitution Article XIII, Section 2. Intangible property as defined under Section 59-2-102 is not subject to assessment and taxation.

D. General Valuation Principles. Unitary properties shall be assessed at fair market value based on generally accepted appraisal theory as provided under this rule.

1. The assemblage or enhanced value attributable to the tangible property should be included in the assessed value. See *Beaver County v. WilTel, Inc.*, 995 P.2d 602 (Utah 2000). The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the reconciliation process.

2. The preferred methods to determine fair market value are the cost approach and a yield capitalization income indicator as set forth in E.

a) Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary to more accurately estimate fair market value.

b) Direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other methods. To the extent intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the reconciliation process, as set forth in E.4.

c) Preferred valuation methods as set forth in this rule are, unless otherwise stated, rebuttable presumptions, established for purposes of consistency in mass appraisal. Any party challenging a preferred valuation method must demonstrate, by a preponderance of evidence, that the proposed alternative establishes a more accurate estimate of fair market value.

3. Non-operating Property. Property that is not necessary to the operation of unitary properties and is assessed by a local county assessor, and property separately assessed by the Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

E. Appraisal Methodologies.

1. Cost Approach. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. A cost indicator may be developed under one or more of the following methods: replacement cost new less depreciation (RCNLD), reproduction cost less depreciation (reproduction cost), and historic cost less depreciation (HCLD).

a) "Depreciation" is the loss in value from any cause. Different professions recognize two distinct definitions or types of depreciation.

(1) Accounting. Depreciation, often called "book" or "accumulated" depreciation, is calculated according to generally accepted accounting principles or regulatory guidelines. It is the amount of capital investment written off on a firm's accounting records in order to allocate the original or historic cost of an asset over its life. Book depreciation is typically applied to historic cost to derive HCLD.

(2) Appraisal. Depreciation, sometimes referred to as "accrued" depreciation, is the difference between the market value of an improvement and its cost new. Depreciation is typically applied to replacement or reproduction cost, but should

be applied to historic cost if market conditions so indicate. There are three types of depreciation:

(a) Physical deterioration results from regular use and normal aging, which includes wear and tear, decay, and the impact of the elements.

(b) Functional obsolescence is caused by internal property characteristics or flaws in the structure, design, or materials that diminish the utility of an improvement.

(c) External, or economic, obsolescence is an impairment of an improvement due to negative influences from outside the boundaries of the property, and is generally incurable. These influences usually cannot be controlled by the property owner or user.

b) Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout. The use of replacement cost instead of reproduction cost eliminates the need to estimate some forms of functional obsolescence.

c) Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying any functional obsolescence.

d) Historic cost is the original construction or acquisition cost as recorded on a firm's accounting records. Depending upon the industry, it may be appropriate to trend HCLD to current costs. Only trending indexes commonly recognized by the specific industry may be used to adjust HCLD.

e) RCNLD may be impractical to implement; therefore the preferred cost indicator of value in a mass appraisal environment for unitary property is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value.

2. Income Capitalization Approach. Under the principle of anticipation, benefits from income in the future may be capitalized into an estimate of present value.

a) Yield Capitalization. The yield capitalization formula is  $CF/(k-g)$ , where "CF" is a single year's normalized cash flow, "k" is the nominal, risk adjusted discount or yield rate, and "g" is the expected growth rate of the cash flow.

(1) Cash flow is restricted to the operating property in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing capacity or function. Cash flow is calculated as net operating income (NOI) plus non-cash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to working capital necessary to achieve the expected growth "g". Information necessary for the Division to calculate the cash flow shall be summarized and submitted to the Division by March 1 on a form provided by the Division.

(a) NOI is defined as net income plus interest.

(b) Capital expenditures should include only those necessary to replace or maintain existing plant and should not include any expenditure intended primarily for expansion or productivity and capacity enhancements.

(c) Cash flow is to be projected for the year immediately following the lien date, and may be estimated by reviewing historic cash flows, forecasting future cash flows, or a combination of both.

i) If cash flows for a subsidiary company are not available or are not allocated on the parent company's cash flow statements, a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. The subsidiary's total is divided by the parent's total to derive the allocation percentage to estimate the subsidiary's cash flow.

ii) If the subject company does not provide the Commission with its most recent cash flow statements by March

1 of the assessment year, the Division may estimate cash flow using the best information available.

(2) The discount rate (k) shall be based upon a weighted average cost of capital (WACC) considering current market debt rates and equity yields. WACC should reflect a typical capital structure for comparable companies within the industry.

(a) The cost of debt should reflect the current market rate (yield to maturity) of debt with the same credit rating as the subject company.

