R25. Administrative Services, Finance.
R25-7. Travel-Related Reimbursements for State Employees.
R25-7-1. Purpose.

The purpose of this rule is to establish procedures to be followed by departments to pay travel-related reimbursements to state employees.

R25-7-2. Authority and Exemptions.

This rule is established pursuant to:

(1) Section 63A-3-107, which authorizes the Division of Finance to adopt rules covering in-state and out-of-state travel; and

(2) Section 63A-3-106, which authorizes the Division of Finance to establish per diem rates to meet subsistence expenses for attending official meetings.

R25-7-3. Definitions.

(1) "Agency" means any department, division, commission, council, board, bureau, committee, office, or other administrative subunit of state government.

(2) "Boards" means policy boards, advisory boards, councils, or committees within state government.

(3) "Department" means all executive departments of state government.

(4) "Finance" means the Division of Finance.

(5) "Per diem" means an allowance paid daily.

(6) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."

(7) "Rate" means an amount of money.

(8) "Reimbursement" means money paid to compensate an employee for money spent.

(9) "State employee" means any person who is paid on the state payroll system.

R25-7-4. Eligible Expenses.

(1) Reimbursements are intended to cover all normal areas of expense.

(2) Requests for reimbursement must be accompanied by original receipts for all expenses except those for which flat allowance amounts are established.

R25-7-5. Approvals.

(1) For insurance purposes, all state business travel, whether reimbursed by the state or not, must have prior approval by an appropriate authority. This also includes non-state employees where the state is paying for the travel expenses.

(2) Both in-state and out-of-state travel must be approved by the department head or designee.

(3) Exceptions to the prior approval for out-of-state travel must be justified in the comments section of the Request for Out-of-State Travel Authorization, form FI 5, or on an attachment, and must be approved by the Department Director or the designee.

(4) The Department Director, the Executive Director, or the designee must approve all travel to out-of-state functions where more than two employees from the same department are attending the same function at the same time.

R25-7-6. Reimbursement for Meals.

(1) State employees who travel on state business may be eligible for a meal reimbursement.

(2) The reimbursement will include tax, tips, and other expenses associated with the meal.

(3) Allowances for in-state travel differ from those for out-of-state travel.

(a) The daily travel meal allowance for in-state travel is $30.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	$6.00
Lunch	$9.00
Dinner	$15.00
Total	$30.00

(b) The daily travel meal allowance for out-of-state travel is $38.00 and is computed according to the rates listed in the following table.

TABLE 2

Out-of-State Travel Meal Allowances

Meals	Rate
Breakfast	$9.00
Lunch	$11.00
Dinner	$18.00
Total	$38.00

(4) When traveling to premium cities (New York, Los Angeles, Chicago, San Francisco, Washington DC, Boston, and Arlington), the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the actual meal cost, with original receipts, up to $50 per day.

(a) The traveler will qualify for premium rates on the day the travel begins and/or the day the travel ends only if the trip is of sufficient duration to qualify for all meals on that day.

(b) Complimentary meals of a hotel, motel and/or association and meals included in registration costs are deducted from the $50 premium allowance as follows:

(i) If breakfast is provided deduct $12, leaving a premium allowance for lunch and dinner of actual up to $38.

(ii) If lunch is provided deduct $15, leaving a premium allowance for breakfast and dinner of actual up to $35.

(iii) If dinner is provided deduct $23, leaving a premium allowance for breakfast and dinner of actual up to $27.

(c) The traveler must use the same method of reimbursement for an entire day.

(d) Actual meal cost includes tips.

(e) Alcoholic beverages are not reimbursable.

(5) When traveling in foreign countries, the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the reasonable, actual meal cost, with original receipts.

(a) The traveler may combine the reimbursement methods during a trip; however, he must use the same method of reimbursement for an entire day.

(b) Actual meal cost includes tips.

(c) Alcoholic beverages are not reimbursable.

(6) The meal reimbursement calculation is comprised of three parts:

(a) The day the travel begins. The traveler's entitlement is determined by the time of day he leaves his home base (the location the employee leaves from and/or returns to), as illustrated in the following table.

TABLE 3

The Day Travel Begins

1st Quarter a.m. 12:01-6:00	2nd Quarter a.m. 6:01-noon	3rd Quarter p.m. 12:01-6:00	4th Quarter p.m. 6:01-midnight
*B, L, D	*L, D	*D	*no meals
In-State			
$30.00	$24.00	$15.00	$0
Out-of-State			
$38.00	$29.00	$18.00	$0

*B=Breakfast, L=Lunch, D=Dinner

(b) The days at the location.

(i) Complimentary meals of a hotel, motel, and/or association and meals included in the registration cost are deducted from the total daily meal allowance.

(ii) Meals provided on airlines will not reduce the meal allowance.

(c) The day the travel ends. The meal reimbursement the traveler is entitled to is determined by the time of day he returns to his home base, as illustrated in the following table.

TABLE 4

The Day Travel Ends

1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
a.m.	a.m.	p.m.	p.m.
12:01-6:00	6:01-noon	12:01-7:00	7:01-midnight
*no meals	*B	*B, L	*B, L, D
In-State			
$0	$6.00	$15.00	$30.00
Out-of-State			
$0	$9.00	$20.00	$38.00

*B=Breakfast, L=Lunch, D=Dinner

(7) An employee may be authorized by his Department Director or designee to receive a meal allowance when his destination is at least 100 miles from his home base and he does not stay overnight.

(a) Breakfast is paid when the employee leaves his home base before 6:01 a.m.

(b) Lunch is paid when the trip meets one of the following requirements:

(i) The employee is on an officially approved trip that warrants entitlement to breakfast and dinner.

(ii) The employee leaves his home base before 10 a.m. and returns after 2 p.m.

(iii) The Department Director provides prior written approval based on circumstances.

(c) Dinner is paid when the employee leaves his home base and returns after 7 p.m.

(d) The allowance is not considered an absolute right of the employee and is authorized at the discretion of the Department Director or designee.

R25-7-7. Meal Per Diem for Statutory Non-Salaried State Boards.

(1) When a board meets and conducts business activities during mealtime, the cost of meals may be charged as public expense.

(2) Where salaried employees of the State of Utah or other advisors or consultants must, of necessity, attend such a meeting in order to permit the board to carry on its business, the meals of such employees, advisors, or consultants may also be paid. In determining whether or not the presence of such employees, advisors, or consultants is necessary, the boards are requested to restrict the attendance of such employees, advisors, or consultants to those absolutely necessary at such mealtime meetings.

R25-7-8. Reimbursement for Lodging.

State employees who travel on state business may be eligible for a lodging reimbursement.

(1) Lodging is reimbursed for single occupancy only.

(2) For non-conference hotel in-state travel, where the department/traveler makes reservations through the State Travel Agency, the state will reimburse the actual cost up to $55 per night plus tax except in Moab, Cedar City, St. George, metropolitan Salt Lake City (Draper to Centerville), Ogden, Layton, Park City, Tooele, Heber City, Midway, Price, and Provo/Orem. In these areas, the rates are:

(a) Moab, Cedar City, and St. George - $65 per night plus tax

(b) Metropolitan Salt Lake City (Draper to Centerville), Park City, Tooele, Heber City, and Midway - $68 per night plus tax

(c) Ogden, Layton, and Provo/Orem - $63 per night plus tax

(d) Price - $60 per night plus tax

(3) The state will reimburse the actual cost per night plus tax for out-of-state travel where the department/traveler makes reservations through the State Travel Agency.

(4) The same rates apply for in-state travel for stays at a non-conference hotel where the department/traveler makes their own reservations.

(5) For out-of-state travel, the state will reimburse the actual cost up to $65 per night plus tax.

(6) Exceptions will be allowed for unusual circumstances when approved in writing by the Department Director or designee prior to the trip.

(a) For out-of-state travel, the approval may be on the form FI 5.

(b) Attach the written approval to the Travel Reimbursement Request, form FI 51B or FI 51D.

(7) For stays at a conference hotel, the state will reimburse the actual cost plus tax for both in-state and out-of-state travel. The traveler must include the conference registration brochure with the Travel Reimbursement Request, form FI 51A or FI 51B.

(8) A proper receipt for lodging accommodations must accompany each request for reimbursement.

(a) The tissue copy of the MasterCard Corporate charge receipt is not acceptable.

(b) A proper receipt is a copy of the registration form generally used by motels and hotels which includes the following information: name of motel/hotel, street address, town and state, telephone number, current date, name of person/persons staying at the motel/hotel, date of occupancy, amount and date paid, signature of agent, number in the party, and single or double occupancy.

(9) Travelers may also elect to stay with friends or relatives or use their personal campers or trailer homes instead of staying in a hotel.

(a) With proof of staying overnight away from home on approved state business, the traveler will be reimbursed the following:

(i) $20 per night with no receipts required or

(ii) Actual cost up to $30 per night with a signed receipt from a facility such as a campground or trailer park, not from a private residence.

(10) Travelers who are on assignment away from their home base for longer than 90 days will be reimbursed as follows:

(a) First 30 days - follow regular rules for lodging and meals. Lodging receipt is required.

(b) After 30 days - $46 per day for lodging and meals. No receipt is required.

R25-7-9. Reimbursement for Incidentals.

State employees who travel on state business may be eligible for a reimbursement for incidental expenses.

(1) Travelers will be reimbursed for actual out-of-pocket costs for incidental items such as baggage tips and transportation costs.

(a) Tips for maid service, doormen, and meals are not reimbursable.

(b) No other gratuities will be reimbursed.

(c) Include an original receipt for each individual incidental item above $20.00 and for all airport parking.

(2) The state will reimburse incidental ground transportation and parking expenses.

(a) Travelers shall document all official business use of

taxi, bus, parking, and other ground transportation including dates, destinations, parking locations, receipts, and amounts.

(b) Personal use of such transportation to restaurants is not reimbursable.

(c) Parking at the Salt Lake City airport will be reimbursed at a maximum of the airport long-term parking rate with a receipt.

(3) Registration should be paid in advance on a state warrant.

(a) A copy of the approved FI 5 form must be included with the Payment Voucher for out-of-state registrations.

(b) If a traveler must pay the registration when he arrives, the agency is expected to process a Payment Voucher and have the traveler take the state warrant with him.

(4) Telephone calls related to state business are reimbursed at the actual cost.

(a) The traveler shall list the amount of these calls separately on the Travel Reimbursement Request, form FI 51A or FI 51B.

(b) The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for business telephone calls and personal telephone calls made during stays of five nights or more.

(5) Allowances for personal telephone calls made while out of town on state business overnight will be based on the number of nights away from home.

(a) Four nights or less - actual amount up to $2.50 per night (documentation is not required for personal phone calls made during stays of four nights or less)

(b) Five to eleven nights - actual amount up to $20.00

(c) Twelve nights to thirty nights - actual amount up to $30.00

(d) More than thirty days - start over

(6) Actual laundry expenses up to $18.00 per week will be allowed for trips in excess of six consecutive nights, beginning after the sixth night out.

(a) The traveler must provide receipts for the laundry expense.

(b) For use of coin-operated laundry facilities, the traveler must provide a list of dates, locations, and amounts.

(7) An amount of $5 per day will be allowed for travelers away in excess of six consecutive nights beginning after the sixth night out.

(a) This amount covers miscellaneous incidentals not covered in this rule.

(b) This allowance is not available for travelers going to conferences.

R25-7-10. Reimbursement for Transportation.

State employees who travel on state business may be eligible for a transportation reimbursement.

(1) Air transportation is limited to Air Coach or Excursion class.

(a) All reservations (in-state and out-of-state) should be made through the State Travel Office for the least expensive air fare available at the time reservations are made.

(b) Only one change fee per trip will be reimbursed.

(c) The explanation for the change and any other exception to this rule must be given and approved by the Department Director or designee.

(d) In order to preserve insurance coverage, travelers must fly on tickets in their names only.

(2) Travelers may be reimbursed for mileage to and from the airport and long-term parking or away-from-the-airport parking.

(a) The maximum reimbursement for parking, whether travelers park at the airport or away from the airport, is the airport long-term parking rate.

(b) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A or FI 51B.

(c) Travelers may be reimbursed for mileage to and from the airport to allow someone to drop them off and to pick them up.

(3) Travelers may use private vehicles with prior approval from the Department Director or designee.

(a) Only one person in a vehicle may receive the reimbursement, regardless of the number of people in the vehicle.

(b) Reimbursement for a private vehicle will be at the rate of 32 cents per mile, or 40 1/2 cents per mile if a state fleet vehicle is not available to the employee.

(c) Agencies may establish a reimbursement rate that is more restrictive than the rate established in this Section.

(d) Exceptions must be approved in writing by the Director of Finance.

(e) Mileage will be computed from the latest official state road map and will be limited to the most economical, usually traveled routes.

(f) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(g) An approved Private Vehicle Usage Report, form FI 40, should be included with the department's payroll documentation reporting miles driven on state business during the payroll period.

(h) Departments may allow mileage reimbursement on an approved Travel Reimbursement Request, form FI 51A or FI 51B, if other costs associated with the trip are to be reimbursed at the same time.

(4) A traveler may choose to drive instead of flying if approved by the Department Director.

(a) If the traveler drives a state-owned vehicle, the traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of the airline trip. The traveler may also be reimbursed for incidental expenses such as toll fees and parking fees.

(b) If the traveler drives a privately-owned vehicle, reimbursement will be at the rate of 32 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director.

(i) The lowest fare available within 30 days prior to the departure date will be used when calculating the cost of travel for comparison to private vehicle cost.

(ii) An itinerary printout which is available through the State Travel Office is required when the traveler is taking a private vehicle.

(c) The traveler may be reimbursed for meals and lodging for a reasonable amount of travel time; however, the total cost of the trip must not exceed the equivalent cost of an airline trip.

(d) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(e) When submitting the reimbursement form, attach a schedule comparing the cost of driving with the cost of flying. The schedule should show that the total cost of the trip driving was less than or equal to the total cost of the trip flying.

(f) If the travel time taken for driving during the employee's normal work week is greater than that which would have occurred had the employee flown, the excess time used will be taken as annual leave and deducted on the Time and Attendance System.

(5) Use of rental vehicles must be approved in writing in advance by the Department Director.

(a) An exception to advance approval of the use of rental vehicles shall be fully explained in writing with the request for reimbursement and approved by the Department Director.

(b) Detailed explanation is required if a rental vehicle is

requested for a traveler staying at a conference hotel.

(c) When making rental car arrangements through the State Travel Agency, reserve the vehicle you need. Upgrades in size or model made when picking up the rental vehicle will not be reimbursed.

(i) State employees should rent vehicles to be used for state business in their own names, using the state contract so they will have full coverage under the state's liability insurance.

(ii) Rental vehicle reservations not made through the travel agency must be approved in advance by the Department Director.

(iii) The traveler will be reimbursed the actual rate charged by the rental agency.

(iv) The traveler must have approval for a rental car in order to be reimbursed for rental car parking.

(6) Travel by private airplane must be approved in advance by the Department Director or designee.

(a) The pilot must certify to the Department Director that he is certified to fly the plane being used for state business.

(b) If the plane is owned by the pilot/employee, he must certify the existence of at least $500,000 of liability insurance coverage.

(c) If the plane is a rental, the pilot must provide written certification from the rental agency that his insurance covers the traveler and the state as insured. The insurance must be adequate to cover any physical damage to the plane and at least $500,000 for liability coverage.

(d) Reimbursement will be made at 50 cents per mile.

(e) Mileage calculation is based on air mileage and is limited to the most economical, usually-traveled route.

(7) Travel by private motorcycle must be approved prior to the trip by the Department Director or designee. Travel will be reimbursed at 16 cents per mile.

(8) A car allowance may be allowed in lieu of mileage reimbursement in certain cases. Prior written approval from the Department Director, the Department of Administrative Services, and the Governor is required.

KEY: air travel, per diem allowances, state employees, transportation

July 1, 2005	**63A-3-107**
Notice of Continuation May 1, 2003	**63A-3-106**

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

These rules are known as the "Certified Public Accountant Licensing Act Rules".

R156-26a-102. Definitions.

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

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

(2) "AICPA" means American Institute of Certified Public Accountants.

(3) "Incidental to regular practice" as defined in Subsection 58-26a-305(1)(a) is further defined to mean:

(a) An individual or a firm licensed as a certified public accountant or equivalent designation in any other state, district, or territory of the United States or any foreign country may perform services in this state for a client whose principal office or residence is located outside of this state as long as the services are incidental to primary services being performed outside of this state for that client.

(b) An individual or firm licensed in another jurisdiction, as incidental to their practice in such other jurisdiction, may advertise in this state that their services are available by any means including, but not limited to television, radio, newspaper, magazine or Internet advertising provided such representations are not false, misleading or deceptive; and provided that such individual or firm does not establish a CPA/Client relationship to perform services requiring a CPA license or CPA firm registration with any individual, business or other legal entity having its principal office or residence in this state without first obtaining a CPA license and CPA firm registration in this state.

(c) Incidental to regular practice in another jurisdiction includes a licensed CPA or equivalent designation continuing a CPA/Client relationship with an individual which originated while the client's residence was located outside of this state but thereafter the client moved their residence to this state.

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

(5) "Standard setting bodies" means the Financial Accounting Standards Board, the Government Accounting Standards Board, the American Institute of Certified Public Accountants, the Securities and Exchange Commission, and the Federal Accounting Standards Advisory Board and other generally recognized standard setting bodies.

(6) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 26a, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-26a-501.

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

R156-26a-103. Authority.

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 26a.

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

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

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

(1) There is created in accordance with Subsection 58-1-203(6), the Education Advisory Committee to the Utah Board of Accountancy consisting of one full-time faculty from each college or university in Utah which has an accredited program as set forth in Section R156-26a-302a, a majority of which committee are to be licensed CPAs.

(a) The Education Advisory Committee shall be appointed and serve in accordance with Section R156-1-204.

(b) The duties and responsibilities of the Education Advisory Committee shall include assisting the division in collaboration with the board in their duties, functions, and responsibilities defined in Section 58-1-202 as follows:

(i) reviewing an applicant's transcript of credits to determine satisfactory completion of the education requirements prior to approving the applicant to take the qualifying examination and advising the board as to the acceptability of an educational institution.

(c) The committee shall consider the following when advising the board of the acceptability of the educational institution:

(i) the institution's accreditation, the acceptability by other state licensing boards, faculty qualifications and other educational resources.

(2) There is created in accordance with Subsection 58-1-203(6), the Peer Review Committee to the Utah Board of Accountancy consisting of not more than ten licensed CPAs.

(a) The committee shall be appointed and serve in accordance with Section R156-1-204.

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

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

(ii) evaluating compliance of CPE programs;

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

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

(v) providing technical assistance to the division; and

(vi) serving as expert witnesses at administrative hearings.

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

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

(1) An applicant shall submit transcripts showing completion of course work consisting of a minimum of 150 semester hours (225 quarter hours) as follows:

(a) a graduate or undergraduate program within an institution whose business or accounting education program is accredited by the American Assembly of Collegiate Schools of Business (AACSB), or the Association of Collegiate Business Schools and Programs (ACBSP), from which the applicant received one of the following:

(i) a graduate degree in accounting;

(ii) a master of business administration degree which includes not less than:

(A) 24 semester hours (36 quarter hours) in upper division accounting courses covering the subjects of financial accounting, auditing, taxation, and management accounting; or

(B) 15 semester hours (23 quarter hours) graduate level accounting courses covering the subjects of financial accounting, auditing, taxation, and management accounting; or

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

hours of upper division course work; or

(iii) a baccalaureate degree in business or accounting and 30 semester hours (45 quarter hours) beyond the requirements for a baccalaureate degree which includes not less than:

(A) 16 semester hours (24 quarter hours) in upper division accounting courses, which when combined with the accounting courses listed in Subsection (B) below, have at least one course with a minimum of two semester hours (three quarter hours) each covering the subjects of financial accounting, auditing, taxation, and management accounting;

(B) eight semester hours (12 quarter hours) in graduate level accounting courses, which when combined with the accounting courses listed in Subsection (A) above, have at least one course each covering the subjects of financial accounting, auditing, taxation, and management accounting;

(C) 12 semester hours (18 quarter hours) in upper division non-accounting business courses;

(D) 12 semester hours (18 quarter hours) in graduate level business or accounting courses; and

(E) 10 semester hours (15 quarter hours) of either graduate or upper division accounting or business courses.

(b) a graduate or undergraduate program from an institution accredited by the Northwest Association of Schools and Colleges, Commission on Colleges, or the North Central Association of Colleges and Schools, Commission on Institutions of Higher Education, or an equivalent accrediting institution from which the applicant received a baccalaureate or graduate degree with not less than:

(i) 30 semester hours (45 quarter hours) in business or related courses providing a minimum of two semester hours (three quarter hours) in each of the following subjects:

(A) business law;

(B) computers;

(C) economics;

(D) ethics;

(E) finance;

(F) statistics and quantitative methods;

(G) written and oral communications; and

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

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

(A) auditing;

(B) finance;

(C) managerial or cost;

(D) systems; and

(E) taxes; and

(iii) 30 semester hours (45 quarter hours) beyond the requirements for a baccalaureate degree of additional business related course work including not less than:

(A) eight semester hours (12 quarter hours) in graduate accounting courses;

(B) 12 semester hours (18 quarter hours) in graduate accounting or graduate business courses; and

(C) 10 semester hours (15 quarter hours) of additional business related hours shall be taken in upper division undergraduate or graduate level courses.

(2) The division in collaboration with the board or the education subcommittee of the board may make a written finding for cause that a particular accredited institution or program is not acceptable.

(3) The Division in collaboration with the board or the education subcommittee of the board may accept education of a person who holds a license as a certified public accountant or equivalent designation in a foreign country, if the applicant has obtained from the National Association of State Boards of Accountancy (NASBA) verification of compliance with the terms of an agreement for reciprocal licensure between the foreign country and the International Qualifications Appraisal Board of NASBA, which agreement provides the applicant's examinations, education and experience is determined to be substantially equivalent to the 1994 Uniform Accountancy Act licensure requirements or a version of the Uniform Accountancy Act having substantially equivalent requirements.

(4) In accordance with Section 58-26a-306, the qualifications to sit for the AICPA examination is clarified or supplemented as follows:

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

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

(c) In accordance with Subsections 58-26a-306(1)(c) and (d), the Board has approved CPAES to make the determination of whether the applicant has met the education requirements, provided however that, if an applicant disputes the finding of CPAES, the Board shall make a final determination of whether the applicant is qualified to sit for the AICPA examination.

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

In accordance with Subsections 58-1-203(7) and 58-1-301(3), the experience requirements for licensure in Section 58-26a-302 are clarified, or supplemented as follows:

(1) The Division in collaboration with the board may accept experience of a person who holds a license as a certified public accountant or equivalent designation in a foreign country, if the applicant has obtained from the National Association of State Boards of Accountancy (NASBA) verification of compliance with the terms of an agreement for reciprocal licensure between the foreign country and the International Qualifications Appraisal Board of NASBA, which agreement provides the applicant's examinations, education and experience is determined to be substantially equivalent to the 1994 Uniform Accountancy Act licensure requirements or a version of the Uniform Accountancy Act having substantially equivalent requirements.

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

(1) The Division in collaboration with the board may accept testing of a person who holds a license as a certified public accountant or equivalent designation in a foreign country, if the applicant has obtained from the National Association of State Boards of Accountancy (NASBA) verification of compliance with the terms of an agreement for reciprocal licensure between the foreign country and the International Qualifications Appraisal Board of NASBA, which agreement provides the applicant's examinations, education and experience is determined to be substantially equivalent to the 1994 Uniform Accountancy Act licensure requirements or a version of the Uniform Accountancy Act having substantially equivalent requirements.

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

(1) General.

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

(a) The purpose of the program is to monitor compliance with applicable accounting and auditing standards adopted by generally recognized standard setting bodies. The program shall emphasize education and may include other remedial actions

determined appropriate where a firm's work product and services do not comply with established professional standards. In the event a firm is unwilling or unable to comply with established standards, or intentionally disregards professional standards so as to warrant disciplinary action, the administering organization shall refer the matter to the division and shall consult with the division regarding appropriate action to protect the public interest.

(2) Scheduling of the Peer Review.

(a) A firm's initial peer review shall be assigned a due date to require that the initial review be started no later than 18 months after the date of the issuance of its initial report as defined in Subsection 58-26a-102(16).

(b) Not less than once in each three years a firm engaged in the practice of public accounting shall undergo, at its own expense, a peer review commensurate in scope with its practice.

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

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

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

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

(4) Qualifications of a Peer Reviewer and inspectors.

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

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

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

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

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

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

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

(a) Standards for review: Peer reviews shall be conducted according to the "Standards for Performing and Reporting on Peer Reviews" promulgated by the AICPA, effective October 5, 1998 as amended, are hereby incorporated by reference and adopted as the minimum standards for peer reviews of all firms. This section shall not require any firm or licensee to become a member of the AICPA or any administering organization.

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

(6) Procedures in Case of Substandard Review, a Modified or Adverse Report or repeat findings.

(a) If an administering organization finds that a peer review was not performed in accordance with these rules or the peer review results in a modified or adverse report or in repeat findings, the Peer Review Committee may require remedial action to assure that the review or performance of the CPA or CPA firm being reviewed meets the objectives of the peer review program.

(7) Review of Multi-State Firms.

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

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

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

(iii) the peer review:

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

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

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

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

(b) A multi-state firm not granted approval under R156-26a-303a(8)(a) shall undergo a peer review pursuant to these rules which shall comply with R156-26a-303a(8)(a) of the multi-state firm within this state.

(c) A multi-state firm seeking approval under R156-26a-303a(8)(a) shall submit an application to the administering organization by February 1 of the year of review establishing that the peer review it proposes to undergo meets all of the requirements of R156-26a-303a(5).

(8) Exemption.

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

(9) Mergers, Combinations, Dissolutions or Separations.

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

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

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

(10) Extension.

(a) If the firm can demonstrate that the time established for the conduct of a peer review will create an unreasonable hardship upon the firm, the Division may approve an extension not to exceed 180 days from the date the peer review was originally scheduled. A request for extension shall be addressed in writing by the firm to the Division with a copy to the administering organization responsible for administration of that firm's peer review. The written request for extension must be received by the Division and the administering organization not less than 30 days prior to the date of scheduled review or the request will not be considered. The Division shall inform the administering organization of the approval of any extension.

(11) Retention of Documents Relating to Peer Reviews.

(a) All documentation necessary to establish that each peer review was performed in conformity with peer review standards adopted by the board, including the peer review working papers, the peer review report, comment letters and related correspondence indicating the firm's concurrence or

nonconcurrence, and any proposed remedial actions and related implementation shall be maintained.

(b) The documents described in R156-26a-303a(11)(a) shall be retained for a period of time corresponding to the designated retention period of the relevant administering organization. In no event shall the retention period be less than 90 days.

(12) Costs and Fees for Peer Review.

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

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

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

R156-26a-303b. Renewal and Reinstatement Requirements - Continuing Professional Education (CPE).

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

(a) The following standards have been broadly stated in recognition of the diversity of practice and experience among CPAs. They establish a framework for the development, presentation, measurement, and reporting of CPE programs and thereby help to ensure that CPAs maintain the required knowledge, skills and abilities necessary to competently provide services and to enable to the CPA to provide evidence of meeting the minimum CPE requirements specified under these rules.

(2) General Standards for CPAs.

(a) Standard No. 1. All CPAs must participate in CPE learning activities that maintain and/or improve their professional competence. This CPE must include a minimum of 80 hours of CPE in each two-year period ending on December 31 of each odd numbered year.

(i) The term "must", as used in these standards, means departure from those specific standards is not permitted. The term "should", as used in these standards, means that CPAs and CPE program sponsors are expected to follow such standards as written and are required to justify any departures from such standards when unusual circumstances warrant such departures.

(ii) Selection of CPE learning activities should be a thoughtful, reflective process addressing the individual CPA's current and future professional plans, current knowledge and skills level, and desired or needed additional competence to meet future opportunities and/or professional responsibilities.

(iii) A CPA's field of employment does not limit the need for CPE. CPAs performing professional services need to have a broad range of knowledge, skills, and abilities. Thus, the concept of professional competence should be interpreted broadly. Accordingly, acceptable continuing education encompasses programs contributing to the development and maintenance of both technical and non-technical professional skills.

(iv) Acceptable CPE subjects include accounting, assurance/auditing, consulting services, specialized knowledge and applications, management, taxation, and ethics. Other subjects, including personal development, may also be acceptable if they maintain and/or improve the CPA's professional competence. Such subjects may include, but are not limited to: accounting and auditing, taxation, management advisory services, information technology, communication arts, mathematics, statistics, probability and quantitative analysis, economics, business law and litigation support, functional fields of business such as finance, production, marketing, personnel relations, development and management, business management and organizations, social environment of business, and specialized areas of industry such as film industry, real estate, or farming.

(v) To help guide their professional development, CPAs may find it useful to develop a learning plan. The learning plan can be used to evaluate learning and professional competence development.

(A) A learning plan means a structured process that helps guide CPAs in their professional development. A learning plan is used to evaluate and document learning and professional competence development. A learning plan should be reviewed regularly and modified as a CPA's professional competence needs change. A learning plan should include:

(I) a self-assessment of the gap between current and needed knowledge, skills, and abilities;

(II) a set of learning objectives arising from this assessment; and

(III) learning activities to be undertaken to fulfill the learning plan.

(b) Standard No 2. CPAs should comply with all applicable CPE requirements and should claim CPE credit only for CPE programs when the CPE program sponsors have complied with the Standards for CPE Program Presentation (Nos. 8 - 11) and Standard for CPE Program Reporting No. 17.

(i) In addition to minimum CPE requirements specified in these rules, CPAs are responsible for compliance with all applicable CPE requirements, rules, and regulations of other state licensing bodies, other governmental entities and other professional organizations or bodies who have standard setting authority. CPAs should contact each appropriate entity to which they report to determine its specific requirements or any exceptions it may have to the standards presented herein.

(ii) Periodically, CPAs may participate in learning activities which do not comply with all applicable CPE requirements, for example specialized industry programs offered through industry sponsors. If CPAs propose to claim credit for such learning activities, they should retain all relevant information regarding the program to provide documentation to the Division, other state licensing bodies, and/or all other professional organizations or bodies showing that the learning activity is equivalent to one which meets all these or other applicable Standards.

(c) Standard No. 3. CPAs are responsible for accurate reporting of CPE credits earned and should retain appropriate documentation of their participation in learning activities, including: name and contact information of CPE program sponsor, title and description of content, date of program, location and number of CPE credits, all of which should be included in documentation provided by the CPE program sponsor.

(i) Although CPAs are required to document a minimum level of CPE hours, through periodic reporting of CPE, the objective of CPE must always be maintenance/enhancement of professional competence, not just attainment of minimum credits.

(ii) Compliance with regulatory and other requirements

mandates that CPAs keep documentation of their participation in activities designed to maintain and/or improve professional competence. In the absence of legal or other requirements for longer retention, a CPA must retain documentation for a minimum of five years from the end of the year in which the learning activities were completed.

(iii) Participants must document their claims of CPE credit. Examples of acceptable evidence of completion include:

(A) For group and independent study programs, a certificate or other verification supplied by the CPE program sponsor.

(B) For self-study programs, a certificate supplied by the CPE program sponsor after satisfactory completion of an examination.

(C) For instruction credit, a certificate or other verification supplied by the CPE program sponsor.

(D) For a university or college course that is successfully completed for credit, a record or transcript of the grade the participant received.

(E) For university or college non-credit courses, a certificate of attendance issued by a representative of the university or college.

(F) For published articles, books, or CPE programs, (1) a copy of the publication (or in the case of a CPE program, course development documentation) that names the writer as author or contributor, (2) a statement from the writer supporting the number of CPE hours claimed, and (3) the name and contact information of the independent reviewer or publisher.

(d) Standard No. 4. CPAs who complete sponsored learning activities that maintain or improve their professional competence should claim the CPE credits recommended by CPE program sponsors.

(i) CPAs may participate in a variety of sponsored learning activities, such as workshops, seminars and conferences, self-study courses, Internet-based programs, and independent study. While CPE program sponsors determine credits, CPAs should claim credit only for activities through which they maintained or improved their professional competence. CPAs who participate in only part of a program should claim CPE credit only for the portion they attended or completed.

(ii) In order to qualify as CPE, an Internet-based program must qualify as a group program as provided in Subsection R156-26a-303b(3)(b)(i) or as a self-study program as provided in Subsection R156-26a-303b(3)(g).

(e) Standard No. 5. CPAs may engage in independent study under the direction of a CPE program sponsor who has met the applicable standards for CPE program sponsors when the subject matter and level of study maintain or improve their professional competence.

(i) Independent study is an educational process designed to permit a participant to learn a given subject under the guidance of a CPE program sponsor one-on-one. Participants in an independent study program should:

(A) Enter into a written learning contract with a CPE program sponsor who must comply with the applicable standards for CPE program sponsors.

(B) Accept the written recommendation of the CPE program sponsor as to the number of credits to be earned upon successful completion of the proposed learning activities. CPE credits will be awarded only if:

(I) all the requirements of the independent study as outlined in the learning contract are met;

(II) the CPE program sponsor reviews and signs the participant's report;

(III) the CPE program sponsor reports to the participant the actual credits earned; and

(IV) the CPE program sponsor provides the participant with contact information.

(ii) The credits to be recommended by an independent study CPE program sponsor should be agreed upon in advance and should be equated to the effort expended to improve professional competence. The credits cannot exceed the time devoted to the learning activities and may be less than the actual time involved.

(iii) Retain the necessary documentation to satisfy regulatory requirements as to the content, inputs, and outcomes of the independent study.

(iv) Complete the program of independent study in 15 weeks or less.

(3) Standards for CPE Program Sponsors (Standard 1), Standards for CPE Program Development (Standards 2-7), Standards for CPE Program Presentation (Standards 8-11), Standards for Program Measurement (Standards 12-16), and Standards for CPE Program Reporting (Standards 17-18). "CPE sponsor", as used herein, means the individual or organization responsible for setting learning objectives, developing the program materials to achieve such objectives, offering a program to participants, and maintaining the documentation required by these standards. The term "CPE program sponsor" may include associations of CPAs, whether formal or informal, as well as employers who offer in-house programs.

(a) Standard No. 1. CPE program sponsors are responsible for compliance with all applicable standards and other CPE requirements.

(i) In addition to the minimum requirements under these rules, CPE program sponsors may have to meet specific CPE requirements of other state licensing bodies, other governmental entities, and/or other professional organizations or bodies. CPE program sponsors should contact the appropriate entity to determine requirements.

(b) Standard No. 2. Sponsored learning activities must be based on relevant learning objectives and outcomes that clearly articulate the knowledge, skills, and abilities that can be achieved by participants in the learning activities.

(i) Learning activities, meaning an educational endeavor that improves or maintains professional competence, provided by CPE program sponsors for the benefit of CPAs, should specify the level, content, and learning objectives so that potential participants can determine if the learning activities are appropriate to their professional competence development needs. Learning activity levels include, for example, basic, intermediate, advanced, update, and overview as defined as follows:

(A) Advanced. Learning activity level most useful for individuals with mastery of the particular topic. This level focuses on the development of in-depth knowledge, a variety of skills, or a broader range of applications. Advanced level programs are often appropriate for seasoned professionals within organizations; however, they may also be beneficial for other professionals with specialized knowledge in a subject area.

(B) Basic. Learning activity level most beneficial to CPAs new to a skill or an attribute. These individuals are often at the staff or entry level in organizations, although such programs may also benefit a seasoned professional with limited exposure to the area.

(C) Intermediate. Learning activity level that builds on a basic program, most appropriate for CPAs with detailed knowledge in an area. Such persons are often at a mid-level within the organization, with operational and/or supervisory responsibilities.

(D) Overview. Learning activity level that provides a general review of a subject area from a broad perspective. These programs may be appropriate for professionals at all organizational levels.

(E) Update. Learning activity level that provides a general review of new developments. This level is for participants with a background in the subject area who desire to keep current.

(c) Standard No. 3. CPE program sponsors should develop and execute learning activities in a manner consistent with the prerequisite education, experience, and/or advance preparation of participants.

(i) To the extent it is possible to do so, CPE program sponsors should make every attempt to equate program content and level with the backgrounds of intended participants. All programs must clearly identify prerequisite education, experience, and/or advance preparation, if any, in precise language so that potential participants can readily ascertain whether they qualify for the program.

(d) Standard No. 4. CPE program sponsors must use activities, materials, and delivery systems that are current, technically accurate, and effectively designed, and include discussions of ethical issues that may apply to the subject matter. CPE program sponsors must be qualified in the subject matter.

(i) To best facilitate the learning process, sponsored programs and materials must be prepared, presented and updated in a timely manner. Learning activities must be developed by individuals or teams having expertise in the subject matter. Expertise may be demonstrated through practical experience or education.

(ii) CPE program sponsors must review the course materials periodically to ensure that they are accurate and consistent with currently accepted standards relating to the program's subject matter.

(e) Standard No. 5. CPE program sponsors of group and self-study programs must ensure learning activities are reviewed by qualified persons other than those who developed them to ensure that the program is technically accurate and current and addresses the stated learning objectives. These reviews must occur before the first presentation of these materials and again after each significant revision of the CPE programs.

(i) Individuals or teams qualified in the subject matter must review programs. When it is impractical to review certain programs in advance, such as lectures given only once, greater reliance should be placed on the recognized professional competence of the instructors or presenters. Using independent reviewing organizations familiar with these standards may enhance quality assurance.

(f) Standard No. 6. CPE program sponsors of independent study learning activities must be qualified in the subject matter.

(i) A CPE program sponsor of independent study learning activities must have expertise in the specific subject area related to the independent study. The CPE program sponsor must also:

(A) Review, evaluate, approve and sign the proposed independent study learning contract, including agreeing in advance on the number of credits to be recommended upon successful completion.

(B) Review and sign the written report developed by the participant in independent study.

(C) Retain the necessary documentation to satisfy regulatory requirements as to the content, inputs, and outcomes of the independent study.

(g) Standard No. 7. Self-study programs must employ learning methodologies that clearly define learning objectives, guide the participant through the learning process, and provide evidence of a participant's satisfactory completion of the program.

(i) To guide participants through a learning process, CPE program sponsors of self-study programs must elicit participant responses to test for understanding of the material, offer evaluative feedback to incorrect responses, and provide reinforcement feedback to correct responses. To provide evidence of satisfactory completion of the course, CPE program sponsors of self-study programs must require participants to successfully complete a final examination with a minimum-passing grade of at least 70 percent before issuing CPE credit for the course.

(A) Evaluative feedback, as used in this subsection, means: specific response to incorrect answers to questions in self-study programs. Unique feedback must be provided for each incorrect response, as each one is likely to be wrong for differing reasons.

(B) Reinforcement feedback, as used in this subsection, means: specific responses to correct answers to questions in self-study programs. Such feedback restates why the answer selected was correct.

(ii) Examinations may contain questions of varying format (for example, multiple-choice, essay and simulations.) If objective type questions are used, at least five questions per CPE credit must be included on the final examination. For example, the final examination for a five-credit course must include at least 25 questions.

(iii) Self-study programs must be based on materials specifically developed for instructional use. Self-study programs requiring only the reading of general professional literature, IRS publications, or reference manuals followed by a test will not be acceptable. However, the use of the publications and reference materials in self-study programs as supplements to the instructional materials could qualify if the self-study program complies with each of the CPE standards.

(h) Standard No. 8. CPE program sponsors must provide descriptive materials that enable CPAs to assess the appropriateness of learning activities. To accomplish this, CPE program sponsors must inform participants in advance of: learning objectives, prerequisites, program level, program content, advance preparation, instructional delivery methods, recommended CPE credit, and course registration requirements. Instructional delivery methods, as used in this subsection, means: delivery strategies such as case studies, computer-assisted learning, lectures, group participation, programmed instruction, teleconferencing, use of audiovisual aids, or work groups employed in group, self-study, or independent study programs.

(i) For potential participants to effectively plan their CPE, the program sponsor should disclose the significant features of the program in advance (e.g., through the use of brochures, Internet notices, invitations, direct mail, or other announcements). When CPE programs are offered in conjunction with non-educational activities, or when several CPE programs are offered concurrently, participants should receive an appropriate schedule of events indicating those components that are recommended for CPE credit. The CPE program sponsor's registration policies and procedures should be formalized, published, and made available to participants.

(ii) CPE program sponsors should distribute program materials in a timely manner and encourage participants to complete any advance preparation requirements. All programs should clearly identify prerequisite education, experience, and/or advance preparation requirements, if any, in the descriptive materials. Prerequisites should be written in precise language so that potential participants can readily ascertain whether they qualify for the program.

(i) Standard No. 9. CPE program sponsors must ensure instructors are qualified with respect to both program content and instructional methods used.

(i) Instructors are key ingredients in the learning process for any group program. Therefore, it is imperative that CPE program sponsors exercise great care in selecting qualified instructors for all group programs. Qualified instructors are those who are capable, through training, education, or experience of communicating effectively and providing an environment conducive to learning. They should be competent and current in the subject matter, skilled in the use of the appropriate instructional methods and technology, and prepared in advance. As used in this subsection, Group Program means:

An educational process designed to permit a participant to learn a given subject through interaction with an instructor and other participants either in a classroom or conference setting or by using the Internet.

(ii) CPE program sponsors should evaluate the instructor's performance at the conclusion of each program to determine the instructor's suitability to serve in the future.

(j) Standard No. 10. CPE program sponsors must employ an effective means for evaluating learning activity quality with respect to content and presentation, as well as provide a mechanism for participants to assess whether learning objectives were met.

(i) The objectives of evaluation are to assess participant satisfaction with specific programs and to increase subsequent program effectiveness. Evaluations, whether written or electronic, should be solicited from participants and instructors for each program session, including self-study, to determine, among other things, whether:

(A) Stated learning objectives were met.

(B) If applicable, prerequisite requirements were appropriate.

(C) Program materials were accurate.

(D) Program materials were relevant and contributed to the achievement of the learning objectives.

(E) Time allotted to the learning activity was appropriate.

(F) If applicable, individual instructors were effective.

(G) Facilities and/or technological equipment was appropriate.

(H) Handout or advance preparation materials were satisfactory.

(I) Audio and video materials were effective.

(ii) CPE program sponsors should periodically review evaluation results to assess program effectiveness and should inform developers and instructors of evaluation results.

(k) Standard No. 11. CPE program sponsors must ensure instructional methods employed are appropriate for the learning activities. Instructional methods means: delivery strategies such as case studies, computer-assisted learning, lectures, group participation, programmed instruction, teleconferencing, use of audiovisual aids, or work groups employed in group, self-study, or independent study programs. Learning activities should be presented in a manner consistent with the descriptive and technical materials provided.

(i) CPE program sponsors should evaluate the instructional methods employed for the learning activities to determine if the delivery is appropriate and effective. Integral aspects in the learning environment that should be carefully monitored include the number of participants and the facilities and technologies employed in the delivery of the learning activity.

(ii) CPE program sponsors are expected to present learning activities that comply with course descriptions and objectives. Appropriate supplemental materials may also be used.

(l) Standard No. 12. Sponsored learning activities are measured by program length, with one 50-minute period equal to one CPE credit. One-half CPE credit increments (equal to 25 minutes) are permitted after the first credit has been earned in a given learning activity.

(i) For learning activities in which individual segments are less than 50 minutes, the sum of the segments should be considered one total program. For example, five 30-minute presentations would equal 150 minutes and should be counted as three CPE credits.

(ii) When the total minutes of a sponsored learning activity are greater than 50, but not equally divisible by 50, the CPE credits granted should be rounded down to the nearest one-half credit. Thus, learning activities with segments totaling 140 minutes should be granted two and one-half CPE credits.

(iii) While it is the participant's responsibility to report the appropriate number of credits earned, CPE program sponsors must monitor group learning activities to assign the correct number of CPE credits.

(iv) For university or college credit courses that meet these CPE Standards, each unit of college credit shall equal the following CPE credits: semester system 15 credits; quarter system 10 credits.

(v) For university or college non-credit courses that meet these CPE standards, CPE credits shall be awarded only for the actual classroom time spent in the non-credit course.

(vi) Credit is not granted to participants for preparation time.

(vii) Only the portions of committee or staff meetings that are designed as programs of learning and comply with these standards qualify for CPE credit.

(m) Standard No. 13. CPE credit for self-study learning activities must be based on a pilot test of the average completion time.

(i) A sample of intended professional participants should be selected to test program materials in an environment and manner similar to that in which the program is to be presented. The sample group of at least three individuals must be independent of the program development group and possess the appropriate level of knowledge before taking the program.

(ii) The sample does not have to ensure statistical validity. CPE credits should be recommended based on the average completion time for the sample. If substantive changes are subsequently made to program materials, further pilot tests of the revised program materials should be conducted to affirm or amend, as appropriate, the average completion time.

(n) Standard No. 14. Instructors or discussion leaders of learning activities should receive CPE credit for both their preparation and presentation time to the extent the activities maintain or improve their professional competence and meet the requirements of these CPE standards.

(i) Instructors, discussion leaders, or speakers who present a learning activity for the first time should receive CPE credit for actual preparation time up to two times the number of CPE credits to which participants would be entitled, in addition to the time for presentation. For example, for learning activities in which participants could receive 8 CPE credits, instructors may receive up to 24 CPE credits (16 for preparation plus 8 for presentation).

(ii) For repeat presentations, CPE credit can be claimed only if it can be demonstrated that the learning activity content was substantially changed and such change required significant additional study or research.

(iii) The maximum credit for instructors, discussion leaders or speakers cannot exceed 50 percent of the CPE requirement.

(o) Standard No. 15. Writers of published articles, books, or CPE programs should receive CPE credit for their research and writing time to the extent it maintains or improves their professional competence.

(i) Writing articles, books, or CPE programs for publication is a structured activity that involves a process of learning. For the writer to receive CPE credit, the article, book, or CPE program must be formally reviewed by an independent party. CPE credits should be claimed only upon publication.

(ii) The maximum credit for books or articles cannot exceed 25 percent of the CPE requirement.

(p) Standard No. 16. CPE credits recommended by a CPE program sponsor of independent study must not exceed the time the participant devoted to complete the learning activities specified in the learning contract.

(i) The credits to be recommended by an independent study CPE program sponsor should be agreed upon in advance and should be equated to the effort expended to improve professional competence. The credits cannot exceed the time devoted to the learning activities and may be less than the actual

time involved.

(q) Standard No. 17. CPE program sponsors must provide program participants with documentation of their participation, which includes the following: CPE program sponsor name and contact information, participant's name, course title, course field of study, date offered or completed, if applicable, location, the name of the CPE registry issuing approval, and the approval number assigned to that program by the Registry, type of instructional/delivery method used, amount of CPE credit recommended, verification by CPE program sponsor representative.

(i) CPE program sponsors should provide participants with documentation to support their claims of CPE credit. Acceptable evidence of completion includes:

(A) For group and independent study programs, a certificate or other verification supplied by the CPE program sponsor.

(B) For self-study programs, a certificate supplied by the CPE program sponsor after satisfactory completion of an examination.

(C) For instruction credit, a certificate or other verification supplied by the CPE program sponsor.

(D) For a university or college course that is successfully completed for credit, a record or transcript of the grade the participant received.

(E) For university or college non-credit courses, a certificate of attendance issued by a representative of the university or college.

(F) For published articles, books, or CPE programs: (1) a copy of the publication (or in the case of a CPE program, course development documentation) that names the writer as author or contributor, (2) a statement from the writer supporting the number of CPE hours claimed, and (3) the name and contact information of the independent reviewer(s) or publisher.

(r) Standard No. 18. CPE program sponsors must retain adequate documentation for five years to support their compliance with these standards and the reports that may be required of participants.

(i) Evidence of compliance with responsibilities set forth under these Standards which is to be retained by CPE program sponsors includes, but is not limited to: records of participation, dates and locations, instructor names and credentials, number of CPE credits earned by participants, and results of program evaluations.

(ii) Information to be retained by developers includes copies of program materials, evidence that the program materials were developed and reviewed by qualified parties, and a record of how CPE credits were determined.

(iii) For CPE program sponsors offering self-study programs, appropriate pilot test records must be retained regarding the following:

(A) When the pilot test was conducted.

(B) The intended participant population.

(C) How the sample was determined.

(D) Names and profiles of sample participants.

(E) A summary of participants' actual completion time.

(4) Programs or Activities Which Do Not Qualify. The following activities do not satisfy the standards for programs of this section and are not eligible for satisfaction of CPE requirements:

(a) Personal study: personal study includes reading professional journals and publications, studying and researching matters such as tax code revisions, practicing software programs on a computer and watching video movies of a conference; and

(b) Committee meetings, dinner and luncheon meetings, firm meetings or other activities that do not meet the standards outlined in this section.

(5) Reporting Requirements. Each licensee applying for license renewal shall report, by January 31 of each even numbered year, demonstrating completion of at least the minimum number of credits required in Section 58-26a-304 for qualified continuing professional education hours completed for the preceding two calendar years. Each person applying for license reinstatement shall file a report at the time of application demonstrating completion of the CPE required under Subsection R156-26a-307.

(a) Such report shall be by means of one of the following:

(i) certification from an approved continuing professional education registry of the hours of qualified continuing education completed; or

(ii) a report to the Division for review and approval of continuing professional education.

(b) It is the responsibility of the applicant or licensee to demonstrate to the Division that the applicant or licensee successfully completed all CPE reported and meets the requirements of this section or that the CPE has been approved by an approved continuing professional education registry and that reported courses maintained or increased the professional competence of the applicant or licensee.

(6) Continuing Professional Education Registry. To obtain approval as a continuing professional education registry, an organization shall:

(a) be a professional association primarily consisting of individuals licensed as certified public accountants;

(b) be organized and in good standing according to the laws of the state;

(c) enter into a written agreement with the Division under which the organization agrees to:

(i) review and approve only those programs which meet the standards set forth under this section;

(ii) publish and disseminate to their members or other CPAs on request, listings of continuing professional education programs which meet the standards and are approved for qualified continuing professional education credit;

(iii) maintain accurate records of qualified continuing professional education completed by each of its registrants and provide each of its registrants with a certificate on a timely basis to permit the registrant to file that certificate with the registrant's application to the division for renewal or reinstatement of his license as a certified public accountant. The certificate shall contain the name of the instructor, the date of the program, location of the program, title of the program, the name of the sponsor, the name of the CPE registry issuing approval, and the approval number assigned to that program by the Registry, and the number of CPE hours granted; and

(iv) make records of approved of qualified continuing professional education programs and records of qualified continuing professional education completed by registrants available for audit by representatives of the division, the board or peer advisory committees of the board.

(7) Fees. A registry may charge a reasonable fee to registrants for services provided for approval of courses. Sponsors of approved courses may charge a lower fee to members of the sponsoring association for participation as a registrant than it charges to non-members of the association.

(8) Other CPE requirements and failure to complete CPE requirements.

(a) Interim Licensure CPE requirements. Those individuals who become licensed or certified between renewal periods shall be required to complete CPE based upon ten hours per calendar quarter for the remaining quarters of the reporting period.

(b) Carry Forward Provision. A licensee who completes more than 80 hours of CPE during the two year reporting period may carry forward up to 40 hours to the next succeeding reporting period.

(c) Failure to comply with CPE requirements.

(i) Failure to meet the 80 hour requirement. An individual

holding a current Utah license who fails to complete the required 80 hours of CPE by the reporting deadline will not be allowed to renew their license unless they complete and report to the division at least 30 days prior to their expiration date two times the number of CPE hours the license holder was short for the reporting period (penalty hours). The penalty hours shall not be considered to satisfy in whole or part any of the CPE hours required for subsequent renewal of the license.

(ii) Non-Qualifying or Disqualified CPE hours. An individual who reports nonqualifying hours or who has hours disqualified by the Utah Board of Accountancy shall not be allowed to renew their license unless they complete and report to the division, within 60 days of receiving notification by the division of their shortage and the relevant penalty hours requirement under R156-26-303b(8)(c)(i).

(iii) Waiver for Medical Reasons. A licensee may request the board to waive the requirements or grant an extension for continuing professional education on the basis that the licensee was not able to complete the continuing professional education due to medical or related conditions confirmed by a qualified health care provider. Such medical confirmation shall include the beginning and ending dates during which the medical condition would have prevented the licensee from completing the continuing professional education, the extent of the medical condition and the effect that the medical condition had upon the ability of the licensee to continue to engage in the practice of accountancy. The board in determining whether the waiver is appropriate shall consider whether or not the licensee continued to be engaged in the practice of accountancy practice on a full or part time basis during the period specified by the medical confirmation. Granting a waiver of meeting the minimum CPE hours shall not be construed as a waiver of a CPA being required to provide services in a competent manner with current knowledge, skill and ability. When medical or other conditions prevent the CPA from providing services in a competent manner, the CPA shall refrain from providing such services.

R156-26a-303c. Renewal Cycle.

In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 26a is established by rule in Section R156-1-308.

R156-26a-303d. Renewal Procedures.

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

R156-26a-305. Use of Certified Public Accountant (CPA) Title.

An individual who has a current CPA license issued by any other state may use the title or designation "Certified Public Accountant" but may only practice public accountancy in the state of Utah if currently licensed in the state of Utah or if performing public accountancy which is incidental to regular practice in another state as defined in Subsection 58-26a-305(1) and as further clarified in R156-26a-102(4).

R156-26a-307. Reinstatement of Licenses.

(1) An individual having held a Utah license which has expired for failure to renew for nonpayment of fees, or an individual applying for reinstatement from emeritus status, may be relicensed upon satisfactory completion of:

(a) submission of an application on forms supplied by the division which shall contain information as to why the person allowed their license to lapse;

(b) 80 hours of acceptable CPE, completed within the 12 months preceding the submission of an application for reinstatement, which shall include a minimum of 16 hours in accounting or auditing or both and shall include successful completion of the AICPA Ethics Self-Study Examination and the Utah Law and Rules Examination with a minimum score of at least the minimum score required for initial licensure. Successful completion of the two examinations will count as eight hours of CPE towards the 80 hour requirement.

(i) The requirements in Subsection R156-26-307(1)(b) are waived if the reinstatement applicant has not been practicing within the state of Utah since the expiration of the license being reinstated, the reinstatement applicant has continuously since the expiration been licensed and practicing in another state and the reinstatement applicant demonstrates that the applicant has met all the CPE requirements that would have been applicable in the state of Utah during the time the license was expired in the state of Utah.

(ii) The requirements in Subsection R156-26a-307(1)(b) are waived, if the applicant failed to renew because of inadvertent failure to pay the renewal fees, to sign application documents, or to meet similar technical application requirements and the application for reinstatement is filed with the Division within 24 months after expiration date of the license and at time of application for reinstatement the applicant demonstrates by proof of attendance at acceptable CPE courses that at all times the applicant was in full compliance with the CPE requirements.

(2) A licensee who reinstates their license must obtain ten hours of CPE per full calendar quarter remaining in the current CPE reporting period after reinstatement is granted.

(3) The number of hours required to reinstate the license shall not be considered to satisfy in whole or part any of the 80 hours of CPE required for subsequent renewal of the license.

R156-26a-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) a licensee willfully failing to comply with continuing professional education or fraudulently reporting continuing professional education; or

(2) commission of an act or omission that fails to conform to the accepted and recognized standards and ethics of the profession including those stated in the "Code of Professional Conduct" of the American Institute of Certified Public Accountants (AICPA) as adopted January 12, 1998, as amended, January 14, 1992 and October 28, 1997, which is hereby incorporated by reference.

KEY: accountants, licensing, peer review, continuing professional education

June 21, 2005	**58-26a-101**
Notice of Continuation April 15, 2002	**58-1-106(1)(a)**
	58-1-202(1)(a)

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**
Notice of Continuation June 28, 2005	**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

R212. Community and Economic Development, Community Development, History.
R212-11. Historic Preservation Tax Credit.
R212-11-1. Authority.

(1) Sections 59-7-609 and 59-10-108.5 allow for an historic preservation tax credit by the Utah State Tax Commission and provide for certain duties of the Division of State History and the State Historic Preservation Office.

(2) Section 9-8-205 provides that the Board of State History and the Division shall make policies and rules to direct the division director in the carrying out of his duties.

R212-11-2. Purpose.

The purposes of this rule are: (1) to ensure an orderly process by the Division of State History and the State Historic Preservation Office, (2) to allow for appeal and judicial review of decisions, and (3) to ensure that all rehabilitation work on historic preservation tax credit projects meets the Secretary of the Interior's "Standards for Rehabilitation".

R212-11-3. Applicability.

This rule applies to all applications and proceedings under Sections 59-7-609 and 59-10-108.5.

R212-11-4. Definitions.

As used in this rule:

(1) "State Historic Preservation Office" means the Office of Preservation within the Division of State History known hereafter as Office.

(2) "Director" means the Director of the Division of State History.

(3) "Office" means the Office of Historic Preservation within the Division of State History.

(4) "Division" means the Division of State History.

(5) "Historic Preservation Tax Credit" means any tax credit allowed by the Utah State Tax Commission pursuant to Sections 59-7-609 or 59-10-108.5.

(6) "Project" means the entire scope and course of work on any building and accompanying site for which an applicant is seeking the historic preservation tax credit.

(7) "Applicant" means any person or entity that is seeking an historic preservation tax credit.

(8) "Standards" means the Secretary of Interior's "Standards for Rehabilitation" as promulgated under the authority of the National Historic Preservation Act 1966 as amended, 16 USC Section 470 et seq.

(9) "National Register" means the National Register of Historic Places maintained pursuant to the National Historic Preservation Act of 1966, as amended, 16 USC Section 470 et seq.

(10) "Anticipatory construction, demolition, or alteration" means any rehabilitation-related action that does not meet the "Standards" taken with prior knowledge and in intentional disregard of the "Standards" or after having received Division comments.

R212-11-5. Application for Historic Preservation Tax Credit.

(1) Any person or entity seeking the historic preservation tax credit shall, prior to completion of the rehabilitation project, apply to the Office for certification of historic significance and approval of the proposed or on-going rehabilitation work. The applications shall be on forms approved by the Office. The applicant shall complete the applications in whole and shall provide all other information requested relative to the project including adequate pre-rehabilitation photographs and other required documentation.

(2) The Office shall consult with the applicant and provide historic and technical advice and assistance subject to budgetary and management constraints, as necessary to assist the applicant in applying for the historic preservation tax credit. The Office shall review the application within thirty days of receipt to determine if the proposed or on-going rehabilitation work meets the "Standards".

(3) If the Office determines the project meets the "Standards" and that no anticipatory construction, demolition, or alteration has occurred, the Office shall provide the applicant with written approval of the proposed or on-going work along with any further comments or conditions deemed necessary.

(4) If after full consultation the Office determines the project does not meet the "Standards", that anticipatory construction, demolition, or alteration has occurred, or the building is not a certifiable historic building, the Office shall notify the applicant in writing of the decision, set forth the basis of the decision, and detail the process to appeal the decision. The applicant or other interested party may request a review of the decision as set forth in R212-11-9.

R212-11-6. Execution of Project.

(1) During the course of the project, the Office shall be available for continuing consultation subject to budgetary and management constraints. If the applicant desires to modify the approved work plan, the applicant shall make such request for a change on a form approved by the Office and shall be governed by the provisions of R212-11-5.

(2) The applicant shall allow access and observation of the project building at any reasonable time upon request of the Office.

R212-11-7. Certification of Completed Work.

(1) Upon completion of the project, the applicant shall request certification of completed work in writing on a form approved by the Office and shall provide all other information requested by the Office relative to the project. The applicant shall allow access to the project for final observation by the Office if necessary in determining if the work conforms with the approved plan.

(2) At this time the applicant shall also submit a complete National Register nomination if the building is not already listed in the National Register as set forth in R212-11-10.

(3) The final Office review shall be in writing and shall be forwarded to the applicant within thirty days of receipt of a complete application.

R212-11-8. Issuance of Authorization Form and Certification Number.

If the Office determines the work was completed in accordance with the approved plan and meets the "Standards", the Office shall issue an authorization form provided by the Utah State Tax Commission, including the unique certification number. If any request for review is sought, the Office shall not issue the authorization form or unique certification number unless and until the review results in approval of the project.

R212-11-9. Request for Review and Appeal Proceedings.

(1) All proceedings under R212-11 with regard to the historic preservation tax credit are informal.

(2) The applicant or any interested person may seek review of the decision of the Office by filing a request for review with the Director. The request for review shall set forth in detail that portion of the decision of the Office for which review is sought, and on what basis the decision was inconsistent with the facts or "Standards". Copies of the request for review shall be sent to the applicant and to any other party who has expressed interest in the proceeding as appropriate. Any such request for review must be filed with the Director within 30 days of the decision of the Office.

(3) The applicant or any interested person may file with

the Director a response to the request for review within fifteen days of notification.

(4) Review of the Office decision shall be made by the Director and shall be based on review of the project file, the request for review, and responses, if any. The Director may conduct an independent investigation and request further information from the Office staff, applicant, or any other party to the project. In addition, the Director may, at his/her sole discretion, conduct an informal hearing on the review.

(5) Within thirty days of receipt of the request for review, the Director shall issue his/her decision based on review of the project file and the information received at a hearing or from other sources, if any. The Director shall set forth in writing his/her decision concerning the request for review and forward it to the applicant and other interested parties.

(6) Judicial review of the decision of the Director may be obtained by filing a complaint in the Third Judicial District Court in Salt Lake County seeking review by a trial de novo. The issue in the district court is whether the decision of the Director constituted an abuse of his/her discretion. The person or entity seeking judicial review shall have the burden of proof that the decision of the Director constituted an abuse of his/her discretion.

R212-11-10. Noncertified Historic Buildings.

(1) If the project building is not listed in the National Register at the time of the application for certification of completed work, the applicant shall submit a complete National Register nomination form to the Office. The Office shall review the nomination for completeness and forward it to the Board of State History according to requirements of 36 CFR 60 and applicable policies for evaluation and action.

(2) If the project building is located in a National Register Historic District and the building has not been designated by the Division as being of significance to the district at the time of application for certification of completed work, the applicant shall submit a request for designation to the Office. The request shall be on a form approved by the Office. The Office shall review the request for completeness and determine if the project building is of significance to the district.

KEY: preservation, tax credit, rehabilitation, housing
January 2, 1996 59-7-609
Notice of Continuation June 30, 2005 59-10-108.5
9-8-205

R277. Education, Administration.
R277-486. Professional Staff Cost Program.
R277-486-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Computer Aided Credentials of Teachers in Utah System (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes information such as:

(1) personal directory information;

(2) educational background;

(3) endorsements;

(4) employment history;

(5) professional development information; and

(6) a record of disciplinary action taken against the educator.

C. "ESEA" means the Elementary and Secondary Education Act, also known as the No Child Left Behind Act, P.L. 107-110, Title I, Part A, Subpart 1, Sec. 1119, January 8, 2002.

D. "FTE" means full time equivalent.

E. "Local Education Agency (LEA)" means any organizational unit of the public education system existing under state law as either a traditional school district or a charter school authorized under Section 53A-1a-502.

F. "National Board certified educator" means an educator who has been certified by the National Board for Professional Teaching Standards (NBPTS) by successfully completing a three-year process that may include national content-area assessment, an extensive portfolio, and assessment of video-taped classroom teaching experience.

G. "USOE" means Utah State Office of Education.

H. "Weighted Pupil Unit (WPU)" means the unit of measure that is computed in accordance with the Minimum School Program Act for the purpose of determining the costs of a program on a uniform basis for each school district.

R277-486-2. 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, by Section 53A-17a-107(2) which authorizes the Board to adopt a rule to require a certain percentage of a district's professional staff to be licensed in the area in which the teacher teaches in order for the district to receive full funding under the state statutory formula, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to satisfy statutory percentages of licensed staff and support LEAs in recruiting and retaining highly educated and experienced educators for instructional, administrative and other types of professional employment in public schools.

R277-486-3. Eligibility to Receive WPUs for Professional Staff.

A. LEAs shall receive WPUs in accordance with the formula provided in Section 53A-17a-107(1)(a):

(1) only for those educators who hold at least a bachelors degree; and

(2) only to the extent that such educators are qualified to work in the area to which they are assigned consistent with R277-520. For example, an educator who is employed full time but is appropriately qualified in only 75% of his assignments would count for only 0.75 FTEs in the calculation of WPUs.

(3) In order to receive full (100%) funding, an LEA shall have an appropriately qualified educator in every assignment.

B. An educator who is identified as qualified under R277-520 is not necessarily highly qualified for ESEA purposes.

C. LEAs shall not receive WPUs for interns in their second or subsequent years nor for paraprofessionals in any assignment.

R277-486-4. Acceptable Experience.

A. Educator experience for purposes of this rule shall be measured in one-year increments.

B. An educator shall be credited with one year of experience for every school year in which he is employed at least half-time (0.5 FTE) in an instructional or administrative position in any public school in the State of Utah or in any regionally accredited:

(1) public school outside of the State of Utah;

(2) private school; or

(3) institution of higher education.

C. To obtain credit under Subsection B(1) through (3), the LEA which employs the educator shall submit to the USOE acceptable documentation verifying such experience, including documentation of the school's or institution's regional accreditation.

D. Employment in a prekindergarten position shall not be acceptable for this purpose, unless the educator is employed in a special education position in an accredited school.

E. Unpaid volunteer service, paid consulting, employment in non-instructional or non-administrative positions in a school setting, and time as a school intern shall not be acceptable experience under this rule.

F. Documentation of an educator's experience in a private school or institution of higher education may be required by USOE staff to determine relevance of experience.

R277-486-5. Acceptable Training.

Acceptable training under this rule may include:

A. Any degree at the bachelors level or above or credit beyond the current degree from a:

(1) regionally accredited institution of higher education; or

(2) postsecondary degree-granting institution accredited by any of the national accrediting agencies recognized by the United States Department of Education.

B. Any professional development activity consistent with R277-501 and approved in writing by the USOE.

R277-486-6. Mapping Degree Summary Data to Statutory Formula.

A. To ensure consistency in applying data from CACTUS to the formula, the following mapping of the relevant two-digit CACTUS Degree Summary codes to the five columns of the Professional Staff Cost formula table in Section 53A-17a-107(1)(a) shall be used:

(1) 03 = Bachelor's Degree;

(2) 04 or 05 = Bachelors + 30 quarter hours or 20 semester hours;

(3) 06 = Master's Degree;

(4) 07 or 08 = Master's Degree + 45 quarter hours or 30 semester hours;

(5) 09 = Doctorate.

B. A district shall be credited for an individual with National Board certification at the doctorate level.

R277-486-7. Data Sources.

A. For LEAs that were in operation in the prior year, data shall be used from June 30 update of CACTUS as required by R277-484-3(c).

B. For LEAs that were not in operation in the prior year, data shall be used from November 1 update of CACTUS as required by R277-484-3(I).

KEY: professional staff
January 15, 2004 **Art X Sec 3**
53A-17a-107(3)
53A-1-401(3)

R277. Education, Administration.
R277-700. The Elementary and Secondary School Core Curriculum.
R277-700-1. Definitions.

A. "Accredited" means evaluated and approved under the Standards for Accreditation of the Northwest Association of Schools and Colleges or the accreditation standards of the Board, available from the USOE Accreditation Specialist.

B. "Applied technology education (ATE)" means organized educational programs or courses which directly or indirectly prepare students for employment, or for additional preparation leading to employment, in occupations, where entry requirements generally do not require a baccalaureate or advanced degree.

C. "Basic skills course" means a subject which requires mastery of specific functions and was identified as a course to be assessed under Section 53A-1-602.

D. "Board" means the Utah State Board of Education.

E. "Core Curriculum content standard" means a broad statement of what students enrolled in public schools are expected to know and be able to do at specific grade levels or following completion of identified courses.

F. "Core Curriculum criterion-referenced test (CRTs)" means a test to measure performance against a specific standard. The meaning of the scores is not tied to the performance of other students.

G. "Core Curriculum objective" means a focused description of what students enrolled in public schools are expected to know and do at the completion of instruction.

H. "Demonstrated competence" means subject mastery as determined by school district standards and review. School district review may include such methods and documentation as: tests, interviews, peer evaluations, writing samples, reports or portfolios.

I. "Elementary school" for purposes of this rule means grades K-6 in whatever kind of school the grade levels exist.

J. "High school" for purposes of this rule means grades 9-12 in whatever kind of school the grade levels exist.

K. "Individualized Education Program (IEP)" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with the Utah Special Education Rules and Part B of the Individuals with Disabilities Education Act (IDEA).

L. "Middle school" for purposes of this rule means grades 7-8 in whatever kind of school the grade levels exist.

M. "Norm-referenced test" means a test where the scores are based on comparisons with a nationally representative group of students in the same grade. The meaning of the scores is tied specifically to student performance relative to the performance of the students in the norm group under very specific testing conditions.

N. "State Core Curriculum (Core Curriculum)" means those standards of learning that are essential for all Utah students, as well as the ideas, concepts, and skills that provide a foundation on which subsequent learning may be built, as established by the Board.

O. "USOE" means the Utah State Office of Education.

P. "Utah Basic Skills Competency Test (UBSCT)" means a test to be administered to Utah students beginning in the tenth grade to include at a minimum components on English, language arts, reading and mathematics. Utah students shall satisfy the requirements of the UBSCT in addition to school or district graduation requirements prior to receiving a basic high school diploma.

R277-700-2. Authority and Purpose.

A. This rule is authorized by Article X, Section 3 of the Utah Constitution, which places general control and supervision of the public schools under the Board; Section 53A-1-402(1)(b) and (c) which directs the Board to make rules regarding competency levels, graduation requirements, curriculum, and instruction requirements; Section 53A-1-402.6 which directs the Board to establish a Core Curriculum in consultation with local boards and superintendents and directs local boards to design local programs to help students master the Core Curriculum; and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify the minimum Core Curriculum requirements for the public schools, to give directions to local boards and school districts about providing the Core Curriculum for the benefit of students, and to establish responsibility for mastery of Core Curriculum requirements.

R277-700-3. Core Curriculum Standards and Objectives.

A. The Board establishes minimum course description standards and objectives for each course in the required general core, which is commonly referred to as the Core Curriculum.

B. Course descriptions for required and elective courses shall be developed cooperatively by school districts and the USOE with opportunity for public and parental participation in the development process.

C. The descriptions shall contain mastery criteria for the courses, and shall stress mastery of the course material and Core objectives and standards rather than completion of predetermined time allotments for courses.

D. Implementation of the Core Curriculum and student assessment procedures are the responsibility of local boards of education consistent with state law.

E. This rule shall apply to students in the 2007-2008 graduating class.

R277-700-4. Elementary Education Requirements.

A. The Board shall establish a Core Curriculum for elementary schools, grades K-6.

B. Elementary School Education Core Curriculum Content Area Requirements:

(1) Grades K-2:
(a) Reading/Language Arts;
(b) Mathematics;
(c) Integrated Curriculum.
(2) Grades 3-6:
(a) Reading/Language Arts;
(b) Mathematics;
(c) Science;
(d) Social Studies;
(e) Arts:
(i) Visual Arts;
(ii) Music;
(iii) Dance;
(iv) Theatre.
(f) Health Education;
(g) Physical Education;
(h) Educational Technology;
(i) Library Media.

C. It is the responsibility of the local boards of education to provide access to the Core Curriculum to all students.

D. Student mastery of the general Core Curriculum is the responsibility of local boards of education.

E. Informal assessment should occur on a regular basis to ensure continual student progress.

F. Board-approved CRT's shall be used to assess student mastery of the following:

(1) reading;
(2) language arts;
(3) mathematics;
(4) science in elementary grades 4-6; and
(5) effectiveness of written expression in grade 6.

G. Norm-referenced tests shall be given to all elementary

students in grades 3 and 5.

H. Provision for remediation for all elementary students who do not achieve mastery is the responsibility of local boards of education.

R277-700-5. Middle School Education Requirements.

A. The Board shall establish a Core Curriculum for middle school education.

B. Students in grades 7-8 shall earn a minimum of 12 units of credit to be properly prepared for instruction in grades 9-12.

C. Local boards may require additional units of credit.

D. Grades 7-8 Core Curriculum Requirements and units of credit:

(1) General Core (10.5 units of credit):
(a) Language Arts (2.0 units of credit);
(b) Mathematics (2.0 units of credit);
(c) Science (1.5 units of credit);
(d) Social Studies (1.5 units of credit);
(e) The Arts (1.0 units of credit):
(i) Visual Arts;
(ii) Music;
(iii) Dance;
(iv) Theatre.
(f) Physical Education (1.0 units of credit);
(g) Health Education (0.5 units of credit);
(h) Applied Technology Education Technology, Life, and Careers (1.0 units of credit);
(i) Educational Technology (credit optional);
(j) Library Media (integrated into subject areas).

E. Board-approved CRT's shall be used to assess student mastery of the following:

(1) reading;
(2) language arts;
(3) mathematics; and
(4) science in grades 7 and 8.

F. Norm-referenced tests shall be given to all middle school students in grade 8.

R277-700-6. High School Requirements.

A. The Board shall establish a Core Curriculum for students in grades 9-12.

B. Students in grades 9-12 shall earn a minimum of 15 units of credit.

C. Grades 9-12 Core Curriculum as specified:

(1) Language Arts (3.0 units of credit);
(2) Mathematics (2.0 units of credit):
(a) minimally, Elementary Algebra or Applied Mathematics I; and
(b) Geometry or Applied Mathematics II; or
(c) any Advanced Mathematics courses in sequence beyond (a) and (b);
(d) high school mathematics credit may not be earned for courses in sequence below (a).
(3) Science (2.0 units of credit from two of the four science areas):
(a) Earth Systems Science (1.0 units of credit);
(b) Biological Science (1.0 units of credit);
(c) Chemistry (1.0 units of credit);
(d) Physics (1.0 units of credit).
(4) Social Studies (2.5 units of credit):
(a) Geography for Life (0.5 units of credit);
(b) World Civilizations (0.5 units of credit);
(c) U.S. History (1.0 units of credit);
(d) U.S. Government and Citizenship (0.5 units of credit).
(5) The Arts (1.5 units of credit from any of the following performance areas):
(a) Visual Arts;
(b) Music;
(c) Dance;
(d) Theatre;
(6) Physical and Health Education (2.0 units of credit):
(a) Health (0.5 units of credit);
(b) Participation Skills (0.5 units of credit);
(c) Fitness for Life (0.5 units of credit);
(d) Individualized Lifetime Activities (0.5 units of credit) or team sport/athletic participation (maximum of 0.5 units of credit with school approval).
(7) Applied Technology Education (1.0 units of credit);
(a) Agriculture;
(b) Business;
(c) Family and Consumer Sciences;
(d) Health Science and Technology;
(e) Information Technology;
(f) Marketing;
(g) Technology Education;
(h) Trade and Technical Education.
(8) Educational Technology:
(a) Computer Technology (0.5 units of credit for the class by this specific name only); or
(b) successful completion of state-approved competency examination (credit may be awarded at the discretion of the school or school district).
(9) General Financial Literacy (0.5 units of credit).
(10) Library Media Skills (integrated into the subject areas).
(11) Board-approved CRT's shall be used to assess student mastery of the following subjects:
(a) reading;
(b) language arts through grade 11;
(c) mathematics as defined under R277-700-6D(2);
(d) science as defined under R277-700-6D(3); and
(e) effectiveness of written expression in grade 9.

D. Local boards shall offer students at least 24 units of credit in grades 9-12.

(1) If a local board requires students to register for more than 24 units in grades 9-12, one-third of those credits above 24 shall be in one or more of the academic areas of math, language arts, world languages, science, or social studies, as determined by the local board.
(2) Local boards may exceed state requirements.

E. Utah public school students shall participate in the Utah Basic Skills Competency Test, as defined under R277-700-1P.

F. Students with disabilities served by special education programs may have changes made to graduation requirements through individual IEPs to meet unique educational needs. A student's IEP shall document the nature and extent of modifications, substitutions or exemptions made to accommodate a student with disabilities.

R277-700-7. Student Mastery and Assessment of Core Curriculum Standards and Objectives.

A. Student mastery of the Core Curriculum at all levels is the responsibility of local boards of education.

B. Provisions for remediation of secondary students who do not achieve mastery is the responsibility of local boards of education under Section 53A-13-104.

C. Students who are found to be deficient in basic skills through U-PASS shall receive remedial assistance according to provisions of Section 53A-1-606(1).

D. If parents object to portions of courses or courses in their entirety under provisions of law (Section 53A-13-101.2) and rule (R277-105), students and parents shall be responsible for the mastery of Core objectives to the satisfaction of the school prior to promotion to the next course or grade level.

E. Students with Disabilities:

(1) All students with disabilities served by special education programs shall demonstrate mastery of the Core Curriculum.

(2) If a student's disabling condition precludes the successful demonstration of mastery, the student's IEP team, on a case-by-case basis, may provide accommodations for or modify the mastery demonstration to accommodate the student's disability.

F. Students may demonstrate competency to satisfy course requirements consistent with R277-705-3.

G. All Utah public school students shall participate in state-mandated assessments, as required by law.

KEY: curricula
March 3, 2004 **Art X Sec 3**
Notice of Continuation January 14, 2003 **53A-1-402(1)(b)**
53A-1-402.6
53A-1-401(3)

R277. Education, Administration.
R277-713. Concurrent Enrollment of High School Students in College Courses.
R277-713-1. Definitions.

A. "Adjunct/Concurrent faculty" means instructors approved by the cooperating USHE institution and approved by school district or charter school receiving concurrent enrollment services from the instructor to teach concurrent enrollment classes on behalf of the USHE institution.

B. "Annual Concurrent Enrollment Contract" means a written plan, negotiated by a school district and a USHE institution, to provide college level courses to high school students.

C. "Board" means the Utah State Board of Education.

D. "Concurrent enrollment" for state funding and for the purposes of this rule means enrollment by public school students in one or more USHE institution course(s) under a contractual agreement between the USHE institution and a school district/public school. Students continue to be enrolled in public schools, counted in Average Daily Membership, and receive credit toward graduation. They also receive college credit for courses.

E. "Fees" for purposes of concurrent enrollment and this rule mean expenses to students directly related to enrollment and tuition. Fees do not include reasonable lab costs, expenses for textbooks and consumable curriculum materials.

F. "USHE" means the Utah System of Higher Education.

G. "USOE" means the Utah State Office of Education.

R277-713-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which provides for the State Board to have general supervision and control over public schools and by Section 53A-17a-120 which directs the Board to adopt rules for accelerated learning programs, Section 53A-1-402(1)(c) which directs the Board to adopt minimum standards for curriculum, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of concurrent enrollment is to provide a challenging college-level and productive secondary school experience, particularly in the senior year, and to provide transition courses that can be applied to post-secondary education.

C. The purpose of this rule is to specify the standards and procedures for concurrent enrollment courses and criteria for funding appropriate concurrent enrollment expenditures.

R277-713-3. Student Eligibility.

A. Local schools and USHE institutions shall jointly establish student eligibility requirements which shall be sufficiently selective to predict a successful experience.

B. Local schools have the primary responsibility for identifying students who are eligible to participate in concurrent enrollment classes.

C. Each student participating in the concurrent enrollment program shall have a current student education/occupation plan (SEOP) on file at the participating school, as required under Section 53A-1a-106(2)(b).

R277-713-4. Courses and Student Participation.

A. Course registration and the awarding of USHE institution credit for concurrent enrollment courses are the province of colleges and universities governed by USHE policies.

B. Concurrent enrollment offerings shall be limited to courses in English, mathematics, fine arts, humanities, science, social science, world languages, and career technical programs to allow a focus of energy and resources on quality instruction in these courses. However, there may be a greater variety of courses in the career technical education area. Concurrent Enrollment courses should assist students toward post-secondary degrees.

C. All concurrent enrollment courses shall be approved or orchestrated by the high school or the USOE and shall provide for waiver of fees to eligible students.

D. Only courses taken from a master list maintained by the Curriculum Section at the USOE shall be reimbursed from state concurrent enrollment funds. Courses may be added or deleted from the master list with adequate notice to teachers at USHE institutions and public schools.

E. Concurrent enrollment funding shall be provided only for 1000 or 2000 level courses unless a student's SEOP identifies a student's readiness and preparation for a higher level course. This exception shall be individually approved by the student's counselor and school district or charter school concurrent enrollment administrator. Concurrent enrollment funding is not intended for unilateral parent/student initiated college attendance or course-taking.

F. Concurrent enrollment course offerings shall reflect the strengths and resources of the respective schools and USHE institutions and be based upon student needs. The number of courses selected shall be kept small enough to ensure coordinated statewide development and training activities for participating teachers.

G. Course content, procedures, examinations, teaching materials, and program monitoring shall be the responsibility of the appropriate USHE institution, shall be consistent with Utah law, and shall ensure quality and comparability with courses offered on the college or university campus.

H. Participation in concurrent enrollment generates higher education credit that becomes a part of a student's permanent college transcript.

R277-713-5. Program Delivery.

A. Schools within the USHE that grant higher education/college credit may participate in the concurrent enrollment program.

B. Concurrent enrollment courses shall be offered at the most appropriate location using the most appropriate methods for the course content, the faculty, and the students involved, consistent with Section 53A-17a-120(2)(a).

C. The delivery system and curriculum program shall be designed and implemented to take full advantage of the most current available educational technology.

D. Courses taken by students who have received a diploma, whose class has graduated or who have participated in graduation exercises are not eligible for concurrent enrollment funding. Senior students shall complete reimbursable concurrent enrollment courses prior to their graduation or participation in graduation exercises.

E. Concurrent enrollment is intended primarily for students in their last two years of high school. Attendance by younger students shall be approved by both the public school and the USHE institution.

F. State reimbursement to school districts for concurrent enrollment courses may not exceed 30 semester hours per student per year.

G. Public schools/school districts shall use USOE designated 11-digit course codes for concurrent enrollment courses.

R277-713-6. Student Tuition, Fees and Credit for Concurrent Enrollment Programs.

A. Tuition or fees may not be charged to high school students for participation in this program consistent with Section 53A-15-101(6)(b)(iii).

B. Students may be assessed a one-time enrollment charge per institution.

C. Concurrent enrollment program costs attributable only to USHE credit or enrollment are not fees and as such are not subject to fee waiver under R277-407.

D. All students' costs related to concurrent enrollment classes, which may include consumables, lab fees, copying, and material costs, as well as textbooks required for the course, are subject to fee waiver consistent with R277-407.

E. The school district/school shall be responsible for these waivers. The agreement between the USHE institution and the district may address the responsibility for fee waivers. The district may withhold concurrent enrollment funds to cover fee waiver costs.

F. Credit:

(1) A student shall receive high school credit for concurrent enrollment classes that is consistent with the district policies for awarding credit for graduation.

(2) College level courses taught in the high school carry the same credit hour value as when taught on a college or university campus and apply toward college/university graduation on the same basis as courses taught at the USHE institution to which the credits are submitted.

(3) Credit earned through the concurrent enrollment program shall be transferable from one USHE institution to another.

(4) Concurrent enrollment course credit shall count toward high school graduation requirements as well as for college credit.

R277-713-7. Faculty Requirements.

A. Nomination of adjunct faculty is the joint responsibility of the participating local school district(s) and the participating USHE institution. Final approval of the adjunct faculty shall be determined by the appropriate USHE institution.

B. USHE institution faculty beginning their USHE employment in the 2005-06 school year who are not K-12 teachers and who have significant unsupervised access to K-12 students and instruct in the concurrent enrollment program defined under this rule shall complete a criminal background check consistent with Section 53A-3-410. The adjunct faculty employer shall have responsibility for determining the need for criminal background checks consistent with the law and for satisfying this requirement and shall maintain appropriate documentation.

C. Adjunct faculty status of high school teachers:

(1) High school teachers who hold adjunct or part time faculty status with a USHE institution for the purpose of teaching concurrent enrollment courses shall be included as fully as possible in the academic life of the supervising academic department.

(2) USHE institutions and secondary schools shall share expertise and in-service training, as necessary, to adequately prepare teachers at all levels to teach concurrent enrollment students and content, including both federal and state laws specific to student privacy and student records.

R277-713-8. Concurrent Enrollment Funding and Use of Concurrent Enrollment Funds.

A. Each district shall receive a pro-rated amount of the funds appropriated for concurrent enrollment according to the number of semester hours successfully completed by students registered through the district in the prior year compared to the state total of completed concurrent enrollment hours. Successfully completed means that a student received USHE credit for the course. Concurrent enrollment funds may not reimburse districts for repeated concurrent enrollment courses. Appropriate reimbursement may be verified at any reasonable time by USOE audit.

B. Each high school shall receive its proportional share of district concurrent enrollment monies allocated to the district pursuant to Section 53A-17a-120 based upon the hours of concurrent enrollment course work successfully completed by students on the high school campus as compared to the state total of completed concurrent enrollment hours.

C. Funds allocated to school districts for concurrent enrollment shall not be used for any other program.

D. Colleges or universities shall receive concurrent enrollment funds from school districts based on the Annual Concurrent Enrollment Contract and applicable rules.

E. District use of state funds for concurrent enrollment is limited to the following:

(1) tuition for students as established by an agreement with the USHE institution;

(2) a share of the costs of supervision and monitoring by USHE institution employees according to the annual contractual agreement;

(3) aid in staff development of adjunct faculty in cooperation with the participating USHE institution;

(4) assistance with delivery costs for distance learning programs;

(5) participation in the costs of district or school personnel who work with the program;

(6) student textbooks and other instructional materials; and

(7) fee waivers for costs or expenses related to concurrent enrollment for fee waiver eligible students under R277-407.

(8) other uses approved in writing by the USOE consistent with the law and purposes of this rule.

R277-713-9. Annual Contracts and Other Student Instruction Issues.

A. Collaborating school districts/public schools and USHE institutions shall negotiate annual contracts including:

(1) the courses offered;

(2) the location of the instruction;

(3) the teacher;

(4) student eligibility requirements;

(5) course outlines;

(6) texts, and other materials needed; and

(7) the administrative and supervisory services, in-service education, and reporting mechanisms to be provided by each party to the contract.

B. The annual concurrent enrollment agreement between a USHE institution and a school/school district or charter school who has responsibility shall:

(1) provide for parental permission for students to participate in concurrent enrollment classes, which includes notice to parents that participation in concurrent enrollment courses count toward a student's college record/transcript,

(2) provide for the entity responsible for parent notification about concurrent enrollment purpose(s) and student and family privacy protections; and

(3) provide for discussion and training, as necessary, to all concurrent enrollment instructors about student information, student records laws, and student confidentiality.

C. This rule shall be effective on the date posted with the Division of Administrative Rules, and shall apply to students who enroll in course work beginning with the 2005-2006 school year, and continuing thereafter.

KEY: students, curricula, higher education

March 21, 2005 **Art X Sec 3**

Notice of Continuation September 12, 2002 **53A-17a-120**

53A-1-402(1)(c)

53A-1-401(3)

R317. Environmental Quality, Water Quality.
R317-1. Definitions and General Requirements.
R317-1-1. Definitions.

1.1 "Absorption system" means a device constructed under the ground surface to receive and to distribute effluent in such a manner that the effluent is effectively filtered and retained below ground surface.

1.2 "Board" means the Utah Water Quality Board.

1.3 "BOD" means 5-day, 20 degrees C. biochemical oxygen demand.

1.4 "Body Politic" means the State or its agencies or any political subdivision of the State to include a county, city, town, improvement district, taxing district or any other governmental subdivision or public corporation of the State.

1.5 "Building sewer" means the pipe which carries wastewater from the building drain to a public sewer, a wastewater disposal system or other point of disposal. It is synonymous with "house sewer".

1.6 "CBOD" means 5-day, 20 degrees C., carbonaceous biochemical oxygen demand.

1.7 "Deep well" means a drinking water supply source which complies with all the applicable provisions of the State of Utah Public Drinking Water Regulations.

1.8 "Digested sludge" means sludge in which the volatile solids content has been reduced to about 50% by a suitable biological treatment process.

1.9 "Division" means the Utah State Division of Water Quality.

1.10 "Domestic wastewater" means a combination of the liquid or water-carried wastes from residences, business buildings, institutions, and other establishments with installed plumbing facilities, together with those from industrial establishments, and with such ground water, surface water, and storm water as may be present. It is synonymous with the term "sewage".

1.11 "Effluent" means the liquid discharge from any unit of a wastewater treatment works, including a septic tank.

1.12 "Human pathogens" means specific causative agents of disease in humans such as bacteria or viruses.

1.13 "Onsite wastewater system" means an underground wastewater disposal system for domestic wastewater which is designed for a capacity of 5,000 gallons per day or less and is not designed to serve multiple dwelling units which are owned by separate owners except condominiums and twin homes. It usually consists of a building sewer, a septic tank and an absorptions system.

1.14 "Industrial wastes" means the liquid wastes from industrial processes as distinct from wastes derived principally from dwellings, business buildings, institutions and the like. It is synonymous with the term "industrial wastewater".

1.15 "Influent" means the total wastewater flow entering a wastewater treatment works.

1.16 "Large underground wastewater disposal system" means the same type of device as described under 1.1.13 above, except that it is designed to handle more than 5,000 gallons per day of domestic wastewater which originates in multiple dwellings, commercial establishments, recreational facilities, schools, or any other wastewater disposal system not covered in 1.1.13 above. The Board controls the installation of such systems.

1.17 "Person" means any individual, corporation, partnership, association, company, or body politic, including any agency or instrumentality of the United States government (Section 19-1-103).

1.18 "Point source" means any discernible, confined and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flow from irrigated agriculture.

1.19 "Polished Secondary Treatment" means a treatment process that can produce an effluent meeting or exceeding the following standards:

A. The arithmetic mean of BOD values determined on effluent samples collected during any 30-day period shall not exceed 15 mg/l, nor shall the arithmetic mean exceed 20 mg/l during any 7-day period.

B. The arithmetic mean of SS values determined on effluent samples collected during any 30-day period shall not exceed 10 mg/l, nor shall the arithmetic mean exceed 12 mg/l during any 7-day period.

C. The geometric mean of total coliform and fecal coliform bacteria in effluent samples collected during any 30-day period shall not exceed either 200 per 100 ml or 20 per 100 ml respectively, nor shall the geometric mean exceed 250 per 100 ml or 25 per 100 ml respectively during any 7-day period; or, the geometric mean of E. coli bacteria in effluent samples collected during any 30-day period shall not exceed 13 per 100 ml nor shall the geometric mean exceed 16 per 100 ml during any 7-day period.

D. The effluent pH values shall be maintained within the limits of 6.5 to 9.0.

1.20 "Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, or such discharge of any liquid, gaseous or solid substance into any waters of the state as will create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

1.21 "Seepage trench" means a modified seepage pit, an absorption system consisting of trenches filled with coarse filter material into which septic tank effluent is discharged.

1.22 "Seepage pit" means an absorption system consisting of a covered pit into which effluent is discharged.

1.23 "Septic tank" means a water-tight receptacle which receives the discharge of a drainage system or part thereof, designed and constructed so as to retain solids, digest organic matter through a period of detention and allow the liquids to discharge into the soil outside of the tank through an underground absorption system meeting the requirements of these regulations.

1.24 "Shallow well" means a well providing a source of drinking water which does not meet the requirements of a "deep well".

1.25 "Sludge" means the accumulation of solids which have settled from wastewater. As initially accumulated, and prior to treatment, it is known as "raw sludge".

1.26 "SS" means suspended solids.

1.27 Total Maximum Daily Load (TMDL) means the maximum amount of a particular pollutant that a waterbody can receive and still meet state water quality standards, and an allocation of that amount to the pollutant's sources.