(b) The cost of equity is estimated using standard methods such as the capital asset pricing model (CAPM), the Risk Premium and Dividend Growth models, or other recognized models.

i) The CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 50% in the correlation.

ii) The CAPM formula is  $k(e) = R(f) + (\text{Beta} \times \text{Risk Premium})$ , where  $k(e)$  is the cost of equity and  $R(f)$  is the risk free rate.

a. The risk free rate shall be the current market rate on 20-year Treasury bonds.

b. The beta should reflect an average or value-weighted average of comparable companies and should be drawn consistently from Value Line or an equivalent source. The beta of the specific assessed property should also be considered.

c. The risk premium shall be the arithmetic average of the spread between the return on stocks and the income return on long term bonds for the entire historical period contained in the Ibbotson Yearbook published immediately following the lien date.

(3) The growth rate "g" is the expected future growth of the cash flow attributable to assets in place on the lien date, and any future replacement assets.

(a) If insufficient information is available to the Division, either from public sources or from the taxpayer, to determine a rate, "g" will be the expected inflationary rate in the Gross Domestic Product Price Deflator obtained in Value Line. The growth rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

b) A discounted cash flow (DCF) method is impractical to implement in a mass appraisal environment, but may be used to value individual properties.

c) Direct Capitalization is an income technique that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by a capitalization rate or by multiplying the normalized income estimate by an income factor.

3. Market or Sales Comparison Approach. The market value of property is directly related to the prices of comparable, competitive properties. The market approach is estimated by comparing the subject property to similar properties that have recently sold.

a) Sales of comparable property must, to the extent possible, be adjusted for elements of comparison, including market conditions, financing, location, physical characteristics, and economic characteristics. When considering the sales of stock, business enterprises, or other properties that include intangible assets, adjustments must be made for those intangibles.

b) Because sales of unitary properties are infrequent, a stock and debt indicator may be viewed as a surrogate for the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liabilities plus shareholder's equity.

4. Reconciliation. When reconciling value indicators into a final estimate of value, the appraiser shall take into

consideration the availability, quantity, and quality of data, as well as the strength and weaknesses of each value indicator. Weighting percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Division must disclose in writing the weighting percentages used in the reconciliation for the final assessment. Any departure from the prior year's weighting must be explained in writing.

F. Property Specific Considerations. Because of unique characteristics of properties and industries, modifications or alternatives to the general value indicators may be required for specific industries.

1. Cost Regulated Utilities.

a) HCLD is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. HCLD is calculated by taking the historic cost less depreciation as reflected in the utility's net plant accounts, and then:

(1) subtracting intangible property;

(2) subtracting any items not included in the utility's rate base (e.g., deferred income taxes and, if appropriate, acquisition adjustments); and

(3) adding any taxable items not included in the utility's net plant account or rate base.

b) Deferred Income Taxes, also referred to as DFIT, is an accounting entry that reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude deferred income taxes from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by deferred income taxes for rate base regulated companies, they shall be removed from HCLD.

c) Items excluded from rate base under F.1.a)(2) or b) should not be subtracted from HCLD to the extent it can be shown that regulators would likely permit the rate base of a potential purchaser to include a premium over existing rate base.

2. Railroads.

a. The cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value.

#### **R884-24P-63. Performance Standards and Training Requirements Pursuant to Utah Code Ann. Section 59-2-406.**

A. The party contracting to perform services shall develop a written customer service performance plan within 60 days after the contract for performance of services is signed.

1. The customer service performance plan shall address:

a) procedures the contracting party will follow to minimize the time a customer waits in line; and

b) the manner in which the contracting party will promote alternative methods of registration.

2. The party contracting to perform services shall provide a copy of its customer service performance plan to the party for whom it provides services.

3. The party for whom the services are provided may, no more often than semiannually, audit the contracting party's performance based on its customer service performance plan, and may report the results of the audit to the county commission or the state tax commissioners, as applicable.

B. Each county office contracting to perform services shall conduct initial training of its new employees.

C. The Tax Commission shall provide regularly scheduled training for all county offices contracting to perform motor vehicle functions.

#### **R884-24P-64. Determination and Application of Taxable Value for Purposes of the Property Tax Exemptions for Disabled Veterans and the Blind Pursuant to Utah Code**

**Ann. Sections 59-2-1104 and 59-2-1106.**

A. For purposes of Sections 59-2-1104 and 59-2-1106, taxable value of vehicles subject to the Section 59-2-405.1 uniform fee shall be calculated by dividing the Section 59-2-405.1 uniform fee the vehicle is subject to by .015.

**R884-24P-65. Assessment of Transitory Personal Property Pursuant to Utah Code Ann. Section 59-2-402.**

A. "Transitory personal property" means tangible personal property that is used or operated primarily at a location other than a fixed place of business of the property owner or lessee.

B. Transitory personal property in the state on January 1 shall be assessed at 100 percent of fair market value.

C. Transitory personal property that is not in the state on January 1 is subject to a proportional assessment when it has been in the state for 90 consecutive days in a calendar year.

1. The determination of whether transitory personal property has been in the state for 90 consecutive days shall include the days the property is outside the state if, within 10 days of its removal from the state, the property is:

- a) brought back into the state; or
- b) substituted with transitory personal property that performs the same function.