1.28 "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing or holding wastes. (Section 19-5-102).

1.29 "Wastes" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. (Section 19-5-102).

1.30 "Wastewater" means sewage, industrial waste or other liquid substances which might cause pollution of waters of the state. Intercepted ground water which is uncontaminated by

wastes is not included.

1.31 "Waters of the state" means all streams, lakes, ponds, marshes, water-courses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof, except that bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish and wildlife, shall not be considered to be "waters of the state" under this definition (Section 19-5-102).

1.32 "Underground Wastewater Disposal System" means a system for underground disposal of domestic wastewater. It usually consists of a building sewer, a septic tank, and an absorption system. It includes onsite wastewater systems and large underground wastewater disposal systems.

R317-1-2. General Requirements.

2.1 Water Pollution Prohibited. No person shall discharge wastewater or deposit wastes or other substances in violation of the requirements of these regulations.

2.2 Construction Permit. No person shall make or construct any device for treatment or discharge of wastewater (including storm sewers), except to an existing sewer system, without first receiving a permit to do so from the Board or its authorized representative, except as provided in R317-1-2.5. Issuance of such permit shall be construed as approval of plans for the purposes of authorizing release of federal or state funds allocated for planning or construction purposes. Construction permits shall expire one year after date of issuance unless substantial and continuous construction is under way. Upon application, construction permits may be extended on an individual basis provided application for such extension is made prior to the permit expiration date.

2.3 Submission of Plans. Any person desiring a permit as required by R317-1-2.2, shall submit complete plans, specifications, and other pertinent documents covering the proposed construction to the Division for review.

2.4 Review of Plans. The Division shall review said plans and specifications as to their adequacy of design for the intended purpose and shall require such changes as are found necessary to assure compliance with pertinent parts of these regulations.

2.5 Exceptions.

A. Onsite Wastewater Disposal Systems. Construction plans and specifications for onsite wastewater disposal systems shall be submitted to the local health authority having jurisdiction and need not be submitted to the Division. Such devices, in any case, shall be constructed in accordance with regulations for onsite wastewater disposal systems adopted by the Water Quality Board. Compliance with the regulations shall be determined by an on-site inspection by the appropriate health authority.

B. Small Animal Waste (Manure) Lagoons. Construction plans and specifications for small animal waste lagoons as defined in R317-6 (permitted by rule for ground water permits) need not be submitted to the Division if the design is prepared or certified by the U.S.D.A. Natural Resources Conservation Service (NRCS) in accordance with criteria provided for in the Memorandum of Agreement between the Division and the NRCS, and the construction is inspected by the NRCS. Compliance with these rules shall be determined by on-site inspection by the NRCS.

2.6 Compliance with Water Quality Standards. No person shall discharge wastes into waters of the state except in compliance with these regulations and under circumstances which assure compliance with water quality standards in R317-2.

2.7 Operation of Wastewater Treatment Works. Wastewater treatment works shall be so operated at all times as to produce effluents meeting all requirements of these regulations and otherwise in a manner consistent with adequate protection of public health and welfare. Complete daily records shall be kept of the operation of wastewater treatment works covered under R317-3 on forms approved by the Division and a copy of such records shall be forwarded to the Division at monthly intervals.

R317-1-3. Requirements for Waste Discharges.

3.1 Deadline For Compliance With Water Quality Standards.

All persons discharging wastes into any of the waters of the State on the effective date of these regulations shall provide the degree of wastewater treatment determined necessary to insure compliance with the requirements of R317-2 (Water Quality Standards) as soon as practicable but not later than June 30, 1983, except that the Board may, on a case-by-case basis, allow an extension to the deadline for compliance with these requirements for specific criteria listed in R317-2 where it is determined that the designated use is not being impaired or significant use improvement would not occur or where there is a reasonable question as to the validity of a specific criterion or for other valid reasons as determined by the Board.

3.2 Deadline For Compliance With Secondary Treatment Requirements.

All persons discharging wastes from point sources into any of the waters of the State shall provide treatment processes which will produce secondary effluent meeting or exceeding the following effluent quality standards.

A. The arithmetic mean of BOD values determined on effluent samples collected during any 30-day period shall not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the BOD values of effluent samples shall not be greater than 15% of the BOD values of influent samples collected in the same time period. As an alternative, if agreed to by the person discharging wastes, the following effluent quality standard may be established as a requirement of the discharge permit and must be met: The arithmetic mean of CBOD values determined on effluent samples collected during any 30-day period shall not exceed 20 mg/l nor shall the arithmetic mean exceed 30 mg/l during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the CBOD values of effluent samples shall not be greater than 15% of the CBOD values of influent samples collected in the same time period.

B. The arithmetic mean of SS values determined on effluent samples collected during any 30-day period shall not exceed 25 mg/l, nor shall the arithmetic mean exceed 35 mg/l during any 7-day period. In addition, if the treatment plant influent is of domestic or municipal sewage origin, the SS values of effluent samples shall not be greater than 15% of the SS values of influent samples collected in the same time period.

C. The geometric mean of total coliform and fecal coliform bacteria in effluent samples collected during any 30-day period shall not exceed either 2000 per 100 ml or 200 per 100 ml respectively, nor shall the geometric mean exceed 2500 per 100 ml or 250 per 100 ml respectively, during any 7-day period; or, the geometric mean of E. coli bacteria in effluent samples collected during any 30-day period shall not exceed 126 per 100 ml nor shall the geometric mean exceed 158 per 100 ml respectively during any 7-day period. Exceptions to this requirement may be allowed by the Board on a case-by-case basis where domestic wastewater is not a part of the effluent and where water quality standards are not violated.

D. The effluent values for pH shall be maintained within the limits of 6.5 and 9.0.

E. Exceptions to the 85% removal requirements may be allowed on a case-by-case basis where infiltration makes such removal requirements infeasible and where water quality standards are not violated.

F. The Board may allow exceptions to the requirements of (A), (B) and (D) above on a case-by-case basis where the discharge will be of short duration and where there will be of no significant detrimental affect on receiving water quality or downstream beneficial uses.

G. The Board may allow on a case-by-case basis that the BOD5 and TSS effluent concentrations for discharging domestic wastewater lagoons shall not exceed 45 mg/l for a monthly average nor 65 mg/l for a weekly average provided the following criteria are met:

1. The lagoon system is operating within the organic and hydraulic design capacity established by R317-3,

2. The lagoon system is being properly operated and maintained,

3. The treatment system is meeting all other permit limits,

4. There are no significant or categorical industrial users (IU) defined by 40 CFR Part 403, unless it is demonstrated to the satisfaction of the Executive Secretary to the Utah Water Quality Board that the IU is not contributing constituents in concentrations or quantities likely to significantly effect the treatment works,

5. A Waste Load Allocation (WLA) indicates that the increased permit limits would not impair beneficial uses of the receiving stream.

3.3 Extensions To Deadlines For Compliance.

The Board may, upon application of a waste discharger, allow extensions on a case-by-case basis to the compliance deadlines in Section 1.3.2 above where it can be shown that despite good faith effort, construction cannot be completed within the time required.

3.4 Pollutants In Diverted Water Returned To Stream.

A user of surface water diverted from waters of the State will not be required to remove any pollutants which such user has not added before returning the diverted flow to the original watercourse, provided there is no increase in concentration of pollutants in the diverted water. Should the pollutant constituent concentration of the intake surface waters to a facility exceed the effluent limitations for such facility under a federal National Pollutant Discharge Elimination System permit or a permit issued pursuant to State authority, then the effluent limitations shall become equal to the constituent concentrations in the intake surface waters of such facility. This section does not apply to irrigation return flow.

R317-1-4. Utilization and Isolation of Domestic Wastewater Treatment Works Effluent.

4.1 Untreated Domestic Wastewater. Untreated domestic wastewater or effluent not meeting secondary treatment standards as defined by these regulations shall be isolated from all public contact until suitably treated. Land disposal or land treatment of such wastewater or effluent may be accomplished by use of an approved total containment lagoon as defined in R317-3 or by such other treatment approved by the Board as being feasible and equally protective of human health and the environment.

4.2 Submittal of Reuse Project Plan. If a person intends to reuse or provide for the reuse of treated domestic wastewater directly for any purpose, except on the treatment plant site as described in R317-1-4.6, a Reuse Project Plan must be submitted to the Division of Water Quality. A copy of the plan must also be submitted to the local health department. Any needed construction of wastewater treatment and delivery systems would also be covered by a construction permit as required in section R317-1-2.2 of this rule. The plan must contain the following information. At least items A and B should be provided before construction begins. All items must be provided before any water deliveries are made.

A. A description of the source, quantity, quality, and use of the treated wastewater to be delivered, the location of the reuse site, and how the requirements of this rule would be met.

B. Evidence that the State Engineer has agreed that the proposed reuse project planned water use is consistent with the water rights for the sources of water comprising the flows to the treatment plant which will be used in the reuse project.

C. An operation and management plan to include:

1. A copy of the contract with the user, if other than the treatment entity.

2. A labeling and separation plan for the prevention of cross connections between reclaimed water distribution lines and potable water lines. Guidance for distribution systems is available from the Division of Water Quality.

3. Schedules for routine maintenance.

4. A contingency plan for system failure or upsets.

D. If the water will be delivered to another entity for distribution and use, a copy of the contract covering how the requirements of this rule will be met.

4.3 Use of Treated Domestic Wastewater Effluent Where Human Exposure is Likely (Type I)

A. Uses Allowed

1. Residential irrigation, including landscape irrigation at individual houses.

2. Urban uses, which includes non-residential landscape irrigation, golf course irrigation, toilet flushing, fire protection, and other uses with similar potential for human exposure.

3. Irrigation of food crops where the applied reclaimed water is likely to have direct contact with the edible part. Type I water is required for all spray irrigation of food crops.

4. Irrigation of pasture for milking animals.

5. Impoundments of wastewater where direct human contact is likely to occur.

6. All Type II uses listed in 4.4.A below.

B. Required Treatment Processes

1. Secondary treatment process, which may include activated sludge, trickling filters, rotating biological contactors, oxidation ditches, and stabilization ponds. The secondary treatment process should produce effluent in which both the BOD and total suspended solids concentrations do not exceed 25 mg/l as a monthly mean.

2. Filtration, which includes passing the wastewater through filter media such as sand and/or anthracite or approved membrane processes.

3. Disinfection to destroy, inactivate, or remove pathogenic microorganisms by chemical, physical, or biological means. Disinfection may be accomplished by chlorination, ozonation, or other chemical disinfectants, UV radiation, membrane processes, or other approved processes.

C. Water Quality Limits. The quality of effluent before use must meet the following standards. Testing methods and procedures shall be performed according to Standards Methods for Examination of Water and Wastewater, eighteenth edition, 1992, or as otherwise approved by the Executive Secretary.

1. The monthly arithmetic mean of BOD shall not exceed 10 mg/l as determined by daily composite sampling. Composite samples shall be comprised of at least six flow proportionate samples taken over a 24-hour period.

2. The daily arithmetic mean turbidity shall not exceed 2 NTU, and turbidity shall not exceed 5 NTU at any time. Turbidity shall be measured continuously. The turbidity standard shall be met prior to disinfection. If the turbidity standard cannot be met, but it can be demonstrated to the satisfaction of the Executive Secretary that there exists a consistent correlation between turbidity and the total suspended solids, then an alternate turbidity standard may be established. This will allow continuous turbidity monitoring for quality

control while maintaining the intent of the turbidity standard, which is to have 5 mg/l total suspended solids or less to assure adequate disinfection.

3. The weekly median E. coli concentration shall be none detected, as determined from daily grab samples, and no sample shall exceed 9 organisms/100 ml.

4. The total residual chlorine shall be measured continuously and shall at no time be less than 1.0 mg/l after 30 minutes contact time at peak flow. If an alternative disinfection process is used, it must be demonstrated to the satisfaction of the Executive Secretary that the alternative process is comparable to that achieved by chlorination with a 1 mg/l residual after 30 minutes contact time. If the effectiveness cannot be related to chlorination, then the effectiveness of the alternative disinfection process must be demonstrated by testing for pathogen destruction as determined by the Executive Secretary. A 1 mg/l total chlorine residual is required after disinfection and before the reclaimed water goes into the distribution system.

5. The pH as determined by daily grab samples or continuous monitoring shall be between 6 and 9.

D. Other Requirements

1. An alternative disposal option or diversion to storage must be automatically activated if turbidity exceeds or chlorine residual drops below the instantaneous required value for more than 5 minutes. 2. Any irrigation must be at least 50 feet from any potable water well. Impoundments of reclaimed water, if not sealed, must be at least 500 feet from any potable water well.

3. Requirements for ground water discharge permits, if required, shall be determined in accordance with R317-6.

4. For residential landscape irrigation at individual homes, additional quality control restrictions may be required by the Executive Secretary. Proposals for such uses should also be submitted to the local health authority to determine any conditions they may require.

4.4 Use of Treated Domestic Wastewater Effluent Where Human Exposure is Unlikely (Type II)

A. Uses Allowed

1. Irrigation of sod farms, silviculture, limited access highway rights of way, and other areas where human access is restricted or unlikely to occur.

2. Irrigation of food crops where the applied reclaimed water is not likely to have direct contact with the edible part, whether the food will be processed or not (spray irrigation not allowed).

3. Irrigation of animal feed crops other than pasture used for milking animals.

4. Impoundments of wastewater where direct human contact is not allowed or is unlikely to occur.

5. Cooling water. Use for cooling towers which produce aerosols in populated areas may have special restrictions imposed.

6. Soil compaction or dust control in construction areas.

B. Required Treatment Processes

1. Secondary treatment process, which may include activated sludge, trickling filters, rotating biological contactors, oxidation ditches, and stabilization ponds. Secondary treatment should produce effluent in which both the BOD and total suspended solids do not exceed 25 mg/l as a monthly mean.

2. Disinfection to destroy, inactivate, or remove pathogenic microorganisms by chemical, physical, or biological means. Disinfection may be accomplished by chlorination, ozonation, or other chemical disinfectants, UV radiation, membrane processes, or other approved processes.

C. Water Quality Limits. The quality of effluent before use must meet the following standards. Testing methods and procedures shall be performed according to Standards Methods for Examination of Water and Wastewater, eighteenth edition, 1992, or as otherwise approved by the Executive Secretary.

1. The monthly arithmetic mean of BOD shall not exceed 25 mg/l as determined by weekly composite sampling. Composite samples shall be comprised of at least six flow proportionate samples taken over a 24-hour period.

2. The monthly arithmetic mean total suspended solids concentration shall not exceed 25 mg/l as determined by daily composite sampling. The weekly mean total suspended solids concentration shall not exceed 35 mg/l.

3. The weekly median E. coli concentration shall not exceed 126 organisms/100 ml, as determined from daily grab samples, and no sample shall exceed 500 organisms/100 ml.

4. The pH as determined by daily grab samples or continuous monitoring shall be between 6 and 9.

5. At the discretion of the Executive Secretary, the sampling frequency to determine compliance with water quality limits for effluent from lagoon systems used to irrigate agricultural crops, may be reduced to monthly grab sampling for BOD, and weekly grab sampling for E. coli, TSS and pH.

D. Other Requirements

1. An alternative disposal option or diversion to storage must be available in case quality requirements are not met.

2. Any irrigation must be at least 300 feet from any potable water well. Spray irrigation must be at least 300 feet from areas intended for public access. This distance may be reduced or increased by the Executive Secretary, based on the type of spray irrigation equipment used and other factors. Impoundments of reclaimed water, if not sealed, must be at least 500 feet from any potable water well.

3. Requirements for ground water discharge permits, if required, shall be determined in accordance with R317-6.

4. Public access to effluent storage and irrigation or disposal sites shall be restricted by a stock-tight fence or other comparable means which shall be posted and controlled to exclude the public.

4.5 Records. Records of volume and quality of treated wastewater delivered for reuse shall be maintained and submitted monthly in accordance with R317-1-2.7. If monthly operating reports are already being submitted to the Division of Water Quality, the data on water delivered for reuse may be submitted on the same form.

4.6 Use of Secondary Effluent at Plant Site. Secondary effluent may be used at the treatment plant site in the following manner provided there is no cross-connection with a potable water system:

A. Chlorinator injector water for wastewater chlorination facilities, provided all pipes and outlets carrying the effluent are suitably labeled.

B. Water for hosing down wastewater clarifiers, filters and related units, provided all pipes and outlets carrying the effluent are suitably labeled.

C. Irrigation of landscaped areas around the treatment plant from which the public is excluded.

4.7 Other Uses of Effluents. Proposed uses of effluents not identified above, including industrial uses, shall be considered for approval by the Board based on a case-specific analysis of human health and environmental concerns.

4.8 Reclaimed Water Distribution Systems. Where reclaimed water is to be provided by pressure pipeline, unless contained in surface pipes wholly on private property and for agricultural purposes, the following requirements will apply. The requirements will apply to all new systems constructed after May 4, 1998, and it is recommended that the accessible portions of existing reclaimed water distribution systems be retrofitted to comply with these rules. Requirements for secondary irrigation systems proposed for conversion from use of non-reclaimed water to use with reclaimed water will be considered on an individual basis considering protection of public health and the environment. Any person or agency that is constructing all or part of the distribution system must obtain a construction permit from the Division of Water Quality prior to beginning

construction.

A. Distribution Lines

1. Minimum Separation.

a. Horizontal Separation. Reclaimed water main distribution lines parallel to potable (culinary) water lines shall be installed at least ten feet horizontally from the potable water lines. Reclaimed water main distribution lines parallel to sanitary sewer lines shall be installed at least ten feet horizontally from the sanitary sewer line if the sanitary sewer line is located above the reclaimed water main and three feet horizontally from the sanitary sewer line if the sanitary sewer line is located below the reclaimed water main.

b. Vertical Separation. At crossings of reclaimed water main distribution lines with potable water lines and sanitary sewer lines the order of the lines from lowest in elevation to highest should be; sanitary sewer line, reclaimed water line, and potable water line. A minimum 18 inches vertical separation between these utilities shall be provided as measured from outside of pipe to outside of pipe. The crossings shall be arranged so that the reclaimed water line joints will be equidistant and as far as possible from the water line joints and the sewer line joints. If the reclaimed water line must cross above the potable water line, the vertical separation shall be a minimum 18 inches and the reclaimed water line shall be encased in a continuous pipe sleeve to a distance on each side of the crossing equal to the depth of the potable water line from the ground surface. If the reclaimed water line must cross below the sanitary sewer line, the vertical separation shall be a minimum 18 inches and the reclaimed water line shall be encased in a continuous pipe sleeve to a distance on each side of the crossing equal to the depth of the reclaimed water line from the ground surface.

c. Special Provisions. Where the horizontal and/or vertical separation as required above cannot be maintained, special construction requirements shall be provided in accordance with requirements in R317-3 for protection of potable water lines. Existing pressure lines carrying reclaimed water shall not be required to meet these requirements.

2. Depth of Installation. To provide protection of the installed pipeline, reclaimed water lines should be installed with a minimum depth of bury of three feet.

3. Reclaimed Water Pipe Identification.

a. General. All new buried pipe, including service lines, valves, and other appurtenances, shall be colored purple, Pantone 522 or equivalent. If fading or discoloration of the purple pipe is experienced during construction, identification tape is recommended. Locating wire along the pipe is also recommended.

b. Identification Tape. If identification tape is installed along with the purple pipe, it shall be prepared with white or black printing on a purple field, color Pantone 512 or equivalent, having the words, "Caution: Reclaimed Water-- Do Not Drink". The overall width of the tape shall be at least three inches. Identification tape shall be installed 12 inches above the transmission pipe longitudinally and shall be centered.

4. Conversion of existing water lines. Existing water lines that are being converted to use with reclaimed water shall first be accurately located and comply with leak test standards in accordance with AWWA Standard C-600 and in coordination with regulatory agencies. The pipeline must be physically disconnected from any potable water lines and brought into compliance with current State cross connection rules and requirements (R309-102-5), and must meet minimum separation requirements in section 4.8.A.1 of this rule above. If the existing lines meet approval of the water supplier and the Division, the lines shall be approved for reclaimed water distribution. If regulatory compliance of the system (accurate location and verification of no cross connections) cannot be verified with record drawings, televising, or otherwise, the lines shall be uncovered, inspected, and identified prior to use. All accessible portions of the system must be retrofitted to meet the requirements of this rule.

5. Valve Boxes and Other Surface Identification. All valve covers shall be of non-interchangeable shape with potable water covers, and shall have an inscription cast on the top surface stating "Reclaimed Water". Valve boxes shall meet AWWA standards. All above ground facilities shall be consistently color coded (purple, Pantone 512) and marked to differentiate reclaimed water facilities from potable water facilities.

6. Blow-off Assemblies. If either an in-line type or end-of-line type blow-off or drain assembly is installed in the system, the Division of Water Quality shall be consulted on acceptable discharge or runoff locations.

B. Storage. If storage or impoundment of reclaimed water is provided, the following requirements apply:

1. Fencing. For Type I effluent, no fencing is required by this rule, but may be required by local laws or ordinances. For Type II effluent, see R317-1-4.4.D.4 above.

2. Identification. All storage facilities shall be identified by signs prepared according to the requirements of Section 4.8.D.6 below. Signs shall be posted on the surrounding fence at minimum 500 foot intervals and at the entrance of each facility. If there is no fence, signs shall be located as a minimum on each side of the facility or at minimum 250 foot intervals or at all accessible points.

C. Pumping Facilities.

1. Marking. All exposed and above ground piping, fittings, pumps, valves, etc., shall be painted purple, Pantone 512. In addition, all piping shall be identified using an accepted means of labeling reading "Caution: Reclaimed Water - Do Not Drink." In a fenced pump station area, signs shall be posted on the fence on all sides.

2. Sealing Water. Any potable water used as seal water for reclaimed water pumps seals shall be protected from backflow with a reduced pressure principle device.

D. Other Requirements.

1. Backflow Protection. In no case shall a connection be made between the potable and reclaimed water system. If it is necessary to put potable water into the reclaimed distribution system, an approved air gap must be provided to protect the potable water system. A reduced pressure principle device may be used only when approved by the Division of Water Quality, the local health department, and the potable water supplier.

2. Drinking Fountains. Drinking fountains and other public facilities shall be placed out of any spray irrigation area in which reclaimed water is used, or shall be otherwise protected from contact with the reclaimed water. Exterior drinking fountains and other public facilities shall be shown and called out on the construction plans. If no exterior drinking fountains, picnic tables, food establishments, or other public facilities are present in the design area, then it shall be specifically stated on the plans that none are to exist.

3. Hose Bibs. Hose bibs on reclaimed water systems in public areas and at individual residences shall be prohibited. In public, non-residential areas, replacement of hose bibs with quick couplers is recommended.

4. Equipment and Facilities. To ensure the protection of public health, any equipment or facilities such as tanks, temporary piping or valves, and portable pumps which have been used for conveying reclaimed water may not be reused for conveying potable water.

5. Warning Labels. Warning labels shall be installed on designated facilities such as, but not limited to, controller panels and washdown or blow-off hydrants on water trucks, and temporary construction services. The labels shall indicate the system contains reclaimed water that is unsafe to drink.

6. Warning signs. Where reclaimed water is stored or

impounded, or used for irrigation in public areas, warning signs shall be installed and contain, as a minimum, 1/2 inch purple letters (Pantone 512) on a white or other high contrast background notifying the public that the water is unsafe to drink. Signs may also have a purple background with white or other high contrast lettering. Warning signs and labels shall read, "Warning: Reclaimed Water - Do Not Drink". The signs shall include the international symbol for Do Not Drink.

R317-1-5. Use of Industrial Wastewaters.

5.1 Use of industrial wastewaters (not containing human pathogens) shall be considered for approval by the Board based on a case-specific analysis of human health and environmental concerns.

R317-1-6. Disposal of Domestic Wastewater Treatment Works Sludge.

6.1 General. No person shall use, dispose, or otherwise manage sewage sludge through any practice for which pollutant limits, management practices, and operational standards for pathogens and vector attraction reduction requirements are established in 40 CFR 503, July 1, 1994, except in accordance with such requirements.

6.2 Permit. All treatment works producing, treating and disposing of sewage sludge must comply with applicable permit requirements at R317-3, 6 and 8.

6.3 Septic Tank Contents. The dumping or spreading of septic tank contents is prohibited except in conformance with 40 CFR 503 and R317-550-7.

6.4 Effective Date. Notwithstanding the effective date for incorporation by reference of 40 CFR 503 provided in R317-8-1.10(9), those portions of 40 CFR 503 specified in R317-1-6.1 and 6.3 are effective immediately.

R317-1-7. TMDLs.

The following TMDLs are approved by the Board and hereby incorporated by reference into these rules:

7.1 Bear River -- December 23, 1997
7.2 Chalk Creek -- December 23, 1997
7.3 Otter Creek -- December 23, 1997
7.4 Little Bear River -- May 23, 2000
7.5 Mantua Reservoir -- May 23, 2000
7.6 East Canyon Creek -- September 1, 2000
7.7 East Canyon Reservoir -- September 1, 2000
7.8 Kents Lake -- September 1, 2000
7.9 LaBaron Reservoir -- September 1, 2000
7.10 Minersville Reservoir -- September 1, 2000
7.11 Puffer Lake -- September 1, 2000
7.12 Scofield Reservoir -- September 1, 2000
7.13 Onion Creek (near Moab) -- July 25, 2002
7.14 Cottonwood Wash -- September 9, 2002
7.15 Deer Creek Reservoir -- September 9, 2002
7.16 Hyrum Reservoir -- September 9, 2002
7.17 Little Cottonwood Creek -- September 9, 2002
7.18 Lower Bear River -- September 9, 2002
7.19 Malad River -- September 9, 2002
7.20 Mill Creek (near Moab) -- September 9, 2002
7.21 Spring Creek -- September 9, 2002
7.22 Forsyth Reservoir -- September 27, 2002
7.23 Johnson Valley Reservoir -- September 27, 2002
7.24 Lower Fremont River -- September 27, 2002
7.25 Mill Meadow Reservoir -- September 27, 2002
7.26 UM Creek -- September 27, 2002
7.27 Upper Fremont River -- September 27, 2002
7.28 Deep Creek -- October 9, 2002
7.29 Uinta River -- October 9, 2002
7.30 Pineview Reservoir -- December 9, 2002
7.31 Browne Lake -- February 19, 2003
7.32 San Pitch River -- November 18, 2003
7.33 Newton Creek -- June 24, 2004
7.34 Panguitch Lake -- June 24, 2004
7.35 West Colorado -- August 4, 2004
7.36 Silver Creek -- August 4, 2004
7.37 Upper Sevier River -- August 4, 2004
7.38 Lower and Middle Sevier River -- August 17,2004
7.39 Lower Colorado River -- September 20, 2004

R317-1-8. Penalty Criteria for Civil Settlement Negotiations.

8.1 Introduction. Section 19-5-115 of the Water Quality Act provides for penalties of up to $10,000 per day for violations of the act or any permit, rule, or order adopted under it and up to $25,000 per day for willful violations. Because the law does not provide for assessment of administrative penalties, the Attorney General initiates legal proceedings to recover penalties where appropriate.

8.2 Purpose And Applicability. These criteria outline the principles used by the State in civil settlement negotiations with water pollution sources for violations of the UWPCA and/or any permit, rule or order adopted under it. It is designed to be used as a logical basis to determine a reasonable and appropriate penalty for all types of violations to promote a more swift resolution of environmental problems and enforcement actions.

To guide settlement negotiations on the penalty issue, the following principles apply: (1) penalties should be based on the nature and extent of the violation; (2) penalties should at a minimum, recover the economic benefit of noncompliance; (3) penalties should be large enough to deter noncompliance; and (4) penalties should be consistent in an effort to provide fair and equitable treatment of the regulated community.

In determining whether a civil penalty should be sought, the State will consider the magnitude of the violations; the degree of actual environmental harm or the potential for such harm created by the violation(s); response and/or investigative costs incurred by the State or others; any economic advantage the violator may have gained through noncompliance; recidivism of the violator; good faith efforts of the violator; ability of the violator to pay; and the possible deterrent effect of a penalty to prevent future violations.

8.3 Penalty Calculation Methodology. The statutory maximum penalty should first be calculated, for comparison purposes, to determine the potential maximum penalty liability of the violator. The penalty which the State seeks in settlement may not exceed this statutory maximum amount.

The civil penalty figure for settlement purposes should then be calculated based on the following formula: CIVIL PENALTY = PENALTY + ADJUSTMENTS - ECONOMIC AND LEGAL CONSIDERATIONS

PENALTY: Violations are grouped into four main penalty categories based upon the nature and severity of the violation. A penalty range is associated with each category. The following factors will be taken into account to determine where the penalty amount will fall within each range:

A. History of compliance or noncompliance. History of noncompliance includes consideration of previous violations and degree of recidivism.

B. Degree of willfulness and/or negligence. Factors to be considered include how much control the violator had over and the foreseeability of the events constituting the violation, whether the violator made or could have made reasonable efforts to prevent the violation, whether the violator knew of the legal requirements which were violated, and degree of recalcitrance.

C. Good faith efforts to comply. Good faith takes into account the openness in dealing with the violations, promptness in correction of problems, and the degree of cooperation with the State.

Category A - $7,000 to $10,000 per day. Violations with

high impact on public health and the environment to include:

1. Discharges which result in documented public health effects and/or significant environmental damage.

2. Any type of violation not mentioned above severe enough to warrant a penalty assessment under category A.

Category B - $2,000 to $7,000 per day. Major violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Discharges which likely caused or potentially would cause (undocumented) public health effects or significant environmental damage.

2. Creation of a serious hazard to public health or the environment.

3. Illegal discharges containing significant quantities or concentrations of toxic or hazardous materials.

4. Any type of violation not mentioned previously which warrants a penalty assessment under Category B.

Category C - $500 to $2,000 per day. Violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Significant excursion of permit effluent limits.

2. Substantial non-compliance with the requirements of a compliance schedule.

3. Substantial non-compliance with monitoring and reporting requirements.

4. Illegal discharge containing significant quantities or concentrations of non toxic or non hazardous materials.

5. Any type of violation not mentioned previously which warrants a penalty assessment under Category C.

Category D - up to $500 per day. Minor violations of the Utah Water Pollution Control Act, associated regulations, permits or orders to include:

1. Minor excursion of permit effluent limits.

2. Minor violations of compliance schedule requirements.

3. Minor violations of reporting requirements.

4. Illegal discharges not covered in Categories A, B and C.

5. Any type of violations not mentioned previously which warrants a penalty assessment under category D.

ADJUSTMENTS: The civil penalty shall be calculated by adding the following adjustments to the penalty amount determined above: 1) economic benefit gained as a result of non-compliance; 2) investigative costs incurred by the State and/or other governmental levels; 3) documented monetary costs associated with environmental damage.

ECONOMIC AND LEGAL CONSIDERATIONS: An adjustment downward may be made or a delayed payment schedule may be used based on a documented inability of the violator to pay. Also, an adjustment downward may be made in consideration of the potential for protracted litigation, an attempt to ascertain the maximum penalty the court is likely to award, and/or the strength of the case.

8.4 Mitigation Projects. In some exceptional cases, it may be appropriate to allow the reduction of the penalty assessment in recognition of the violator's good faith undertaking of an environmentally beneficial mitigation project. The following criteria should be used in determining the eligibility of such projects:

A. The project must be in addition to all regulatory compliance obligations;

B. The project preferably should closely address the environmental effects of the violation;

C. The actual cost to the violator, after consideration of tax benefits, must reflect a deterrent effect;

D. The project must primarily benefit the environment rather than benefit the violator;

E. The project must be judicially enforceable;

F. The project must not generate positive public perception for violations of the law.

8.5 Intent Of Criteria/Information Requests. The criteria and procedures in this section are intended solely for the guidance of the State. They are not intended, and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the State.

KEY: water pollution, waste disposal, industrial waste, effluent standards
June 29, 2005 19-5
Notice of Continuation October 7, 2002

R380. Health, Administration.
R380-40. Local Health Department Minimum Performance Standards.
R380-40-1. Authority.

This rule is promulgated as required by Section 26A-1-106(1)(c). The minimum performance standards apply to all local health department services, regardless of funding sources.

R380-40-2. Definitions.

(1) "Department" means the Utah Department of Health.

(2) "Local health department" means a city/county or district health department.

(3) "General performance standards" means the minimum duties performed by local health departments for public health administration, personal health, environmental health, laboratory services, and health resources in addition to the powers and duties listed in Section 26A-1-114 and is equivalent to the phrase "minimum performance standards" in Section 26A-1-116(1)(c).

(4) "Specific level of performance" means the measurable level of each general performance standard.

R380-40-3. Negotiation.

The local health department and the department shall jointly negotiate specific measurable levels of performance, not inconsistent with corresponding general performance standards, and record them in a negotiated standards document. The department and the local health department shall take into account in the negotiation process availability of local technical and financial resources, availability of department technical and financial assistance, and past practices between the department and local health departments in providing the programs under consideration.

R380-40-4. Compliance.

The local health department and the department shall monitor compliance with general performance standards and specific levels of performance.

R380-40-5. Corrective Action.

If the department finds that a local health department is out of compliance with general performance standards and specific levels of performance then the local health department shall submit a plan of corrective action to the department that is satisfactory to the department. The corrective action plan shall include but not be limited to: local health department name; the specific program under consideration; the general performance standard(s) and specific levels of performance in question; date of report; corrective actions; responsible individual; date of plan implementation.

R380-40-6. General Performance Standards For Local Health Department Administration.

(1) Local health departments shall exercise the powers and duties as outlined in Section 26A-1-114.

(2) The local board of health shall:

(a) establish local health department policies;

(b) adopt an annual budget;

(c) monitor expenditures;

(d) oversee compliance with general and specific performance standards;

(e) provide for long range planning;

(f) appoint a qualified local health officer, subject to ratification by the governing bodies of the participating jurisdictions;

(g) periodically, but at least annually, evaluate the performance of the local health officer; and

(h) report at least annually to county commissioners regarding health issues.

(3) Each local health department shall have an annual financial audit. The local board of health shall appoint an independent auditor or the audit may be conducted as part of the county audit and, in any event, the local board of health shall accept the audit.

(4) (a) A local health officer who is a physician shall:

(i) be a graduate of a regularly chartered and legally constituted school of medicine or osteopathy;

(ii) be licensed to practice medicine in the state of Utah;

(iii) have successfully completed at least one year's graduate work in public health, public administration or business administration;

(iv) be board certified in preventive medicine or in a primary care specialty such as family practice, pediatrics, or internal medicine; and

(v) have at least two years of professional full-time experience in public health or preventive medicine in a senior level administrative capacity.

(b) A local health officer who is not a physician shall:

(i) have successfully completed a master's degree in public health, nursing or other health discipline related to public health, or public administration, or business administration from an accredited school and have at least five years of professional full-time public health experience, of which at least three years were in a senior level administrative capacity; or

(ii) have successfully completed a bachelor's degree in a field closely related to public health work from an accredited school and have at least 12 years of professional full-time public health experience, of which at least 10 years have been in a senior level administrative capacity.

(c) If the local health officer is not a physician, the local health department shall contract with or employ a physician that is:

(i) residing in Utah and licensed to practice medicine in the state;

(ii) competent and experienced in a primary medical care field, such as family practice, pediatrics, OBGYN, or internal medicine;

(iii) board certified in preventive medicine or in a primary care specialty such as family practice, pediatrics, or internal medicine;

(iv) able to supervise and oversee clinical services delivered within the local health department, including the approval of all protocols and standing orders;

(v) able to play a substantial role in reviewing policies and procedures addressing human disease outbreaks of public health importance; and

(vi) able to participate in the Department's local health department physician network.

(d) Local health officers serving as of November 1, 2004, as well as the contracted or employee physician, are deemed to meet the requirements of R380-40-6(4) for the period that the individual so identified serves in those capacities. Upon the hiring of a new local health officer or employing or contracting with a new physician, the requirements of R380-40-6(4)(a), (b), and (c) must be met.

(e) The Executive Director may grant an exception to the local health officer and physician requirements upon written request from a Local Board of Health documenting the failure of serious and substantial efforts to recruit candidates who meet the requirements or how the intent of the rule can be met by a method not specified in the rule.

(5) The local health officer shall:

(a) promote and protect the health and wellness of the people within the jurisdiction;

(b) function as the executive and administrative officer;

(c) report to and receive policy direction from the board of health;

(d) coordinate public health services in the district;

(e) direct programs assigned by statute to the local health department, including administering and enforcing state and local health laws, regulations and standards;

(f) direct the investigation and control of diseases and conditions affecting public health;

(g) be responsible for hiring, terminating, supervising, and evaluating all local health department employees;

(h) oversee proposed budget preparation;

(i) present the budget to the board of health for review and approval;

(j) develop and propose policies for board consideration;

(k) implement policies of the local board of health;

(l) advise the department with regard to policy development as those policies impact upon the mission, purpose, and capacity of the local health department; and

(m) perform other duties as assigned by the board of health.

(6) The local health officer shall ensure that an ongoing planning process is initiated and maintained that includes mission statement; community needs assessments; problem statements; goals, outcomes, and process objectives or implementation activities; evaluation; public involvement; and use of available data sources.

(7) The local health officer shall ensure that fiscal management procedures are developed, implemented and maintained in accordance with federal, state, and local government requirements.

(8) Consistent with federal and state laws and local ordinances and policies, the local health officer shall ensure:

(a) that employees are recruited, hired, terminated, classified, trained, and compensated in accordance with relevant merit principles, federal civil rights requirements, and laws of general applicability, and that their qualifications are commensurate with job responsibilities;

(b) the orientation of all new employees to the local health department and its personnel policies;

(c) the maintenance of a personnel system that includes an accurate, current, and complete personnel record for each local health department employee;

(d) the verification of all current licensure and certification requirements;

(e) continued education and training for all employees;

(f) that each employee receives an annual performance evaluation, based upon a job description and written performance expectations for each employee; and

(g) all training and certification programs for establishing and maintaining quality performance will be conducted as required by the Utah Department of Health and the Utah Department of Commerce.

(9) A local health officer or designee who is a physician or osteopath licensed to practice medicine in Utah shall supervise and be accountable for medical practice conducted by local health department employees. If the local health officer is not a physician or osteopath licensed in Utah, he shall appoint a medical director licensed to practice medicine or osteopathy in Utah to supervise and be accountable for medical practice conducted by local health department employees.

(10) Each local health department shall employ a registered nurse with education, experience, and Utah licensure consistent with the position requirements to supervise, evaluate, and be accountable for nursing practice conducted by local health department nurses in order to provide quality public health nursing service.

(11) Each local health department shall employ a health educator or other qualified person with education and experience consistent with the position requirements to direct health education activities.

(12) Each local health department shall employ a sanitarian registered in Utah with education and experience consistent with the position requirements to supervise, evaluate, and be accountable for environmental health activities in order to protect and promote public health and protect the environment.

(13) Programs provided by local health departments shall be developed, directed, and organized in response to community needs; delivered and controlled in accordance with approved budget; and evaluated by using a management information system. The management information system, when consistent with program objectives, shall include a method to determine client satisfaction.

(a) Each local health department shall collect and manage data in accordance with the needs of local health department programs, department programs, and other funding sources.

(b) Each local health department shall provide all public health services in compliance with federal, state, and local (including district) laws, regulations, rules, policies and procedures; and accepted standards of public health, medical and nursing practice.

(c) Each local health department shall maintain an ongoing quality assurance program for public health services designed to objectively and systematically monitor and evaluate the quality of public health services and resolve identified problems.

R380-40-7. General Performance Standards For Local Health Department Personal Health Services.

(1) Each local health department shall provide health education, health promotion and risk reduction services to assist residents to:

(a) obtain the necessary knowledge, skills, capacity, and opportunity to improve and maintain individual, family, and community health;

(b) use preventive health services, practices, and facilities appropriately;

(c) understand and participate, where feasible, in decision-making concerning their health care;

(d) understand and encourage compliance with prescribed medical instructions;

(e) participate in community health decision making; and

(f) prevent or delay premature death, disease, injury, or disability through services that encourage the long-term adoption of healthy behavior.

(2) Each local health department shall provide communicable disease control services to include: reporting, surveillance, assessment, epidemiological investigation, and appropriate control measures for vaccine-preventable diseases, sexually transmitted diseases, tuberculosis, AIDS, and other communicable diseases to attempt to prevent, control, or prevent and control epidemics, cases of vaccine-preventable diseases, and the spread of sexually transmitted diseases, AIDS, and tuberculosis.

(3) Each local health department shall provide infant and child health services to help prevent illness, injury, and disability; reduce the preventable complications of illness, injury, and disability; maintain health; and foster healthy growth and development. These services shall include: periodic health assessments; screening for and early identification of health and developmental problems; and provision of appropriate treatment, education, or referral.

(4) Each local health department shall ensure that families of referred cases of infant and childhood death including Sudden Infant Death Syndrome cases, are offered counseling services or referred to counseling services.

(5) Each local health department shall advocate and promote preventive health services and health instruction for school-aged children.

(6) Each local health department shall ensure that injury control needs are identified and programs or services are available to reduce the occurrence of injury and unintentional

death.

(7) Each local health department shall provide chronic disease control services which may include screening, referral, education, promotion, and preventive activities related to the prevention of cardiovascular disease, cancer, diabetes, and other chronic diseases to reduce premature morbidity and mortality associated with these diseases.

(8) Each local health department shall provide family planning services including information to clients who request it and referral in accordance with State law.

(9) Each local health department shall ensure that women and families have access to risk appropriate preconceptional, interconceptional, prenatal, intrapartum, and postpartum health services with the objective of lowering the frequency of maternal and infant death, disease and disability, and promoting the development and maintenance of a healthy, nurturing family unit.

(10) Each local health department shall provide dental health services which may include dental health screening, referral, education, promotion, and preventive activities.

R380-40-8. General Performance Standards For Local Health Department Environmental Health Programs.

(1) Each local health department shall ensure that there is a program for:

(a) food service establishments to include: the maintenance of an inventory, directory, or listing of establishments; inspections including corrective actions; plan reviews; an information management system; and the dissemination of public information;

(b) public swimming pools to include: the maintenance of an inventory, directory, or listing of facilities; inspections including corrective actions; plan reviews; an information management system; and the dissemination of public information;

(c) institutions, public facilities, and indoor and outdoor facilities to include: the maintenance of an inventory, directory, or listing of facilities; inspections including corrective actions; plan reviews; an information management system; and the dissemination of public information;

(d) safe drinking water to include: the maintenance of an inventory, directory, or listing of systems; inspections including corrective actions; an information management system; and the dissemination of public information;

(e) nuisance complaints to include: inspections including corrective actions; an information management system; and the dissemination of public information;

(f) vector control to include: complaint inspections including corrective actions; an information management system; and the dissemination of public information;

(g) air quality and air pollution control to include: conducting limited inspections of visible emissions including corrective actions; an information management system; and the dissemination of public information;

(h) injury control to include: inspections including corrective actions; an information management system; and the dissemination of public information;

(i) indoor clean air to include: inspections of public facilities including corrective actions; an information management system; and the dissemination of public information;

(j) solid waste to include: an inventory, directory, or listing of locations; inspections including corrective actions; an information management system; and the dissemination of public information; and

(k) subsurface waste water systems to include: the maintenance of an inventory, directory, or listing of facilities; inspections including corrective actions; plan reviews; an information management system; and the dissemination of public information.

(2) Each local health department shall develop, implement, and maintain special programs, such as programs to respond to noise, hazardous waste, and asbestos abatement control, to meet the special or unique needs of its community as determined by local or state needs assessment.

R380-40-9. General Performance Standards For Local Health Department Laboratory Services.

All local health departments that have a laboratory are not exempt from existing state and federal laboratory requirements.

R380-40-10. General Performance Standards For Local Health Department Health Resources.

(1) Epidemiology. Each local health department shall provide for the investigation, detection, control, and development of preventive strategies of any communicable, infectious, acute, chronic, or other disease, or environmental or occupational health hazard that is considered dangerous or important or which may affect the public health. Reportable diseases shall be reported.

(2) Vital Statistics. Each local health department designated as a local registrar of vital statistics shall ensure the registration of appropriate certificates for all live births, deaths, and fetal deaths that occur in the registration area, as required by State statute.

KEY: local health departments, performance standards
February 2, 2005 26A-1-106(1)(c)
Notice of Continuation June 6, 2005

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-1. Utah Medicaid Program.
R414-1-1. Introduction and Authority.

(1) This rule generally characterizes the scope of the Medicaid Program in Utah, and defines all of the provisions necessary to administer the program.

(2) The rule is authorized by Title XIX of the Social Security Act, and Sections 26-1-5, 26-18-2.1, 26-18-2.3, UCA.

R414-1-2. Definitions.

The following definitions are used throughout the rules of the Division:

(1) "Act" means the federal Social Security Act.

(2) "Applicant" means any person who requests assistance under the medical programs available through the Division.

(3) "Categorically needy" means aged, blind or disabled individuals or families and children:

(a) who are otherwise eligible for Medicaid; and

(i) who meet the financial eligibility requirements for AFDC as in effect in the Utah State Plan on July 16, 1996; or

(ii) who meet the financial eligibility requirements for SSI or an optional State supplement, or are considered under section 1619(b) of the federal Social Security Act to be SSI recipients; or

(iii) who is a pregnant woman whose household income does not exceed 133% of the federal poverty guideline; or

(iv) is under age six and whose household income does not exceed 133% of the federal poverty guideline; or

(v) who is a child under age one born to a woman who was receiving Medicaid on the date of the child's birth and the child remains with the mother; or

(vi) who is least age six but not yet age 18, or is at least age six but not yet age 19 and was born after September 30, 1983, and whose household income does not exceed 100% of the federal poverty guideline; or

(vii) who is aged or disabled and whose household income does not exceed 100% of the federal poverty guideline; or

(viii) who is a child for whom an adoption assistance agreement with the state is in effect.