D. Once transitory personal property satisfies the conditions under C., tax shall be proportionally assessed for the period:

1. beginning on the first day of the month in which the property was brought into Utah; and
2. for the number of months remaining in the calendar year.

E. An owner of taxable transitory personal property who removes the property from the state prior to December and who qualifies for a refund of taxes assessed and paid, shall receive a refund based on the number of months remaining in the calendar year at the time the property is removed from the state and for which the tax has been paid.

1. The refund provisions of this subsection apply to transitory personal property taxes assessed under B. and C.

2. For purposes of determining the refund under this subsection, any portion of a month remaining shall be counted as a full month.

F. If tax has been paid for transitory personal property and that property is subsequently moved to another county in Utah:

1. No additional assessment may be imposed by any county to which the property is subsequently moved; and
2. No portion of the assessed tax may be transferred to the subsequent county.

**R884-24P-66. Appeal to County Board of Equalization Pursuant to Utah Code Ann. Section 59-2-1004.**

A.1. "Factual error" means an error that is:

- a) objectively verifiable without the exercise of discretion, opinion, or judgment, and
  - b) demonstrated by clear and convincing evidence.
2. Factual error includes:
- a) a mistake in the description of the size, use, or ownership of a property;
  - b) a clerical or typographical error in reporting or entering the data used to establish valuation or equalization;
  - c) an error in the classification of a property that is eligible for a property tax exemption under:
    - (1) Section 59-2-103; or
    - (2) Title 59, Chapter 2, Part 11;
  - d) valuation of a property that is not in existence on the lien date; and
  - e) a valuation of a property assessed more than once, or by the wrong assessing authority.

B. Except as provided in D., a county board of equalization shall accept an application to appeal the valuation

or equalization of a property owner's real property that is filed after the time period prescribed by Section 59-2-1004(2)(a) if any of the following conditions apply:

1. During the period prescribed by Section 59-2-1004(2)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.

2. During the period prescribed by Section 59-2-1004(2)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was capable of filing an appeal.

3. The county did not comply with the notification requirements of Section 59-2-919(4).

4. A factual error is discovered in the county records pertaining to the subject property.

5. The property owner was unable to file an appeal within the time period prescribed by Section 59-2-1004(2)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Section 59-2-1004(2)(a), and no co-owner of the property was capable of filing an appeal.

C. Appeals accepted under B.4. shall be limited to correction of the factual error and any resulting changes to the property's valuation.

D. The provisions of B. apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

E. The provisions of this rule apply only to appeals to the county board of equalization. For information regarding appeals of county board of equalization decisions to the Commission, please see Section 59-2-1006 and R861-1A-9.

**R884-24P-67. Information Required for Valuation of Low-Income Housing Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-301.3.**

A. The purpose of this rule is to provide an annual reporting mechanism to assist county assessors in gathering data necessary for accurate valuation of low-income housing projects.

B. The Utah Housing Corporation shall provide the following information that it has obtained from the owner of a low-income housing project to the commission:

1. for each low-income housing project in the state that is eligible for a low-income housing tax credit:
  - a) the Utah Housing Corporation project identification number;
  - b) the project name;
  - c) the project address;
  - d) the city in which the project is located;
  - e) the county in which the project is located;
  - f) the building identification number assigned by the Internal Revenue Service for each building included in the project;
  - g) the building address for each building included in the project;
  - h) the total apartment units included in the project;
  - i) the total apartment units in the project that are eligible for low-income housing tax credits;
  - j) the period of time for which the project is subject to rent restrictions under an agreement described in B.2.;
  - k) whether the project is:
    - (1) the rehabilitation of an existing building; or
    - (2) new construction;
  - l) the date on which the project was placed in service;
  - m) the total square feet of the buildings included in the project;
  - n) the maximum annual federal low-income housing tax credits for which the project is eligible;
  - o) the maximum annual state low-income housing tax



**R986. Workforce Services, Employment Development.****R986-600. Workforce Investment Act.****R986-600-601. Authority for Workforce Investment Act (WIA) and Other Applicable Rules.**

(1) The Department provides services to eligible clients under the authority granted in the Workforce Investment Act, (WIA) 29 USC 2801 et seq. Funding is provided by the federal government through the WIA. Utah is required to file a State Plan to obtain the funding. A copy of the State Plan is available at Department administrative offices and on the Internet. The regulations contained in 20 CFR 652, 20 CFR 660 through 20 CFR 671 and 29 CFR 37 (2000) are also applicable.

(2) The provisions of Rule R986-100 apply to WIA unless expressly noted otherwise in these rules even though R986-100 refers to public assistance and WIA funding does not meet the technical definition of public assistance. The residency requirements of R986-100-106 and the application for assistance requirement of R986-100-111 do not apply to WIA.

**R986-600-602. Workforce Investment Act (WIA).**

(1) The goal of WIA is to increase a customer's occupational skills, employment, retention and earnings; to decrease welfare dependency; and to improve the quality of the workforce and national productivity.