(b) whose categorical eligibility is protected by statute.

(4) "Code of Federal Regulations" (CFR) means the publication by the Office of the Federal Register, specifically Title 42, used to govern the administration of the Medicaid Program.

(5) "Client" means a person the Division or its duly constituted agent has determined to be eligible for assistance under the Medicaid program.

(6) "CMS" means The Centers for Medicare and Medicaid Services, a Federal agency within the U.S. Department of Health and Human Services. Programs for which CMS is responsible include Medicare, Medicaid, and the State Children's Health Insurance Program.

(7) "Department" means the Department of Health.

(8) "Director" means the director of the Division.

(9) "Division" means the Division of Health Care Financing within the Department.

(10) "Emergency medical condition" means a medical condition showing acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:

(a) placing the patient's health in serious jeopardy;

(b) serious impairment to bodily functions;

(c) serious dysfunction of any bodily organ or part; or

(d) death.

(11) "Emergency service" means immediate medical attention and service performed to treat an emergency medical condition. Immediate medical attention is treatment rendered within 24 hours of the onset of symptoms or within 24 hours of diagnosis.

(12) "Emergency Services Only Program" means a health program designed to cover a specific range of emergency services.

(13) "Executive Director" means the executive director of the Department.

(14) "InterQual" means the McKesson InterQual Criteria, a comprehensive, clinically based, patient focused medical review criteria and system developed by McKesson Corporation.

(15) "Medicaid agency" means the Department of Health.

(16) "Medical assistance program" or "Medicaid program" means the state program for medical assistance for persons who are eligible under the state plan adopted pursuant to Title XIX of the federal Social Security Act; as implemented by Title 26, Chapter 18, UCA.

(17) "Medical or hospital assistance" means services furnished or payments made to or on behalf of recipients under medical programs available through the Division.

(18) "Medically necessary service" means that:

(a) it is reasonably calculated to prevent, diagnose, or cure conditions in the recipient that endanger life, cause suffering or pain, cause physical deformity or malfunction, or threaten to cause a handicap; and

(b) there is no other equally effective course of treatment available or suitable for the recipient requesting the service that is more conservative or substantially less costly.

(19) "Medically needy" means aged, blind, or disabled individuals or families and children who are otherwise eligible for Medicaid, who are not categorically needy, and whose income and resources are within limits set under the Medicaid State Plan.

(20) "Provider" means any person, individual or corporation, institution or organization, qualified to perform services available under the Medicaid program and who has entered into a written contract with the Medicaid program.

(21) "Recipient" means a person who has received medical or hospital assistance under the Medicaid program, or has had a premium paid to a managed care entity.

(22) "Undocumented alien" means an alien who is not recognized by Immigration and Naturalization Services as being lawfully present in the United States.

R414-1-3. Single State Agency.

The Utah Department of Health is the Single State Agency designated to administer or supervise the administration of the Medicaid program under Title XIX of the federal Social Security Act.

R414-1-4. Medical Assistance Unit.

Within the Utah Department of Health, the Division of Health Care Financing has been designated as the medical assistance unit.

R414-1-5. State Plan.

(1) As a condition for receipt of federal funds under title XIX of the Act, the Utah Department of Health must submit a State Plan contract to the federal government for the medical assistance program, and agree to administer the program in accordance with the provisions of the State Plan, the requirements of Titles XI and XIX of the Act, and all applicable federal regulations and other official issuances of the United States Department of Health and Human Services. A copy of the State Plan is available for public inspection at the Division's offices during regular business hours.

(2) The department adopts the Utah State Plan Under Title XIX of the Social Security Act Medical Assistance Program, in effect September 1, 2004, which is incorporated by reference.

R414-1-6. Services Available.

(1) Medical or hospital services available under the Medical Assistance Program are generally limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

(2) The following services provided in the State Plan are available to both the categorically needy and medically needy:

(a) inpatient hospital services, with the exception of those services provided in an institution for mental diseases;

(b) outpatient hospital services and rural health clinic services;

(c) other laboratory and x-ray services;

(d) skilled nursing facility services, other than services in an institution for mental diseases, for individuals 21 years of age or older;

(e) early and periodic screening and diagnoses of individuals under 21 years of age, and treatment of conditions found, are provided in accordance with federal requirements;

(f) family planning services and supplies for individuals of child-bearing age;

(g) physician's services, whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere;

(h) podiatrist's services;

(i) optometrist's services;

(j) psychologist's services;

(k) interpreter's services;

(l) home health services:

(i) intermittent or part-time nursing services provided by a home health agency;

(ii) home health aide services by a home health agency; and

(iii) medical supplies, equipment, and appliances suitable for use in the home;

(m) private duty nursing services for children under age 21;

(n) clinic services;

(o) dental services;

(p) physical therapy and related services;

(q) services for individuals with speech, hearing, and language disorders furnished by or under the supervision of a speech pathologist or audiologist;

(r) prescribed drugs, dentures, and prosthetic devices and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist;

(s) other diagnostic, screening, preventive, and rehabilitative services other than those provided elsewhere in the State Plan;

(t) services for individuals age 65 or older in institutions for mental diseases:

(i) inpatient hospital services for individuals age 65 or older in institutions for mental diseases;

(ii) skilled nursing services for individuals age 65 or older in institutions for mental diseases; and

(iii) intermediate care facility services for individuals age 65 or older in institutions for mental diseases;

(u) intermediate care facility services, other than services in an institution for mental diseases. These services are for individuals determined, in accordance with section 1902(a)(31)(A) of the Social Security Act, to be in need of this care, including those services furnished in a public institution for the mentally retarded or for individuals with related conditions;

(v) inpatient psychiatric facility services for individuals under 22 years of age;

(w) nurse-midwife services;

(x) family or pediatric nurse practitioner services;

(y) hospice care in accordance with section 1905(o) of the Social Security Act;

(z) case management services in accordance with section 1905(a)(19) or section 1915(g) of the Social Security Act;

(aa) extended services to pregnant women, pregnancy-related services, postpartum services for 60 days, and additional services for any other medical conditions that may complicate pregnancy;

(bb) ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider in accordance with section 1920 of the Social Security Act; and

(cc) other medical care and other types of remedial care recognized under state law, specified by the Secretary of the United States Department of Health and Human Services, pursuant to 42 CFR 440.60 and 440.170, including:

(i) medical or remedial services provided by licensed practitioners, other than physician's services, within the scope of practice as defined by state law;

(ii) transportation services;

(iii) skilled nursing facility services for patients under 21 years of age;

(iv) emergency hospital services; and

(v) personal care services in the recipient's home, prescribed in a plan of treatment and provided by a qualified person, under the supervision of a registered nurse.

(dd) other medical care, medical supplies, and medical equipment not otherwise a Medicaid service if the Division determines that it meets both of the following criteria:

(i) it is medically necessary and more appropriate than any Medicaid covered service; and

(ii) it is more cost effective than any Medicaid covered service.

R414-1-7. Aliens.

(1) Certain qualified aliens described in Title IV of Public Law 104-193 may be eligible for the Medicaid program. All other aliens are prohibited from receiving non-emergency services, as described in Section 1903(v) of the Social Security Act, which is adopted and incorporated by reference.

(2) Aliens who are prohibited from receiving non-emergency services will have "Emergency Services Only Program" printed on their Medical Identification Cards, as noted in R414-3A.

R414-1-8. Statewide Basis.

The medical assistance program is state-administered and operates on a statewide basis in accordance with 42 CFR 431.50.

R414-1-9. Medical Care Advisory Committee.

There is a Medical Care Advisory Committee that advises the Medicaid agency director on health and medical care services. The committee is established in accordance with 42 CFR 431.12.

R414-1-10. Discrimination Prohibited.

In accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 70b), and the regulations at 45 CFR Parts 80 and 84, the Medicaid agency assures that no individual shall be subjected to discrimination under the plan on the grounds of race, color, gender, national origin, or handicap.

R414-1-11. Administrative Hearings.

The Medicaid agency has a system of administrative hearings for medical providers and dissatisfied applicants, clients, and recipients that meets all the requirements of 42 CFR Part 431, Subpart E.

R414-1-12. Utilization Review.

(1) Utilization review provides for review and evaluation of the utilization of Medicaid services provided in acute care general hospitals, and by members of the medical staff to patients entitled to benefits under the Medicaid plan.

(2) The Department shall conduct hospital utilization review as outlined in the Superior Utilization Waiver state implementation plan, November 1997 edition, which is incorporated by reference in this rule.

(3) The Department shall determine medical necessity and appropriateness of inpatient admissions during utilization review by use of InterQual Criteria, published by McKesson Corporation, 2004 edition, McKesson Health Solutions LLC, 275 Grove Street, Suite 1-110, Newton, MA 02466-2273, which is incorporated by reference in this rule, or by following other criteria and protocols outlined in ATTACHMENT 4.19-A, Section 180, of the Medicaid State Implementation Plan. Level of Care and Care Planning Criteria in effect at the time the service was rendered. This criteria is incorporated by reference in this rule. Other criteria and protocols outlined in ATTACHMENT 4.19-A, Section 180 of the State Plan, are also used to determine medical necessity and appropriateness of inpatient admissions.

(4) The standards in the InterQual Criteria shall not apply to services that are:

(a) excluded as a Medicaid benefit by rule or contract;

(b) provided in an intensive physical rehabilitation center as described in R414-2B; or

(c) organ transplant services as described in R414-10A.

In these three exceptions, or where InterQual is silent, the Medicaid agency shall approve or deny claims based upon appropriate administrative rules or its own criteria as incorporated in provider contracts that incorporate the Medicaid Provider Manuals.

(5) The Department may take remedial action as outlined in ATTACHMENT 4.19-A, Section 180, of the Medicaid State Implementation Plan for inappropriate services identified through utilization review.

(6) In accordance with 42 CFR 431, Subpart E, the Utilization Review Committee shall send written notification of remedial action to the provider.

R414-1-13. Provider and Client Agreements.

(1) To meet the requirements of 42 CFR 431.107, the Department contracts with each provider who furnishes services under the Utah Medicaid Program.

(2) By signing a provider agreement with the Department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider letters.

(3) By signing an application for Medicaid coverage, the client agrees that the Department's obligation to reimburse for services is governed by contract between the Department and the provider.

R414-1-14. Utilization Control.

(1) The Medicaid agency has implemented a statewide program of surveillance and utilization control that safeguards against unnecessary or inappropriate use of Medicaid services available under the plan. The plan also safeguards against excess payments, assesses the quality of services, and provides for control and utilization of inpatient services as outlined in the Superior Utilization Waiver state implementation plan. The program meets the requirements of 42 CFR Part 456.

(2) In order to control utilization, and in accordance with 42 CFR 440.230(d), services, equipment, or supplies not specifically identified by the Department as covered services under the Medicaid program, are not a covered benefit.

(3) The Medicaid agency may request records that support provider claims for payment under programs funded through the agency. Such requests must be in writing and identify the records to be reviewed. Responses to requests must be returned within 30 days of the date of the request. Responses must include the complete record of all services for which reimbursement is claimed and all supporting services. If there is no response within the 30 day period, the agency will close the record and will evaluate the payment based on the records available.

(4) If Medicaid pays for a service which is later determined not to be a benefit of the Utah Medicaid program or is not in compliance with state or federal policies and regulations, Medicaid will make a written request for a refund of the payment. Unless appealed, the refund must be made to Medicaid within 30 days of written notification. An appeal of this determination must be filed within 30 days of written notification as specified in R410-14-6.

(5) Reimbursement for services provided through the Medicaid program must be verified by adequate records. If these services cannot be properly verified, or when a provider refuses to provide or grant access to records, either the provider must promptly refund to the state any payments received for the undocumented services, or the state may elect to deduct an equal amount from future reimbursements. If the Department suspects fraud, it may refer cases for which records are not provided to the Medicaid Fraud Control Unit for additional investigation and possible action.

R414-1-15. Medicaid Fraud.

The Medicaid agency has established and will maintain methods, criteria, and procedures that meet all requirements of 42 CFR 455.13 through 455.21 for prevention and control of program fraud and abuse.

R414-1-16. Confidentiality.

State statute, Title 63, Chapter 2, and Section 26-1-17.5, impose legal sanctions and provide safeguards that restrict the use or disclosure of information concerning applicants, clients, and recipients to purposes directly connected with the administration of the plan.

All other requirements of 42 CFR Part 431, Subpart F are met.

R414-1-17. Eligibility Determinations.

Determinations of eligibility for Medicaid under the plan are made by the Division of Health Care Financing, the Utah Department of Workforce Services, and the Utah Department of Human Services. There is a written agreement among the Utah Department of Health, the Utah Department of Workforce Services, and the Utah Department of Human Services. The agreement defines the relationships and respective responsibilities of the agencies.

R414-1-18. Professional Standards Review Organization.

All other provisions of the State Plan shall be administered by the Medicaid agency or its agents according to written contract, except for those functions for which final authority has been granted to a Professional Standards Review Organization under Title XI of the Act.

R414-1-19. Timeliness in Eligibility Determinations.

The Medicaid agency shall adhere to all timeliness requirements of 42 CFR 435.911, for processing applications, determining eligibility, and approving Medicaid requests. If these requirements are not completed within the defined time limits, clients may notify the Division of Health Care Financing at 288 North, 1460 West, Salt Lake City, UT 84114-2906.

R414-1-20. Residency.

Medicaid is furnished to eligible individuals who are residents of the State under 42 CFR 435.403.

R414-1-21. Out-of-state Services.

Medicaid services shall be made available to eligible residents of the state who are temporarily in another state. Reimbursement for out-of-state services shall be provided in accordance with 42 CFR 431.52.

R414-1-22. Retroactive Coverage.

Individuals are entitled to Medicaid services under the plan during the 90 days preceding the month of application if they were, or would have been, eligible at that time.

R414-1-23. Freedom of Choice of Provider.

Unless an exception under 42 CFR 431.55 applies, any individual eligible under the plan may obtain Medicaid services from any institution, pharmacy, person, or organization that is qualified to perform the services and has entered into a Medicaid provider contract, including an organization that provides these services or arranges for their availability on a prepayment basis.

R414-1-24. Availability of Program Manuals and Policy Issuances.

In accordance with 42 CFR 431.18, the state office, local offices, and all district offices of the Department maintain program manuals and other policy issuances that affect recipients, providers, and the public. These offices also maintain the Medicaid agency's rules governing eligibility, need, amount of assistance, recipient rights and responsibilities, and services. These manuals, policy issuances, and rules are available for examination and, upon request, are available to individuals for review, study, or reproduction.

R414-1-25. Billing Codes.

In submitting claims to the Department, every provider shall use billing codes compliant with Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements as found in 45 CFR Part 162.

R414-1-26. General Rule Format.

The following format is used generally throughout the rules of the Division. Section headings as indicated and the following general definitions are for guidance only. The section headings are not part of the rule content itself. In certain instances, this format may not be appropriate and will not be implemented due to the nature of the subject matter of a specific rule.

(1) Introduction and Authority. A concise statement as to what Medicaid service is covered by the rule, and a listing of specific federal statutes and regulations and state statutes that authorize or require the rule.

(2) Definitions. Definitions that have special meaning to the particular rule.

(3) Client Eligibility. Categories of Medicaid clients eligible for the service covered by the rule: Categorically Needy or Medically Needy or both. Conditions precedent to the client's obtaining coverage such as age limitations or otherwise.

(4) Program Access Requirements. Conditions precedent external to the client's obtaining service, such as type of certification needed from attending physician, whether available only in an inpatient setting or otherwise.

(5) Service Coverage. Detail of specific services available under the rule, including limitations, such as number of procedures in a given period of time or otherwise.

(6) Prior Authorization. As necessary, a description of the procedures for obtaining prior authorization for services available under the particular rule. However, prior authorization must not be used as a substitute for regulatory practice that should be in rule.

(7) Other Sections. As necessary under the particular rule, additional sections may be indicated. Other sections include regulatory language that does not fit into sections (1) through (5).

KEY: Medicaid
June 3, 2005 26-1-5
Notice of Continuation April 30, 2002 26-18-1

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-7A. Medicaid Certification of New Nursing Facilities.
R414-7A-1. Administrative Proceedings.

Adjudicative proceedings for decisions by the Division of Health Care Financing made pursuant to Section 26-18-504 are informal and conducted accordance with R410-14.

KEY: Medicaid
June 3, 2005 26-1-5
Notice of Continuation November 8, 2004 26-18-504(2)

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-19A. Coverage for Dialysis Services by a Free-Standing State Licensed Dialysis Facility.
R414-19A-0. Policy Statement.

Dialysis services are provided under the State Plan for Medicaid to cover Medicaid eligible individuals principally for the 90-day period between the first dialysis service and commencement of Medicare ESRD benefits. If Medicaid individuals are unable to qualify for Medicare, dialysis services are provided under the State Plan for Medicaid.

R414-19A-1. Authority.

The provision of clinic services for outpatient dialysis is authorized under the authority of Title 42 of the Code of Federal Regulations section 440.90, and the Utah State Plan under clinic services.

R414-19A-2. Definition as Used in This Chapter.

A. Approved dialysis facility means any free-standing State-licensed facility providing dialysis services, and certified to participate in the Medicare program.

R414-19A-3. Eligibility Requirements.

Dialysis services are available to both categorically and medically needy Medicaid recipients.

R414-19A-4. Program Access Requirements.

Dialysis services are available to Medicaid recipients when performed through an approved dialysis facility.

R414-19A-5. Service Coverage.

A. Dialysis services, which include hemodialysis and peritoneal dialysis treatments, may be provided. Providers may bill the Division of Health Care Financing for these services only on a fee-for-service basis.

1. Hemodialysis and peritoneal dialysis services and supplies are covered if they are furnished in approved dialysis facilities. The composite rate for hemodialysis and peritoneal dialysis includes all services, items, supplies, and equipment necessary to perform dialysis. The rate includes physician evaluation as part of the dialysis service.

2. Self-dialysis is covered when performed by an ESRD patient who has completed an appropriate course of training.

3. Hemodialysis and peritoneal dialysis treatments performed at home are covered when they are supervised by an approved dialysis facility, and performed by an appropriately trained patient. Treatments performed at home are covered only if the facility provides the supplies, equipment, and supervisory services necessary for home dialysis. Medicaid pays the same amount for each home dialysis treatment as it does for an in-facility treatment.

4. Monthly supervision of hemodialysis and peritoneal dialysis, including home dialysis, is a covered benefit.

5. Routine diagnostic and dialysis monitoring tests, e.g. hematocrit and clotting time, used by the facility to monitor the patient's fluid incident to each dialysis treatment, are covered when performed by qualified staff of the facility under the direction of a physician, as provided in the plan of care.

6. Epoetin Alfa (EPO) is covered for the treatment of anemia for ESRD patients when:

a. administered by the renal dialysis facility, or

b. administered "incident to" a physician's service outside the dialysis facility; and

c. hematocrit is less than 30 percent.

7. EPO is not covered when self-administered.

R414-19A-6. Standards of Care.

Dialysis facilities must comply with the Medicare conditions of participation as outlined in 42 CFR, Part 405 Subpart U, dated October 1, 1988, which are hereby adopted and incorporated by reference.

R414-19A-7. Limitations.

Dialysis for End Stage Renal Disease is limited to medically accepted dialysis procedures for outpatients receiving services through free-standing State-licensed facilities which are also certified to participate in the Medicare program.

R414-19A-8. Prior Authorization.

Prior authorization is not required.

R414-19A-9. Reimbursement for Services.

Payment for renal dialysis is based on the established fee schedule unless a lower amount is billed. The amount billed cannot exceed usual and customary charges. Fees are based on the Medicare payment for dialysis in Salt Lake County, Utah.

KEY: medicaid
1990 26-1-5
Notice of Continuation June 3, 2005 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-31. Inpatient Psychiatric Services for Individuals Under Age 21.
R414-31-1. Introduction and Authority.

(1) Except for certain age groups, Medicaid excludes coverage of patients in an institution for mental disease. The State has elected to cover these inpatient psychiatric services for individuals under age 21 in accordance with the conditions set forth below.

(2) 42 USC 1396d(a)(16) and (h) authorizes the provision of this service under a state's Medicaid program.

R414-31-2. Client Eligibility Requirements.

Categorically and medically needy Medicaid recipients are eligible for this service if the service is provided before the recipient reaches age 21 or, if the recipient was receiving the services immediately before the recipient reached age 21, before the earlier of the following: (1) the date the recipient no longer requires the services; or (2) the date the recipient reaches age 22.

R414-31-3. Program Access Requirements.

(1) Before admission for inpatient psychiatric services or before authorization for Medicaid payment, a facility physician must make a medical evaluation of the recipient's need for care in the hospital and certify that inpatient services are needed.

(2) The certification must document that:

(a) ambulatory care resources available in the community do not meet the treatment needs of the recipient;

(b) proper treatment of the recipient's psychiatric condition requires services on an inpatient basis or under the direction of a physician; and

(c) the services can reasonably be expected to improve the recipient's condition or prevent further regression so that services will no longer be needed.

(3) The Bureau of Health Facility Licensing, Certification and Resident Assessment, within the Division of Health Systems Improvement, under the Department of Health, reviews the medical evaluation and certification and determines that the client meets certification of need requirements.

R414-31-4. Service Coverage.

(1) Services must be provided under the direction of a physician and must be based on a plan of care that includes an integrated program of therapies, activities, and experiences designed to meet the recipient's treatment objectives. The plan of care must be a written plan developed for each recipient to improve the recipient's condition to the extent that inpatient care is no longer necessary.

(2) At the appropriate time, the physician must develop post-discharge plans and coordination of inpatient services with partial discharge plans and related community services to ensure continuity of care with the recipient's treatment objectives.

R414-31-5. Qualified Providers.

Inpatient psychiatric services for recipients under age 21 are provided only by the Utah State Hospital.

R414-31-6. Reimbursement for Services.

The Department pays the lower amount of costs or charges and uses Medicare regulations to define allowable costs.

KEY: Medicaid
June 15, 2005 26-1-5
Notice of Continuation October 6, 2004 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-33. Targeted Case Management Services.
R414-33-0. Policy Statement.

Targeted Case Management is a service that assists recipients in the target group to gain access to medical, social, educational, and other services.

R414-33-1. Authority and Purpose.

A. The Consolidated Omnibus Budget Reconciliation Act (P.L. 99-272, COBRA) added Targeted Case Management to the list of optional services which can be provided under the State Medicaid Plan.

B. The Health Care Financing Administration (HCFA) approved Utah's request for provision of Targeted Case Management services, effective July 1, 1987.

R414-33-2. Definitions.

A. "Independent living arrangement financially supported by the Utah Department of Social Services" means a setting other than the individual's natural family home, including supervised apartment and independent living for individuals between the ages of 17 and 21. Room and board in these facilities and in foster and group homes are supported by the Utah Department of Social Services through a combination of state and federal funds (excluding AFDC grants).

B. "Under the statutory responsibility of the Utah Department of Social Services" means children in protective custody who are dependent, neglected, abused, or conduct disordered.

C. "Qualified Targeted Case Manager" means a psychologist, clinical social worker, certified social worker, or social service worker, licensed under the authority of Title 58 (Occupational and Professional Licensing) of the Utah Code Annotated, 1953 as amended, practicing within the scope of his license.

R414-33-3. Eligibility Requirements/Coverage.

Targeted Case Management services are provided to recipients under the age of 21 who are under the statutory responsibility of the Utah Department of Human Services, with the exception of youth under the authority of the Utah Division of Youth Corrections.

R414-33-4. Program Access Requirements.

A. Recipients must meet one of the following criteria:

1. be discharged from an inpatient facility in the previous 12 months; or

2. be currently residing in a foster home, group home, supervised apartment or independent living arrangement financially supported by the Utah Department of Social Services; or

3. be at risk for placement in a more costly or restrictive living arrangement were case management services not available.

B. In addition, recipients of Targeted Case Management services must exhibit at least one of the following:

1. failure or inability to comply with a treatment regimen or failure or inability to access needed services independently; or

2. frequent crisis episodes; or

3. requirement for multiple services and their coordination; or

4. lack of adequate support networks.

C. Recipients will have the free choice of any enrolled qualified Targeted Case Manager.

D. It is the recipient's option whether he receives Targeted Case Management services. A recipient cannot be forced to receive Targeted Case Management services for which he might be eligible.

E. Targeted Case Management services may not be used to restrict the access of the recipient to other services available under the Medicaid State Plan.

R414-33-5. Service Coverage.

Targeted Case Management is a service that assists recipients in the target group to gain access to medical, social, educational, and other services. Targeted Case Management includes:

A. assessing the recipient's need for service and developing a service plan to assure adequate access to medical, social, educational, and other related services.

B. linking the recipient with basic community resources.

C. coordinating the delivery of services and monitoring to assure appropriateness and quality of services.

D. monitoring recipient's progress and continued need for service.

R414-33-6. Standards of Care.

A. The Targeted Case Management manager must develop and maintain sufficient written documentation for each unit of targeted case management services billed indicating at least the following:

1. date of service;

2. name of recipient;

3. name of provider agency and person providing the service;

4. units of service; and

5. place of service.

B. Targeted Case Management services must be documented in 15-minute intervals.

C. The following documents must be contained in each recipient's case file:

1. social history that documents need for service;

2. treatment plan that identifies the services the recipient is to receive; and

3. progress notes that track the recipient's progress toward treatment objectives. The progress notes must be updated periodically at intervals of no more than 95 days, or more frequently as required by the client's condition.

D. The Targeted Case Manager must sign a provider agreement with the Division of Health Care Financing, Utah Department of Health, in order to become a qualified provider. The individual must satisfy one of the following:

1. provide documentation of:

a. at least 5 years experience providing case management services to the target group,

b. be licensed to practice independently as a psychologist or clinical social worker under the authority of the Utah Code Annotated, Title 58,

c. current professional malpractice insurance of at least $1,000,000; or

2. provide documentation of:

a. contract or employment with a public or private licensed child placement agency that specializes in providing case management to the target group and has adequate malpractice insurance for its employees or contractors,

b. license as a psychologist, clinical social worker, certified social worker, social service worker, licensed under the authority of Title 58 of the Utah Code Annotated, 1953, as amended.

R414-33-7. Limitations.

A. Individuals receiving nursing home or hospital services are not eligible for Targeted Case Management services.

B. Recipients receiving case management services under Home and Community-Based Waiver Services are not eligible for Targeted Case Management services.

C. Discharge planning cannot be billed as a Targeted Case Management service.

D. Outreach activities in which the agency or provider attempts to contact potential recipients of a service do not constitute Targeted Case Management services.

E. A physical or psychological examination/evaluation conducted as a component of a recipient's need for service assessment cannot be considered a Targeted Case Management service.

F. Individual therapy, group therapy, and teaching activities cannot be billed as a Targeted Case Management service.

G. Making referral arrangements for medical treatment may be considered a Targeted Case Management activity; however, the actual provision of the service does not constitute Targeted Case Management services.

H. The following are associated with the necessary activities for the proper and efficient administration of the Medicaid State Plan and cannot be included as components of the Targeted Case Management service:

1. Medicaid eligibility determinations;
2. Medicaid intake processing;
3. Medicaid preadmission screening;
4. prior authorization for Medicaid services;
5. required Medicaid utilization review;
6. CHEC (EPSDT) administration; and
7. activities associated with the "lock-in" provisions of 1915(a) of the Social Security Act.

R414-33-8. Prior Authorization.

Not required.

R414-33-9. Reimbursement for Services.

A. Payment for Targeted Case Management services is made on a fee-for-service basis.

B. Rates are prospective and established on the basis of the historical cost for the service. Historical cost is inflated by the Consumer Price Index, Urban-All Items, published by the U.S. Department of Labor.

C. Rates are based on a 15-minute unit of service.

D. Payment cannot be made for Targeted Case Management services for which another payer is liable, nor for services for which no payment liability is incurred.

KEY: medicaid
1990 26-1-5
Notice of Continuation June 3, 2005 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-49. Dental Service.
R414-49-1. Introduction and Authority.

(1) The Medicaid Dental Program provides a scope of dental services to meet the basic dental needs of Medicaid recipients.

(2) Dental services are authorized by 42 CFR, October 1995 ed., Sections 440.100, 440.120, 483.460, which are adopted and incorporated by reference.

R414-49-2. Definitions.

In addition to the definitions in R414-1-1, the following definitions apply to this rule:

(1) "Adult" means a person who has attained the age of 21.

(2) "Child" means a person under age 21 who is eligible for the EPSDT (CHEC) program.

(3) "Child Health Evaluation and Care" (CHEC) is the Utah-specific term for the federally mandated program of early and periodic screening, diagnosis, and treatment (EPSDT) for children under the age of 21.

(4) "Dental services" means diagnostic, preventive, or corrective procedures provided by, or under the supervision of, a dentist in the practice of his profession.

(5) "Emergency services" means treatment of an unforeseen, sudden, and acute onset of symptoms or injuries requiring immediate treatment, where delay in treatment would jeopardize or cause permanent damage to a person's dental health.

R414-49-3. Client Eligibility Requirements.

Dental services are available to categorically and medically needy clients.

R414-49-4. Program Access Requirements.

Dental services are available only from a dentist who meets all of the requirements necessary to participate in the Utah Medicaid Program, and who has signed a provider agreement.

R414-49-5. Service Coverage.

Specific services are identified for adults and for children eligible for the EPSDT (CHEC) program, since program covered services may differ. Specific program covered services for residents of ICFs/MR are detailed in this section.

(1) Diagnostic services are covered as follows:

(a) Each provider may perform a comprehensive oral evaluation one time only for either a child or an adult.

(b) A limited problem-focused oral evaluation for a child or an adult.

(c) Each provider may perform either two periodic oral evaluations, or a comprehensive and a periodic oral evaluation per calendar year.

(d) A choice of panoramic film, a complete series of intraoral radiographs, or a bitewing series of radiographs of diagnostic quality.

(e) Study models or diagnostic casts for children.

(2) Preventive services are covered as follows:

(a) Child:

(i) Two prophylaxis treatments in a calendar year by a provider, with or without fluoride.

(ii) Occlusal sealants are a benefit on the permanent molars of children under age 18.

(iii) Space maintainers.

(b) Adult: Two prophylaxis treatments in a calendar year by a provider.

(3) Restorative services are covered as follows:

(a) Amalgam restorations, composite restorations on anterior teeth, stainless steel crowns, crown build-up, prefabricated post and core, crown repair, and resin or porcelain crowns on permanent anterior teeth for children.

(b) Amalgam restorations, and composite restorations on anterior teeth for adults.

(4) Endodontics services are covered as follows:

(a) Therapeutic pulpotomy for primary teeth.

(b) Root canals, except for permanent third molars or primary teeth, or permanent second molars for adults.

(c) Apicoectomies.

(5) Periodontics services are covered as follows:

(a) Root planing or periodontal treatment for children.

(b) Gingivectomies for patients who use anticonvulsant medication, as verified by their physician.

(6) Oral Surgery services are covered as follows:

(a) Extractions for adults and children.

(b) Surgery for emergency treatment of traumatic injury.

(c) Emergency oral and maxillofacial services provided by dentists or oral and maxillofacial surgeons.

(7) Prosthodontics services are covered as follows:

Initial placement of dentures, including the relining to assure the desired fit.

(a) Full Dentures

(i) Child: Complete dentures.

(ii) Adult: "Initial" dentures.

(b) Partial dentures may be provided if the denture replaces an anterior tooth or is required to restore mastication ability where there is no mastication ability present on either side.

(c) Relining, rebasing, or repairing of existing full or partial dentures.

(8) Medicaid covered dental services are available to residents of an ICF/MR on a fee-for-service basis, except for the annual exam, which is part of the per diem paid to the ICF/MR.

(9) Patients who receive total parenteral or enteral nutrition may not receive dentures.

(10) The provider must mark all new placements of full or partial dentures with the patient's name to prevent lost or stolen dentures in facilities licensed under Title 26, Chapter 21.

(11) General anesthesia and I.V. sedation are covered services.

(12) Fixed bridges, osseo-implants, sub-periosteal implants, ridge augmentation, transplants or replants are not covered services.

(13) pontic services, vestibuloplasty, occlusal appliances, or osteotomies are not covered services.

(14) Consultations or second opinions not requested by Medicaid are not covered services.

(15) Treatment for temporomandibular joint syndrome, its prevention or sequela, subluxation, therapy, arthrotomy, meniscectomy, condylectomy are not covered services.

(16) Prior authorization is required for gingivectomies, full mouth debridements, dentures, partial dentures, porcelain to metal crowns and general anesthesia procedures.

R414-49-6. Reimbursement.

(1) Reimbursement for Dental Services is through select ADA dental codes which are based on an established fee schedule unless a lower amount is billed. The Department pays the lower of the amount billed and the rate on the schedule.

(2) The amount billed cannot exceed usual and customary charges for private pay patients. 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.

(3) Providers in urban counties (Utah, Salt Lake, Davis, and Weber counties) who sign the Dental Incentive Agreement and providers in rural counties shall receive a 20% increase in the allowable fees paid for Medicaid dental services.

KEY: Medicaid

July 1, 2005 26-1-5
Notice of Continuation November 12, 2004 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-53. Eyeglasses Services.
R414-53-1. Introduction and Authority.

The Eyeglasses Program provides eyeglasses services to meet the basic vision care needs of Medicaid recipients. This rule is authorized under Utah Code 26-18-3 and governs the services allowed under 42 CFR 440.120(d).

R414-53-2. Definitions.

"Eyeglasses" means lenses, including frames, contact lenses, and other aids to vision that are prescribed by a physician skilled in diseases of the eye or by an optometrist.

R414-53-3. Client Eligibility Requirements.

Eyeglasses are available to Categorically and Medically Needy clients.

R414-53-4. Service Coverage.

(1) Corrective lenses and frames may be provided based on medical need. Medical need includes a change in prescription or replacement as a result of normal lens or frame wear. Frames must be those in which lenses can be replaced readily without having to provide a new frame. Corrective lenses must be suitable for indoor and outdoor use and for day and night use.

(2) Single vision, bifocal, or trifocal lenses, with or without slab-off prism, in clear glass or plastic, may be provided.

(3) Only the least expensive frame practicable for use, either plastic or metal, may be provided.

(4) Replacements for existing lenses or frames may be provided if the prescribing physician or optometrist declares them to be medically necessary. Eyeglasses may not be replaced more often than every two years unless the prescribing physician or optometrist declares an earlier replacement to be medically necessary. Circumstances that warrant providing new eyeglasses or contact lenses are a diopter change of .75 or more, or disease or damage to the eye. Eyeglasses or contact lenses may not be replaced if they were damaged through client negligence or abuse.

(5) The audiologist or hearing aid provider may provide frames that have hearing aids placed in the earpieces. The prescribing physician or optometrist must dispense the lenses for these frames.

(6) The following services may be provided if the prescribing physician or optometrist declares them to be medically necessary:

(a) Contact lenses;

(b) Soft contact lenses;

(c) Gas permeable contact lenses;

(d) Tints for eyeglasses or contact lenses where diseases or conditions are present that render the client unusually light-sensitive;

(e) Low vision aids.

(7) The following services are not provided:

(a) Additional eyeglasses such as reading glasses, distance glasses, or a "spare";

(b) Extended wear contact lenses or disposable contact lenses.

R414-53-5. Reimbursement.

(1) The Department pays for lenses and standard frames on a fee-for-service basis, based on CPT codes as described in the State Plan, Attachment 4.19-B.

(2) The Department pays the lower of the amount billed or 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.

(3) 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.

KEY: Medicaid, eyeglasses
July 1, 2005 26-1-5
Notice of Continuation June 6, 2003 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-401. Nursing Care Facility Assessment.
R414-401-1. Introduction and Authority.

(1) This rule implements the assessment imposed on certain nursing care facilities by Utah Code Title 26, Chapter 35a.

(2) The rule is authorized by Section 26-1-30 and Utah Code Title 26, Chapter 35a.

R414-401-2. Definitions.

(1) The definitions in Section 26-35a-103 apply to this rule.

(2) The definitions in R414-1 apply to this rule.

R414-401-3. Assessment.

(1) The collection agent for the nursing care facility assessment shall be the Department, which is vested with the administration and enforcement of the assessment.

(2) The uniform rate of assessment for every facility is $6.18 per non-Medicare patient day provided by the facility, except that intermediate care facilities for the mentally retarded shall be assessed at the uniform rate of $5.52 per patient day. Swing bed facilities shall be assessed the uniform rate for nursing facilities effective January 1, 2006. The Utah State Veteran's Home is exempted from this assessment and this rule.

(3) Each nursing care facility must pay its assessment monthly on or before the last day of the next succeeding month.

(4) The Department shall extend the time for paying the assessment to the next month succeeding the federal approval of a Medicaid State Plan Amendment allowing for the assessment, and consequent reimbursement rate adjustments.

R414-401-4. Reporting and Auditing Requirements.

(1) Each nursing care facility shall, on or before the end of the succeeding month, file with the Department a report for the month, and shall remit with the report the assessment required to be paid for the month covered by the report.

(2) Each report shall be on the Department-approved form, and shall disclose the total number of patient days in the facility, by designated category, during the period covered by the report.

(3) Each nursing care facility shall supply the data required in the report and certify that the information is accurate to the best of the representative's knowledge.

(4) Each nursing care facility subject to this assessment shall maintain complete and accurate records. The Department may inspect each nursing care facility's records and the records of the facility's owners to verify compliance.

(5) Separate nursing care facilities owned or controlled by a single entity may combine reports and payments of assessments provided that the required data are clearly set forth for each separately reporting nursing care facility.

(6) The Department shall extend the time for making required reports to the next month succeeding the federal approval of a Medicaid State Plan Amendment allowing for the assessment, and consequent reimbursement rate adjustments.

R414-401-5. Penalties and Interest.

The penalties for failure to file a report, to pay the assessment due within the time prescribed, to pay within 30 days of a notice of deficiency of the assessment, for underpayment of the assessment, for intent to evade the assessment are as provided in Utah Code Section 26-35a-105.

KEY: Medicaid, nursing facility
July 1, 2005 **26-1-30**
26-35a

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-504. Nursing Facility Payments.
R414-504-1. Introduction.

(1) This rule adopts a case mix or severity based payment system, commonly referred to as RUGS (Resource Utilization Group System). This system reimburses facilities based on the case mix index of the facility.

(2) This rule is authorized by Utah Code sections 26-1-5, 26-18-3, and 26-35a.

R414-504-2. Definitions.

The definitions in R414-1-2 and R414-501-2 apply to this rule. In addition:

(1) "Behaviorally complex resident" means a long-term care resident with a severe, medically based behavior disorder, including traumatic brain injury, dementia, Alzheimer's, Huntington's Chorea, which causes diminished capacity for judgment, retention of information or decision-making skills, or a resident, who meets the Medicaid criteria for nursing facility level of care and who has a medically-based mental health disorder or diagnosis and has a high level resource use in the nursing facility not currently recognized in the case mix.

(2) "Case Mix Index" means a score assigned to each facility based on the average of the Medicaid patients' RUGS scores for that facility.

(3) "Facility Case Mix Rate" means the rate the Department issues to a facility for a specified period of time. This rate utilizes the case mix index for a provider, labor wage index application and other case mix related costs.

(4) "FCP" means the Facility Cost Profile cost report filed by the provider on an annual basis.

(5) "Minimum Data Set" (MDS) means a set of screening, clinical and functional status elements, including common definitions and coding categories, that form the foundation of the comprehensive assessment for all residents of long term care facilities certified to participate in Medicaid.

(6) "Nursing Costs" means the most current costs from the annual FCP report reported on lines 070-012 Nursing Admin Salaries and Wages; 070-013 Nursing Admin Tax and Benefits; 070-040 Nursing Direct Care Salaries and Wages; 070-041 Nursing Direct Care Tax and Benefits, and 070-050 Purchased Nursing Services.

(7) "Nursing facility" or "facility" means a Medicaid-participating NF, SNF, or a combination thereof, as defined in 42 USC 1396r (a) (1988), 42 CFR 440.150 and 442.12 (1993), and UCA 26-21-2(15).

(8) "Patient day" means the care of one patient during a day of service, excluding the day of discharge.

(9) "Property costs" means the most current property costs from the annual FCP report reported on lines 230 (Rent and Leases Expense), 240 (Real Estate and Personal Property Taxes), 250 (Depreciation - Building and Improvement), 260 (Depreciation - Transportation Equipment), 270 (Depreciation - Equipment), 280 (Interest - Mortgage, Personal Property Furniture and Equipment - Small Items), 300 (Property Insurance). Under a fair rental value (FRV) system, a facility is reimbursed on the basis of the estimated current value of its capital assets in lieu of direct reimbursement for depreciation, amortization, interest, and rent/lease expenses. The FRV system establishes a nursing facility's bed value based on the age of the facility and total square footage.

(10) "RUGS" means the 34 RUG identification system based on the Resource Utilization Group System established by Medicare to measure and ultimately pay for the labor, fixed costs and other resources necessary to provide care to Medicaid patients. Each "RUG" is assigned a weight based on an assessment of its relative value as measured by resource utilization.

(11) "RUGS score" means a total number based on the individual RUGS derived from a resident's physical, mental and clinical condition, which projects the amount of relative resources needed to provide care to the resident. RUGS is calculated from the information obtained through the submission of the MDS data.

(12) "Sole community provider" means a facility that is not an urban provider and is not within 30 paved road miles of another existing facility and is the only facility:

(a) within a city, if the facility is located within the incorporated boundaries of a city; or

(b) within the unincorporated area of the county if it is located in an unincorporated area.

(13) "Urban provider" means a facility located in a county of more than 90,000 population.

R414-504-3. Principles of Facility Case Mix Rates and Other Payments.

The following principles apply to the payment of freestanding and provider based nursing facilities for services rendered to nursing care level I, II, and III Medicaid patients, as defined in R414-502. This rule does not affect the system for reimbursement for intensive skilled Medicaid patients.

(1) Approximately 59% of total payments in aggregate to nursing facilities for nursing care level I, II and III Medicaid patients are based on a prospective facility case mix rate. In addition, these facilities shall be paid a flat basic operating expense payment equal to approximately 29% of the total payments. The balance of the total payments will be paid in aggregate to facilities as required by R414-504-3 based on other authorized factors, including property and behaviorally complex residents, in the proportion that the facility qualifies for the factor.

(2) Pending federal approval of the Medicaid rate adjustment, the request to allow the implementation of the Utah Nursing Care Facility Assessment Act, and consequent rules, the case mix rate in effect on July 2, 2004, as well as other components of the total rate will be the same as those in effect on June 30, 2004.

(3) Upon federal approval of the nursing care facility rate adjustment and the assessment pursuant to R414-504-3(2), rate components will be adjusted retroactively to July 2, 2004, to reflect the additional funding made available. The adjusted rate will be further adjusted retroactive to September 15, 2004 to include the application of a Fair Rental Value reimbursement system for property as addressed in R414-504-3(7).

(4) The Department calculates each nursing facility's case mix index quarterly based upon the previous 3-month moving average case mix history. The newly calculated case mix index is applied to the case mix rate one month after the end of the quarter.

(5) A facility may apply for a special add-on rate for behaviorally complex residents by filing a written request with the Division of Health Care Financing. The Department may approve an add-on rate if an assessment of the acuity and needs of the patient demonstrates that the facility is not adequately reimbursed by the RUGS score for that patient. The rate is added on for the specific resident's payment and is not subsumed as part of the facility case mix rate. The Resident Assessment Section will make the determination as to qualification for any additional payment. The Division of Health Care Financing shall determine the amount of any add-on.

(6) Property costs are paid separately from the RUGS rate.

(7) Each facility's reimbursement interim rate effective July 2, 2004, includes a property payment of $11.19 per patient day.

(a) A facility with property costs greater than $11.19 per patient day as reported on the most recent FCP may receive a

property differential payment, as follows:

(i) For facilities with the most recent FCP-reported occupancy greater than 75%, the property differential is the FCP-reported property cost divided by the sum of the number of Medicaid patient days and non-Medicaid patient days from which the $11.19 base is subtracted. This can be algebraically stated as: (FCP-reported property cost / (total number of Medicaid patient days + non-Medicaid patient days)) - $11.19 = property differential.

(ii) For facilities with an FCP-reported occupancy less than 75%, the property differential is the FCP-reported property cost divided by the number of licensed beds times 365 times .75 from which the $11.19 base is subtracted. This can be algebraically stated as: (FCP-reported property cost / (total number of licensed beds x 365 x .75)) - $11.19 = property differential.

(b) Regardless of the result produced under subsection (b), the property differential payment shall not exceed $8.81 per patient day.

(8) Upon federal approval, property costs will be calculated and reimbursed as a component of the facility rate based on an FRV System, effective September 15, 2004.

(a) Under this FRV system, the Department reimburses a facility based on the estimated current value of its capital assets in lieu of direct reimbursement for depreciation, amortization, interest, and rent or lease expenses. The FRV system establishes a nursing facility's bed value based on the age of the facility and total square footage.

(i) The initial age of each nursing facility used in the FRV calculation is determined as of September 15, 2004, using each facility's year of construction.

(ii) The age of each facility is adjusted each July 1 to make the facility one year older.

(iii) The age is reduced for replacements, major renovations, or additions placed into service since the facility was built, provided there is sufficient documentation to support the historical changes.

(A) If a facility adds new beds, these new beds are averaged into the age of the original beds to arrive at the facility's age.

(B) If a facility completed a major renovation (defined as a project with capitalized cost equal to or greater than $500 per bed) or replacement project, the cost of the project is represented by an equivalent number of new beds

(I) The renovation or replacement project must have been completed during a 24-month period and reported on the FCP (due March 31st) for the calendar year prior to a July 1 rate year and be related to the reasonable functioning of the nursing facility. Renovations unrelated to either the direct or indirect functioning of the nursing facility shall not be used to adjust the facility's age.