(2) WIA is for individuals who need assistance finding suitable employment.

(3) Services are available for the following groups: adult, dislocated workers, and youth services.

**R986-600-603. Youth Services.**

(1) The goals of WIA youth services are to provide options for improving educational and skill competencies; to provide effective connections to employers; to ensure access to mentoring, training opportunities and support services; to provide incentives for achievement; and to provide opportunities for leadership, citizenship and community service.

(2) WIA youth services are available to low-income youth who are between the ages of 14 and 21 years old and who have barriers which interfere with the ability to complete an educational program or to secure and hold employment.

(a) Services to youths include eligibility determination, assessment, employment planning and referral to community resources delivering youth services. The Department may provide youth services or the services may be provided under contract as determined by competitive bid.

(b) Youth may be referred to appropriate community resources based on need. Services include educational achievement services, employment services, summer employment opportunities, supportive services, leadership development, mentoring, and follow-up services.

(c) A bonus/incentive/stipend may be paid to provide recognition of achievement to eligible youth.

**R986-606-604. Adults, Youth, and Dislocated Workers.**

The Department offers three levels of service for adults, youth and dislocated workers:

- (1) core services,
- (2) intensive services,
- (3) training services

**R986-600-605. Core Services.**

(1) There are no eligibility requirements for core services offered by the Department.

(2) Core services include:

- (a) providing the following informational resources:
  - (i) outreach, intake, and orientation to, and information about, available services, including resource and referral services;
  - (ii) local, regional and national labor market information

including job vacancy listings and occupations in demand and the skills necessary to obtain those jobs and occupations.

(iii) the performance of and program costs for all eligible providers of training and education services.

(iv) performance measures with respect to the one-stop delivery system;

(b) assessment of skill levels, aptitudes, abilities, and supportive service needs;

(c) job search and placement assistance, and where appropriate, career counseling;

(d) follow-up services will be provided for a period of not less than 12 months after active participation ends for all youth. If requested, follow-up services will also be provided for 12 months after the first day of employment to adults and dislocated workers who have been placed in unsubsidized employment and,

(e) determining if a client is eligible for and assistance in applying for: WIA funded programs, unemployment insurance benefits, financial aid assistance available for training and educational programs not funded under WIA, food stamps, other supportive services such as child care, medical services, and transportation.

**R986-600-606. Intensive Services.**

(1) If the client establishes appropriateness and need, intensive services are available to adults and dislocated workers:

(a) who are unemployed and are unable to obtain 'suitable employment' through core services and who have been determined by a Department employment counselor to be in need of more intensive services in order to obtain employment; or

(b) who are employed, but who are determined by the Department to be in need of intensive services in order to obtain or retain suitable employment. Suitable employment is employment that allows for self-sufficiency. Self-sufficiency for WIA is generally determined to be 200% of the Office of Management and Budget poverty level.

(2) Intensive services are available to youth who:

- (a) establish appropriateness and need, and
  - (b) require additional assistance to complete an educational program or to secure and hold employment, and
  - (c) meet the regional service priority level.
- (3) intensive services for adults, dislocated workers and youth consist of:

- (a) an assessment as provided in R986-600-620,
- (b) development of an employment plan as provided in R986-600-621.

(c) Short-term prevocational services, including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct, to prepare individuals for unsubsidized employment or training.

- (d) case management, counseling and career planning, and
- (e) supportive services.

(4) Additional intensive services available to youth include:

- (a) leadership development,
- (b) mentoring,
- (c) comprehensive guidance and counseling, and
- (d) follow-up services.

**R986-600-607. Training Services.**

(1) If the client establishes appropriateness and need, training services are available to adults and dislocated workers:

(a) who are unemployed and are unable to obtain 'suitable employment' through intensive services and who have been determined by a Department employment counselor to be in need of training services in order to obtain suitable employment; or

(b) who are employed, but who are determined by the Department to be in need of training services in order to obtain or retain suitable employment as defined in R986-600-606(2).

(2) The employment counselor determines what is suitable employment based on the customer's individual circumstances.

(3) Training services include employment related education and work site learning.

(4) Training services are available to youth who:

(a) establish appropriateness and need, and

(b) require additional assistance to complete an educational program or to secure and hold employment, and

(c) meet the regional service priority level.

(5) Training services for youth consist of;

(a) tutoring,

(b) alternative school,

(c) occupational skills training,

(d) paid and unpaid internships, and/or

(e) summer youth employment opportunities.

#### **R986-600-608. Eligibility Requirements, General Definition.**

(1) Core services are available to all customers.

(2) There are different eligibility criteria for low-income youth services (ages 14-21), and adult (18 and over) and dislocated workers. Eligibility requirements for intensive and training services must be determined before an adult, youth, or dislocated worker can receive those services. If a client is eligible for services in more than one category, the Department or youth contract provider will determine the most appropriate program placement for the client. The Department may choose to contract out these services for youth.