(II) The equivalent number of new beds is determined by dividing the cost of the project by the accumulated depreciation per bed of the facility's existing beds immediately before the project.

(III) The equivalent number of new beds is then subtracted from the total actual beds. The result is multiplied by the difference in the year of the completion of the project and the age of the facility, which age is based on the initial construction year or the last reconstruction or renovation project. The product is then divided by the actual number of beds to arrive at the number of years to reduce the age of the facility.

(b) A nursing facility's fair rental value per diem is calculated as follows:

As used in this subsection (b), "capital index" is the percent change in the nursing home "Per bed or person, total cost" row and "3/4" column as found in the two most recent annual R.S. Means Building Construction Cost Data as adjusted by the weighted average total city cost index for Salt Lake City, Utah.

(i) The buildings and fixtures value per licensed bed is $50,000, which is based upon a standard facility size of at least 450 square feet determined using the R.S. Means Building Construction Cost Data adjusted by the weighted average total city cost index for Salt Lake City, Utah. To this $50,000 is added 10% ($5,000) for land and 10% ($5,000) for movable equipment. Each nursing facility's total licensed beds are multiplied by this amount to arrive at the "total bed value." The total bed value is trended forward by multiplying it by the capital index and adding it to the total bed value to arrive at the "newly calculated total bed value." The newly calculated total bed value is depreciated, except for the portion related to land, at 1.50 percent per year according to the weighted age of the facility. The maximum age of a nursing facility shall be 35 years. Therefore, nursing facilities shall not be depreciated to an amount less than 47.50 percent or 100 percent minus (1.50 percent times 35) of the newly calculated bed value. There shall be no recapture of depreciation.

(ii) A nursing facility's annual FRV is calculated by multiplying the facility's newly calculated bed value times a rental factor. The rental factor is the sum of the 20-year Treasury Bond Rate as published in the Federal Reserve Bulletin using the average for the calendar year preceding the rate year and a risk value of 3 percent. Regardless of the result produced in this subsection (ii), the rental factor shall not be less than 9 percent or more than 12 percent.

(iii) the facility's annual FRV is divided by the greater of:

(A) the facility's annualized actual resident days during the cost reporting period; and

(B) 75 percent of the annualized operational bed capacity of the facility.

(iv) The FRV per diem determined under this fair rental value system shall be no lower than $8 per patient day.

(v) The FRVper diem determined under this fair rental value system shall be phased-in using a hold-harmless method over a one-year period,as follows:

(A) Nursing facility property rates are calculated under the fair rental value system and compared to rates in effect on July 2, 2004.

(B) If the fair rental value system property rate is less than the nursing facility's July 2, 2004 rate, the nursing facility's rate is adjusted to additionally pay the nursing facility the difference between the September 15, 2004 rate and the July 2, 2004 rate, but not to exceed $5 per patient day; and

(C) the hold harmless method expires on June 30, 2005.

(c) A pass-through component of the rate is applied and is calculated as follows:

(i) As used in this subsection (c), "property tax and property insurance index" is the percent change in the combined property tax and property insurance costs reported by the facility on its two most recent FCPs.

(ii) For a newly constructed facility that has not made two FCP reports, the property tax and property insurance index is the average percent change in the combined property tax and property insurance costs reported by all facilities on their two most recent FCPs.

(iii) The property tax and property insurance pass-through is trended forward by multiplying it by the property tax and property insurance index and adding it to the combined property tax and property insurance costs as reported on the most recent FCP to arrive at the pass-through amount.

(iv) The nursing facility's per diem property tax and property insurance cost is determined by dividing the facility's pass-through amount by the facility's actual total patient days.

(9) Newly constructed facilities' case mix component of the rate shall be paid at the average rate. This average rate shall remain in place for a new facility for six months, whereupon the provider's case mix index and property payment is established. At this point, the Department shall issue a new case mix

adjusted rate. The property payment to the facility is controlled by R414-504-3(6). Prior to implementation of a fair rental value system, a newly constructed facility's property payment may not exceed $20.00 per patient day.

(10) An existing facility acquired by a new owner will continue at the same case mix index and property cost payment established for the facility under the previous ownership for the remainder of the quarter. Prior to implementation of a fair rental value system, the new owners property payment may not exceed $20.00 per patient day.

(11) A sole community provider that is financially distressed may apply for a payment adjustment above the case mix index established rate. The maximum increase will be the lesser of the facility's reasonable costs (as defined in CMS publication 15-1, Section 2102.2), or 7.5% above the average of the most recent FCP Medicaid daily rate for all Medicaid residents in all freestanding nursing facilities in the state. The maximum duration of this adjustment is 12 months.

(a) The application shall propose what the adjustment should be and include a financial review prepared by the facility documenting:

(i) the facility's income and expenses for the past 12 months; and

(ii) steps taken by the facility to reduce costs and increase occupancy.

(b) Financial support from the local municipality and county governing bodies for the continued operation of the facility in the community is a necessary prerequisite to an acceptable application. The Department, the facility and the local governing bodies may negotiate the amount of the financial commitment from the governing bodies, but in no case may the local commitment be less than 50% of the state share required to fund the proposed adjustment. Any continuation of the adjustment beyond 6 months requires a local commitment of 100% of the state share for the rate increase above the base rate. The applicant shall submit letters of commitment from the applicable municipality or county, or both, committing to make an intergovernmental transfer for the amount of the local commitment.

(c) The Department may conduct its own independent financial review of the facility prior to making a decision whether to approve a different payment rate.

(d) If the Department determines that the facility is in imminent peril of closing, it may make an interim rate adjustment for up to 90 days.

(e) The Department's determination shall be based on maintaining access to services on and maintaining economy and efficiency in the Medicaid program.

(f) If the facility desires an adjustment for more than 90 days, it must demonstrate that:

(i) the facility has taken all reasonable steps to reduce costs, increase revenue and increase occupancy;

(ii) despite those reasonable steps the facility is currently losing money and forecast to continue losing money; and

(iii) the amount of the approved adjustment will allow the facility to meet expenses and continue to support the needs of the community it serves, without unduly enriching any party.

(g) If the Department approves an interim or other adjustment, it shall notify the facility when the adjustment is scheduled to take effect and how much contribution is required from the local governing bodies. Payment of the adjustment is contingent on the facility obtaining a fully executed binding agreement with local governing bodies to pay the contribution to the Department.

(h) The Department may withhold or deny payment of the interim or other adjustment if the facility fails to obtain the required agreement prior to the scheduled effective date of the adjustment.

(12) A provider may challenge the rate set pursuant to this rule using the appeal in R410-14. A provider must exhaust administrative remedies before challenging rates in any other forum.

(13) In developing payment rates, the Department may adjust urban and non-urban rates to reflect differences in urban and non-urban labor costs. The urban labor costs reimbursement cannot exceed 106% of the non-urban labor costs. Labor costs are as reported on the most recent FCP but do not include FCP-reported management, consulting, director, and home office fees.

R414-504-4. Quality Improvement Incentive.

Upon federal approval of the Nursing Care Facilities State Plan Amendment, funds in the amount of $500,000 shall be set aside annually to reimburse facilities that have a quality improvement plan and have no violations that are at an "immediate jeopardy" level, as determined by the Department, at the most recent re-certification survey and during the incentive period. The Department shall distribute incentive payments to qualifying facilities based on the proportionate share of the total Medicaid patient days in qualifying facilities. If a facility appeals the determination of a survey violation, the incentive payment will be withheld pending the final administrative appeal. On appeal, if violations are found not to have occurred at a severity level of "immediate jeopardy" or higher, the incentive payment will be paid to the facility. If the survey findings are upheld, the remaining incentive payments will be distributed to all qualifying facilities.

R414-504-5. Reimbursement for Intermediate Care Facilities for the Mentally Retarded.

The following principles apply to the payment of community-based intermediate care facilities for the mentally retarded (ICF/MRs) that are licensed under Utah Code 26-21-13.5:

(1) Approximately 93% of total payments paid in aggregate to ICF/MRs are based on a prospective flat rate. The balance of the total payments is attributable to a property cost component of the rate as calculated by the Fair Rental Value system pursuant to R414-504-3(8).

(2) Pending federal approval of the Medicaid rate adjustment for ICF/MRs, the rates in effect on July 1, 2005, will be the same as those in effect on June 30, 2005, inflated by 1%.

(3) Upon federal approval of the ICF/MR rate adjustment, rate components will be adjusted retroactively to July 1, 2005, to reflect additional funding made available.

KEY: Medicaid

July 1, 2005 **26-1-5**
26-18-3
26-35a

R444. Health, Epidemiology and Laboratory Services, Laboratory Improvement.
R444-14. Rule for the Certification of Environmental Laboratories.
R444-14-1. Introduction.

(1) This rule is authorized by Utah Code Section 26-1-30(2)(m).

(2) This rule applies to laboratories that analyze samples for compliance with Federal Safe Drinking Water Act, Federal Clean Water Act, and the Federal Resource Conservation and Recovery Act.

(3) A laboratory that analyzes samples for compliance with rules established by the Utah Department of Environmental Quality that require that the analysis be conducted by a certified laboratory, must become certified under this rule and comply with its provisions.

(4) A laboratory that, under subcontract with another laboratory, analyzes samples for compliance with rules established by the Utah Department of Environmental Quality that require that the analysis be conducted by a certified laboratory, must become certified under this rule and comply with its provisions.

(5) A laboratory certified under this rule to analyze samples for compliance with rules established by the Utah Department of Environmental Quality that require that the analysis be conducted by a certified laboratory must also obtain approval under this rule for each analyte analyzed by a specific method.

R444-14-2. Definitions.

(1) "Analyte" means the substance or thing for which a sample is analyzed to determine its presence or quantity.

(2) "Approved" means the determination by the department that a certified laboratory may analyze for an analyte under this rule.

(3) "Clean Water Act" means U.S. Public Law 92-500, as amended, governing water pollution control programs.

(4) "Department" means the Utah Department of Health.

(5) "Revoke" means to withdraw a certified laboratory's certification or the approval for a certified laboratory to perform one or more specified methods.

(6) "Resource Conservation and Recovery Act" means U.S. Public Law 94-580, as amended, governing solid and hazardous waste programs.

(7) "Safe Drinking Water Act" means U.S. Public Law 93-523 94-580, as amended, governing drinking water programs.

R444-14-3. Laboratory Certification.

(1) A laboratory is the organization and facilities established for testing samples.

(2) A laboratory that conducts tests that are required by Department of Environmental Quality rules to be conducted by a certified laboratory must be certified under this rule.

(3) To become certified, to renew certification, or to become recertified under this rule, a laboratory must adhere to the requirements found in Chapter 4, "Accreditation Process", of the National Environmental Laboratory Accreditation Conference Standards approved June 2003, which are incorporated by reference.

R444-14-4. Analytical Methods.

(1) The department may only approve a certified laboratory to analyze an analyte by specific method. The department may approve a certified laboratory for an analyte using methods described in the July 1, 1992 through 2005, editions of 40 CFR Parts 141, 142, and 143 (Safe Drinking Water Act); 40 CFR Parts 136 and 503.8 (Clean Water Act); 40 CFR Parts 260 and 261 (Resource Conservation and Recovery Act).

(2) In analyzing a sample for compliance with the Safe Drinking Water Act, the Clean Water Act, or the Resource Conservation and Recovery Act, a certified laboratory must follow the method that it reports on its final report to have used.

R444-14-5. Proficiency Testing.

For a certified laboratory to become approved and to maintain approval for an analyte by a specific method, the certified laboratory must, at its own expense, meet the proficiency testing requirements of this rule. A certified laboratory must adhere to the requirements found in Chapter 2, "Proficiency Testing", of the National Environmental Laboratory Accreditation Conference Standards approved July 2003, which are incorporated by reference.

R444-14-6. Quality System.

(1) A certified laboratory must adhere to the requirements found in Chapter 5, Quality Systems, of the National Environmental Laboratory Accreditation Conference Standards approved June 2003, which are incorporated by reference.

R444-14-7. Recognition of NELAP Accreditation.

The department may certify a laboratory that is NELAP-accredited. A laboratory seeking certification because of its NELAP accreditation must provide evidence of its accreditation and apply for certification on that basis. A laboratory certified on the basis of NELAP accreditation must obtain approval from the department for each analyte and meet the approval requirements of this rule.

R444-14-8. Penalties.

A laboratory violates this rule and is subject to the penalties provided in Title 26, Chapter 23, including administrative and civil penalties of up to $5,000.00 for each offense, criminal sanctions of a class B misdemeanor on the first offense and a class A misdemeanor on the second offense, and criminal penalties of up to $5,000.00 for each offense if it:

(1) without being certified under this rule, holds itself out as one capable of testing samples for compliance with Federal Safe Drinking Water Act, Federal Clean Water Act, Federal Resource Conservation and Recovery Act; or

(2) without being approved to analyze for the analyte , analyzes samples for the analyte for compliance with rules established by the Utah Department of Environmental Quality that require that the analysis be conducted by a certified laboratory.

KEY: laboratories
July 1, 2005 **26-1-30(2)(m)**
Notice of Continuation June 13, 2002

R448. Health, Medical Examiner.
R448-10. Unattended Death and Reporting Requirements.
R448-10-1. Authority and Purpose.

This rule is authorized by Utah Code Section 26-1-5. It clarifies the meaning of unattended death under the provisions of Utah Code Subsection 26-4-2(8) and the requirements of Utah Code Section 26-4-8.

R448-10-2. Death Under Physician's Care and Supervision.

For purposes of Utah Code Subsection 26-4-2(8), an individual whose care is directly supervised by a physician and who has been seen by a licensed nurse whose activity is directly supervised by the physician is deemed to have been seen by the physician within the scope of the physician's professional capacity.

R448-10-3. Reporting Requirement.

(1) If a death occurs and the individual's care within 30 days prior to death was not directly supervised by a physician or if the individual was not seen by a licensed nurse whose activity is directly supervised by the individual's treating physician, then the death must be reported as required under Utah Code Section 26-4-8.

(2) All other deaths that meet the criteria in Utah Code Section 26-4-7, must be reported as required by Utah Code Section 26-4-8

(3) As required by R432-750-29, a hospice is required to report all deaths supervised by the hospice if the death was a result from injury, accident, or other possible unnatural cause.

KEY: medical examiner, unattended death, reporting death

June 19, 2000	**26-1-5**
Notice of Continuation June 6, 2005	**26-4-2**
	26-4-7
	26-4-8

R448. Health, Medical Examiner.
R448-20. Access to Medical Examiner Reports.
R448-20-1. Authority and Purpose.

This rule is authorized by Utah Code Section 26-1-5. It establishes who may, under the provisions of Utah Code Subsection 26-4-17(3), access medical examiner reports generated in the investigation of a death.

R448-20-2. Access by Next-of-Kin.

(1) Next-of-kin who may access medical examiner records under the provisions of Utah Code Subsection 26-4-17(3) are as follows:

(a) surviving spouse;

(b) any natural or adoptive parent, regardless of whether the deceased was an adult;

(c) any full or half sibling; and

(d) any child aged 18 or older.

(2) All next-of-kin have equal access to medical examiner records under 26-4-17, without preference or priority.

R448-20-3. Access by a Legal Representative.

(1) Legal representatives who may access medical examiner records under the provisions of Utah Code Subsection 26-4-17(3) are as follows:

(a) any legal guardian of the person, regardless of whether the deceased was child or an adult; and

(b) a personal representative of the estate of the deceased appointed by a court of competent jurisdiction.

(2) All legal representatives have equal access to medical examiner records under Utah Code Subsection 26-4-17(3), without preference or priority.

R448-20-4. Request and Verification of Right to Record.

A request made under Utah Code Subsection 26-4-17(3) must be in a writing either;

(1) bearing a notary seal attesting to the identity of the individual and establishing the individual's right to the record; or

(2) signed in the presence of medical examiner staff after producing documentation establishing the individual's right to the record.

KEY: medical examiner, records
June 19, 2000 26-1-5
Notice of Continuation June 6, 2005 26-4-17

R510. Human Services, Aging and Adult Services.
R510-104. Nutrition Programs for the Elderly (NPE).
R510-104-1. Nutrition Program Standards, Policy and Procedures.

(1) Program Standards: The Division shall comply with the Dietary Guidelines for Americans released 30 May 2000, published by the U. S. Department of Health and Human Services and the U. S. Department of Agriculture, and provide to each participating older individual:

(a) A minimum of 33 1/3 percent of the daily Recommended Dietary Allowances (RDA) and Dietary Reference Intake (DRI) as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences, Institute of Medicine and Mathematica Policy Research, Incorporated, if the project provides 1 meal per day;

(b) A minimum of 66 2/3 percent of the allowances if the project provides two meals per day; and

(c) One hundred percent of the allowances if the project provides three meals per day.

(2) Nutrition Services: The Division shall develop a comprehensive and coordinated nutrition service system statewide. The Division shall encourage and assist the AAAs in utilization of resources to develop greater capacity in their nutrition programs and services. The Division will approve a nutrition screening tool that will be used to identify nutritional risk or malnutrition. All seniors participating in the Nutrition Programs For The Elderly, Congregate and Home Delivered Meals, will be required to complete the nutrition screen. If an individual does not want to fill out the screening form, he or she will not be denied a meal. The provider is required to assure the data to National Aging Program Information System (NAPIS). The Division will monitor, coordinate, and assist in the planning of nutritional services, with the advice of a registered dietitian or an individual with comparable expertise. The nutrition service system shall provide older Utahns, particularly those in the greatest economic and social need categories, with particular attention to low-income and low-income minorities, access and outreach to nutrition services, nutrition education and nutritionally sound meals, to promote better health through improved diet.

(3) Coordination: Policy and Procedures approved by the Utah State Board of Aging and Adult Services - shall be used by the Division and its contractors/grantees in the conduct of all functions and responsibilities required in carrying out services and funding categories of the Title III Part C Nutrition Program, including Congregate Meals (Part C-1), Home-Delivered Meals (Part C-2), Nutrition Education and Nutrition Outreach, and the Cash-in-Lieu and Commodities Program. The USDA Program authorizes cash payments to the State from the United States Department of Agriculture, based upon the number of eligible Title III Congregate and Home-Delivered Meals served. Part of or all of the revenue earned may be received in the form of commodities; as determined by the Division and in consultation with the AAAs.

R510-104-2. Eligibility for Nutrition and Nutrition Support Services.

(1) All persons aged 60 and older and the spouse of any individual regardless of his/her age, are eligible for OAA nutrition services. If sufficient resources are not available to serve all eligible individuals who request a service, the AAA shall ensure that preference is given to those of greatest social or economic need, with particular attention to low-income, and low-income minorities. All individuals requesting home-delivered meals shall be assessed and only those individuals who have been determined to be homebound as defined in R510-104-2.4 shall be eligible for a home-delivered meal.

(2) Other Individuals who may receive congregate and home-delivered meals include:

(a) Any individual with a disability (who has not attained the age of 60), if they reside in a housing facility primarily occupied by elderly persons that has a congregate meal site funded by the OAA on the premises.

(b) Clients of Home and Community-Based Alternatives programs and/or clients of the Medicaid Home and Community-Based programs for the elderly shall be allowed to participate in the nutrition program as capacity allows, if the client's case manager includes the meal in the care plan. The participant's program shall pay the actual cost of the meal as determined by the AAA. The above-named clients shall be given preference over other fee-paying individuals.

(c) Individuals with disabilities who reside at home with and accompany older individuals who are eligible under the Act.

(3) Homebound Status:

(a) A person shall be determined to be homebound if he/she is unable to leave home without assistance because of a disabling physical, emotional, or environmental condition.

(b) Homebound status shall be documented at the project level. Method of assessment shall be approved by the Division to ensure standard measurable criteria. Homebound status shall be reviewed or re-evaluated on a regular basis, but not less frequently than annually. Written authorization for eligibility shall be provided by the AAA. A written copy of the appeal process shall be made available to those denied this service. Two authorized signatures of approval for eligibility shall be required by the AAA.

(c) Urgent need: Top priority may be given to emergency requests. Home-delivered meals for an emergency shall start as soon as possible after the determination of urgent need has been made. A regular assessment will be made within 14 calendar days from the date of request to determine continued eligibility.

R510-104-3. Contribution Policy.

(1) The actual cost, as defined by the AAA and reported to the State, of a congregate meal shall be posted at the nutrition site. Suggested contribution and actual cost shall be posted in a prominent conspicuous location.

(2) Each eligible participant shall have an opportunity to voluntarily and anonymously contribute toward the cost of a provided meal service.

(3) Each AAA shall establish and implement procedures which will protect the privacy of the client's decision to contribute or not contribute toward the meal service rendered.

(4) Under no circumstances may an eligible client be denied service(s) by a provider who received funds from the AAA (for that service) because of the client's decision not to contribute for services rendered.

(5) AAAs shall have each provider post suggested contributions and fees (actual costs of meal) for nutrition services in a prominent conspicuous location.

(6) There shall be locked contribution boxes, placed away from the ticket and change table, which shall not be monitored for contributions, in order to assure the confidentiality of the donation.

(7) Participant contributions shall be counted by two persons, and both individuals shall sign a form attesting to the correct count. A copy of such signed documentation shall be kept on file.

R510-104-4. Nutrition Services.

(1) Selection of Providers:

(a) The AAA shall make awards for congregate and home-delivered nutrition services to providers that furnish either or both types of service. Each AAA shall assure that each service provider selected meets all applicable Federal, State and Local regulations.

(b) Each AAA, when feasible, shall give preference in

making awards for home-delivered meal services to providers that meet the following :

(i) Organizations that have demonstrated an ability to provide home-delivered meals efficiently and reasonably; and

(ii) Providers will furnish assurances to the AAA that it will maintain efforts to solicit voluntary support and that OAA funds made available will not be used to supplant funds from non-federal sources.

(2) Requirements for Congregate Meal Providers:

(a) Each AAA, in consultation with the nutrition provider and AAA Advisory Council, or local equivalent, shall determine the number of congregate sites to be established and their days of operation.

(b) Local AAA's must provide congregate meals a minimum of five days per week (except in a rural area where such frequency is not feasible (as defined by the Assistant Secretary of Aging by regulation), and a lesser frequency shall be approved by the Division).

(c) Where feasible, congregate nutrition sites shall be in as close proximity to the majority of eligible individuals' residences as feasible, with particular attention upon a multipurpose senior center, a school, a church, or to other appropriate community facility, preferably within walking distance where possible, and where appropriate, transportation to such site is furnished.

(d) Congregate meal projects will provide at least one hot or other appropriate meal per day and any additional meals which the nutrition contract provider may elect to provide, with the approval of the AAA.

(e) A provision for Special Meals will be provided where feasible and appropriate to meet the particular dietary needs arising from the health requirements, religious requirements, or ethnic backgrounds of eligible individuals.

(f) The congregate meals shall comply with the Dietary Guidelines for Americans as stated in R510-104-1(A).

(g) Each congregate meal project shall comply with applicable State and local laws regarding the safe and sanitary handling of food, equipment, and supplies used in the storage, preparation, service, and delivery of meals to older individuals.

(h) Each nutrition provider shall establish outreach activities which assure that the maximum number of eligible clients are aware that they have the opportunity to participate.

(i) Each congregate project shall provide nutrition education on at least a semi-annual basis.

(3) Requirements for Home-Delivered Meal Providers:

(a) Home-delivered meals service within a Planning and Service Area (PSA) shall be available 5 or more days per week.

(b) Home-delivered meals that are provided 4 days/week or less in rural areas must be approved by the Division.

(c) Home-delivered meals shall comply with the Dietary Guidelines for Americans as stated in R510-104-1(A).

(d) Home-delivered meal/s should consist of solid foods, served hot, cold, frozen, dried, canned, or supplemental foods (with a satisfactory storage shelf life). In situations where nutritional considerations make solid foods inappropriate, the need for nutrient supplements to include liquid supplemental feedings, (meeting the required RDA Guidelines) may be part of medical nutrition therapy recommended by a registered dietitian, registered nurse or physician, with the concurrence of the local AAA, primarily when the participant can not tolerate or digest regular meals. Exceptions to solid foods shall be documented by the nutrition case manager who shall record that other alternatives were tried but unsuccessful. All other sources of home-delivered meal modification should be exhausted before liquid supplemental feedings become the main nutritional regimen.

(e) Each home-delivered meal project shall comply with applicable State and local laws regarding the safe and sanitary handling of food, equipment, and supplies used in the storage, preparation, service, and delivery of meals to older individuals.

(f) Each AAA shall provide a mechanism that will assure the review of need for home-delivered meals for absent participants at the Congregate Sites.

(g) Arrangements for the availability of meals to participants during weather-related emergencies shall be made when feasible and appropriate by the service provider. When appropriate, nutrition service providers shall refer clients to additional health and social services.

(h) Each home-delivered project shall provide nutrition education to participants on a least a semi-annual basis.

(4) Food Service Management: All AAAs shall ensure the following:

(a) Meal Preparation Site: When a project is designed to serve meals at more than one congregate meal site, efforts shall be made to have all meals prepared at one facility and in turn delivered to the various sites, (if more cost effective).

(b) Sanitation: All State and local sanitation and safety regulations applicable to food preparation, delivery and the serving of meals shall be followed.

(c) Quality and Quantity: Tested quality recipes adjusted to yield the number of servings needed must be used to achieve constant and desirable quality and quantity of meals.

(d) Food Preparation: All foods shall be prepared and served in a manner acceptable in flavor and appearance, while retaining nutrients and food value, and critiqued by the local advisory council which considers issues pertaining to the nutrition program.

(e) Inventories: Each AAA shall require that accurate inventory records for consumable goods, including USDA commodities and supplies be maintained for nutrition projects funded in whole or in part by the Older Americans Act funds. Either the periodic or perpetual system of inventory shall be acceptable, if conducted consistent with generally accepted inventory control principles.

(f) Training: The provider shall plan and provide training and supervision in sanitation, food preparation, and portion control by qualified personnel for all paid and volunteer staff who prepare, handle and serve food.

(g) Refrigerated Storage:

(i) The refrigeration cooling period for hot food shall not exceed 4 hours.

(ii) All prepared foods that are frozen in a nutrition project kitchen shall be chilled in a rapid chill system which reduces the temperature of foods to 70 degrees within 2 hours and shall be cooled to an internal product temperature of 41 degrees F or below within the following 2 hours.

(h) Frozen Food Requirements: All packaged frozen meals and freezing methods used to freeze meals utilized by the nutrition project, must meet the requirements of the State of Utah Health Department regulations.

(i) Leftover Food:

(i) All food transported to sites which becomes "leftover," except unopened prepackaged food, must be properly disposed of at the meal site or the main food preparation site in compliance with local Health Department regulations.

(ii) AAAs shall develop policies and procedures to minimize leftover meals to 1.5 percent or less.

(iii) Leftovers shall be offered to all participants as second helpings at those congregate settings which do not have on site cooking facilities or methods to preserve leftover food to meet the nutritional standards for later consumption (approved by the local Health Departments).

(iv) The AAA shall cause to have placed at each nutrition site, in a location that is easily visible to patrons, a disclaimer which shall state: "For Your Safety: Food removed from the center must be kept hot or refrigerated promptly. We cannot be responsible for illness or problems caused by improperly handled food." No food shall be taken from the site by staff.

(j) Food Protection: Food on display shall be protected

from consumer contamination by the use of packaging or by the use of an easily cleanable counter, serving line, or salad bar protector devices, display cases, or by other effective means. Enough hot or cold food facilities shall be available to maintain the required temperature of potentially hazardous food on display.

(k) Hot and Cold Food:

(i) Beef products including hamburger shall be cooked to an internal temperature of 155 degrees F, poultry shall be cooked to an internal temperature of 165 degrees F and pork shall be cooked to an internal temperature of 165 degree F.

(ii) All hot foods shall be maintained at 140 degrees F or above, from the time of final food preparation to completion of service. All refrigerated food shall reach an internal temperature of 41 degrees F within 4 hours.

(iii) Cold foods shall be maintained at 41 degrees F or below from time of initial service to completion of service.

(iv) The nutrition project shall make temperature checks of all prepared, received and transported meals.

(l) Food Safety:

(i) All food used by the nutrition service provider(s) must meet standards of quality, sanitation, and safety applying to foods that are processed commercially and purchased by the project.

(ii) No food prepared or canned in a home or any other non-licensed facility may be used in meals provided by a project financed through the nutrition service provider(s) award.

(iii) Food service certification in applied food service sanitation by nationally recognized industry programs and approved by the Utah State Department of Health, shall be required for one person per shift where food is prepared and cooked for NPE meals.

(m) Staffing: The nutrition service provider shall:

(i) Give preference to employing those qualified persons age sixty (60) and over, including those of greatest economic or social need;

(ii) Designate a person responsible for the conduct of the project who has the necessary authority to conduct day-to-day management functions of the provider;

(iii) Utilize a registered dietitian or nutritionist to provide necessary nutrition services.

(n) Staff and Volunteer Meals:

(i) Staff and guest(s), under the age of 60 years, must pay the actual cost, as established by the AAA, of the meal. Payments from those under 60 years of age should be collected and accounted for separately.

(ii) If serving a meal to staff under age 60 deprives elderly target population individuals from securing a meal, other arrangements shall be made for staff.

(iii) Each AAA shall establish procedures when they allow nutrition project administrators the option to offer a meal to individuals providing volunteer service during the meal hour, on the same basis as meals that are provided to elderly participants.

(5) Nutritional Requirements:

(a) Food Requirements: AAAs shall ensure that the meals provided through their nutrition projects comply with the Dietary Guidelines for Americans to each participating older individual: to include R510-104-1(a)(b)(c). Compliance shall be documented for each meal served by the nutrition provider. The following methods are acceptable:

(i) Handbook 8 of USDA (located in the University of Utah Marriott Library Federal Documents Collection)

(ii) Computer analysis based upon an acceptable software program approved by the Division.

(iii) Computation of food values for portions of foods commonly used; such menus and analysis of menus shall be the responsibility of a qualified dietitian/nutritionist.

(b) Menu Cycles and Analysis:

(i) Nutrition providers shall send an approved copy of the menu cycles to be used to the appropriate nutrition site(s) and to the AAA. Any substitutions (deviations) from the nutrient approved menu(s) shall be documented and reported by the nutrition project director.

(ii) Service providers contracting with a third party shall stipulate in the contract that menu cycles must be received by the service provider at least one week prior to use for analysis and approval.

(iii) Any substitutions to the original menu cycle must be analyzed for minimum requirements, documented in the menu (by the cook in charge in the nutrition project who initials the changes) and kept on file. For audit purposes, menu cycles and nutrient analysis shall be maintained for a minimum of 3 years, or until disposition is authorized by the grantor agency. The project director shall be responsible for selecting or designating an individual to be trained in the proper procedures for menu analysis and menu substitutions.

(c) Modified Diets:

(i) Modified diets shall be available to program participants. Each project will provide special menus, where feasible and appropriate to meet the particular dietary needs arising from the health requirements, religious requirements, or ethnic backgrounds of eligible individuals. The AAA shall be responsible for the method of obtaining orders for modified diets from each participant's physician, maintaining such orders on file and reviewing them. In addition, registered/certified dietitians shall identify which modified diets are available to participants.

(ii) The Division shall recommend a diet manual for modified diets. Any other manuals used shall be approved by the Division prior to their use. Modified diet menus shall be planned and prepared under the supervision of a dietitian/nutritionist to assure that they comply with the Dietary Guidelines for Americans and provide 33 1/3 % of the RDA or DRI as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences, Institute of Medicine.

(d) Vitamins: Vitamins and/or mineral supplements shall not be made available by service providers.

(e) Utensils for the Blind and Disabled: Upon request, the AAA may provide the appropriate food containers and utensils for the blind and the disabled.

R510-104-5. Use of Nutrition Dollars to Fund Support Services Directly Related to Nutrition Services.

Project income generated by Title III-C can only be used to:

(1) expand the number of meals provided or to facilitate access to such meals (transportation and outreach);

(2) integrate systematic nutrition screening for nutrition/malnutrition and food insecurity; or

(3) to provide other supportive services directly related to nutrition services, such as outreach, information and referral, transportation, access to grocery shopping, help with food stamp procurement, social activities in conjunction with a meal, and nutrition education.

R510-104-6. Restriction on Use of Funds.

(1) Program income generated by OAA Title III Part C-1 and Part C-2 may be used as the addition alternative (to expand the number of meals provided, or to facilitate access to such meals or to provide other supportive services directly related to expanding nutrition services) or the cost sharing alternatives as stated in 45 CFR 92.259(g)(2) (to match federal and/or state funds) or, a combination of the two alternatives.

(2) To defray program costs, nutrition providers may also perform Nutrition Services for other groups and programs outside the parameters of the Nutrition Program for the Elderly under the OAA, providing such services will not interfere with

the project or programs for which the contract was originally granted. These extra nutrition activities shall be held in a manner that does not impede the preparation or delivery of nutrition services to the elderly, and shall charge, to the recipients, the full cost of preparation and delivery of the nutrition services as set forth by the provider. When persons 60 years of age and older participate in these "special events," they assume the identity of the activity and are obligated to pay the requested fee for participation. This shall not be confused with the donation policy of the Title III Nutrition Programs. However, income earned - meaning gross program income directly generated by a contract supported program - shall be used to increase the number of meals served by the nutrition project involved.

R510-104-7. USDA Program Participation (Commodities and Cash-In-Lieu of Commodities).

(1) Donated Food Standard Agreement: The AAA or nutrition service provider shall enter into a written agreement with the Department of Human Services Federal Food Program of the State of Utah and shall follow all procedures of the "Agreement for Commodities Donated by the U.S. Department of Agriculture."

(2) USDA cash-in-lieu of commodities payments or revenue earned, depending on whether the accounting for the USDA program is on a cash or accrual basis, shall be used to offset the cost of raw food and the cost of purchased meals.

(3) USDA Commodity Storage Billing: In accordance with Section 250.6(10)(j) of the Code of Federal Regulations, Title 7, Chapter 2, FNS, the Distributing Agency reserves the right to bill the actual costs incurred in the storage and/or in-state transportation of commodities ordered by and for those Nutrition Programs for the Elderly sites which operate under the auspices of the Division.

(4) Division Responsibilities:

(a) The Division, with the assistance of the nutrition projects, may annually conduct a cost analysis comparing costs of commodities to the cost of the same food purchased locally or the cost of utilizing the State award for foods. Based on this study, commodities which are cost efficient, may be recommended to be ordered by the Division from Federal Food for each AAA requesting commodities.

(5) Nutrition Service Provider Responsibilities:

(a) Nutrition providers shall accept and use all commodities, including bonus commodities, made available by the Division and funded by the USDA.

(b) Nutrition projects shall store commodities as prescribed in the "Agreement for Commodities Donated by the U.S. Department of Agriculture."

(c) AAAs shall report all irregularities in the commodity shipping invoices to Federal Food, State of Utah. The nutrition project shall accept only the quantity and type of food stated on the invoice. If the quantity is less than shown on the invoice, the nutrition project shall note this on the invoice, and request the deliverer to initial, and report it to the AAA.

(6) Cash-In-Lieu of Commodities:

(a) AAAs shall promptly disburse all USDA cash-in-lieu of commodities to nutrition providers in their planning and service area that are funded with Title III Part C-1 and Part C-2 funds.

(b) AAAs shall ensure that payments received by providers in lieu of commodities shall be used solely for the purchase of:

(i) United States agricultural commodities and other foods produced in the United States; or

(ii) Meals furnished to them under contractual arrangements with food service management companies, caterers, restaurants, or institutions, have provided that each such meal contains United States produced commodities or foods at least equal in value to the per meal cash payment which the nutrition service providers have received.

(7) Monitoring, Withholding or Recovering Cash Payments:

(a) The Division and the AAAs shall monitor and assess use of payments received in lieu of commodities. Such monitoring shall include periodic on site examination of all pertinent records maintained by service providers, as well as, all such records maintained by suppliers of meals purchased under contractual arrangements.

(b) The Division will withhold or recover cash payments in lieu of commodities from an AAA if it determines, through a review of such AAA's reports, program monitoring, financial review or audit, that the AAA has failed to comply with the provisions of this section, or otherwise have failed to adequately document the basis for payments received during the fiscal year.

(c) AAAs which do not expend the Cash-In-Lieu within a maximum of two quarters after it has been allocated by the Division shall be evaluated for need and other available resources at the local AAA. Their rate of entitlement may be reduced in succeeding allocation periods.

(8) USDA Documentation:

(a) AAAs shall ensure that the cost of U.S. grown food purchased during the project year is at least equal to the amount of the USDA reimbursement under the cash in lieu of commodities program. This documentation shall be based on paid invoices.

(b) In the case of meals served under contractual arrangements with food service management companies, caterers, restaurants or institutions, copies of menus and invoices of food purchases that demonstrate that each meal served contained United States produced commodities or food at least equal in value to the per meal cash payments, constitutes adequate documentation.

(9) Food Stamps: AAAs shall require all service provider(s) to ensure that information is provided to all participants regarding food coupons or cash-out and how to apply for such assistance.

R510-104-8. Additional Meal Policy.

(1) Nutrition providers may serve a second meal or third meal if planned as an objective in the Area Plan. When two meals are served per day, they shall provide 66 2/3% of the RDA and DRI. When three meals are served per day, they shall provide 100% of the RDA and DRI. Provision of more than one meal qualifies for USDA reimbursement if each meal meets the 33 1/3% RDA and DRI. Second helpings of the same meal do not qualify for USDA reimbursement. All meals shall comply with the Dietary Guidelines for Americans.

(2) A home-delivered meal, intended for a meal client and that can not be delivered, may be given to another home-delivered meal client as a second meal.

(3) To qualify second meals in the local meal count reports for USDA reimbursement, AAAs on Aging will be allowed to serve up to 1.5% of the total meals per quarter in second meals without formally developing a local second meal policy. If second meals claimed in the local meal count reports are equal to or greater than 1.5% of total first meals per quarter, a second meal policy will need to be developed by each local AAA for USDA reimbursement.

(4) Administration and Program Management: Nutrition services providers may serve a second meal to Senior Citizens who have been identified through nutrition screening to be at nutritional risk and/or socially or economically in need. The AAA shall have written program objectives which are specific, verifiable, and achievable for nutrition service provider(s), including the number and frequency of meals to be served at each designated congregate site or center, and to individual recipients in the home delivered meal program.

(a) Nutrition projects who provide a second meal will

identify how many participants are in need of the extra meal, and include this number in their daily meal order.

(b) Second meals will be packaged so that the food will be kept at proper storage temperatures until the meal is taken home by the participant.

(c) A cold "sack lunch" that meets 33 1/3% of the dietary requirements may be offered as the second meal to the eligible participants.

(d) The participants who receive a second meal will be given the opportunity to make a second confidential contribution for that meal.

(e) Records will be maintained by the nutrition provider(s) on all additional meals served to eligible participants.

(f) Nutrition projects take appropriate action to minimize food left over at each site.

(g) Leftover foods occurring at on site cooking facilities shall be properly refrigerated and incorporated into subsequent meals whenever possible.

(5) Nutrition counseling and educational services for individuals and their primary caretakers may by provided by (or under the direction of) a dietitian or an individual with comparable expertise.

(6) There shall be written procedures to be followed by the service providers in the event of weather related emergencies, disasters, or situations which may interrupt meal service or the transportation of participants to the nutrition site.

R510-104-9. Transfer of Funds.

Statewide transfers between OAA Title III B and C awards shall not exceed 30%. Transfers between Part C-1 and Part C-2 awards shall not exceed 40% of any one funding category unless the Division requests and receives written approval from the U.S. Department of Health and Human Services Assistant Secretary for Aging.

R510-104-10. Documentation and Record Keeping Requirements.

(1) AAAs shall document and maintain all records and forms required to meet state and/or federal requirements of the OAA and the USDA (United States Department of Agriculture).

(2) The number of participants participating in Title III C-1, C-2 and their names shall be kept on file in the Planning and Service Area.

KEY: elderly, nutrition, home-delivered meals, congregate meals
October 2, 2003 62A-3-104
Notice of Continuation June 22, 2005 42 USC Section 3001

R510. Human Services, Aging and Adult Services.
R510-401. Utah Caregiver Support Program (UCSP).
R510-401-1. Utah Caregiver Support Program Purpose.

The Utah Caregiver Support Program is created under authority of the Older Americans Act of 1965 as amended in 2000 (PL 89-73) Part E - National Family Caregiver Support Program (NFCSP).

The purpose of the program is to provide support services including information and assistance, counseling, support groups, respite and other home and community-based services to family caregivers of frail older individuals. The program also recognizes the needs of grandparents who are caregivers of grandchildren and other older individuals who are relative caregivers of children who are 18 years of age and under.

Operation of the program is a joint responsibility of the State Division of Aging and Adult Services and local Area Agencies on Aging (AAA). Funds are distributed by formula (R510-100-1) to local AAAs.

R510-401-2. Definitions.

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency or Area Agency on Aging (AAA)" means the agency designated by the Division of Aging and Adult Services (DAAS) to coordinate and provide services for a defined geographical area.

(3) "Agency Director" means the director of the Agency.

(4) "Caregiver or Family Caregiver" means an adult family member, or another adult individual, who is an informal provider of in-home and community care to an older individual who is:

(a) 60 years of age or older; or is a

(b) caregiver 60 years of age or older who is caring for persons with mental retardation or related developmental disabilities; or is a

(c) grandparent or older individual who is a relative caregiver of a child not more than 18 years of age.

This definition excludes agency and privately-paid supportive service providers.

(5) "Care Receiver" means an adult 60 years of age or older who receives assistance from, or is dependent upon, another for care and is:

(a) unable to perform at least two activities of daily living without substantial human assistance, including verbal reminding, physical cueing, or supervision; or

(b) due to a cognitive or other mental impairment, requires substantial supervision.

(6) "Companion Services" means non-medical, basic supervisory services which are provided to the eligible care receiver in his home on a short-term, intermittent basis. Companion Services provide respite to a caregiver who is caring for eligible care receivers who do not require any personal care assistance, medical assistance, or housekeeping services during the time when companion services are provided.

(7) "Child" means an individual who is not more than 18 years of age.

(8) "Counseling, Support Groups, or Caregiver Training" means provision of advice, guidance, and education about options and methods of caregiving to provide support to caregivers in an individual or group setting.

(9) "Director" means the director of the Division of Aging and Adult Services (DAAS), Utah Department of Human Services).

(10) "Division" means the Division of Aging and Adult Services (DAAS), Utah Department of Human Services.

(11) "Formal Resources" means an entity or individual that provides services for a fee or reimbursement.

(12) "Grandparent or Older Individual who is a Relative Caregiver" means a grandparent or step-grandparent of a child, or a relative of a child by blood or marriage, who is 60 years of age or older and:

(a) lives with the child;

(b) is the primary caregiver of the child because the biological or adoptive parents are unable or unwilling to serve as the primary caregiver of the child; and,

(c) has a legal relationship to the child, such as legal custody or guardianship, or is raising the child informally.

(13) "Informal Resources" means family, friends, neighbors, community organizations or others who offer resources and support and are not assigned by formal agencies or organizations, irrespective of any payment received.

(14) "Multifaceted Systems" means a variety of systems of support for the caregiver including but not limited to those described in the required five service categories of the (NFCSP), Title IIIE of the Older Americans Act, as amended in 2000.

(15) "National Family Caregiver Support Program or NFCSP" is the federal program enacted as P. L. 106-501, Title IIIE of the Older Americans Act, P. L. 89-73, 42 USC Section 3001 et seq., as amended in 2000.

(16) "Relief" means ease from or lessening of discomfort, anxiety, fear, stress, or burden.

(17) "Service Plan" means a written plan which contains a description of the needs of the caregiver, the care recipient, and the services and goals necessary to meet those needs.

(18) "Supplemental Services" means other services to complement the care of caregivers, on a limited basis. Supplemental services shall serve to maximize the support of caregivers and shall be flexible, adaptable, and responsive to the needs of the individual caregiver or care receiver where ever they reside in the State of Utah. Services provided under supplemental services shall not fall into other categories defined in the UCSP or the NFCSP. Necessity for supplemental services shall be specified in the service plan goals. Reimbursement shall include the purchase, installation, removal, replacement, or repair of approved items or services. The case manager will document in the client file all funding resources explored and reasons alternative funding cannot be accessed. Items or services exceeding $250 per purchase must be prior approved by the Agency Director based on a formal written request by the Case Manager or designee documenting the determination of need and estimated cost. A copy of said approved waiver request will be sent to the Division. A copy will be placed by the Agency in the client file.

(a) "Supplies or Equipment" means durable and non-durable goods purchased under supplemental services to provide support and assistance to caregivers in their caregiving responsibilities. Reimbursement shall include the purchase of supplies, and the purchase, installation, removal, replacement or repair of approved equipment.

(b) "Modifications or durable adaptive aids and devices" purchased as supplemental services shall be one-time purchases to provide support and assistance to caregivers in their caregiving responsibilities. Minor modifications of homes shall facilitate the ability of older individuals to remain at home or provide for the safety of the care receiver. Adaptive aids and devices shall assist the caregivers helping care receivers to perform normal living activities, and shall include the cost of any necessary installation fitting, adjustment, repair, and training. Adaptive aids and devices may be fabricated by a professional if the care receiver needs specialized aids and devices.

(c) "Legal, Financial, or Placement Services" purchased as supplemental services shall provide support and assistance to caregivers in their caregiving responsibilities. Services will provide the caregiver with legal, financial, and placement advice, counseling, and representation by an attorney, certified financial advisor, or other person acting under the supervision of an attorney, certified financial advisor, or placement

professional.

(19) "Respite or Respite Care" is considered to be temporary, substitute supports or living arrangements to provide a brief period of relief or rest for caregivers as outlined in the service plan. It can be in the form of in-home respite, adult day care respite, or institutional respite for an overnight stay on an intermittent, occasional, or emergency basis. Respite can be provided for a caregiver for no more than 12 consecutive months from the date of enrollment and shall not exceed $1,500 for that time period. If either condition is met, the client must come off of the program and then reapply. Temporary respite may not be provided by the twenty percent (20%) maximum supplemental services funds.

(19) "Waiver" means an intentional release in writing by the Division, as authorized in the rules, from a program limitation or criterion included in these rules.

R510-401-3. Eligibility for Services.

(1) Services listed in Section R510-401-5 are available to caregivers, grandparents and older individuals who are relative caregivers.

(2) Respite care and Supplemental Services are available to caregivers who are:

(a) caregivers of adults 60 years of age or older

(b) caregivers 60 years of age or older caring for persons with mental retardation or related developmental disabilities; or are

(c) grandparents or older individuals who are a relative caregiver of a child not more than 18 years of age.

(3) To provide respite and supplemental services to caregivers of adults 60 years of age or older, the care receiver must be unable to perform at least two activities of daily living without substantial human assistance, including verbal reminding, physical caring or supervision.

(4) The DAAS-approved assessment tool shall be completed to establish eligibility for Respite and Supplemental Services as stated in Section R510-401-5(3).

R510-401-4. Responsibilities of the Division.

(1) Pursuant to UCA 62A-3-104, the Division shall:

(a) establish a funding formula for the distribution of the funds as approved by the Board;

(b) monitor, and at the request of the Area Agency on Aging, consult and assist in UCSP;

(c) provide training opportunities;

(d) define minimal documentation and client assessment standards; and

(e) approve or disapprove waivers and exceptions.

R510-401-5. Program Content.

(1) Each Area Agency on Aging shall provide a multifaceted system of caregiver support services for caregivers and, if funded, for grandparents or older individuals who are relative caregiversto include:

(a) information to caregivers about available services;

(b) individual, one-on-one assistance to caregivers in gaining access to services in the form of information and assistance or case management. Assistance may include but is not limited to such activities as phone contactand home visits;

(c) individual counseling, support groups, and caregiver training to assist the caregivers in making decisions and solving problems relating to their caregiving roles;

(d) respite care to enable caregivers to be temporarily relieved from their caregiving responsibilities; and

(e) supplemental services, on a limited basis, to complement the care provided by caregivers.

(2) The Area Agency on Aging shall use the DAAS-approved assessment tool to determine eligibility for respite and supplemental services and said tool shall be kept in the client file.

(3) Prior to receiving respite or supplemental services the Area Agency on Aging shall develop a written service plan including goals and objectives for the caregiver, which shall be kept in the client file.

(4) The Area Agency on Aging shall ensure the provision of the full range of caregiver support services in the community by coordinating its activities with the activities of other community agencies and voluntary organizations providing supportive services to family caregivers and, if funded, grandparents or older individuals who are relative caregivers of children.

(5) Older Americans Act information and services shall be provided to family caregivers in a direct and helpful manner. In cases where caregiver support programs already exist within the community, coordination of these programs and the UCSP is essential to maximize the dollars available for family caregivers and avoid duplication of services.

(6) To assure coordination of caregiver services in the planning and service area, the Area Agency on Aging shall convene a minimum of one joint planning meeting annually with other local providers who currently provide support services to family caregivers. As practical, the Area Agency on Aging shall coordinate the activities under this program with other community agencies and voluntary organizations providing services to caregivers.

(7) Funds allocated on an annual basis under the UCSP for services provided by an Area Agency on Aging shall be expended as follows:

(a) Information to caregivers about available services: the Area Agency on Aging may not use less than three percent of the funds allocated under the UCSP to provide these services.

(b) Assistance to caregivers in gaining access to the services: the Area Agency on Aging may not use less than five percent of the funds allocated under the UCSP to provide these services.

(c) Individual counseling, organization of support groups, and caregiver training to caregivers to assist the caregivers in making decisions and solving problems relating to their caregiving roles: The Area Agency on Aging may not use less than five percent of the funds allocated under the UCSP to provide these services.

(d) Respite care to enable caregivers to be temporarily relieved from their caregiving responsibilities: The Area Agency on Aging may not use less than five percent of the funds allocated under the UCSP to provide these services.

(e) Supplemental services, on a limited basis, to complement the care provided by caregivers: The Area Agency on Aging may not use more than twenty percent of the funds allocated under the UCSP to provide these services.

(f) The Area Agency on Aging shall spend no more than 10% of funds on services provided to grandparents and other individuals who are relative caregivers of children.

R510-401-6. Caregiver Advisory Council.

(1) The Area Agency on Aging shall develop and maintain a Caregiver Advisory Council.

(2) The Caregiver Advisory Council may be a subgroup of the Area Agency on Aging Advisory Council providing they meet the requirements set forth in the rule.

(a) The Caregiver Advisory Council shall be comprised of no less than five members of whom the majority shall be caregivers.

(3) The Caregiver Advisory Council shall meet no less than semiannually, and meetings shall be scheduled by each Area Agency on Aging.

(4) The duties of the Caregiver Advisory Council shall be to conduct an annual client satisfaction survey for the caregiver program.

(5) The Caregiver Advisory Council shall advise the Area Agency on Aging in determining service needs and developing action plans. When there is a concern over the use of limited resources for Respite Care and Supplemental Services, the Area Agencies on Aging, in consultation with their Caregiver Advisory Council, may further limit the amount of services provided to an individual caregiver. This local policy decision shall be in writing and shall be uniform for all caregivers for the current fiscal year.

(6) The Area Agency on Aging shall be responsible for developing orientations for Caregiver Advisory Councils on caregiver issues and responding to community needs.

R510-401-7. Voluntary Contributions.

(1) Individuals receiving services from this program may be encouraged to participate in voluntary contributions for services, provided that the method of solicitation is non-coercive.

(2) Voluntary contributions shall in no way be based on a means test of an individual client's income.

(3) Each Area Agency on Aging shall implement procedures for voluntary contributions in the UCSP, and shall comply, at a minimum, with the following:

(a) provide each recipient with an opportunity to voluntarily contribute to the cost of the services;

(b) clearly inform each recipient that there is no obligation to contribute and that the contribution is purely voluntary;

(c) protect the privacy and confidentiality of each recipient with respect to the recipient's contribution or lack of contribution; and

(d) establish appropriate procedures to safeguard and account for voluntary contributions.

(4) Use all collected voluntary contributions to expand the service for which such contributions were given.

(5) In no instance shall services be denied if individuals do not participate in voluntary contributions.

(6) Area Agencies on Aging will consult with relevant service providers and older individuals in their planning and service area to determine the best method for accepting voluntary contributions.

R510-401-8. Reporting.

(1) The Area Agency on Aging shall collect data and maintain records relating to the UCSP in the format specified by the Division.

(2) The Area Agency on Aging shall furnish the records to the DAAS as specified.

(3) The Area Agency on Aging shall report to DAAS, as specified, the activities and determinations of the Caregiver Advisory Council.

R510-401-10. Waiver for Supplemental Services.

An Area Agency on Aging may request in writing a waiver for Supplemental Services in order to enable the caregiver to carry out their duties in assisting the care receiver. In requesting a waiver, the Area Agency on Aging must demonstrate that effort has been made to access other sources of services or funds. The Agency Director may grant a waiver for Supplemental Services on a case-by-case basis provided that such waiver is consistent with the law. A copy of the approved waiver request must be sent in writing to the Division.

R510-401-11. Waiver for Respite Services.

An Area Agency on Aging may request a waiver for Respite Services to enable the caregiver to carry out their duties in assisting the care receiver. In requesting a waiver, the Area Agency on Aging must demonstrate that effort has been made to access other sources of services or funds. The Division and the Agency Director may grant a waiver for Respite Services on a case-by-case basis provided such waiver is consistent with the law. This waiver request must be in writing to the Division. If the Agency Director approves the request, the approved written request is submitted to the Division for either approval or denial. The Division has ten working days to respond. The decision of the Division becomes the final decision.

KEY: caregiver, care receiver, elderly, respite
April 16, 2003 63A-3-104(4)
Notice of Continuation June 22, 2005 62A-3-104(5)

R590. Insurance, Administration.
R590-93. Replacement of Life Insurance and Annuities.
R590-93-1. Authority.

This rule is promulgated pursuant to Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A and pursuant to Subsection 31A-23a-402(8), which allows the commissioner to define methods of competition and acts and practices found to be unfair or deceptive.

R590-93-2. Purpose and Scope.

(1) The purpose of this rule is:

(a) to regulate the activities of insurers and producers with respect to the replacement of existing life insurance and annuities; and

(b) to protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions. It will:

(i) assure that purchasers receive information with which a decision can be made in the purchaser's own best interest;

(ii) reduce the opportunity for misrepresentation and incomplete disclosure; and

(iii) establish penalties for failure to comply with requirements of this rule.

(2) Unless otherwise specifically included, this rule shall not apply to transactions involving:

(a) credit life insurance;

(b) group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual. Group life insurance or group annuity certificates marketed through direct response solicitation shall be subject to the provisions of Section R590-93-8;

(c) group life insurance and annuities used to fund prearranged funeral contracts;

(d) an application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner;

(e) proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;

(f)(i) policies or contracts used to fund:

(A) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(B) a plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;

(C) a governmental or church plan defined in Section 414, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the Internal Revenue Code; or

(D) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(ii) Notwithstanding Subsection (i), this rule shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurer has been notified that plan participants may choose from among two or more insurers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. As used in this subsection, direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement or, when initiated by an individual employee, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual employee;

(g) where new coverage is provided under a life insurance policy or contract and the cost is borne wholly by the insured's employer or by an association of which the insured is a member;

(h) existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed;

(i) immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this rule; or

(j) structured settlements.

(3) Registered contracts shall be exempt from the requirements of Subsections R590-93-6(1)(c) and R590-93-7(2) with respect to the provision of illustrations or policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead.

R590-93-3. Definitions.

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purposes of this rule.

(1) "Direct-response solicitation" means a solicitation through a sponsoring or endorsing entity or individually solely through mails, telephone, the Internet or other mass communication media.

(2) "Existing insurer" means the insurance company whose policy or contract is or will be changed or affected in a manner described within the definition of "replacement."

(3) "Existing policy or contract" means an individual life insurance policy, hereinafter referred to as policy, or annuity contract, hereinafter referred to as contract, in force, including a policy under a binding or conditional receipt or a policy or contract that is within an unconditional refund period.

(4) "Financed purchase" means the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from values of an existing policy to pay all or part of any premium due on the new policy. For purposes of a regulatory review of an individual transaction only, if a withdrawal, surrender or borrowing involving the policy values of an existing policy is used to pay premiums on a new policy owned by the same policyholder and issued by the same company within four months before or 13 months after the effective date of the new policy, it will be deemed prima facie evidence of the policyholder's intent to finance the purchase of the new policy with existing policy values. This prima facie standard is not intended to increase or decrease the monitoring obligations contained in Subsection R590-93-5(1)(d).

(5) "Illustration" means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years as defined in R590-177, Life Insurance Illustrations Rule.

(6) "Notice" means Appendix A and Appendix C, Important Notice: Replacement of Life Insurance or Annuities, and Appendix B, Notice Regarding Replacement, from the National Association of Insurance Commissioners, dated 2000 and which are incorporated herein by reference. The notice is to be made available by the replacing insurer and must be imprinted with the name, address, and telephone number of the replacing insurer.

(7)(a) "Policy summary" for policies or contracts other

than universal life policies, means a written statement regarding a policy or contract which shall contain to the extent applicable, but need not be limited to, the following information:

(i) current death benefit;

(ii) annual contract premium;

(iii) current cash surrender value;

(iv) current dividend;

(v) application of current dividend; and

(vi) amount of outstanding loan.

(b) "Policy summary" for universal life policies, means a written statement that shall contain at least the following information:

(i) the beginning and end date of the current report period;

(ii) the policy value at the end of the previous report period and at the end of the current report period;

(iii) the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type, e.g., interest, mortality, expense and riders;

(iv) the current death benefit at the end of the current report period on each life covered by the policy;

(v) the net cash surrender value of the policy as of the end of the current report period; and

(vi) the amount of outstanding loans, if any, as of the end of the current report period.

(8) "Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or is a financed purchase.

(9) "Registered contract" means a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

(10) "Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:

(a) lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;

(b) converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(c) amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(d) reissued with any reduction in cash value; or

(e) used in a financed purchase.

(11) "Sales material" means a sales illustration and any other written, printed or electronically presented information created, or completed or provided by the company or producer and used in the presentation to the policy or contract holder related to the policy or contract purchased.

R590-93-4. Duties of Producers.

(1) A producer who initiates an application shall submit to the insurer, with or as part of the application, a statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts. If the answer is "no," the producer's duties with respect to replacement are complete.

(2) If the applicant answered "yes" to the question regarding existing coverage referred to in Subsection (1), the producer shall present and read to the applicant, not later than at the time of taking the application, the Notice regarding replacements in the form as described in Appendix A or other substantially similar form approved by the commissioner. However, no approval shall be required when amendments to the Notice are limited to the omission of references not applicable to the product being sold or replaced. The Notice shall be signed by both the applicant and the producer attesting that the Notice has been read aloud by the producer or that the applicant did not wish the Notice to be read aloud, in which case the producer need not have read the Notice aloud, and left with the applicant. With respect to an electronically completed application and Notice, the producer is not required to leave a copy of the electronically completed Notice with the applicant.

(3) The Notice shall list each existing policy or contract contemplated to be replaced, properly identified by name of insurer, the insured or annuitant, and policy or contract number if available; and shall include a statement as to whether each policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy or contract. If a policy or contract number has not been issued by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

(4) In connection with a replacement transaction the producer shall leave with the applicant at the time an application for a new policy or contract is completed the original or a copy of all sales material. With respect to electronically presented sales material, it shall be provided to the policy or contract holder in printed form no later than at the time of policy or contract delivery.

(5) Except as provided in Subsection R590-93-6(3), in connection with a replacement transaction the producer shall submit to the insurer to which an application for a policy or contract is presented, a copy of each document required by this section, a statement identifying any preprinted or electronically presented company approved sales materials used, and copies of any individualized sales materials, including any illustrations related to the specific policy or contract purchased.

R590-93-5. Duties of Insurers that Use Producers.

Each insurer shall:

(1) maintain a system of supervision and control to insure compliance with the requirements of this rule that shall include at least the following:

(a) inform its producers of the requirements of this rule and incorporate the requirements of this rule into all relevant producer training manuals prepared by the insurer;

(b) provide to each producer a written statement of the company's position with respect to the acceptability of replacements providing guidance to its producer as to the appropriateness of these transactions;

(c) a system to review the appropriateness of each replacement transaction that the producer does not indicate is in accord with Subsection (b) above;

(d) procedures to confirm that the requirements of this rule have been met;

(e) procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer, but that have not been reported as such by the applicant or producer. Compliance with this rule may include, but shall not be limited to, systematic customer surveys, interviews, confirmation letters, or programs of internal monitoring;

(2) have the capacity to monitor each producer's life insurance policy and annuity contract replacements for that insurer, and shall produce, upon request, and make such records available to the department. The capacity to monitor shall include the ability to produce records for each producer's:

(a) life replacements, including financed purchases, as a percentage of the producer's total annual sales for life insurance;

(b) number of lapses of policies by the producer as a percentage of the producer's total annual sales for life insurance;

(c) annuity contract replacements as a percentage of the producer's total annual annuity contract sales;

(d) number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the company's monitoring system as required by Subsection R590-93-5(1)(e); and

(e) replacements, indexed by replacing producer and existing insurer;

(3) require with or as a part of each application for life insurance or an annuity a signed statement by both the applicant and the producer as to whether the applicant has existing policies or contracts;

(4) require with each application for life insurance or annuity that indicates an existing policy or contract, a completed Notice regarding replacements as contained in Appendix A;

(5) when the applicant has existing policies or contracts, each insurer shall be able to produce copies of any sales material required by Subsection R590-93-4(5), the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased, and the producer's and applicant's signed statements with respect to financing and replacement for at least five years after the termination or expiration of the proposed policy or contract;

(6) ascertain that the sales material and illustrations required by Subsection R590-93-4(5) of this rule meet the requirements of this rule and are complete and accurate for the proposed policy or contract;

(7) if an application does not meet the requirements of this rule, notify the producer and applicant and fulfill the outstanding requirements; and

(8) maintain records in any media or by any process that accurately reproduces the actual document.

R590-93-6. Duties of Replacing Insurers that Use Producers.

(1) Where a replacement is involved in the transaction, the replacing insurer shall:

(a) verify that the required forms are received and are in compliance with this rule;

(b) with respect to an electronically completed Notice, the replacing insurer shall send a printed copy of the electronically executed Notice to the applicant within five working days of the date the Notice is received by the company;

(c) Notify any other existing insurer that may be affected by the proposed replacement within five business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available illustration or the policy summary for the proposed policy or disclosure document for the proposed contract within five business days of a request from an existing insurer;

(d) be able to produce copies of the notification regarding replacement required in Subsection R590-93-4(2), indexed by producer, for at least five years or until the next regular examination by the insurance department of a company's state of domicile, whichever is later; and

(e) provide to the policy or contract holder notice of the right to return the policy or contract within 20 days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it; such notice may be included in Appendix A or C. This subsection does not preempt the requirements of 31A-22-423.

(2) In transactions where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control, allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide periods up to the face amount of the existing policy or contract. With regard to financed purchases the credit may be limited to the amount the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.

(3) If an insurer prohibits the use of sales material other than that approved by the company, as an alternative to the requirements made of an insurer pursuant to Subsection R590-93-4(5) with regard to sales materials, the insurer may:

(a) require with each application a statement signed by the producer that:

(i) represents that the producer used only company-approved sales material; and

(ii) states that copies of all sales material were left with the applicant in accordance with Subsection R590-93-4(4); and

(b) within ten days of the issuance of the policy or contract:

(i) notify the applicant by sending a letter or by verbal communication with the applicant by a person whose duties are separate from the marketing area of the insurer, that the producer has represented that copies of all sales material have been left with the applicant in accordance with Subsection R590-93-4(4);

(ii) provide the applicant with a toll free number to contact company personnel involved in the compliance function if such is not the case; and

(iii) stress the importance of retaining copies of the sales material for future reference; and

(c) be able to produce a copy of the letter or other verification in the policy file for at least five years after the termination or expiration of the policy or contract.

R590-93-7. Duties of the Existing Insurer.

Where a replacement is involved in the transaction, the existing insurer shall:

(1) retain and be able to produce all replacement notifications received, indexed by replacing insurer, for at least five years or until the conclusion of the next regular examination conducted by the insurance department of its state of domicile, whichever is later;

(2) send a letter to the policy or contract holder of the right to receive information regarding the existing policy or contract values including, if available, an in force illustration or policy summary if an in force illustration cannot be produced. The information shall be provided within five business days of receipt of the request from the policy or contract holder; and

(3) upon receipt of a request to borrow, surrender or withdraw any policy values, send a notice, advising the policy holder that the release of policy values may affect the guaranteed elements, non-guaranteed elements, face amount or surrender value of the policy from which the values are released. The notice shall be sent separate from the check if the check is sent to anyone other than the policyholder. In the case of consecutive automatic premium loans, the insurer is only required to send the notice at the time of the first loan.

R590-93-8. Duties of Insurers with Respect to Direct Response Solicitations.

(1) In the case of an application that is initiated as a result of a direct response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue or change an existing policy or contract. If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, the Notice regarding replacement in Appendix B, or other substantially similar form approved by the commissioner.

(2) If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:

(a) provide to applicants or prospective applicants with the policy or contract a Notice, as described in Appendix C, or other substantially similar form approved by the commissioner. In these instances the insurer may delete the references to the producer, including the producer's signature, and references not applicable to the product being sold or replaced, without having to obtain approval of the form from the commissioner. The insurer's obligation to obtain the applicant's signature shall be satisfied if it can demonstrate that it has made a diligent effort

to secure a signed copy of the Notice referred to in this subsection. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed Notice referred to in this section; and

(b) comply with the requirements of Subsection R590-93-6(1)(c), if the applicant furnishes the names of the existing insurers, and the requirements of Subsections R590-93-6(1)(d), R590-93-6(1)(e), and R590-93-6(2).

R590-93-9. Violations and Penalties.

(1) Any failure to comply with this rule shall be considered a violation of 31A-23a-402. Examples of violations include:

(a) any deceptive or misleading information set forth in sales material;

(b) failing to ask the applicant in completing the application the pertinent questions regarding the possibility of financing or replacement;

(c) the intentional incorrect recording of an answer;

(d) advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer; or

(e) advising a policy or contract holder to write directly to the company in such a way as to attempt to obscure the identity of the replacing producer or company.

(2) Policy and contract holders have the right to replace existing life insurance policies or annuity contracts after indicating in or as a part of applications for new coverage that replacement is not their intention; however, patterns of such action by policy or contract holders of the same producer shall be deemed prima facie evidence of the producer's knowledge that replacement was intended in connection with the identified transactions, and these patterns of action shall be deemed prima facie evidence of the producer's intent to violate this rule.

(3) Where it is determined that the requirements of this rule have not been met, the replacing insurer shall provide to the policy holder an in force illustration if available or a policy summary for the replacement policy or disclosure document for the replacement contract and the appropriate Notice regarding replacements in Appendix A or C.

(4) Violations of this rule shall subject the violators to penalties that may include the revocation or suspension of a producer's or company's license, monetary fines and the forfeiture of any commissions or compensation paid to a producer as a result of the transaction in connection with which the violations occurred. In addition, where the commissioner has determined that the violations were material to the sale, the insurer may be required to make restitution, restore policy or contract values and pay interest at the legal rate as provided in Title 15 of the Utah Code on the amount refunded in cash.

R590-93-10. Relationship to Other Statutes and Rules.

If any portion of this rule is inconsistent with any provision of any statute or other rule dealing with life insurance or annuity marketing practices or disclosure, said inconsistent portion shall be interpreted so as to provide the greatest information or protection to the policyholder.

R590-93-11. Severability.

If any section, term, or provision of this rule shall be adjudged invalid for any reason, such judgment shall not affect, impair or invalidate any other section, term, or provision of this rule and the remaining sections, terms, and provision shall be and remain in full force.

R590-93-12. Enforcement Date.

The commissioner will begin enforcing this rule September 1, 2005.

KEY: life insurance, annuity replacement
June 8, 2005 31A-2-201
Notice of Continuation April 28, 2004 31A-23a-402

R590. Insurance, Administration.
R590-171. Surplus Lines Procedures Rule.
R590-171-1. Authority.

This rule is promulgated pursuant to the general rule making authority vested in the commissioner by Section 31A-2-201 and pursuant to the specific authority of Sections 31A-15-103(3), 31A-15-103(11) and 31A-15-111.

R590-171-2. Purpose and Scope.

A. The purpose of this rule is:

(1) to recognize The Surplus Line Association of Utah as the advisory organization of surplus lines brokers;

(2) to authorize The Surplus Line Association to conduct the examination of surplus lines transactions;

(3) to authorize The Surplus Line Association to collect a stamping fee;

(4) to require that each person licensed as a surplus lines broker in Utah be a member of the advisory organization;

(5) to regulate access to the surplus lines market, with exceptions made for substantial insureds who are presumed to be sophisticated insurance buyers who the commissioner finds can adequately protect their own interests because of their financial resources, business experience and insurance knowledge; and

(6) to prescribe procedures for the placement of insurance with surplus lines insurers.

B. This rule applies, pursuant to Section 31A-15-103, to the placement of insurance with surplus lines insurers on risks located in Utah.

R590-171-3. Definitions.

For the purpose of this rule the commissioner adopts the definitions as set forth in Section 31A-1-301 and in addition the following:

A. "Export list" means a list published by the commissioner of coverages and classes of insurance for which the commissioner has determined no general market exists with admitted insurers.

B. "Producer" means an insurance agent, broker or surplus lines broker as defined in Section 31A-23-102.

C. "Surplus lines broker" means a person licensed under Subsection 31A-23-204(5) to place insurance with surplus lines insurers in accordance with Section 31A-15-103 and this rule.

D. "Surplus lines insurer" means a nonadmitted insurer with which a surplus lines broker may place business pursuant to Title 31A, Chapter 15, Part 1 and this rule.

E. "Surplus lines transaction" means the solicitation, negotiation, procurement or effectuation with a surplus lines insurer of an insurance contract or certificate of insurance. It also means any renewal, cancellation, endorsement, audit, or other adjustment to the insurance contract.

R590-171-4. Surplus Line Association of Utah.

A. Surplus Line Association of Utah is recognized as the advisory organization of surplus lines brokers authorized by Section 31A-15-111.

B. Each person licensed as a surplus lines broker in Utah must be a member of the Surplus Line Association of Utah.

C. The Surplus Line Association of Utah is authorized:

(1) to facilitate and encourage compliance by its members with the laws of Utah and the rules of the commissioner relative to surplus lines insurance and to act in other matters as specified by Section 31A-15-111;

(2) to conduct the examination of surplus lines transactions required under Subsection 31A-15-103(11);

(3) to make a determination that a surplus lines transaction is in compliance with Subsection 31A-15-103(11) and with Sections R590-171-6 and 7 of this rule; and

(4) to collect the stamping fee prescribed by Subsection 31A-15-103(11)(d).

R590-171-5. Export List.

A. (1) The commissioner shall maintain an export list of insurance coverages and classes that may be placed with surplus lines insurers.

(2) The commissioner may consider the following in determining the insurance coverages and classes to be listed:

(a) the current marketplace;

(b) information from the Surplus Line Association Board of Directors;

(c) information from admitted and surplus lines insurers doing business in Utah;

(d) information from other sources, including producers and consumers; and

(e) any other information the commissioner deems relevant.

(3) Any person may request in writing that, at the next publication of the list, the commissioner add or remove a coverage or class of insurance from the list. The person must provide evidence of market conditions to substantiate the request.

B. The list shall be published at least annually but may be revised and republished at any time.

R590-171-6. Conditions for Placing Insurance with Surplus Lines Insurers.

Placement of insurance with surplus lines insurers pursuant to Section 31A-15-103 may only be done in accordance with either Section A, B or C below.

A. Insurance coverages and classes included on the export list may be placed with surplus lines insurers.

B. Insurance coverages and classes not included on the export list may be placed with surplus lines insurers only under the following conditions:

(1) A good faith effort must be made to place the insurance with admitted insurers the producer has reason to believe will consider writing the type of coverage or class of insurance involved. If that effort shows that the insurance cannot be obtained because of underwriting reasons or the insured requires specific terms and conditions of coverage which are unavailable through admitted insurers, the insurance may be placed with surplus lines insurers. Placement with the surplus lines insurer solely to obtain a better price does not constitute good faith unless the producer demonstrates that the price quoted by the admitted market is excessive as defined in Subsection 31A-19a-201(2).

(2) The inability to place the insurance through an admitted insurer with whom the producer has an established relationship is not an exception to the obligation to place the insurance with an admitted insurer.

(3) The producer must document his efforts to place the insurance with admitted insurers. The documentation must include the record of the efforts to place the insurance and a written explanation confirming the effort as being in good faith. The good faith effort documentation shall be maintained in the surplus lines broker's and producing agent's files for at least three years from the inception date of coverage or renewal.

C. Substantial insureds may purchase insurance from surplus lines insurers pursuant to Section 31A-15-103 if each of the following conditions is met:

(1) the insured procures the insurance for its risk exposures by use of an employee of the insured whose full time responsibilities and duties consist of purchasing insurance and risk management;

(2) the insurance procured for property and casualty coverages, excluding workers' compensation insurance, exceeds an annual aggregate premium of $500,000; and

(3) the insured's risk manager and an officer of the

company sign an affidavit confirming items (1) and (2). This affidavit shall be retained by the surplus lines broker and one copy shall be attached to the submission documentation required under R590-171-8.

D. All information relating to the placement of insurance pursuant to Section 31A-15-103 shall be made available to the commissioner upon his request.

R590-171-7. Conditions for Marketing Insurance with Surplus Lines Insurers.

A. Producers may not solicit business on behalf of a surplus lines insurer. However:

(1) Producers may advertise the availability of insurance products for the insurance coverages and classes included on the export list to potential insureds and other producers.

(2) Surplus lines brokers may advertise their services and product lines to other producers.

(3) Such advertisements shall identify the fact that the insurance will be placed with a surplus lines insurer. The advertisements must not identify the insurer by name nor act as a solicitation on behalf of any surplus lines insurer. The advertisements shall not identify specific rates or specific policy provisions.

B. Once negotiations over the available terms and conditions for specific coverages begin, at least the following facts must be disclosed in writing to the potential insured:

(1) that the insurance will be placed through a surplus lines insurer and the name of the insurer;

(2) that the producer is not an agent of the potential insurer because surplus lines insurers are not permitted to appoint agents;

(3) that the surplus lines market is a specialty market that has limited regulatory oversight by the commissioner, and specifically, there is no regulation of policy coverage forms or rates; and

(4) that no protection is afforded under any Utah guaranty fund mechanism.

C. Subject to the general provisions of Section 31A-23-404, a surplus lines broker may originate surplus lines insurance or accept applications for surplus lines insurance from any other producer duly licensed as to the kinds of insurance involved. The surplus lines broker may compensate the producer.

D. Only that portion of a risk that is unacceptable to the admitted market may be placed with a surplus lines insurer. If it is not possible to obtain the full amount of insurance required by segmenting the risk, or if the only portion that the admitted market will write is incidental to the principal elements of coverage, it is permissible to place the full amount with a surplus lines insurer. An explanation must be provided in the submission documentation outlined in R590-171-8.

R590-171-8. Reporting and Examination.

A. No later than 60 days after the effective date of a policy or a certificate of insurance that has been placed with a surplus lines insurer, the surplus lines broker must file a complete copy of the policy or certificate and justification for placement with a surplus lines insurer with the Surplus Line Association for examination pursuant to Subsection 31A-15-103(11)(a).

B. Justification for placement with a surplus lines insurer shall:

(1) for insurance exposures placed pursuant to R590-171-6.A, consist of identification of the specific coverage or class on the export list; or

(2) for insurance exposures placed pursuant to R590-171-6.B, consist of a copy of the record of the effort to place with admitted insurers required by R590-171-6.B(3); or

(3) for insurance placed pursuant to R590-171-6.C, consist of a copy of an affidavit signed by the insured; and

(4) if applicable, consist of the explanation required by R590-171-7.D; and

(5) consist of any other information or documentation pertinent to the surplus lines placement.

C. The Surplus Line Association shall provide submission forms to be used for complying with R590-171-8.B.

D. If the contract or certificate is not available within 60 days, a binder with sufficient detail to determine the subject of the insurance, coverages, insured, insurer, premium amount and the justification required by R590-171-8B must be filed pending receipt of the actual policy or certificate of insurance.

E. If the examination performed by the Surplus Line Association determines that the placement of a policy or certificate of insurance with a surplus lines insurer is not in compliance with Section 31A-15-103(11)(a) or this rule, the Surplus Line Association shall take such corrective action as the Association Board of Directors considers appropriate, subject to the review of the commissioner. The Association shall advise the commissioner of all cases of noncompliance.

R590-171-9. Rule Distribution.

The Surplus Line Association of Utah shall distribute a copy of this rule to every surplus lines broker and instruct all surplus lines brokers as to its scope and operation.

R590-171-10. Severability.

If a 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 such provisions is not effected.

KEY: insurance

September 1, 1995	**31A-2-201**
Notice of Continuation June 14, 2005	**31A-15-103**
	31A-15-111

R590. Insurance, Administration.
R590-199. Plan of Orderly Withdrawal Rule Relating to Health Benefit Plans.
R590-199-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-201(3) and 31A-4-115(8).

R590-199-2. Purpose.

This rule is drafted for the purposes of maintaining a health benefit plan market that is stable, fair, and efficient for individuals and small employers and ensuring and maintaining increased access for individuals and small employers to health coverage. It promotes an orderly process by which an insurer can elect to nonrenew health benefit plan coverages without unreasonable disruption to the health insurance market.

R590-199-3. Applicability and Scope.

This rule applies to accident and health insurers.

R590-199-4. Definitions.

(1) The definitions in Section 31A-30-103 apply to this rule.

(2) "Annual Renewal Date" means the annual anniversary of the date of the policy or plan, under which health insurance benefits are provided, was initially issued.

R590-199-5. Plan of Orderly Withdrawal.

(1) A covered carrier and each affiliate of a covered carrier that elects to nonrenew coverage under a health benefit plan in Utah must file a plan of orderly withdrawal with the Utah insurance commissioner explaining the process of nonrenewal. The plan must be filed with the Utah insurance commissioner at the time advance notice is given under Subsection 31A-30-107(3)(e) and 31A-30-107.1.(3)(e) and must be accompanied by a $50,000 withdrawal fee or proof of placement or assumption of all business to another carrier. This fee is to be made out to the Utah Comprehensive Health Insurance Pool. The plan of orderly withdrawal is to include the following information:

(a) name and telephone number of company representative to contact regarding the nonrenewal;

(b) list of all policy forms affected by the withdrawal;

(c) number of group or individual policies, or both, that are currently in force;

(d) number of covered lives, include insured, spouse and dependents, under individual health benefit plan policies;

(e) number of covered lives, include insured, spouse and dependents, under small employer health benefit plans;

(f) number of COBRA or state extension policies and the number of covered lives for each;

(g) copy of conversion plan and rates that will be offered in accordance with Section 31A-22-703;

(h) copy of notice required by Subsection 31A-30-107(1)(f)(ii). Such notice must inform the insured of their portability rights and responsibilities;

(i) service or coverage areas within the state, which indicates withdrawal areas;

(j) list of all types of all insurance coverages offered in Utah by line of business and the premium volume generated in the prior year;

(k) any reinsurance ceding arrangements relating to the health benefit plans being nonrenewed;

(l) information relating to any waiver provided under Subsection 31A-30-104(3)(a);

(m) list of all affiliated carriers as described in Subsection 31A-30-104(2);

(n) certification of compliance executed by the president of the company stating that the withdrawing company is in compliance with Sections 31A-30-101 through 31A-30-112 at the time the election to withdraw is filed;

(o) certification executed by the president of the company that its individual enrollment cap has been exceeded, if applicable;

(p) loss ratios for each form issued in Utah and the methodology by which the loss ratio was calculated, including a description of all assumptions made;

(q) certified actuarial analysis from a qualified actuary of the impact that the withdrawal or nonrenewal will have on the individual and small employer market in Utah;

(r) certified actuarial analysis from a qualified actuary of the impact that withdrawal or nonrenewal will have on the Utah Comprehensive Health Insurance Pool;

(s) actuarial certification from a qualified actuary certifying to the level of liability related to the policies;

(t) detailed explanation of all efforts made to place business that is to be nonrenewed with other carriers;

(u) any plans to nonrenew any other line of business in Utah in the future;

(v) copy of the certificate of authority of the company and all affiliates involved in the withdrawal; and

(w) demonstrate that all liabilities relating to the policies that will be nonrenewed are fully satisfied or adequately reserved.

(2) Submit two copies of the plan of orderly withdrawal, one copy to be filed and a second set to be returned to you, and a self addressed return envelope.

(3) If both the written notice and a complete plan of orderly withdrawal are not received, the partial submission will be returned and not considered to have been received by the department.

R590-199-6. Implementation of Withdrawal.

(1) A covered carrier and all its affiliates that elect to withdraw from the market or to nonrenew a health benefit plan issued to covered insureds must provide written notice of the decision to do so to all affected insureds and to the insurance commissioner in each state in which an affected insured resides.

(2) Each insured must be given at least 180-days notice prior to the nonrenewal date.

(3) The Utah insurance commissioner is to receive written notice of the decision to withdraw or nonrenew any health benefit plan at least three working days prior to the mailing of the notice to affected covered insureds.

(4) The carrier must include with the notice to the Utah insurance commissioner its certificate of authority which will be modified to prohibit the writing of business which the carrier has elected to nonrenew or withdraw from the market.

(5) The carrier is prohibited from writing new business in the individual and small employer health benefit plan market for a period of five-years from the date of notice to the Utah insurance commissioner.

(6) The covered carriers affiliates, as defined in Subsection 31A-30-104(2), may also be required to withdraw as determined by the commissioner.

(7) Each plan submitted to the commissioner must provide that the nonrenewal of any coverage under a health benefit plan will occur on the annual renewal date of each policy or plan. Nonrenewal can only occur on the annual renewal date.

R590-199-7. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: health insurance
March 14, 2003 **31A-2-201**

Notice of Continuation June 15, 2005	**31A-4-115**
	31A-30-106
	31A-30-107

R595. Judicial Conduct Commission, Administration.
R595-4. Sanctions.
R595-4-1. Dismissals with Warning or upon Stated Conditions.

A. The Commission may dismiss a complaint or formal complaint with a warning or upon stated conditions if:

1. the judge stipulates that the conduct complained of has occurred;

2. the Commission finds that the stipulated conduct constitutes misconduct; and

3. the Commission finds that the misconduct is troubling but relatively minor and that no public sanction is warranted.

B. The Commission will not dismiss a complaint or formal complaint with a warning or upon stated conditions if:

1. the Commission finds that a public sanction is warranted;

2. the Commission has previously dismissed a complaint or formal complaint against the judge upon stated conditions and the current misconduct violates one or more of those conditions; or

3. the Commission finds that the current misconduct is the same or similar to misconduct established from a previous complaint or formal complaint that was dismissed with a warning or upon stated conditions.

R595-4-2. Sanctions Guidelines.

In determining an appropriate sanction for misconduct, the Commission shall consider the following non-exclusive factors:

A. the nature of the misconduct;

B. the gravity of the misconduct;

C. the extent to which the misconduct has been reported or is known among court employees, participants in the judicial system or the public, and the source of the dissemination of information;

D. the extent to which the judge has accepted responsibility for the misconduct;

E. the extent to which the judge has made efforts to avoid repeating the same or similar misconduct;

F. the length of the judge's service on the bench;

G. the effect the misconduct has had upon the confidence of court employees, participants in the judicial system or the public in the integrity or impartiality of the judiciary;

H. the extent to which the judge profited or satisfied his or her personal desires as a result of the misconduct; and

I. the number and type of previous sanctions imposed against the judge.

KEY: judicial conduct commission
June 2, 2005 **Art. VIII, Sec. 13**
78-8-101 through 78-8-108

R606. Labor Commission, Antidiscrimination and Labor, Antidiscrimination.
R606-3. Nondiscrimination Clause to be used in Contracts Entered into by the State of Utah and its Agencies.
R606-3-1. Authority.

This rule is established pursuant to Section 34A-5-104.

R606-3-2. Procedures and Prohibitions.

A. In order to comply with the provisions of the Utah Antidiscrimination Act relating to prohibited employment practices, a contractor must do the following:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, sex, age, religion, national origin, or disability.

2. In all solicitations or advertisements for employees, the contractor will state that all qualified applicants will receive consideration without regard to race, color, sex, age, religion, national origin, or disability.

3. The contractor will send to each labor union or workers' representative notices stating the contractor's responsibilities under the Act.

4. The contractor will furnish such information and reports as requested by the Division for the purpose of determining compliance with the Act.

5. The contractor will include the provisions of subsections 1-4 above in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor unless exempted by law.

B. Failure of the contractor to comply with the Act or the rules shall be deemed a breach of contract and the contract may be canceled, terminated, or suspended in whole or in part.

KEY: discrimination, contractors, construction contracts
1990 34A-5-104 et seq.
Notice of Continuation June 8, 2005

R606. Labor Commission, Antidiscrimination and Labor, Antidiscrimination.
R606-4. Advertising.
R606-4-1. Authority.

This rule is established pursuant to Section 34A-5-104.

R606-4-2. Procedures and Prohibitions.

A. It is a violation of the Utah Antidiscrimination Act and of Title VII of the Civil Rights Act of 1964 for a help-wanted advertisement to indicate a preference, limitation, specification, or discrimination based on sex.

B. An exception to R606-4-2.A can be allowed based upon bona fide occupational qualification requirements. "Male" or "Female" designations, or readily understood abbreviations such as "M" or "F", may be used to indicate such preferential exception.

C. The Commission intends to review the operation of this guideline in the light of experience to ensure that male and female classifications in help-wanted advertising do not operate to limit employment opportunity.

KEY: discrimination, advertising, employment
1990 34A-5-101 et seq.
Notice of Continuation June 8, 2005

R606. Labor Commission, Antidiscrimination and Labor, Antidiscrimination.
R606-5. Employment Agencies.
R606-5-1. Authority.

This rule is established pursuant to Section 34A-5-104.

R606-5-2. Procedures and Prohibitions.

A. An employment agency undertaking to fill a job order containing a specification regarding race, color, national origin, sex, age, religion, or disability will share responsibility with the employer placing the job order if it is determined that the specification was not based upon a bona fide occupational qualification.

B. An exception to R606-5-2.A can be allowed in that an application form may ask "Male ....., Female .....", or "Mr., Mrs., Miss" provided that the inquiry is made in good faith for a nondiscriminatory purpose and is based upon a bona fide occupational qualification.

KEY: discrimination, employment agencies, employment
1990 34A-5-104 et seq.
Notice of Continuation June 8, 2005

R606. Labor Commission, Antidiscrimination and Labor, Antidiscrimination.
R606-6. Regulation of Practice and Procedure on Employer Reports and Records.
R606-6-1. Authority.

This rule is established pursuant to Section 34A-5-104.

R606-6-2. Procedures and Prohibitions.

A. Employers subject to the jurisdiction of the U.S. Equal Employment Opportunity Commission shall not be required to furnish information to the Division which is a duplication of that filed on Standard Form 100, Employer Information EEO-1 Report. The Division reserves the right to require reports about the employment practices of individual employers, or groups of employers, whenever such information has not been furnished to the Equal Employment Opportunity Commission.

B. The provision respecting confidentiality of information contained in Section 709(e) of the U.S. Civil Rights Act of 1964 shall be observed by Commission and all Commission staff.

C. Any personnel or employment record made or kept by an employer (including but not necessarily limited to application forms submitted by applicants and other records having to do with hiring, promotion, demotion, transfer, layoff or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship) shall be preserved by the employer for a period of six months from the date of the making of the record and the personnel action involved, whichever occurs later. In case of involuntary termination of an employee, the personnel records of the individual terminated shall be kept for a period of six months from the date of termination. Where a complaint of discrimination has been filed, the respondent employer shall preserve all personnel records relevant to the complaint and to the charging party until final disposition of the complaint. The term "personnel records relevant to the complaint", for example, would include personnel or employment records relating to the charging party and to all other employees holding positions similar to that held or sought by the charging party and application forms or test papers completed by an unsuccessful applicant or by all other candidates for the same position as that for which the charging party applied and was rejected. The date of "final disposition of the complaint" means the date of the final agency action or the end of the appeals process.

D. If a person fails to make, keep, or preserve records or make reports in accordance with the Act and rules, the district court for the county in which such person is found, resides, or has his principal place of business, upon application of the Commission, may issue an order requiring compliance.

KEY: discrimination, personnel files
1990 34A-5-101 et seq.
Notice of Continuation June 8, 2005

R651. Natural Resources, Parks and Recreation.
R651-409. Minimum Amounts of Liability Insurance Coverage for an Organized Practice or Sanctioned Race.
R651-409-1. Insurance Policy Requirements Maintained.

The insurance specifications for Subsections 41-22-29(1)(a) and (b) for an organization conducting "organized practices" or "sanctioned races" shall be a continuously maintained policy fully covering insurable responsibilities. This insurance policy shall be obtained from a reliable insurance company that is authorized to do business in Utah and is at all times A.M. Best Company rated "A" or better with a financial size category of XII or larger. The policy shall include Comprehensive General Liability Insurance, including coverage for premises and operations, products, combined single limit per occurrence, and an aggregate of not less than $1,000,000 combined single limit per occurrence, and an aggregate of not less than $1,000,000, which shall be designated as applying only to the organization conducted under Subsections 41-22-29(1)(a) and (b) U.C.A. 1953. If this coverage is written on a claims-made basis, the certificate of insurance shall so indicate. The policy shall also contain an extended-reporting-period provision or similar "tail" provision that keeps full insurance in force for claims reported up to three (3) years after the organization ceases activities covered by the policy. The insurance policy shall be endorsed to add all persons providing services or who own lands affected by the activities conducted.

KEY: parks, liability, insurance
July 4, 2000 **63-11-17**
Notice of Continuation July 1, 2005 **41-22-29(1)(a)**
41-22-29(1)(b)

R651. Natural Resources, Parks and Recreation.
R651-634. Snowmobile User Fee - Non-Residents.
R651-634-1. User Fees.

Except as provided below, any nonresident owning an off-highway vehicle, who operates or gives another person permission to operate the off-highway vehicle on any public land, trail, street or highway in this state, shall pay an annual off-highway vehicle user fee

1. A decal will be issued which proves payment has been made. The decal will then be displayed on the off-highway vehicle as follows: On snowmobiles, the decal shall be mounted on the left side of the hood, pan or tunnel. On motorcycles, the decal shall be mounted on the left fork, or on the left side body plastic. On all-terrain vehicles, the decal shall be mounted on the rear of the vehicle. Vehicle types are defined in 41-22-2 UCA. In all instances, the decal shall be mounted in a visable location. The decal shall be non-transferable.

2. A receipt will be issued with the decal indicating the fee paid, the Vehicle Identification Number (VIN) of the off-highway vehicle, and the off-highway vehicle owner's name and address. This receipt shall remain with the off-highway vehicle at all times.

3. Fees charged will be in accordance with S.B. 14 (1999 Utah Laws 1, effective July 1, 1999), and H.B. 51 (2004 Utah Laws, Chapter 314, effective July 1, 2004) which state that the off-highway vehicle user annual fee will be $30 per year.

4. Nonresident OHV user permits shall expire December 31, annually.

Applicants for a nonresident OHV user permit shall provide evidence that the applicant is the owner of the off-highway vehicle, and is not a resident of Utah. Such evidence shall include:

a. A government issued identification card showing the state of residency of the off-highway vehicle owner, and one of the following:

(1) A title or certificate of registration from a state other than Utah.