#### **R986-600-609. Citizenship, Alienage and Residency Requirements.**

An individual seeking intensive or training services must be a citizen of the United States or be employment eligible in the United States. Employment eligible is defined by the WIA Act, section 188 (a)(5) as citizens and nationals of the US, lawfully admitted permanent resident aliens, refugees, asylees and parolees and other immigrants authorized by the U.S. Attorney General to work in the US.

#### **R986-600-610. Selective Service Registration Requirements.**

Male applicants must be in compliance with Selective Service registration requirements to receive intensive or training services, which includes youth services.

#### **R986-600-611. Income Eligibility Requirements.**

(1) Applicants for all youth and adult programs must meet the income eligibility requirements in this rule.

(2) Dislocated workers do not need to meet income eligibility requirements however appropriate training is only available if the dislocated worker is unable to obtain or retain

(a) employment at 80% or more of his or her lay off wage, or

(b) suitable employment as defined in this rule.

#### **R986-600-612. Prioritization Factors Used for Determining Eligibility for Adult and Dislocated Workers.**

(1) For adults and dislocated workers, in addition to meeting the eligibility requirements found in rules R996-600-608 through R996-600-611, the Department will prioritize clients' eligibility based on prioritization factors developed by the Department. Current prioritization factors are available at the Department. When a client is approved for intensive or training services, the Department will estimate the anticipated cost to the Department associated with that services and "obligate" and reserve that amount for accounting purposes. The total amount of money obligated and reserved will determine which prioritization factors are operational at any given time.

(2) A dislocated worker can only get funding if he or she cannot find a job paying 80% of the lay off wage or suitable employment as defined in this rule and they meet the Department's current prioritization factors.

(3) WIA Youth Councils set regional priority levels for services for youth based on the needs of youth in specific regions or sub-region areas.

(4) Because the funding is separate and distinct for each program, the prioritization factors operate independently for each of the two affected programs.

#### **R986-600-613. Categorical Income Eligibility.**

(1) A client is deemed to have met the income eligibility requirements for youth services, and adult services, if the client is receiving or is a member of a household that has been determined to be eligible for food stamps within the last six months or is currently receiving financial assistance from the Department or is homeless. Categorical income eligibility does not apply to expedited food stamps.

(2) In addition, a client is deemed to have met the income eligibility requirements for youth services if the youth is a runaway or a foster child.

(3) If a client is not eligible under paragraphs (1) and (2) above, the client must meet the low income eligibility guidelines in this rule.

#### **R986-600-614. How to Determine Who Is Included in the Family.**

Family size must be determined to establish income eligibility for youth services and adults.

(1) A 'family' is two or more persons related by blood, marriage, or decree of court, living in a single residence, and included in one or more of the following categories:

(a) A husband and wife and dependent children age 21 and under

(b) A parent or legal guardian and dependent children age 21 and under

(c) A husband and wife.

(2) A single person or an adult child (age 22 or older) applying on their own behalf and living with parent(s) is considered a family of one. Dependent adult children are not included in determining family size if another household member is applying for services.

(3) "Living in a single residence" includes family members residing elsewhere on a voluntary, temporary basis, such as attending school or visiting relatives. It does not include involuntary temporary residence elsewhere, such as incarceration, or court-ordered placement outside the home.

(4) Two people living in a single residence but who are not married are not members of the same 'family'. If they have children together, for WIA reporting purposes, each is considered a single parent and the children are considered part of each persons family.

(5) Family size will be determined by counting the maximum number of family members in the residence during the last 6 months.

(6) Family size must be verified only if using family income to determine low-income status for WIA adult or youth services.

(7) A family can only include two generations.

(8) A client with a disability that is a barrier to employment may be determined a family of one for determining family income.

#### **R986-600-615. Assets.**

Assets are not counted when determining eligibility for WIA services.

#### **R986-600-616. Countable Income.**

(1) Countable income is total annual cash receipts before taxes are deducted, from all sources with the exceptions listed below under "Excludable Income". If income is not specifically excluded, it is counted. Countable income, for WIA purposes includes:

- (a) money, wages, and salaries before any deductions,
- (b) net receipts from self-employment, including farming,
- (c) Job Corps payments to participants,
- (d) railroad retirement,
- (e) strike benefits from union funds,
- (f) workers' compensation benefits,
- (g) veterans' payments, except disability payments,
- (h) training stipends,
- (i) alimony,
- (j) military family allotments or other regular support from an absent family member or someone not living in the household,
- (k) private pensions or government employee pensions, including military retirement pay, except Social Security payments are excluded,
  - (l) any insurance, annuity, regular disability, and social security payments, other than social security disability (SSI or SSDI) or veterans disability.
  - (m) college or university scholarships, grants, fellowships, and assistantship (excluding Pell Grants),
  - (n) dividends,
  - (o) interest,
  - (p) net rental income,
  - (q) net royalties, including tribal payments from casino royalties,
  - (r) periodic receipts from estates or trusts, and
  - (s) net gambling or lottery winnings.
- (2) Excludable income, which is income that is not counted, is:
  - (a) cash welfare payments under a Federal, state or local welfare program, including public assistance under FEP, FEPTP, GA, WTE, SSI, Emergency Assistance,
  - (b) child support,
  - (c) unemployment compensation,
  - (d) capital gains and assets drawn down as withdrawals from a bank, the sale of property, a house or car,
  - (e) SSI, SSDI, and veterans disability payments,
  - (f) educational financial assistance received under title IV of the Higher Education Act as amended by section 479(B) 1992 and other needs-based scholarship assistance and Pell grants. This includes some Work-Study programs,
  - (g) foster child care payments,
  - (h) tax refunds,
  - (i) gifts,
  - (j) loans,
  - (k) lump-sum inheritances,
  - (l) one-time insurance payments or compensation for injury,
  - (m) Earned Income Credit from the IRS,
  - (n) income received by a veteran while on active military duty in the Armed Forces if the veteran applies for WIA services within six months of discharge,
  - (o) benefit payments to veterans under 38 U.S.C 4212, part 3,
  - (p) non-cash benefits such as employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the value of rent from owner-occupied non farm or farm housing, federal noncash benefits programs such as Medicare, Medicaid, food stamps, school lunches and housing assistance, and
  - (q) other amounts specifically excluded by Federal statute.

#### **R986-600-617. How to Calculate Income.**

(1) To determine if a client meets the income eligibility standards, all income from all sources of all family members during the previous six months is counted. That amount is multiplied by two to arrive at an annual income and compared to the income guidelines, which are updated annually.

(2) Income averaging can be used if complete income records are not available for the six month period.

(3) Allowable business expenses are deducted from self-employment but no other deductions from income are allowed.

(4) The client family is income eligible if the annual income meets the higher of:

(a) the poverty line as determined by the Department of Human Services, or

(b) 70% of the LLSIL (lower living standard income level) as determined by Department of Labor and available at the Department of Workforce Services.

#### **R986-600-618. Dislocated Worker.**

(1) A dislocated worker is an individual who meets one of the following criteria:

(a)(i) has been terminated or laid off, or has received a notice of termination or layoff from employment, and

(ii)(1) is eligible for or has exhausted unemployment compensation entitlement, or

(ii)(2) has been employed for a duration sufficient to demonstrate attachment to the workforce, but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer that were not covered under unemployment compensation law, and

(iii) is unlikely to return to the individual's previous industry or occupation. 'Unlikely to return' means that labor market information shows a lack of jobs in either that industry OR occupation, or the customer lacks the skills to re-enter the industry or occupation, or the client declares that they will not return to that industry or occupation.

(b)(i) Has been terminated or laid off, or has received a notice of termination or layoff, from employment as a result of any permanent closure of, or any substantial layoff at, a plant, facility, or enterprise, or

(ii) is employed at a facility at which the employer has made a general announcement that such facility will close within 180 days; or

(iii) for purposes of eligibility to receive rapid response services, is employed at a facility at which the employer has made a general announcement that such facility will close. Rapid response services are defined by WIA.

(c) Was self-employed (including employment as a farmer, a rancher, or a fisherman) but is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters.

(d) Is a displaced homemaker. A WIA displaced homemaker is an individual who has been providing unpaid services to family members in the home and who:

(i) has been dependent on the income of another family member but is no longer supported by that income; and

(ii) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(2) The dislocation must have occurred within the prior two years.

(3) There are no income or asset guidelines for dislocated worker eligibility. Training appropriateness must still be determined before training services can be provided.

(4) The following documentation is acceptable to confirm dislocated worker status:

a. Unemployment Insurance records;

b. An individual layoff letter;

c. Rapid Response Unit analysis or review;

d. Public announcements of layoff;

e. If no other means of verification are available, the



employer can provide verification; or

f. Worker self certification, although this is a last resort and requires documentation that other attempts to verify were unsuccessful.

(5) If the Department is providing services under a National Reserve Discretionary Grant, additional documentation may be needed.

**R986-600-619. Participation Requirements.**

Payment of any and all financial assistance, intensive and/or training services is contingent upon the client participating, to the maximum extent possible, in assessment and evaluation, and the completion of a negotiated employment plan.

**R986-600-620. Participation in Obtaining an Assessment.**

(1) When the Department or youth contract provider determines that a client has a need for intensive services, an employment counselor/case worker will be assigned to assess the needs of the client.

(2) The assessment evaluation is used to develop an employment plan.

(3) Completion of the assessment requires that the client provide information about:

- (a) family circumstances including health, needs of the children, support systems, and relationships;
- (b) personal needs or potential barriers to employment;
- (c) education;
- (d) work history;
- (e) skills;
- (f) financial resources and needs; and
- (g) any other information relevant to the client's ability to become self-sufficient.

(4) The client may be required to participate in testing or completion of other assessment tools and may be referred to another person within the Department, another agency, or to a company or individual under contract with the Department to complete testing, assessment, and evaluation.