(2) An original bill of sale; or

b. A sworn affidavit stating that the off-highway vehicle is owned by a nonresident of the State of Utah. The affidavit must state the name and address of the vehicle owner, and a description of the off-highway vehicle, including the Vehicle Identification Number (VIN).

Off-highway vehicles currently registered in a state offering reciprocal operating privileges to Utah residents shall be exempt from the nonresident user fee requirements of this rule. The Division shall maintain a list of states offering reciprocal operating privileges to Utah residents. This list shall be updated at least annually.

Provisions of this rule shall not apply to off-highway vehicles exempt under 41-22-35(1)(b)(i), or to off-highway vehicles participating in scheduled competitive events sponsored by a public or private entity, or in noncompetitive events sponsored in whole or in part by any governmental entity.

KEY: parks
September 1, 2004 41-22-35
Notice of Continuation July 1, 2005 63-11-17

R710. Public Safety, Fire Marshal.
R710-7. Concerns Servicing Automatic Fire Suppression Systems.
R710-7-1. Adoption of Codes.

Pursuant to Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, the Utah State Fire Prevention Board adopts rules to provide regulation to those concerns that service Automatic Fire Suppression Systems. These rules do not apply to standpipe systems, deluge systems, or automatic fire sprinkler systems.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association, Standard 12, Standard on Carbon Dioxide Extinguishing Systems, 2005 edition; N.F.P.A., Standard 12A, Halon 1301 Fire Extinguishing Systems, 2004 edition; N.F.P.A., Standard 12B, Halon 1211 Fire Extinguishing Systems, 1990 edition; N.F.P.A., Standard 17, Standard for Dry Chemical Extinguishing Systems, 2002 edition; N.F.P.A., Standard 17A, Standard for Wet Chemical Extinguishing Systems, 2002 edition; N.F.P.A., Standard 96, Ventilation Control and Fire Protection of Commercial Cooking Operations, 2004 edition; N.F.P.A., Standard 2001, Clean Agent Fire Extinguishing Systems, 2004 edition. The definitions contained in these pamphlets shall pertain to these regulations.

1.2 Validity

If any 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 SFM, such decision shall not affect the validity of the remaining portion of these rules.

1.3 Systems Prohibited

No person shall market, distribute, sell, install or service any automatic fire suppression system in this state, unless it meets the following:

1.3.1 It complies with these rules.

1.3.2 It has been tested by, and bears the label of a testing laboratory which is accepted by the SFM as qualified to test automatic fire suppression systems.

1.3.3 All existing automatic fire suppression systems using dry chemical shall be removed and replaced with a UL300 listed system by January 1, 2006 or before that date when any of the following occurs:

1.3.3.1 Six year internal maintenance service;

1.3.3.2 Recharge;

1.3.3.3 Hydrostatic test date as indicated on the manufacturer date of the cylinders;

1.3.3.4 Reconfiguration of the system piping.

1.3.4 All existing wet chemical automatic fire suppression systems not UL300 listed shall be removed, replaced or upgraded to a UL300 listed system by January 1, 2006 or before that date when any of the following occurs:

1.3.4.1 Six year internal maintenance service;

1.3.4.2 Recharge;

1.3.4.3 Hydrostatic test date as indicated on the manufacturer date of the cylinders;

1.3.4.4 Reconfiguration of the system piping.

1.4 Copies of the above listed codes are on file in the Office of Administrative Rules and the Office of the State Fire Marshal.

R710-7-2. Definitions.

2.1 "Annual" means a period of one year or 365 days.

2.2 "Board" means Utah Fire Prevention Board.

2.3 "Branch Office" means any location, other than the primary business location, where business license, telephone, advertising and servicing equipment is utilized.

2.4 "Certificates of Registration" means a written document issued by the SFM to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

2.5 "Concern" means a person, firm, corporation, partnership, or association, licensed by the SFM.

2.6 "Employee" means those persons who work for a licensed concern which may include but are not limited to assigned agents and others who work on a contractual basis with a licensee using service tags of the licensed concern.

2.7 "Hydrostatic Test" means subjecting any cylinders requiring periodic pressure testing procedures specified in these rules.

2.8 "Inspection Authority" means the local fire authority, or the SFM, and their authorized representatives.

2.9 "License" means a written document issued by the SFM authorizing a concern to engage in the business of servicing automatic fire suppression systems.

2.10 "N.F.P.A." means National Fire Protection Association.

2.11 "Recognized Testing Laboratory" means a State Fire Marshal list of acceptable labs.

2.12 "Service" means a complete check of an automatic fire suppression system which includes the required service procedures set forth by a manufacturer of an approved system or the minimum service requirements as provided as set forth in adopted N.F.P.A. standards.

2.13 "System" means an Automatic Fire Suppression System.

2.14 "SFM" means Utah State Fire Marshal or authorized deputy.

2.15 "UCA" means Utah State Code Annotated, 1953 as amended.

R710-7-3. Licensing.

3.1 License Required

No person or concern shall engage in the business of selling, installing, servicing, repairing, testing or modifying any automatic fire suppression system without obtaining a license from the SFM, pursuant to these rules, expressly authorizing such concern to perform such acts.

3.2 Type of License

3.2.1 Every license shall be identified by type. The type of license shall be determined on the basis of the act or acts performed by the licensee or any of the employees. Every licensed concern shall be staffed by qualified personnel and shall be properly equipped to perform the act or acts for the type of license issued.

3.2.2 Licenses shall be any one, or combination of the following:

3.2.2.1 Class H1 - A licensed concern which is engaged in the installation, modification, service, or maintenance of engineered and/or pre-engineered automatic fire suppression systems.

3.2.2.2 Class H2 - A licensed concern which is engaged in service and maintenance only of automatic fire suppression systems to include hydrostatic testing.

3.3 Application

3.3.1 Application for a license to conduct business as an automatic fire suppression system concern, shall be made in writing to the SFM on forms provided by the SFM. A separate application for license shall be made for each separate place or business location of the applicant (branch office).

3.3.2 The application for a license to conduct business as an automatic fire suppression system concern, shall be accompanied with proof of public liability insurance. The public liability insurance shall be issued by a public liability insurance carrier showing coverage of at least $100,000 for each incident, and $300,000 in total coverage. The licensee shall notify the SFM within thirty days after the public liability insurance coverage required is no longer in effect for any reason.

3.4 Signature of Applicant

The application shall be signed by the applicant. If the application is made by a partnership, it shall be signed by all partners. If the application is made by a corporation or association other than a partnership, it shall be signed by a principal officer.

3.5 Equipment Inspection

The applicant or licensee shall allow the SFM and any of his authorized deputies to enter, examine, and inspect any premises, building, room or vehicle used by the applicant in the service of automatic fire suppression systems to determine compliance with the provisions of these rules. The inspection will be conducted during normal business hours, and the owner or manager shall be given a minimum of 24 hours notice before the appointed inspection. The equipment inspection may be conducted on an annual basis, and consent to inspect will be obtained. The applicant, license holder or certified employee of the license holder, may be asked during the inspection by the SFM or any of his deputies, to demonstrate skills or knowledge used in servicing of automatic fire suppression systems.

3.6 Issuance and Posting of License

Following receipt of the properly completed application, and compliance with the provisions of the statute and these rules, the SFM shall issue a license. Every license issued pursuant to the provisions of these rules shall be posted in a conspicuous place on the premises of the licensed concern.

3.7 Original License and Inspection

Original licenses shall be valid for one year from the date of application. Thereafter, each license shall be renewed annually and renewals shall be valid for one year from issuance. No original license will be issued until the satisfactory completion of a materials, equipment and performance inspection by the SFM.

3.8 Renewal License and Inspection

Application for renewal shall be made as directed by the SFM. The failure to renew the license will cause the license to become invalid. No renewal license will be issued until the satisfactory completion of a materials, equipment and performance inspection by the SFM. Beginning March 4, 2003 through February 29, 2004, renewal dates for licensed concerns will be based upon the inspection date and valid for a one-year period of time. Renewal license fees shall be prorated monthly, and monthly fees already paid in that time period shall be credited towards the renewal license fee.

3.9 Duplicate License

A duplicate license may be issued by the SFM to replace any previously issued license, which has been lost or destroyed, upon request.

3.10 Refusal to Renew

SFM may refuse to renew any license that is authorized, pursuant to Section 8 of these rules. The applicant will, upon such refusal, have the same rights as are granted by Section 8 of these rules to an applicant for an original license which has been denied by the SFM.

3.11 Change of Address

Every licensee shall notify the SFM, in writing, within thirty (30) days, of any change of address or location of business.

3.12 Under Another Name

No licensee shall conduct the licensed business under a name other than the name or names which appears on the license.

3.13 Hiring and Termination

Every licensed concern shall, within thirty (30) days of employment or termination of an employee or contracted agent shall notify the SFM of the name, address, and certification number of that person.

3.14 Minimum Age

No license shall be issued to any person as licensee who is under eighteen (18) years of age.

3.15 Employer Responsibility

Every concern is responsible for the acts of its employees or assigned agents relating to installation and servicing of automatic fire suppression systems.

3.16 Restrictive Use

No license shall constitute authorization for any licensee, or any of the employees or contracted agents, to enter upon, or into, any property, building, or machinery without the consent of the owner or manager. No license shall grant authorization to enforce the Uniform Fire Code or these rules.

3.17 Non-Transferable

No license issued pursuant to this section shall be transferred from one concern to another.

3.18 Registration Number

Every license shall be identified by a number, delineated as H-(number). Such number may only be transferred from one concern to another when approved by the SFM.

3.19 Minimum Materials and Equipment Required

At each business location or vehicle of the applicant where servicing work is performed the following minimum material and equipment requirements shall be maintained:

3.19.1 Calibrated scales with ability to:

3.19.1.1 Weigh gas cartridges to within 1/4 ounce of manufacturers specifications.

3.19.1.2 Weigh cylinders accurately for systems being serviced.

3.19.2 Nitrogen Pressure Filling Equipment

3.19.2.1 Nitrogen Supply

3.19.2.2 Pressure Regulator - 750 p.s.i. minimum

3.19.2.3 Filling Adapters

3.19.3 Dry Chemical Systems

3.19.3.1 Extinguishing agents, compatible with systems serviced

3.19.3.2 Fusible links

3.19.3.3 Safety pins

3.19.3.4 An assortment of gaskets and "O" Rings compatible with systems serviced

3.19.3.5 Gas cartridges as required according to manufacture's specifications

3.19.3.6 Current reference manuals, to include manufacture's service manuals

3.19.3.7 Cocking or Lockout Tool

3.19.4 Halon and CO2 Systems

3.19.4.1 Have access to, or meet the requirements for a U.L. approved filling station.

3.19.4.2 Have available in inventory, or have immediate access to, detectors compatible with systems serviced.

3.19.4.3 Calibration equipment such as electrical testers and detector testers.

3.19.4.4 Control panel components

3.19.4.5 Release valves

3.19.4.6 Current reference manuals

This list does not, however, include all items that may be necessary in order to conduct a complete system installation, modification or service.

3.20 Records

Accurate records shall be maintained for five years back by the licensee of all service work performed. These records shall be made available to the SFM, or authorized deputies, upon request. These records shall include the following:

3.20.1 The name and address of all serviced locations

3.20.2 Type of service performed

3.20.3 Date and name of person performing the work

R710-7-4. Certificates of Registration.

4.1 Required Certificates of Registration

No person shall service any automatic fire suppression system without a certificate of registration issued by the SFM

pursuant to these rules expressly authorizing such person to perform such acts.

4.2 Application

Application for a certificate of registration to work on automatic fire suppression systems shall be made in writing to the SFM on forms provided by the SFM. The application shall be signed by the applicant.

4.3 Examination

The SFM shall require all applicants for a certificate of registration to take and pass a written examination, which may be supplemented by practical tests to determine the applicant's knowledge to work on automatic fire suppression systems. Pictured identification of the applicant for a certificate of registration may be requested by the SFM or his deputies. Examinations will be given according to the following schedule:

4.3.1 On the first and third Tuesdays of each month. When holidays conflict with these days, the day immediately following will be used. An appointment will be made to take an examination at least 24 hours in advance of the examination date.

4.3.2 Examinations may be given at various field locations as deemed necessary by the SFM. Appointments for field examinations are required.

4.4 Examination - Passing Grade

To successfully pass the written examination, the applicant must obtain a minimum grade of seventy percent (70%) in each portion of the examination taken.

4.5 Contents of Examination

The examination required shall include a written test of the applicant's knowledge of the work to be performed, the provisions of these rules, and may include an actual demonstration of his ability to perform the acts indicated on the application.

4.6 Right to Contest

Every person who takes an examination for a certificate of registration shall have the right to contest the validity of individual questions of such examination. Every contention as to the validity of individual questions of the examination shall be made in writing within 48 hours after taking said examination. The decision of the SFM shall be final.

4.7 Issuance

Following receipt of the completed application, compliance with the provisions of these rules, and the successful completion of the required examination, the SFM shall issue a certificate of registration.

4.8 Original and Renewal Valid Date

Original certificates of registration will be valid for one year from the date of application. Thereafter, each certificate of registration will be renewed annually and renewals will be valid for one year from issuance. The failure to renew a certificate of registration will cause the certificate of registration to become invalid. The holder of an invalid certificate of registration shall not perform any work on automatic fire suppression systems.

4.9 Renewal Date

Application for renewal will be made as directed by the SFM. Beginning March 4, 2003 through February 29, 2004, renewal dates for certification of registrations will be based upon the license inspection date and valid for a one-year period of time. Renewal certificate of registrations shall be prorated monthly, and monthly fees already paid in that time period shall be credited towards the renewal fee.

4.10 Re-examination

Every holder of a valid certificate of registration will take a re-examination every five (5) years, from the date of original certificate, to comply with the provisions of Section 4.3 of these rules as follows:

4.10.1. The re-examination to comply with the provisions of Section 4.3 of these rules shall consist of one 25 question open book examination to be mailed to the certificate holder at least 60 days before the renewal date.

4.10.2 The 25 question re-examination will consist of questions that focus on changes in the last five years to the NFPA standards, the statute, and adopted practices of concerns noted by the Board or SFM,.

4.10.3 The certificate holder is responsible to complete the re-examination and return it to the SFM in sufficient time to renew.

4.10.4 The certificate holder is responsible to return to the SFM the correct renewal fees to complete that certificate renewal.

4.11 Refusal to Renew

The SFM may refuse to renew any certificate of registration for the reasons that is authorized pursuant to Section 8 of these rules. The applicant will, upon such refusal, have the same rights as are granted by Section 8 of these rules to an applicant for an original certificate of registration which has been denied by the SFM.

4.12 Inspection

The holder of a certificate of registration will submit such certificate for inspection, upon request of the SFM, any authorized deputies, or any local fire official.

4.13 Change of Address

Any change of address of any holder of a certificate of registration will be reported by the registered person to the SFM within thirty (30) days of such change. Such change will also be made by the holder of the certificate of registration on the reverse side of the certificate of registration card.

4.14 Duplicate

A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate which has been lost or destroyed.

4.15 Minimum Age

No certificate of registration shall be issued to any person who is under eighteen (18) years of age.

4.16 Restrictive Use

4.16.1 No certificate of registration will constitute authorization for any person to enter upon or into any property or building.

4.16.2 No certificate of registration will constitute authorization for any person to enforce any provisions of these rules or the Uniform Fire Code.

4.16.3 Regardless of the acts authorized to be performed by the licensed concern, only those acts for which the applicant for a certificate of registration has qualified will be permissible by such applicant.

4.17 Non-Transferable

Certificates of registration will not be transferable. Individual certificates of registration will be carried by the person to whom issued.

4.18 Limited Issuance

No certificate of registration will be issued to any person unless that person is a licensee or an employee of a licensed concern.

4.19 New Employees

New employees of a licensed concern may perform the various acts while under the direct supervision of a person holding a valid certificate of registration for a period not to exceed forty-five (45) days from the initial date of employment.

4.20 Certificate Identification

Every certificate will be identified by a number, delineated as HE-(number).

R710-7-5. Service Tags and Labels.

5.1 Size and Color

Tags shall be not more than five and one-half inches (5-1/2") in height, nor less than four and one-half inches (4-1/2") in height, and not more than three inches (3") in width, nor less than two and one-half inches (2-1/2") in width. Tags may be

any color except red.

5.2 Attaching Tag

One service tag will be attached to each automatic fire suppression system in such a position as to be conveniently inspected

5.3 Signature and Certificate Number

5.3.1 The signature and certificate of registration number of the person performing the work shall be signed legibly on the service tag.

5.3.2 All information pertaining to complete date, type of servicing, and type of system will be indicated on the tag by perforations in the appropriate space provided.

5.4 New Tag

A new service tag will be attached to a properly functioning system each time service is performed. A system not in compliance shall not receive a service tag, but shall receive a non-compliance tag as required in Section 5.8.

5.5 Tag Warning

The following wording shall be placed at the top or reinforced ring end of every tag: "DO NOT REMOVE, BY ORDER OF THE STATE FIRE MARSHAL".

5.6 Removal

No person shall deface, modify, alter or remove any active service label or tag attached to or required to be attached to any automatic fire suppression system.

5.7 Service Tag Information

All service tags shall be designed as required by the SFM.

5.8 Six Year Maintenance and Hydrostatic Test Labels

5.8.1 Six year maintenance and hydrostatic test labels will be affixed by a heatless process. The labels will be applied only when the system is recharged or undergoes six year maintenance servicing or hydrostatic testing.

5.8.2 Six year maintenance and hydrostatic test labels shall be durable to withstand the effects of weather and adverse conditions.

5.8.3 Six year maintenance and hydrostatic test labels will be designed as shown below:

EXAMPLE OF SIX YEAR AND HYDROSTATIC TEST LABEL

5.9 Non-Compliance Tags

5.9.1 Non-compliance tags will be affixed to any system failing to meet service specifications and will be placed in a conspicuous location on that system.

5.9.2 Non-compliance tags shall be red in color.

5.9.3 A system shall receive a non-compliance tag, when the system fails to fully comply with manufactures specifications or these rules.

5.9.4 After placing the non-compliance tag on the system, the service person shall notify the local fire chief or his authorized representative. The service person shall also furnish a copy of the service report to the authority having jurisdiction.

5.9.5 Non-compliance tags will be designed as required by the SFM.

R710-7-6. Requirements For All Approved Systems.

6.1 Service

6.1.1 Maintenance will be conducted on extinguishing systems at least every six months or immediately after use or activation.

6.1.2 When fusible links are a required portion of the system, fusible links will be replaced yearly or as required by the manufacturer of the system.

6.1.3 Fusible links will show the date when installed by year only.

6.1.4 Fusible links will not be used after February 1 of the next year showing a previous years date.

6.2 Interchanging of Parts

Interchanging of parts from different manufactured systems is prohibited. Parts shall be specifically listed and compatible for use with the designed system.

6.3 Return of parts

All replaced parts to the system serviced will be returned to the system owner or manager after completion of the service. Parts that are required to be returned to the manufacturer due to warranty are exempt.

6.4 Restricted Service

Any system requiring a hydrostatic test, will not be serviced until such system has been subjected to, and passed, the required test. A non-compliance tag will not be accepted to meet the requirements of this section.

6.5 Service

At the time of installation, and during any service, all servicing will be done in accordance with the manufacturers instructions, adopted statutes, and these rules. Systems will be placed and remain in an operable condition, free from defects which may cause malfunctions. Discharge nozzles and piping will be free of obstructions or substances.

R710-7-7. Adjudicative Proceedings.

7.1 All adjudicative proceedings performed by the agency shall proceed informally as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

7.2 The issuance, renewal, or continued validity of a license or certificate of registration may be denied, suspended, or revoked, if the SFM finds that the applicant, person employed for, or the person having authority and management of a concern servicing automatic fire suppression systems commits any of the following violations:

7.2.1 The person or applicant is not the real person in interest.

7.2.2 The person or applicant provides material misrepresentation or false statement on the application.

7.2.3 The person or applicant refuses to allow inspection by the SFM, his duly authorized deputies.

7.2.4 The person or applicant for a license or certificate of registration does not have the proper facilities and equipment, to conduct the operations for which application is made.

7.2.5 The person or applicant for a certificate of registration does not possess the qualifications of skill or competence to conduct the operations for which application was made, as evidenced by failure to pass the examination and practical tests pursuant to Section 4.2 of these rules.

7.2.6 The person or applicant has been convicted of one or more federal, state or local laws.

7.2.7 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.

7.2.8 Any offense or finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the applicant or person were granted a license or certificate of registration.

7.2.9 There are other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant or person to safely and competently engage in the practice of servicing fire suppression systems.

7.3 A person whose license or certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing before the Board if requested by that person within 20 days after receiving notice.

7.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

7.5 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.

7.6 The Board shall direct the SFM 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).

7.7 Reconsideration of the Board decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

7.8 After a period of three years from the date of revocation, the Board shall review the submitted written application of a person whose license or certificate of registration has been revoked. After timely notice to all parties involved, the Board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the Board. After the hearing, the Board shall direct the SFM to allow the person to complete the licensing or certification process or shall direct that the revocation be continued.

7.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

R710-7-8. Fees.

8.1 Fee Schedule

8.1.1 Licenses (New and Renewals)

8.1.1.1 Type H1 (Marketing and Installation) . . . $300.00

If the concern currently is licensed to service portable fire extinguishers the fee is $150.00.

8.1.1.2 Type H2 (Service Only) $150.00

If the concern currently is licensed to service portable fire extinguishers the fee is $75.00.

8.1.1.3 Branch Office License. $150.00

8.1.2 Certificates of Registration (New and Renewals)

8.1.2.1 Certificate of Registration. $30.00

If the individual currently is certified as a portable fire extinguisher technician the fee is $10.00

8.1.3 License Transfer $50.00

8.1.4 Examinations

8.1.4.1 Initial Examination. $20.00

8.1.4.2 Re-Examination $15.00

8.1.4.3 Five (5) Year Examination. $20.00

8.2 Payment of Fees

The required fee will accompany the application for license or certificate of registration. License or certificate of registration fees will be refunded if the application is denied.

8.3 Late Renewal Fees

8.3.1 Any license or certificate of registration not renewed before January 1 will be subject to an additional fee equal to 10% of the required inspection fee.

8.3.2 When a certificate of registration has expired for more than one year, an application will be made for an original certificate as if the application was being made for the first time. Examinations will be re-taken with initial fees.

KEY: fire prevention, systems
June 13, 2005 53-7-204
Notice of Continuation June 11, 2002

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.
R722-310. Regulation of Bail Bond Recovery and Enforcement Agents.
R722-310-1. Purpose.

The purpose of this rule is to regulate bail bond recovery and enforcement agents as provided by Title 53, Chapter 11, the "Bail Bond Recovery Act."

R722-310-2. Authority.

This rule is authorized by Subsection 53-11-103(5).

R722-310-3. Definitions.

A. Terms used in this rule are defined in Section 53-11-102.

B. In addition:

1. "Moral turpitude" as used in Subsection 53-11-108(2)(a)(vi), means a conviction of any crime listed in R724-4-3(M). In addition, a crime of moral turpitude means a conviction of an offense involving:

a. the use of alcohol, or;

b. the unlawful use of narcotics or other controlled substances.

2. "Division" means the Law Enforcement and Technical Services Division of the Department of Public Safety.

3. "Peace officer" as used in Subsection 53-11-108(2)(c), means anyone who is employed either full time or part time by the federal, state or local government in one of the officer classifications listed in Subsection 53-13-102.

R722-310-4. Application.

In addition to the requirements set forth in Sections 53-11-109 and 53-11-113, all applicants seeking licensure under this chapter shall provide two completed sets of fingerprint cards for the purpose of fingerprint processing as provided for in Section 53-11-115.

R722-310-5. Licensure.

A. In addition to the provisions set forth in Subsection 53-11-116(1)(b)(i), each license and identification card shall have on it's face a designation as to whether or not the licensee is authorized to carry a loaded and concealed firearm as provided for in Subsection 53-11-108(5).

B. Providers offering instruction or continuing instruction required for licensure shall offer the courses to all applicants at the same course fees.

R722-310-6. Minimum Experience Requirements.

In addition to the requirements set forth in Subsections 53-11-109(1)(b)(i) and (ii), applicants who are claiming previous experience as either a bail recovery agent or law enforcement officer, must be able to substantiate the experience as qualifying experience by showing that the experience claimed has been acquired within ten years immediately preceding application.

R722-310-7. Qualification Credit for Specified Training.

A. Applicants receiving qualification credit under Section 53-11-114, are still required to attend the 16 hour training course(s) referred to in Section 53-11-108.

B. Applicants who hold a criminal justice bachelor's degree or who are certified to have successfully completed the state Peace Officers Standards and Training basic training course referred to in Section 53-6-202, may be exempt from meeting up to 1000 hours of the experience requirements.

C. Not more than 1000 hours may be exempt for any specified training.

R722-310-8. Notice to Commissioner.

The notice to the commissioner referred to in Subsection 53-11-116(5) regarding a change in the name or address of a bail bond agency and any change of employees or contract employees, shall be in writing and signed by the licensee.

R722-310-9. Appeal on Denial of License.

A. All adjudicative proceedings provided for herein shall be informal in accordance with Section 63-46b-5 and as allowed by Section 63-46b-4.

B. The board may deny a license application or renewal for failure to comply with the requirements in Sections 53-11-108 through 53-11-115, or for any of the reasons set forth in Section 53-11-118.

C. The board shall review and make an initial determination on all license applications. An applicant who is denied licensure by the board will be given an opportunity to appeal the board's initial determination to the board for a hearing.

D. The board will issue a written decision to the applicant within ten days following the hearing.

E. If the Board denies the license following a hearing, the decision issued by the Board will advise the applicant that he/she may appeal to the commissioner within 30 days after the decision is issued.

F. An appeal to the commissioner will not result in a de novo hearing before the commissioner. It will result in a review of the record by the department's administrative law judge as the commissioner's designee. The administrative law judge, at his discretion, may request oral argument by the parties.

G. In addition to the options in Subsection 53-11-118(4), the administrative law judge may affirm the board's decision.

H. The administrative law judge will issue a decision within 60 days after receipt of the appeal.

KEY: bail bond enforcement agent, bail bond recovery agent, license
November 16, 2000 53-11-103(5)
Notice of Continuation June 29, 2005

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.
R722-330. Licensing of Private Investigators.
R722-330-1. Purpose.

The purpose of this rule is to define the licensing and regulation standards of private investigators as set forth in Title 53, Chapter 9, the "Private Investigator Regulation Act."

R722-330-2. Authority.

This rule is authorized by Subsection 53-9-103(6).

R722-330-3. Definitions.

A. Terms used in this rule are defined in Section 53-9-102.

B. In addition:

1. "Act constituting dishonesty or fraud" as used in Subsection 53-9-108(1)(a)(iv), means conviction of any crime as itemized in R724-4-3(M).

2. "Act involving illegally using, carrying, or possessing a dangerous weapon" as used in Subsection 53-9-108(1)(a)(ii), means conviction of any firearms violation involving a crime of violence.

3. "Act of personal violence or force on any person or threatening to commit any act of personal violence or force against another person" as used in Subsection 53-9-108(1)(a)(iii), means conviction of any crime in Subsection 76-10-501(2)(b).

4. "Division" means the Division of Law Enforcement and Technical Services of the Department of Public Safety.

5. "Moral turpitude" as used in Subsection 53-9-108(1)(a)(v), means conviction of any crime in R724-4-3(M).

R722-330-4. Application.

A. Applicants must use the application form provided by the division.

B. Applicants will be classified into three categories as set forth in Section 53-9-107: agencies, registrants, and apprentices.

1. If approved for licensure, an agency applicant will receive one private investigation agency license and one identification card.

2. Registrants and apprentices must be employed or contracted by a licensed agency.

C. Applicants must meet the qualifications set forth in Section 53-9-108 and will be required to provide all of the information and fees as set forth in Sections 53-9-109 through 111. Previous work experience must be verifiable for it to apply to the work experience requirement.

R722-330-5. Fees.

A. The information regarding license and registration fees as established by Section 53-9-111, shall apply to this rule.

B. In addition, in accordance with Section 53-9-111, a fee of $24 shall be charged for fingerprint processing and background investigation for each applicant. This fee is non-refundable.

R722-330-6. Issuance and Expiration of Identification Cards.

A. Information regarding the issuance and expiration of identification cards is set forth in Section 53-9-112.

B. In addition:

1. The board shall not issue licenses or registrations, but rather shall review applications and then make recommendations to the commissioner for approval or disapproval.

2. Upon approval by the commissioner, the division shall issue to the applicant an identification card that will expire two years from the issue date.

R722-330-7. Records Access.

A. Information supplied to the division by an applicant, including the completed application form, shall be considered "private" information in accordance with Subsection 63-2-302(2)(d).

B. Information gathered by the division in the course of investigating an application or complaint shall be considered "protected" information in accordance with Subsections 53-9-118(2)(e) and 63-2-304(8). However, if such information is used as the basis for denial of a license or registration or discipline of a licensee or registrant, such information shall be considered "private" information in accordance with Subsection 63-2-302(2)(d) and the applicant shall have access to it.

R722-330-8. Adjudicative Proceedings.

A. The adjudicative proceedings set forth in this section shall be conducted informally as authorized by Section 63-46b-4 and as set forth in Section 63-46b-5.

B. Denials of initial and renewal licenses or registrations are appealable as set forth in Section 53-9-113.

C. The board may take disciplinary action against a licensee or registrant for violation of Subsection 53-9-118(1).

1. Except for summary suspension in emergency cases, disciplinary action will be taken only after the issuance of a notice of intent to discipline and an opportunity for hearing. A letter of caution is not considered to be disciplinary action and is not appealable.

2. The notice of intent to discipline will be issued by the commissioner, and will notify the licensee or registrant of the charge(s) and the right to a hearing before the board within 60 days.

3. Following the hearing, the board may take any of the actions set forth in Subsection 53-9-118(6).

D. Appeals to the Commissioner on denials of initial and renewal licenses or registrations are provided for in Subsection 53-9-113(4). Appeals to the commissioner on disciplinary action are provided for in Subsection 53-9-118(8). Such appeals to the commissioner shall not result in de novo hearings before the commissioner, but rather shall result in a review of the board's findings by the department's administrative law judge, who shall review the board's findings and issue a recommendation to the commissioner for the commissioner's approval and decision. The decision of the commissioner is appealable to the district court in accordance with Subsection 53-9-113(5) and Subsection 53-9-118(9) pursuant to Section 63-46b-15.

KEY: private investigators, license
June 14, 1999 **53-9-103(6)**
Notice of Continuation June 29, 2005

R728. Public Safety, Peace Officer Standards and Training.
R728-205. Council Resolution of Public Safety Retirement Eligibility.
R728-205-1. Authority.

The authority for this rule is authorized under UCA Sections 49-4-203(3)(b) and 49-4a-203(5)(b).

R728-205-2. Purpose.

To describe the process by which the Council will determine eligibility for participation in the public safety retirement system.

R728-205-3. Eligibility.

A. The following shall be the minimum requirements established for eligibility of employment positions into the public safety retirement system:

1. the employment position requires full-time employment with the employing unit;

2. the employment position requires the employee to serve in a position that may place the employee at risk to life and personal safety;

3. the employment position requires peace officer certification and training in the peace officer, correctional officer, or special function officer designations defined under UCA Section 53-13-103, 53-13-104, or 53-13-105;

4. the employment position's primary duties shall consist of the duties defined under UCA Section 53-13-103, 53-13-104, or 53-13-105.

R728-205-4. Procedures.

A. The Council shall establish a subcommittee to review all disputes between the retirement office and an employing unit or employee regarding public safety retirement eligibility.

B. The subcommittee shall only review employment positions eligible for public safety retirement.

C. The subcommittee shall review disputed employment positions within a reasonable period of time after receipt of notice of the dispute.

D. Within 30 days of receipt of the notice of dispute, the subcommittee shall give written notification to the concerned parties that it is considering the dispute, including notice of the opportunity to submit written briefs to the subcommittee within thirty days of said notice. Either party may request a hearing before the subcommittee within 30 days of the issuance of said notice. If both parties fail to request a hearing, the subcommittee will decide the issue, and make it's recommendation based on the written briefs.

E. The recommendation of the subcommittee shall be made in writing and copies of the order shall be mailed to the concerned parties.

F. All parties in the dispute shall have an opportunity to request a review of the subcommittee's recommendation before the Council.

1. Requests for review shall be submitted in writing to the director of the division within 15 days from the date of issuance of the subcommittee's recommendation.

2. Requests for review shall contain all issues and evidence which the party wishes to present before the Council, and a copy thereof shall be sent to all other parties. The party seeking the review shall provide to all transcripts, documents and briefs to the Council within 30 days after filing the notice requesting review. No party shall be permitted oral argument before the Council unless a request for oral argument is filed with the Council within the same 30 day period. If oral argument is requested, the parties shall be permitted 20 minutes each to present oral argument on their respective positions.

3. Upon receipt of the subcommittee's recommendation and/or a request for review, the director shall notify the Council and schedule a hearing for the next available Council meeting.

4. A majority of those Council members considering the recommendation shall be required to adopt said recommendation.

5. The Council shall render a written decision within a reasonable period of time, and the director shall issue a formal written notice thereof to all concerned parties. The director's written notice shall constitute final agency action.

G. All proceedings under this rule shall be informal as set forth in UCA Section 63-46b-4, and shall be conducted pursuant to the procedures set forth in UCA Section 63-46b-5.

KEY: retirement, peace officer*
April 15, 1997 49-4-203
Notice of Continuation June 27, 2005 49-4a-203

R746. Public Service Commission, Administration.
R746-341. Lifeline/Link-up Rule.
R746-341-1. Applicability.

Telecommunications corporations that have been designated as eligible telecommunications carriers by the Commission, pursuant to Section 214 of the Federal Communications Act, shall establish a lifeline telephone service pursuant to the requirements of Sections 2 through 10.

R746-341-2. Definitions.

A. "Applicant" -- means the eligible telecommunications customer who owns and resides in a residential property or rents and resides in a residential property.

B. "Responsible Agency" -- means the agency that administers the certification, verification, and continued verification of Lifeline enrollment.

C. " ETC " -- means the eligible telecommunications carrier.

D. "Federal Poverty Guidelines" -- means the poverty guidelines issued each year by the Department of Health and Human Services and published in the Federal Register.

E. "Income " -- means gross income, whether earned or unearned, received by all members of the household including, but not limited to, salary before deductions. Income shall not include student financial aid, military housing and cost-of-living allowances, or irregular income from occasional small jobs.

R746-341-3. Eligibility Requirements.

A. Program-Based Criteria -- The ETCs shall provide lifeline telephone service to any applicant who self-certifies, under the penalty of perjury, the household members' eligibility for public assistance under one of the following or its successor programs:

1. Temporary Assistance to Needy Families (TANF);
2. Work Toward Employment;
3. Food Stamps;
4. General Assistance;
5. Home Energy Assistance Target Programs/Help Program;
6. Medicaid;
7. Refugee Assistance;
8. Supplemental Security Income.
9. Federal Public Housing Assistance, including Section 8 Housing;
10. National School Lunch Free Lunch Program; or
11. Head Start Program (income qualifying standard only).

B. Income-Based Criteria -- The ETCs shall provide lifeline telephone service to any applicant who certifies via supporting documentation, under the penalty of perjury, income to be at or below 135 percent of the then applicable Federal Poverty Guidelines.

1. Income-based eligibility is based on family size and actual income, therefore, the Lifeline customer must certify, under the penalty of perjury, the number of individuals residing in their household.

2. A Lifeline customer must certify, under the penalty of perjury, that the documentation presented accurately represents the applicant's annual household income. The following documents, or any combination of these documents, are acceptable for Lifeline certification;

a. Prior year's state, federal, or tribal tax return;

b. Current year-to-date earnings statement from an employer or three consecutive months of paycheck stubs;

c. Social Security statement of benefits;

d. Veterans Administration statement of benefits;

e. Retirement/pension statement of benefits;

f. Unemployment/Worker's Compensation statement of benefits;

g. Federal or tribal notice letter of participation in Bureau of Indian Affairs General Assistance; or

h. Divorce decree, or child support wage assignment statement.

C. Certification -- The application form for participation will be supplied by the ETC or the responsible agency and contain the following:

1. applicant's name, current telephone number, and social security number;

2. a request for lifeline service;

3. an affirmative statement that the applicant qualifies for lifeline service.

4. a statement, under the penalty of perjury, as to whether the person is participating in one of the programs listed in Subsection R746-341-3.A; or a statement, under the penalty of perjury, as to whether the person's income is at or below 135 percent of the Federal Poverty Guidelines.

a. If qualified by income-based criteria, certification must be supported by acceptable documentation listed in R746-341-3.B.

5. a statement that if the applicant is later shown to have submitted a false self-certification for the Lifeline program, the applicant will be responsible to pay the difference between the lifeline service rate and the otherwise applicable service rate;

6. a statement whether this is a connection or a reconnection; and

7. the applicant's signature.

D. Documentation Retention -- The responsible agency will retain income and program eligibility certification for as long as the eligible customer receives Lifeline service from an ETC.

E. Tribal Land Lifeline Discounts -- Customers who live on tribal lands and who qualify for the state Lifeline service rate based on the program qualifications and income qualifications set forth in R746-341-3.B, are eligible to receive a larger federal discount. Those federal discounts are not within the scope of, nor governed by, these rules.

R746-341-4. Continuing Eligibility.

A. Annual Verification -- The continuing eligibility of all customers on the Lifeline service rate shall be verified annually

B. ETC Verification Responsibilities -- Annually, the ETCs offering Lifeline telephone service shall provide the responsible agency with computer tapes, written lists, or personal computer disks, listing their Lifeline service customers' names, telephone numbers, addresses and social security numbers. ETCs with more than 300 Lifeline telephone customers shall provide the information in an electronic format useable by the responsible agency. ETC's with less than 300 customers shall provide the information in a format designated by the responsible agency.

C. Verification Criteria -- The responsible agency will verify the continued eligibility of Lifeline customers under the program-based and income-based eligibility criteria.

1. The responsible agency shall identify a method by which income eligibility will be verified on an annual basis including, but not limited to, annual self-certification, random beneficiary audits, a periodic submission of income documents, or the continued eligibility of a statistically valid sample of Lifeline customers.

2. The responsible agency will use the records provided in Subsection R746-341-3.A. to match, using the state computer system, against program participation.

3. If a Lifeline customer does not appear as a participant in a program on the state computer system, the responsible agency will send a letter to the Lifeline customer requesting;

a. proof of participation in any of the programs listed in R746-341-3.A; or

b. documentation of eligibility under the income-based criteria set forth in R746-341-3.B.

4. The responsible agency shall notify any Lifeline customer who fails to supply proof of participation in one of the programs listed in R746-341-3.A or documentation of income eligibility as listed in R746-341-3.B of an intent to discontinue the customer's eligibility for the Lifeline service discount. The letter will explain the appeals process as set forth in Subsection R746-341-4.D.

a. The notice must allow the customer at least 60 days to demonstrate continued eligibility consistent with this rule.

5. If the customer fails to file an appeal within the prescribed appeal period, or if the customer does not prevail on appeal, the responsible agency will notify each ETC, using a format designated by the responsible agency, that the customer is no longer eligible for the Lifeline service rate.

D. Termination Notices and Dispute Resolution --

1. Should the ETC or the responsible agency have a reasonable basis to believe that a Lifeline telephone service customer no longer qualifies for Lifeline service in accordance with this rule, the ETC or the responsible agency shall notify the customer of its intent to discontinue the customer's eligibility and the basis for that decision. The notice shall be in writing and shall be delivered to the customer in a mailing separate from the customer's monthly bill.

a. The notice must allow the customer at least 60 days to demonstrate continued eligibility consistent with this rule. The customer's participation in Lifeline may not be discontinued during the 60-day period.

b. The notice shall also alert the customer of the option to continue local telephone service after termination of Lifeline benefits at the non-discounted rate.

2. If the customer fails to provide proof of continued eligibility as required, or if the ETC or the responsible agency does not accept the customer's proof of continued eligibility, the ETC or the responsible agency shall notify the customer in writing of its determination and intent to discontinue the customer's participation in the program. The notice shall also include instructions for filing an appeal of the determination.

a. The customer may appeal this decision within ten days of the notification by filing a written notice of appeal with the agency assigned responsibility for administering the Lifeline program.

b. Lifeline benefits will continue pending an appeal of a non-eligibility decision.

3. The appeal shall be addressed consistent in time and manner with the dispute resolution procedures set forth in R746-240-7 and 8 that provide for review and resolution of disputes between telecommunications carriers and consumers.

E. False Certification Penalties -- A Lifeline telephone service customer who does not qualify and has falsely self-certified and participated in the Lifeline program will be responsible to pay the difference between the Lifeline service rate and the otherwise applicable service rate for the length of time the customer subscribed to Lifeline telephone service for which the customer was not eligible.

R746-341-5. Lifeline Telephone Service Features.

A. Discounts -- Lifeline telephone service provided by ETCs shall consist of dial tone line, usage charges or their equivalent, and any Extended Area Service (EAS) charges, less a discount of $3.50 and any other matching funds established by the Federal Communication Commission.

B. Deposits -- When customer security deposits are otherwise required, they will be waived for Lifeline telephone service customers if the customer voluntarily elects to receive toll blocking.

C. Link-Up America Plan Participation -- Companies providing Lifeline service shall apply for the Link-Up America Plan provided by the Federal Communications Commission.

D. Link-Up America Plan Discounts -- In addition to the Link-Up America reduction, Lifeline qualifying customers are entitled to a 50 percent reduction of the remaining connection charges.

E. Nonrecurring Charge Waiver -- Lifeline telephone service customers will receive a waiver of the nonrecurring service charge for changing the type of local exchange usage service to Lifeline service, or changing from flat rate service to message rate service, or vice versa, but only one such waiver shall be allowed during any 12-month period.

F. Disconnection -- Lifeline service shall not be disconnected for nonpayment of toll service.

G. Restrictions -- Lifeline telephone service will be subject to the following restrictions:

1. Lifeline telephone service will only be provided to the applicant's principal residence.

2. A Lifeline telephone service customer will only receive a Lifeline discount on one single residential access line.

H. Other Services -- A Lifeline telephone service customer will not be prohibited from purchasing vertical services.

R746-341-6. Link-up America Plan Telephone Service.

A. Link-Up -- An ETC shall provide the initial installation for telephone service to any applicant who qualifies for Lifeline service in accordance with the eligibility criteria listed under R746-341-3.

1. Link-up telephone service provided by ETCs is a federal program that provides a 50 percent discount of the initial hook-up fee, up to $30.00, for eligible customers.

B. Enhanced Link-UP -- Customers who live on tribal lands and qualify for the state Lifeline service rate under R746-341-3, are eligible to receive a larger federal discount. Those federal discounts are not within the scope of, nor governed by, these rules.

R746-341-7. Reporting Requirements.

A. Reporting Requirements -- ETCs shall submit, to the Division of Public Utilities, a semi-annual report, by June 30 and December 31, of each year, containing a description of the ETC's Lifeline program. The reports shall also contain monthly information on:

1. the forgone revenue resulting from the discounts provided to Lifeline customers;

2. the amounts of administrative, advertising, voucher and other program expenses;

3. interest accrual amounts on Lifeline and Link up funds; and

4. the number of Lifeline telephone service customers by exchange area; and

5. a detailed report of outreach efforts.

R746-341-8. Funding of Lifeline.

A. Cost Recovery -- The total cost of providing Lifeline telephone service, including the administrative costs of the ETCs and the costs incurred by the responsible agency, shall be recovered and funded as provided in 54-8b-15.

R746-341-9. Collection and disbursement of Lifeline Funds.

A. ETC Payment -- Within 30 days after review and audit of an ETC's semi-annual report, the Public Service Commission shall disburse an amount equal to the ETC's semi-annual Lifeline program expenses and Lifeline discounts granted.

R746-341-10. Outreach Guidelines.

A. Reporting and Coordination -- ETC's shall report their outreach efforts to the Public Service Commission, as well as coordinate with agencies that administer any of the relevant government assistance programs to maximize public awareness and participation in the Lifeline Program.

KEY: telephone, telecommunications, rules and procedures, lifeline rates
June 20, 2005 54-4-1
Notice of Continuation November 15, 2000 54-4-4

R865. Tax Commission, Auditing.
R865-9I. Income Tax.
R865-9I-2. Determination of Utah Resident Individual Status Pursuant to Utah Code Ann. Section 59-10-103.

A. Domicile.

1. Domicile is the place where an individual has a permanent home and to which he intends to return after being absent. It is the place at which an individual has voluntarily fixed his habitation, not for a special or temporary purpose, but with the intent of making a permanent home.

2. For purposes of establishing domicile, an individual's intent will not be determined by the individual's statement, or the occurrence of any one fact or circumstance, but rather on the totality of the facts and circumstances surrounding the situation.

a) Tax Commission rule R884-24P-52, Criteria for Determining Primary Residence, provides a non-exhaustive list of factors or objective evidence determinative of domicile.

b) Domicile applies equally to a permanent home within and without the United States.

3. A domicile, once established, is not lost until there is a concurrence of the following three elements:

a) a specific intent to abandon the former domicile;

b) the actual physical presence in a new domicile; and

c) the intent to remain in the new domicile permanently.

4. An individual who has not severed all ties with the previous place of residence may nonetheless satisfy the requirement of abandoning the previous domicile if the facts and circumstances surrounding the situation, including the actions of the individual, demonstrate that the individual no longer intends the previous domicile to be the individual's permanent home, and place to which he intends to return after being absent.

B. Permanent place of abode does not include a dwelling place maintained only during a temporary stay for the accomplishment of a particular purpose. For purposes of this provision, temporary may mean years.