**R986-600-621. Requirements of an Employment Plan.**

(1) A client is required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan. The client will be provided with a copy of the employment plan.

(2) The goal of the employment plan is obtaining marketable skills and employment and the plan must contain the soonest possible target date for entry into employment consistent with the needs of the client.

(3) An employment plan consists of activities designed to help an individual become employed.

(4) Each activity must be directed toward the goal of employment.

(5) The employment plan may require that the client:

- (a) search for suitable, immediate employment.
- (b) participate in an educational program to obtain a high school diploma or its equivalent, if the client does not have a high school diploma;
- (c) obtain education or training necessary to obtain employment;
- (d) obtain medical, mental health, or substance abuse treatment;
- (e) resolve transportation and child care needs;
- (f) resolve any other barriers identified as preventing or limiting the ability of the client to obtain employment, and/or
- (g) participate in rehabilitative services as prescribed by the State Office of Rehabilitation.

(6) The client must meet the performance expectations of each activity in the employment plan in order to stay eligible for intensive or training services.

(7) The client must cooperate with the Department's efforts to monitor and evaluate the client's activities and progress under the employment plan, which may include providing ongoing information and or documentation relative to their progress and providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(8) Where available and appropriate, supportive services may be provided as needed for each activity.

(9) The client agrees, as part of the employment plan, to cooperate with other agencies, or with individuals or companies under contract with the Department, as outlined in the employment plan.

(10) An employment plan may, at the discretion of the Department, be amended to reflect new information or changed circumstances.

**R986-600-622. Requirements of an Employment Plan for Youth.**

(1) The focus of services for youth are separated by age into two categories; Younger Youth, 14-18 years old; and 19-21 years old.

(2) Employment plans for all youth must reflect intentions to assist with preparing for post-secondary education and/or employment; finding effective connections to the job market and employers, and understanding the links between academic and occupational learning.

(3) The primary goal of the employment plan for Younger Youth is setting and achieving goals. Secondary goals may include graduating from high school, and/or being placed in post-secondary education, other advanced training, or employment.

(4) The goal of the employment plan for older youth is the same as in R986-600-621.

**R986-600-623. Education and Training and Support Services as Part of an Employment Plan.**

(1) A client's participation in education or training beyond that required to obtain a high school diploma or its equivalent is limited per exposure to the lesser of:

(a) 24 months which need not be continuous and which can be waived by a Department supervisor based on individual circumstances, or

(b) the completion of the education and training goals of the employment plan.

(2) Education and training will only be supported where:

(a) the client is unable to find suitable employment due to a lack of marketable skills;

(b) the education or training will substantially increase the income level the client would be able to attain without the education or training;

(c) the plan must show that the client has the ability to be successful in the education or training and in the market thereafter;

(d) the education or training is required for the occupation;

(e) the client is willing to complete the education or training as quickly as is reasonable;

(f) the mental and physical health of the client indicates the education or training could be completed successfully and the client could perform the job once the schooling is completed; and

(g) the specific employment goal that requires the education or training is marketable in the area where the client resides or the client has agreed to relocate for the purpose of employment once the education/training is completed.

(3) Additional payments and/or services are allowable under certain circumstances based on individual need provided they are necessary and appropriate to enable the client to participate in activities authorized under this title (WIA).

**R986-600-624. The Right to Appeal a Denial of Services.**

If an applicant or a client who is currently receiving services is denied services the individual can request a hearing as provided in Rules R986-100-123 through R986-100-135. If the client is currently receiving services under WIA and requests a hearing within 10 days of the denial, services will continue pending the hearing as provided in Rule R986-100-134.

**R986-600-651. Definitions.**

(1) "State Council" means the State Council on Workforce Services.

(2) "Eligible Provider" means an occupational skills training provider eligible to receive funds for training adults and dislocated workers authorized under WIA and approved by the State Council.

(3) "Regional Council" means any of the Regional Councils on Workforce Services.

**R986-600-652. Determining Initial Eligibility for Training Providers.**

(1) Training providers are automatically eligible if they if they complete an application and are either:

(a) a postsecondary educational institution that:

(i) is eligible to receive federal funds under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), and

(ii) provides a program that leads to an associate degree, baccalaureate degree, or certificate; or

(b) an entity that provides programs under the "National Apprenticeship Act", 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.

(2) All other training providers must submit the following information:

(a) the name, mailing address, physical address, telephone number, and email address (if available) of the training facility;

(b) documentation of financial stability of the applicant, which may include audits or financial statements or evidence of compliance with the Utah Board of Regents' bonding requirements;

(c) the name of each program for which approval is requested;

(d) the percentage of all participants who complete each program;

(e) the percentage of all participants in each program who obtained unsubsidized employment;

(f) average placement wage of all participants in each program;

(g) if applicable, the rate of Utah state-recognized or industry-recognized licensure, certification, degrees, or equivalent attained by all program graduates. For example, CDL, Certified Nurse Aid, Licensed Practical Nurse, Novell Network Engineer;

(h) program costs including tuition and fees;

(i) a description of the methodology used to collect and verify performance information;

(j) a copy of the provider's student grievance procedure;

(k) the self-administered Department training provider accessibility checklist; and

(l) the number of years in business using the current name, and a list of other names under which the provider operated.

(3) Applications from providers in paragraph 2 above will be sent to the Regional Council staff in the region in which the provider does business or wishes to apply. Regional Councils recommend approval or disapproval for each provider and these results are sent to the State Council for final action.

(4) Performance information must meet standards established by the Department or the state council may grant an exception.

(5) All schools must be in business for a minimum of one year before approval will be granted.

(6) The Department will notify a provider in writing when a decision has been made concerning the provider's eligibility.

(7) A list of Initially Eligible providers including program performance and cost information will be published on the Internet.

**R986-600-653. Distance Learning Providers.**

(1) Distance learning is training that is made possible due to advances in computer technology. Using an online computer connection, distance learning can establish a setting for students and instructors where lessons are assigned, completed, and returned, and discussions can be held online.

(2) Distance learning can only be approved when it is a part of a curriculum that:

(a) leads to the completion of a training program;

(b) requires students to interact with instructors;

(c) requires students to take periodic tests.

**R986-600-654. Determining Subsequent Eligibility for Training Providers.**

(1) Eligible providers shall apply annually to continue to receive WIA funds.

(2) Eligible providers shall submit student and program information as required, and in a format determined by the Department.

(3) The Department shall establish annual minimum performance requirements for continuing eligibility, and will consider the following as it establishes those requirements:

(a) the economic, geographic, and demographic factors in the state; and

(b) the characteristics of the populations served by providers, including the difficulties in serving such populations, where applicable.

(4) The Department shall establish annual minimum requirements for the following performance measures:

(a) program completion rates for all participants;

(b) the percentage of all participants who obtain employment;

(c) the average quarterly earnings of participants;

(5) Providers shall give the Department an annual list of social security numbers of all participants, by program; each participant's exit date from the program and a list of the completion rate and cost for each program for which approval is sought. The time and format for submitting this information will be determined by the Department.

(6) The Department may require providers to submit additional information to the Department.

(7) Training provider program employment and earnings performance information will be computed by the Department using the Social Security numbers provided by the training providers.

(8) The Department will notify a provider in writing when a decision has been made concerning the provider's subsequent eligibility.

(9) Providers must retain participant program records for three years from the date the participant completes the program.

(10) The Department may remove a provider from the list if the provider does not meet the performance levels established by the Department.

(11) The Department will remove a provider from the list if the provider has committed fraud or violated applicable state or federal law.

(12) The Department will remove a provider from the list for at least two years if the provider intentionally supplies inaccurate student or program performance information.

(13) The Department shall publish the program, performance, and cost information of each subsequently eligible provider on the list.

(14) Only providers on the list are eligible to receive

funding or reimbursements from WIA funding.

**R986-600-655. The Right to a Hearing and How to Request a Hearing.**

(1) A provider may request a hearing to appeal a decision to deny eligibility or to remove the provider from the eligible provider list.

(2) Hearing requests will be made in writing to the Council, which will conduct the hearing at the next regularly scheduled meeting. The Council's decision on the provider's eligibility will be final.

**R986-600-656. Monitoring for Compliance of Equal Opportunity and Nondiscrimination.**

(1) The Department monitors service providers for compliance with the equal opportunity and nondiscrimination requirements of WIA. This includes compliance with all applicable laws, regulations, contract provisions, corrective actions, and remedial actions.

(2) Each service provider's compliance will be reviewed annually. The review can be either an on-site review or a data review.

**R986-600-657. Noncompliance.**

(1) In the event the Department identifies specific instances of noncompliance with federal discrimination laws, the Department will;

(a) notify the service provider in writing of the finding(s) of noncompliance and the corrective action required to ensure compliance;

(b) establish a corrective action plan;

(c) notify the provider of the time lines for the completion of the plan; and

(d) ensure compliance with the corrective action plan.

(2) For training providers, the corrective action plan will provide that the training provider agree to stop all prohibited practices in order to remain eligible for WIA funding.

**R986-600-658. Sanctions for Noncompliance and Right to Appeal.**

(1) The Department may impose sanctions against a provider for failure to comply with federal nondiscrimination laws or required corrective actions.

(2) If the Department finds that a provider has not taken the required corrective action in the specified time limits the Department will issue a notice of final action informing the service provider of the Department's intent to;

(a) discontinue referral of participants to the provider,

(b) cancel the contract with the provider,

(c) make other changes deemed necessary to secure compliance, and/or

(d) refer the matter to another governmental entity.

(3) The service provider may appeal the decision of the Department by filing an appeal in writing within 30 days of the date of the notice of final action to: The Director, Civil Rights Center, US Department of Labor, 200 Constitution Ave NW, Room N4123, Washington DC, 20210.