C. Determination of resident individual status for military servicepersons.

1. The status of a military serviceperson as a resident individual or a nonresident individual is determined as follows, based on the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. 574.

a) A resident individual in active military service does not lose his status as a resident individual if the resident individual's absence from the state is a result of military orders.

b) A nonresident individual in active military service who is stationed in Utah does not become a resident individual for income tax purposes if the nonresident individual's presence in Utah is due solely to military orders.

2. Subject to federal law, an individual in active military service may change from a resident individual to a nonresident individual or from a nonresident individual to a resident individual if he establishes that he satisfies the conditions of A.3.

3. A nonresident individual serviceperson is exempt from Utah income tax only on his active service pay. All other Utah source income received by the nonresident individual serviceperson is subject to Utah income tax as provided by Section 59-10-116.

4. The spouse of an individual in active military service generally is considered to have the same residency status as that individual for purposes of Utah income tax.

R865-9I-3. Credit for Income Tax Paid by an Individual to Another State Pursuant to Utah Code Ann. Section 59-10-106.

A. A Utah resident taxpayer is required to report his entire state taxable income pursuant to Section 59-10-106 even though part of the income may be from sources outside this state.

B. Except to the extent allowed in D., a resident taxpayer may claim the credit provided in Section 59-10-106 by:

1. filing a resident Utah return showing the computation of tax based on total income before any credit for taxes in another state;

2. completing form TC-40A, Schedule A, Credit For Tax Paid To Another State, for each state for which a credit is claimed; and

3. attaching any schedule completed under B.2. to the individual income tax return.

C. A part-year resident taxpayer may claim credit on that portion of income subject to both Utah tax and tax in another state. The credit is claimed in the same manner as claimed by a full-year resident, but only for that portion of the year that the nonresident taxpayer was living in Utah. Form TC-40A, Schedule A, Credit For Tax Paid To Another State, must be completed and attached to the individual income tax return for each state for which a credit is claimed.

D. For only those states in which a resident professional athlete has participated in his team's composite return or simplified withholding, a resident professional athlete may claim the credit provided in Section 59-10-106 by:

1. filing a resident Utah return showing the computation of tax based on total income before any credit for taxes in another state; and

2. attaching a summary, prepared by the team or the team's authorized representative, indicating both the amount of the athlete's income allocated to all other states in which the athlete has participated in his team's composite return or simplified withholding, and the amount of income tax paid by the athlete to those states.

E. The credit allowable on the Utah return for taxes paid to any other state shall be the smaller of the following:

1. the amount of tax paid to the other state; or

2. a percentage of the total Utah tax. This percentage is determined by dividing the total federal adjusted gross income into the amount of the federal adjusted gross income taxed in the other state.

F. A taxpayer claiming a credit under Section 59-10-106 shall retain records to support the credit claimed.

R865-9I-4. Equitable Adjustments Pursuant to Utah Code Ann. Section 59-10-115.

A. Every taxpayer shall report and the Tax Commission shall make or allow such adjustments to the taxpayer's state taxable income as are necessary to prevent the inclusion or deduction for a second time on his Utah income tax return of items involved in determining his federal taxable income. Such adjustments shall be made or allowed in an equitable manner as defined in Utah Code Ann. 59-10-115 or as determined by the Tax Commission consistent with provisions of the Individual Income Tax Act.

B. In computing the Utah portion of a nonresident's federal adjusted gross income; any capital losses, net long-term capital gains, and net operating losses shall be included only to the extent that these items were not taken into account in computing the taxable income of the taxpayer for state income tax purposes for any taxable year prior to January 2, 1973.

R865-9I-6. Returns by Husband and Wife When One is a Resident and the Other is a Nonresident Pursuant to Utah Code Ann. Section 59-10-119.

A. Except as provided in B., a husband and wife, one being a nonresident and the other a resident, who file a joint federal income tax return, but separate state income tax returns shall determine their separate state taxable income as follows:

1. First, the amount of the total federal adjusted gross income ("FAGI") pertaining to each spouse shall be determined. Any adjustments that apply to both spouses shall be divided between the spouses in proportion to the respective incomes of

the spouses.

2. Next, each spouse is allocated a portion of each deduction and add back item.

a) To determine this allocation, each spouse shall:

(1) divide his or her own FAGI by the combined FAGI of both spouses and round the resulting percentage to four decimal places; and

(2) multiply the resulting percentage by the deductions and add back items.

b) The deductions and add back items allowed are as follows:

(1) state income tax deducted as an itemized deduction on federal Schedule A;

(2) other items that must be added back to FAGI on the state income tax return;

(3) itemized or standard deduction;

(4) state exemption for dependents;

(5) one-half of the federal tax liability;

(6) state income tax refund included on line 10 of the federal income tax return; and

(7) other state deductions.

3. Each spouse shall claim his or her full state personal exemption.

4. Each spouse shall determine his or her separate tax using the Utah tax rate schedules applicable to a husband and wife filing separate returns.

B. A husband and wife, one being a nonresident and the other a resident, may use an alternate method of calculating their separate state taxable incomes than the method provided in A. if they can demonstrate to the satisfaction of the Tax Commission that the alternate method more accurately reflects their separate state taxable incomes.

R865-9I-7. Change of Status As Resident or Nonresident Pursuant to Utah Code Ann. Section 59-10-120.

A. Definitions.

1. "Part-year resident" means an individual that changes status during the taxable year from resident to nonresident or from nonresident to resident.

2. "FAGI" means federal adjusted gross income, as defined by Section 62, Internal Revenue Code.

B. The state taxable income of a part-year resident shall be a percentage of the amount that would have been state taxable income if the taxpayer had been a full-year resident as determined under Section 59-10-112. This percentage is the Utah portion of FAGI divided by the total FAGI, not to exceed 100 percent.

C. The Utah portion of a part-year resident's FAGI shall be determined as follows:

1. Income from wages, salaries, tips and other compensation earned while in a resident status and included in the total FAGI shall be included in the Utah portion of the FAGI.

2. Dividends actually or constructively received while in resident status shall be included in the Utah portion of FAGI. Any dividend exclusion shall be deducted from the Utah portion of FAGI using the percentage of excludable dividends received while in resident status, compared to the total excludable dividends.

3. All interest actually or constructively received while in resident status shall be included in the Utah portion of the FAGI.

4. All FAGI derived from Utah sources while in a nonresident status, as determined under Section 59-10-117, shall be included in the Utah portion of FAGI.

D. Income or loss from businesses, rents, royalties, partnerships, estates or trusts, small business corporations as defined by Internal Revenue Code Section 1371(b), and farming shall be included in the Utah portion of FAGI:

1. if the activities involved were concluded, or the taxpayer's connection with them terminated before or at the time of change from resident to nonresident status; or

2. if the activities were commenced or the taxpayer joined them at the time or after the change from nonresident to resident status.

Otherwise, such income or loss shall be included in the Utah portion of FAGI only to the extent derived from Utah sources as determined under Section 59-10-117.

E. Moving expenses deducted on the federal return may be deducted from the Utah portion of FAGI only to the extent that they are for moving into Utah and within Utah.

F. Employee business expenses may be deducted from the Utah portion of FAGI only to the extent that they pertain to the production of income included in the Utah portion of FAGI.

G. Payments by a self-employed person to a retirement plan that reduce the total FAGI may be deducted from the Utah portion of FAGI in the same proportion that the related self-employment income is included in the Utah portion of FAGI.

H. Other income, losses or adjustments applicable in determining total FAGI may be allowed or included in the Utah portion of his FAGI only when the allowance or inclusion is fair, equitable, and would be consistent with other requirements of the act or these rules as determined by the Tax Commission.

R865-9I-8. Proration When Two Returns Are Required Pursuant to Utah Code Ann. Section 59-10-121.

A. Two returns are not required when an individual changes status as resident or nonresident. Ordinarily, the total of the taxable income that would be reported on two returns will be included in one return.

B. Only in unusual circumstances as determined by the Tax Commission will the preparation of two returns be allowed or required. In this event, the returns shall be prepared in a fair and equitable manner as approved or prescribed by the Tax Commission consistent with Utah Code Ann. Section 59-10-121 and other pertinent provisions.

R865-9I-9. Taxable Year Pursuant to Utah Code Ann. Section 59-10-122.

A. If a taxpayer's taxable year is changed to a taxable period of less than 12 months as required by Utah Code Ann. Section 59-10-122 and if he is required to convert his income for the period to an annual basis for federal income tax purposes, the taxpayer shall convert his income for the period of less than a year to an annual basis for computing his state income tax.

B. Unless the Tax Commission determines a different method consistent with requirements of the act is necessary or appropriate, the income tax of the taxpayer for the period of less than 12 months shall be computed as follows:

1. determine the state taxable income applicable to the fractional part of the year and multiply this amount by 12;

2. divide the product by the number of months in the period to arrive at the state taxable income on an annualized basis;

3. compute the tax applicable to the state taxable income as annualized;

4. divide the tax as computed on the annualized state taxable income by 12; and

5. multiply the result by the number of months in the period involved.

R865-9I-10. Adjustments Between Taxable Years After Change in Accounting Methods Pursuant to Utah Code Ann. Section 59-10-124.

A. If a taxpayer's state taxable income for any taxable year is computed under a method of accounting different from the method under which such income was computed for the

previous year, the taxpayer shall attach a statement to his return setting forth all differences. This statement shall specify the amounts duplicated or omitted in full or in part as a result of such change. The Tax Commission shall make or allow any necessary adjustments to prevent double inclusion or exclusion of an item of gross income, or double allowance or disallowance of an item of deduction or credit.

R865-9I-11. Share of A Nonresident Estate or Trust, or Its Beneficiaries In State Taxable Income Pursuant to Utah Code Ann. Section 59-10-207.

A. In determining the respective shares of the beneficiaries and of the estate or trust referred to in Utah Code Ann. Section 59-10-207, consideration shall be given to the net amount of the modifications described in Utah Code Ann. Sections 59-10-114 and 59-10-115. This is particularly true for those that relate to items of income, gain, loss, and deduction and that also enter into the definition of distributable net income. Otherwise, any methods different from those prescribed in Utah Code Ann. Section 59-10-207 of the act shall be used only if approved or directed by the Tax Commission as being necessary to prevent a substantial inequity in the allocation of such shares.

R865-9I-12. Fiduciary Adjustment Pursuant to Utah Code Ann. Section 59-10-210.

A. The net amount of the modifications described in Utah Code Ann. Sections 59-10-114 and 59-10-115 that relate to items of income or deduction of an estate or trust may be determined and used as the fiduciary adjustment. Otherwise, any methods different from those prescribed in Utah Code Ann. Section 59-10-210 shall be used only if approved or directed by the Tax Commission as being more appropriate and equitable in specific cases.

R865-9I-13. Nonresident's Share of Partnership or Limited Liability Company Income Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, 59-10-118, and 59-10-303.

A. Nonresident partners and nonresident members shall keep adequate records to substantiate their determination or to permit a determination by the Tax Commission of the part of their adjusted gross income that was derived from or connected with sources in this state.

B. Partnerships and limited liability companies may file form TC-65, Utah Partnership/Limited Liability Company Return of Income, as a composite return on behalf of nonresident partners or nonresident members that meet all of the following conditions:

1. Nonresident partners or nonresident members included on the return may not have other income from Utah sources. Resident partners and resident members may not be included on the composite return.

2. A schedule shall be included with the return listing all nonresident partners or nonresident members included in the composite filing. The schedule shall list all of the following information for each nonresident partner or nonresident member:

a) name;

b) address;

c) social security number;

d) percentage of partnership or limited liability company income;

e) Utah income attributable to that partner or member.

3. Nonresident partners or nonresident members that are entitled to mineral production tax withholding credits, agricultural off-highway gas tax credits, or other Utah credits, may not be included in a composite filing, but must file form TC-40NR, Nonresident or Part-year Resident Form Individual Income Tax Return.

C. The tax due on the composite return shall be computed as follows:

1. A deduction equal to 15 percent of the Utah taxable income attributable to nonresident partners or nonresident members included in the composite filing shall be allowed in place of a standard deduction, itemized deductions, personal exemptions, federal tax determined for the same period, or any other deductions.

2. The tax shall be computed using the maximum tax rate applied to Utah taxable income attributable to Utah sources.

D. The partnership's or limited liability company's federal identification number shall be used on the form TC-65 in place of a social security number.

R865-9I-14. Requirement of Withholding Pursuant to Utah Code Ann. Sections 59-10-401, 59-10-402, and 59-10-403.

A. Except as otherwise provided in statute or this rule, every employer shall withhold Utah income taxes from all wages paid:

1. to a nonresident employee for services performed within Utah,

2. to a resident employee for all services performed, even though such services may be performed partially or wholly without the state.

B. If the services performed by a resident employee are performed in another state of the United States, the District of Columbia, or a possession of the United States that requires withholding on wages earned, the withholding tax for Utah shall be the Utah tax required to be withheld less the tax required to be withheld under the laws, rules, and regulations of that other state, District of Columbia, or possession of the United States.

C. If the duties of a nonresident employee involve work both within and without the state, tax is withheld from that portion of the total wages that is properly allocable to Utah. The method of allocation is subject to review by the Tax Commission and may be subject to change if it is determined to be improper.

D. Income tax treatment of rail carrier and motor carrier employees is governed by 49 U.S.C. Section 14503.

E. Withholding required under Section 59-10-402 is required for all wages that are:

1. subject to withholding for federal income tax purposes;

2. paid to individuals who are deemed employees as determined by the Tax Commission, using Internal Revenue Service guidelines.

F. The number of exemptions claimed for federal withholding shall be the number of exemptions claimed for state withholding purposes.

G. Employers should use Utah income tax withholding schedules or tables published by the Tax Commission in computing the amount of state income tax withheld from their employees.

R865-9I-15. Employees Incurring No Income Tax Liability Pursuant to Utah Code Ann. Section 59-10-403.

A. With reference to Utah Code Ann. Section 59-10-403, an employer shall not be required to deduct and withhold Utah income taxes from wages paid to an employee who has filed a Federal Withholding Certificate, Form W-4E.

R865-9I-16. Collection and Payment of Withholding Pursuant to Utah Code Ann. Section 59-10-406.

A. Legible copies of the federal Form W-2 must contain the following information:

1. the name and address of the employee and employer;

2. the employer's Utah withholding tax account number;

3. the amount of compensation;

4. the amounts of federal and Utah state income tax withheld;

5. the social security number of the employee;

6. the word "Utah" either printed or stamped thereon in such a way as to clearly indicate the tax withheld was for Utah in accordance with Utah law, as distinguished from any other state or jurisdiction; and

7. other information required by the commission.

B. Sufficient copies of the W-2 form must be furnished to each employee to enable attachment of a legible copy to the state income tax return.

C. If a tax required under Section 59-10-402 is not withheld by an employer, but is later paid by the employee:

1. the tax required to be withheld under Section 59-10-402 shall not be collected from the employer; and

2. the employer shall remain subject to penalties and interest on the total amount of taxes that the employer should have withheld under Section 59-10-402.

R865-9I-17. Time for Filing Withholding Tax Returns and Payment of Withholding Taxes Pursuant to Utah Code Ann. Sections 59-10-406 and 59-10-407.

A. This rule provides exceptions to the statutory requirement that an employer shall file withholding tax returns and pay withholding taxes quarterly.

B. An employer may elect to file withholding tax returns and pay withholding taxes on an annual basis for a calendar year in which the employer:

1. files a federal Schedule H; or

2. withholds less than $1,000.

C. The annual withholding return and payment under B. are due by January 31 of the year succeeding the year for which the payment and return apply.

D. An employer withholding an average of $1,000 or more per month shall file withholding tax returns and pay withholding taxes on a monthly basis.

E. The monthly withholding return and payment under D. are due as prescribed in Section 59-10-407.

R865-9I-18. Taxpayer Records, Statements, and Special Returns Pursuant to Utah Code Ann. Section 59-10-501.

A. Every taxpayer shall keep adequate records for income tax purposes of a type which clearly reflect income and expense, gain or loss, and all transactions necessary in the conduct of business activities.

B. Records of all transactions affecting income or expense, or gain or loss, and of all transactions for which deductions may be claimed, should be preserved by the taxpayer to enable preparation of returns correctly and to substantiate claims. All such records shall be made available to an authorized agent of the Tax Commission when requested, for review or audit.

R865-9I-19. Returns By Husband and Wife Pursuant to Utah Code Ann. Section 59-10-503.

A. In the year a married person dies, the surviving spouse may file a joint Utah return if a joint federal return was filed except in cases where one spouse was a resident and the other a nonresident. In these cases, separate returns may be required (see Section 59-10-503(1)(b) and Rule R865-9I-6).

R865-9I-20. Returns Made By Fiduciaries and Receivers Pursuant to Utah Code Ann. Section 59-10-504.

A. Returns by fiduciaries and receivers shall be made in accordance with forms and instructions provided by the Tax Commission. The fiduciary of any resident estate or trust or of any nonresident estate or trust having income derived from Utah sources and who is required to make a return for federal income tax purposes shall make and file a corresponding return for state income tax purposes.

1. Each return shall include a listing of the beneficiaries and their distributable shares of the state taxable income.

2. In the case of a nonresident estate or trust, the return shall include detailed information showing how the amount of income derived from or connected with Utah sources was determined.

B. The fiduciary is required to pay the taxes on the income taxable to the estate or trust. Liability for payment of the tax attaches to the executor or administrator up to his discharge. If the executor or administrator failed to file a return as required by law or failed to exercise due diligence in determining and satisfying the tax liability, the liability is not extinguished until the return is filed and paid.

C. Liability for the tax also follows the estate itself. If by reason of the distribution of the estate and the discharge of the executor or administrator, it appears that collection of tax cannot be made from the executor or administrator, each legatee or distributee must account for his proportionate share of the tax due and unpaid to the extent of the distributive share received by him.

R865-9I-21. Return By Partnership Pursuant to Utah Code Ann. Sections 59-10-507 and 59-10-514.

(1) Every partnership having a nonresident partner and income derived from sources in this state shall file a return in accordance with forms and instructions provided by the Tax Commission.

(2) If the partnership has income derived from or connected with sources both inside and outside Utah and if any partner was not a resident of Utah, the portion derived from or connected with sources in this state must be determined and shown.

(a) The Utah portion must be determined and shown for each item of the partnership's, and each nonresident partner's, distributive shares of income, credits, deductions, etc., shown on Schedules K and K-1 of the federal return.

(b) The Utah portion may be shown:

(i) alongside the total for each item on the federal schedules K and K-1; or

(ii) on an attachment to the Utah return.

(3) A partnership, all of whose partners are resident individuals, shall satisfy the requirement to file a return with the commission by:

(a) maintaining records that show each partner's share of income, losses, credits, and other distributive items; and

(b) making those records available for audit.

R865-9I-22. Signing of Returns and Other Documents Pursuant to Utah Code Ann. Section 59-10-512.

A. Any return, statement, or other document shall be signed as required by specific provisions of the act or as prescribed by forms or instructions furnished by the Tax Commission.

B. All returns filed with the Tax Commission must be signed by the taxpayer or his duly authorized agent as provided by law. Unsigned returns are not valid returns for income tax purposes and if unsigned, the benefits of proper filing may be denied the taxpayer.

C. Returns may be filed on forms prescribed and furnished by the Tax Commission, or in lieu thereof, on reproduced or facsimile copies, provided that the same information required on the printed form for the same year is provided and the paper used for such substitute return is equal in durability and weight to 20 lb. bond. Paper more brittle or lighter in weight than that specified is not acceptable as a replacement for the regular reporting forms. The use of paper of lesser quality for supporting schedules is permitted, providing the schedules are clear and legible.

R865-9I-23. Extension of Time to File Returns Pursuant to Utah Code Ann. Section 59-10-516.

A. A completed form TC-546, Prepayment of Income Tax,

must accompany the prepayment amount required by Section 59-10-516, if the prepayment is not in the form of withholding, payments applied from previous year refunds, or credit carryforwards.

B. Interest shall be charged on any additional tax due shown on the return in accordance with Section 59-1-402. Interest is calculated from the original due date of the return to the date the tax is paid and applies even when an extension of time to file the return exists.

C. Utah residents in military service, stationed outside the United States, shall be granted an extension of time to file to the 15th day of the fourth month after their return to the United States, or their discharge date, whichever is earlier.

R865-9I-24. Timely Mailing Treated As Timely Filing Pursuant to Utah Code Ann. Section 59-10-517.

A. With reference to Section 59-10-517(3)(b), the provisions of that statute that apply to registered mail shall also apply in ordinary circumstances to certified mail.

R865-9I-30. Limitations on Assessment and Collection Pursuant to Utah Code Ann. Section 59-10-536.

A. If a taxpayer elects to defer a determination as to applicability of the presumption that the activity is being engaged in for profit as set forth in I.R.C. Section 183(d), he shall notify the Tax Commission in writing of such election. He must also consent to assessment of tax pertaining to such activity at any time within the five- or seven-year period plus a reasonable additional period.

1. In addition, the taxpayer shall immediately furnish to the Tax Commission a copy of every waiver of the running of the statute of limitations that he may give to the Internal Revenue Service, and he shall at the same time give his consent in writing that the waiver shall also apply to the time allowed for assessment of tax by the Tax Commission.

2. The taxpayer must notify the Tax Commission of any audit actions or determinations made by the Internal Revenue Service with respect to such activity.

R865-9I-32. Confidentiality of Return Information, Penalties, and Exchange of Information With The Internal Revenue Service or Governmental Units Pursuant to Utah Code Ann. Section 59-10-545.

A. The amount of income and other particulars disclosed by a taxpayer on his return or report required under the act is strictly confidential and except in accordance with proper judicial order, or as otherwise provided by law, may not be divulged.

B. A taxpayer, properly identified, may inspect his own return. He may also authorize to the satisfaction of the Tax Commission, an agent to represent him and inspect his returns. Such authorization must be in writing and may be limited or of a continuing nature as specified. A fee may be charged for furnishing copies of returns or reports by the Tax Commission.

C. Officers of the United States Internal Revenue Service, upon being properly identified as such, may be granted permission to inspect the returns or reports on file under this chapter for the purpose of administering the federal tax law. All information, so obtained, must be used in the strictest confidence for tax administration only.

R865-9I-33. Reporting Miscellaneous Income Pursuant to Utah Code Ann. Section 59-10-501.

A. Legible copies of the federal Form 1099 or other special forms for reporting rents, royalties, interest, remuneration, etc., from Utah sources not subject to federal withholding must be open to inspection and gathering of information by authorized representatives of the Tax Commission or submitted to the Tax Commission upon request. These forms must show the name, address, social security number, and other pertinent information pertaining to each taxpayer, resident or nonresident of Utah, the amount and purpose of the distribution clearly shown.

R865-9I-34. Property Tax Relief For Individuals Pursuant to Utah Code Ann. Sections 59-2-1201 through 59-2-1220.

A. "Household" is determined as follows:

1. For purposes of the homeowner's credit under Section 59-2-1208, household shall be determined as of January 1 of the year in which the claim under that section is filed.

2. For purposes of the renter's credit under Section 59-2-1209, household shall be determined as of January 1 of the year for which the claim is filed under that section.

B. "Nontaxable income" includes:

1. the amount of a federal child tax credit received under Section 24 of the Internal Revenue Code that exceeded the taxpayer's federal tax liability; and

2. the amount of a federal earned income credit received under Section 32 of the Internal Revenue Code that exceeded the taxpayer's federal tax liability.

C. "Nontaxable income" does not include:

1. federal tax refunds;

2. the amount of a federal child tax credit received under Internal Revenue Code Section 24 that did not exceed the taxpayer's federal tax liability;

3. the amount of a federal earned income credit received under Internal Revenue Code Section 32 that did not exceed the taxpayer's federal tax liability;

4. payments received under a reverse mortgage;

5. payments or reimbursements to senior program volunteers under United States Code Title 42, Section 5058; and

6. gifts and bequests.

D. "Property taxes accrued" does not mean that taxes can be accumulated for two or more years and then claimed in one year.

E. A claimant who pays property taxes on a mobile home and pays rent on the land on which the mobile home is situated shall be eligible for a homeowner's credit for the property tax paid on the mobile home and a renter's credit for the rent paid on the land.

F. State welfare assistance is not considered as public funds for the payment of rent, and will not preclude a rebate. However, assistance payments must be included in income.

G. Where housing assistance payments are involved under the Housing and Community Development Act, Title II, Section 8:

1. only that portion of the rent paid by the tenant may be claimed under the terms of the Circuit Breaker Act; and

2. that portion of the rent paid by the federal government to the landlord will not be considered as part of the household income since it is not subject to a claim for rebate.

H. Persons claiming a property tax exemption under Title 59, Chapter 2, Part 11 are not precluded from claiming a homeowner's or renter's credit.

R865-9I-37. Enterprise Zone Individual Income Tax Credits Pursuant to Utah Code Ann. Sections 9-2-401 through 9-2-414.

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. "Transfer" pursuant to Section 9-2-411, means the relocation of assets and operations of a business, including personnel, plant, property, and equipment.

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. 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.

H. 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.

R865-9I-39. Subtraction from Federal Taxable Income for a Dependent Child With a Disability or an Adult With a Disability Pursuant to Utah Code Ann. Sections 59-10-114 and 59-10-501.

A. A taxpayer that claims the deduction from income for a dependent child with a disability or an adult with a disability allowed under Section 59-10-114 shall complete form TC-40D, Disabled Exemption Verification, as evidence that the taxpayer qualifies for the deduction.

B. The form described under A. shall be:

1. completed for each year for which the taxpayer claims the deduction; and

2. retained by the taxpayer.

R865-9I-41. Historic Preservation Tax Credits Pursuant to Utah Code Ann. Section 59-10-108.5.

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 59-10-108.5 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 59-10-108.5 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. Upon issuing a certification number under D., the State Historic Preservation Office shall provide the taxpayer an authorization form containing that certification number.

F. Credit amounts shall be applied against Utah individual income tax due in the tax year in which the project receives final certification under D.

G. Credit amounts greater than the amount of Utah individual income tax due in a tax year shall be carried forward to the extent provided by Section 59-10-108.5.

H. Carryforward historic preservation tax credits shall be applied against Utah individual income 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.

R865-9I-42. Order of Credits Applied Against Utah Individual Income Tax Due Pursuant to Utah Code Ann. Sections 9-2-413, 59-6- 102, 59-13-202, and Title 59, Chapter 10.

A. Taxpayers shall deduct credits authorized by Sections 9-2- 413, 59-6-102, 59-13-202, and Title 59, Chapter 10 against Utah individual income tax due in the following order:

1. nonrefundable credits;

2. nonrefundable credits with a carryforward;

3. refundable credits.

R865-9I-44. Compensation Received by Nonresident Professional Athletes Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, and 59-10-118.

A. The Utah source income of a nonresident individual who is a member of a professional athletic team includes that portion of the individual's total compensation for services rendered as a member of a professional athletic team during the taxable year which, the number of duty days spent within the state rendering services for the team in any manner during the taxable year, bears to the total number of duty days spent both within and without the state during the taxable year.

B. Travel days that do not involve either a game, practice, team meeting, promotional caravan or other similar team event are not considered duty days spent in the state, but shall be considered duty days spent within and without the state.

C. Definitions.

1. "Professional athletic team" includes any professional

baseball, basketball, football, soccer, or hockey team.

2. "Member of a professional athletic team" shall include those employees who are active players, players on the disabled list, and any other persons required to travel and who do travel with and perform services on behalf of a professional athletic team on a regular basis. This includes coaches, managers, and trainers.

3. "Duty days" means all days during the taxable year from the beginning of the professional athletic team's official preseason training period through the last game in which the team competes or is scheduled to compete.

a) Duty days shall also include days on which a member of a professional athletic team renders a service for a team on a date that does not fall within the period described in 3., for example, participation in instructional leagues, the Pro Bowl, or other promotional caravans. Rendering a service includes conducting training and rehabilitation activities, but only if conducted at the facilities of the team.

b) Included within duty days shall be game days, practice days, days spent at team meetings, promotional caravans, and preseason training camps, and days served with the team through all postseason games in which the team competes or is scheduled to compete.

c) Duty days for any person who joins a team during the season shall begin on the day that person joins the team, and for a person who leaves a team shall end on the day that person leaves the team. If a person switches teams during a taxable year, a separate duty day calculation shall be made for the period that person was with each team.

d) Days for which a member of a professional athletic team is not compensated and is not rendering services for the team in any manner, including days when the member of a professional athletic team has been suspended without pay and prohibited from performing any services for the team, shall not be treated as duty days.

e) Days for which a member of a professional athletic team is on the disabled list shall be presumed not to be duty days spent in the state. They shall, however, be included in total duty days spent within and without the state.

4. "Total compensation for services rendered as a member of a professional athletic team" means the total compensation received during the taxable year for services rendered:

a) from the beginning of the official preseason training period through the last game in which the team competes or is scheduled to compete during that taxable year; and

b) during the taxable year on a date that does not fall within the period in 4.a), for example, participation in instructional leagues, the Pro Bowl, or promotional caravans.

5. "Total compensation" includes salaries, wages, bonuses, and any other type of compensation paid during the taxable year to a member of a professional athletic team for services performed in that year.

a) Total compensation shall not include strike benefits, severance pay, termination pay, contract or option-year buyout payments, expansion or relocation payments, or any other payments not related to services rendered to the team.

b) For purposes of this rule, "bonuses" subject to the allocation procedures described in A. are:

(1) bonuses earned as a result of play during the season, including performance bonuses, bonuses paid for championship, playoff or bowl games played by a team, or for selection to all-star league or other honorary positions; and

(2) bonuses paid for signing a contract, unless all of the following conditions are met:

(a) the payment of the signing bonus is not conditional upon the signee playing any games for the team, or performing any subsequent services for the team, or even making the team;

(b) the signing bonus is payable separately from the salary and any other compensation; and

c) the signing bonus is nonrefundable.

D. The purpose of this rule is to apportion to the state, in a fair and equitable manner, a nonresident member of a professional athletic team's total compensation for services rendered as a member of a professional athletic team. It is presumed that application of the provisions of this rule will result in a fair and equitable apportionment of that compensation. Where it is demonstrated that the method provided under this rule does not fairly and equitably apportion that compensation, the commission may require the member of a professional athletic team to apportion that compensation under a method the commission prescribes, as long as the prescribed method results in a fair and equitable apportionment.

1. If a nonresident member of a professional athletic team demonstrates that the method provided under this rule does not fairly and equitably apportion compensation, that member may submit a proposal for an alternative method to apportion compensation. If approved, the proposed method must be fully explained in the nonresident member of a professional athletic team's nonresident personal income tax return for the state.

E. Nonresident professional athletes shall keep adequate records to substantiate their determination or to permit a determination by the Tax Commission of the part of their adjusted gross income that was derived from or connected with sources in this state.

F. Professional athletic teams shall file a composite return, on a form prescribed by the commission, on behalf of nonresident professional athletes that meet all of the following conditions.

1. Nonresident professional athletes included on the return may not have other income from Utah sources. Resident professional athletes may not be included on a composite return.

2. A schedule shall be included with the return, listing all nonresident professional athletes included in the composite filing. The schedule shall list all of the following information for each nonresident professional athlete:

a) name;

b) address;

c) social security number;

d) Utah income attributable to that nonresident professional athlete.

3. Nonresident professional athletes that are entitled to mineral production tax withholding credits, agricultural off-highway gas tax credits, or other Utah credits, may not be included in a composite filing, but must file form TC-40NR, Non or Part-year Resident Individual Income Tax Return.

4. Participating team members must acknowledge through their election that the composite return constitutes an irrevocable filing and that they may not file an individual income tax return in the taxing state for that year.

G. The tax due on the composite return shall be computed as follows.

1. A deduction equal to 15 percent of the Utah taxable income attributable to nonresident professional athletes included in the composite filing shall be allowed in place of a standard deduction, itemized deductions, personal exemptions, federal tax determined for the same period, or any other deductions.

2. The tax shall be computed using the maximum tax rate applied to Utah taxable income attributable to Utah sources.

H. The professional athletic team's federal identification number shall be used on the composite form in place of a social security number.

I. This rule has retrospective application to January 1, 1995.

R865-9I-46. Medical Savings Account Tax Deduction Pursuant to Utah Code Ann. Sections 31A-32a-106 and 59-10-114.

A. Account administrators required to withhold penalties

from withdrawals pursuant to Section 31A-32a-105 shall hold those penalties in trust for the state and shall submit those withheld penalties to the commission along with form TC-97M, Utah Medical Savings Account Reconciliation.

B. In addition to the requirements of A., account administrators shall file a form TC- 675M, Statement of Withholding for Medical Savings Account, with the commission, for each account holder. The TC-675M shall contain the following information for the calendar year:

1. the beginning balance in the account;
2. the amount contributed to the account;
3. the account's earnings;
4. distributions for qualified medical expenses;
5. distributions for non-medical expenses not subject to penalty;
6. distributions for non-medical expenses subject to penalty;
7. the amount of penalty required to be withheld and remitted to the state;
8. the account administrator's administrative fee charged to the account; and
9. the ending balance in the account.

C. The account administrator shall file forms TC-97M and TC-675M with the commission on or before January 31 of the year following the calendar year on which the forms are based.

D. The account administrator shall provide each account holder with a copy of the form TC-675M on or before January 31 of the year following the calendar year on which the TC-675M is based.

E. The account administrator shall maintain original records supporting the amounts listed on the TC-675M for the current year filing and the three previous year filings.

R865-9I-47. Withholding and Payment of Income Tax for Members of the Armed Services Receiving Combat Pay Pursuant to Utah Code Ann. Sections 59-10-408 and 59-10-522.

A. Income excluded from federal adjusted gross income as combat pay shall be exempt from the withholding requirements of Sections 59-10-401 through 59-10-407.

B. Utah residents receiving combat pay qualify for an extension of time to pay income taxes for a period not to exceed the extension for filing returns provided in Tax Commission rule R865-9I-23(C).

R865-9I-48. Adoption Expenses Deduction Pursuant to Utah Code Ann. Section 59-10-114.

A. For purposes of the deduction for adoption expenses under Section 59-10-114, adoption expenses include:

1. medical expenses associated with prenatal care, childbirth, and neonatal care;
2. fees paid to reimburse the state under Section 35A-3-308;
3. fees paid to an attorney or placement service for arranging the adoption;
4. all actual travel costs incurred exclusively for the purpose of completing adoption arrangements; and
5. living expenses of the birth mother if paid by the adoptive parents as part of their adoption expenses and if in conformance with Section 76-7-203.

B. Adoption expenses do not include:

1. food, clothing, or other routine expenses associated with the child's care, other than necessary medical expenses, that arise before the adoption is final;
2. foster care expenses incurred prior to the application for adoption; or
3. legal expenses arising from custody actions subsequent to the finalization of the adoption.

C. Qualified adoption expenses may be deducted regardless of whether the adoption process is terminated.

D. The income tax deduction under Section 59-10-114 applies to the actual qualified adoption expenses of the birth mother, the legal guardian of the birth mother or another individual acting on behalf of the birth mother, or the adoptive parents.

E. Reimbursed adoption expenses for which a taxpayer has taken the state income tax deduction, must be added to the taxpayer's gross income in the tax year in which the expenses are reimbursed.

R865-9I-49. Higher Education Savings Incentive Program Tax Deduction Pursuant to Utah Code Ann. Sections 53B-8a-112 and 59-10-114.

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.

R865-9I-50. Addition to Federal Taxable Income for Interest Earned on Bonds, Notes, and Other Evidences of Indebtedness Pursuant to Utah Code Ann. Section 59-10-114.

The addition to federal taxable income required under Section 59-10-114 for interest earned on bonds, notes, and other evidences of indebtedness acquired on or after January 1, 2003 applies to:

A. interest on individual bonds, notes, or other evidences of indebtedness purchased by a resident or nonresident individual on or after January 1, 2003; and

B. for bonds, notes, and other evidences of indebtedness held in a bond fund owned by a resident or nonresident individual, the portion of interest attributable to individual bonds, notes, and other evidences of indebtedness purchased by the bond fund on or after January 1, 2003.

KEY: historic preservation, income tax, tax returns, enterprise zones
June 8, 2005
Notice of Continuation April 22, 2002

9-2-401 through 9-2-414
31A-32A-106
53B-8a-112
59-2-1201 through 59-2-1220
59-6-102
59-7-3
59-10
59-10-103
59-10-106

59-10-108
through
59-10-122
59-10-108.5
59-10-114
59-10-124
59-10-127
59-10-128
59-10-129
59-10-130
59-10-207
59-10-210
59-10-303
59-10-401
through
59-10-403
59-10-406
through
59-10-408
59-10-501
59-10-503
59-10-504
59-10-507
59-10-512
58-10-514
59-10-516
59-10-517
59-10-522
59-10-533
59-10-536
59-10-545
59-10-602
59-10-603
59-13-202
59-13-302

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. Adjustments may be made and credit allowed for cash discounts, returned goods, and bad debts that result from sales upon which the tax has been reported and paid in full by a seller to the Tax Commission.

1. Adjustments and credits will be allowed only if the seller has not been reimbursed 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.

3. Any refund or credit given to the purchaser must include the related sales tax.

D. Tax is 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 seller claims the credit, the seller must adjust the taxable amount so that the amount of tax credited corresponds proportionally to the amount of tax originally collected.

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.

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.

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 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 that 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. Sale of tangible personal property that is attached to real property, but remains personal property, is subject to sales tax on the retail selling price of the personal property, unless the tangible personal property attached to the real property is exempt from sales and use tax under Section 59-12-104.

D. 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-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 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 that give away items of tangible personal property as premiums or otherwise are regarded as the users or consumers of those items and the sale to the donor is a taxable sale. Exceptions to this treatment are items of tangible personal property donated to or provided for use by exempt organizations that 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 that 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 the premium is certain and does not depend upon chance.

C. Where a retailer is engaged in selling tangible personal property that 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. 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.

G. 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-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. 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.

F. 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.

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;

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.

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.

R865-19S-116. Items that Constitute Sports or Recreational Equipment Pursuant to Utah Code Ann. Section 59-12-102.

"Sports or recreational equipment" includes:

A. ballet and tap shoes;
B. cleated or spiked athletic shoes;
C. gloves, including:
(i) baseball gloves;
(ii) bowling gloves;
(iii) boxing gloves;
(iv) hockey gloves; and
(v) golf gloves;
D. goggles;
E. hand and elbow guards;
F. life preservers and vests;
G. mouth guards;
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).

R865-19S-119. Certain Transactions Involving Food and Lodging Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

A. The provisions of this rule apply to a seller that:

1. is not a restaurant; and

2. provides a purchaser both food and lodging.

B. If a seller does not separately state an amount for tax applicable to food on the invoice, the seller must:

1. pay sales and use tax on the food at the time the seller purchases the food; and

2. include the food in the base that is subject to transient room tax.

C. Subject to D., if a seller separately states an amount for tax applicable to food on the invoice, the seller:

1. may purchase the food tax exempt from sales and use tax as a sale for resale; and

2. may not include the food in the base that is subject to transient room tax.

D. A seller that separately states an amount for tax applicable to food on the invoice must ensure that those amounts are accurately reflected in the seller's records.

KEY: charities, tax exemptions, religious activities, sales tax
July 1, 2005
Notice of Continuation April 5, 2002

59-1-210
59-12
59-12-102
59-12-103
59-12-104
59-12-105
59-12-106
59-12-107
59-12-108
59-12-118
59-12-301
59-12-352
59-12-353
9-2-1702
9-2-1703
10-1-303
10-1-306
10-1-307
10-1-405
19-6-808
26-32a-101 through 26-32a-113

R873. Tax Commission, Motor Vehicle.
R873-22M. Motor Vehicle.
R873-22M-2. Documentation Required and Procedures to Follow to Register or Title Certain Vehicles Pursuant to Utah Code Ann. Sections 41-1a-104 and 41-1a-108.

A. To title or register a vehicle previously registered in a nontitle state, an applicant must submit both of the following:

1. the last certificate of registration;

2. a lien search from the recording jurisdiction or an "Affidavit of Ownership" in lieu of the lien search.

B. To title or register a repossessed vehicle, an applicant must submit both of the following:

1. the outstanding certificate of title, with the lien recorded in favor of the repossessor;

2. an approved affidavit of repossession, signed by the lien holder recorded on the certificate of title.

C. To title or register a vehicle previously owned by the U.S. Government, an applicant must submit a Certificate of Release of a Motor Vehicle, Standard Form No. 97.

D. To title or register a vehicle foreclosed by advertisement, an applicant must submit each of the following:

1. a certificate of sale bearing the notarized signature of the person who conducted the sale. The certificate must contain the following information:

a. date of sale;

b. name of person to whom the vehicle was sold;

c. complete description of the vehicle;

d. amount due on the contract;

e. date that the amount due became delinquent; and

f. amount received from the sale of the vehicle.

2. a copy of the notice sent to the owner and lien holder of record;

3. proof that notice was published two consecutive weeks prior to sale. If the notice was not published in a newspaper, an affidavit of posting of notices must be furnished. Posting must be at least ten days prior to sale.

E. To title or register a vehicle transferred by divorce decree an applicant must submit each of the following:

1. a certified copy of the divorce decree;

2. the outstanding certificate of title;

3. the last registration certificate.

F. To title or register a vehicle when the current owner is declared incompetent, an applicant must submit each of the following:

1. the outstanding certificate of title, endorsed for transfer by the guardian;

2. the last registration certificate;

3. a certified copy of the court order appointing the guardian.

G. To title or register a vehicle purchased at impound auction, an applicant must submit a certificate of sale that contains the following information:

1. legal basis under which the vehicle was impounded and sold:

2. a complete description of the vehicle;

3. name of the purchaser;

4. the notarized signature of the state, city, or county official who conducted the sale.

H. To title or register a vehicle transferred pursuant to a power of attorney, an applicant must submit the properly notarized power of attorney to the Tax Commission.

I. To title or register a vehicle transferred from a deceased owner when a survivorship affidavit is not applicable, the applicant must submit the outstanding certificate of title and the last registration card. In addition, the applicant must submit one of the following:

1. a certified copy of the final decree of distribution;

2. an order from the court confirming sale;

3. an endorsement on the title by the administrator, executor, or personal representative with a certified copy of letters of administration, letters testamentary, or letters appointing a personal representative attached.

a. When the title is issued in joint ownership where the owners names are connected with "and" or a "/" the survivor may transfer ownership by endorsement only and by furnishing proof of death of the other joint owner.

J. The Tax Commission may issue a title or a dismantle permit upon receipt of a court order or upon receipt of an affidavit and surety bond when satisfactory documentary evidence of ownership is lacking and the applicant has exhausted all normal means of obtaining evidence of ownership.

1. The affidavit must contain each of the following:

a) a complete recital of facts explaining the absence of a negotiable title or current registration for nontitle states;

b) an explanation of how the vehicle was obtained and from whom;

c) a statement indicating any outstanding liens or encumbrances on the vehicle;

d) a statement indicating where the vehicle was last titled or registered;

e) a description of the vehicle;

f) any other items pertinent to the acquisition or possession of the vehicle.

2. The Tax Commission may issue a title or a dismantle permit upon receipt of an affidavit and an indemnification agreement holding the Tax Commission and its employees harmless from any and all liability resulting from the issuance of the title or dismantle permit if the vehicle satisfies each of the following conditions:

a) the vehicle is not a motorcycle;

b) the vehicle has a value of $1,000 or less at the time of application;

c) the vehicle is six model years old or older.

3. If the vehicle has a value of $1,000 or less at the time of application, and the vehicle is not more than six model years old, or the vehicle is a motorcycle, a title or dismantle permit may not be issued until the vehicle is physically examined by a qualified investigator appointed by the Tax Commission.

4. If the vehicle has a value in excess of $1,000, the Tax Commission may require a surety bond in addition to the affidavit. The amount of the surety bond may not exceed twice the fair market value of the vehicle as determined by the Tax Commission.

K. To title or register a specially constructed or rebuilt vehicle, an applicant shall furnish an affidavit of construction, explaining the acquisition of essential parts and the date construction was completed. The affidavit must be supported by bills of sale or invoices for the parts.

1. An application for an identification number must be completed. The assigned number shall be affixed to the vehicle and inspected by a peace officer or an authorized agent of the Tax Commission.

2. The vehicle make shall be designated as "SPCN" (specially constructed), and the year model shall be determined according to the date the construction was completed.

3. If satisfactory evidence of ownership is lacking, the procedure outlined in J. shall be followed.

4. In the case of a dune buggy or similar type vehicle where the complete running gear and chassis of another vehicle is used, the identification number of the vehicle used as the primary base of the rebuilt vehicle shall be used for identification and must correspond to the identification number on the surrendered certificate of title.

5. The rebuilt vehicle shall retain the manufacturer's name as it appeared on the surrendered title. However, the word "rebuilt" shall be placed on the application and on the face of the title issued by the Tax Commission. The type of body and vehicle model may be changed to more accurately describe the

vehicle. If a new body is used, the year model shall be determined by the date the rebuilding is complete. If only the body style has been altered or changed, the vehicle shall retain the year model stated on the surrendered title.

R873-22M-7. Transfer of License Plates and Registration for an Increase of Gross Laden Weight Pursuant to Utah Code Ann. Section 41-1a-701.

A. License plates and registration may not be transferred under any of the following conditions:

1. The license plates are lifetime trailer plates issued pursuant to Section 41-1a-228.

2. The newly acquired vehicle requires a different registration period from that of the vehicle previously owned.

B. License plates may be transferred only if the application for transfer is made in the name of the original registered owner, unless the owner's name has been changed by marriage, divorce, or court order.

C. Transferred license plates may not be displayed upon the newly acquired vehicle until the registration has been completed and a new registration card has been issued.

D. The expiration date on the new registration card shall be the same as that appearing on the original registration.

E. If registration is based on gross laden weight and the gross laden weight of a vehicle is increased during the registration year, additional registration fees shall be collected based on the following computations:

1. Subtract the registration fee for the current year from the registration fee for the increased weight.

2. Multiply that difference by the percentage of the year for which the vehicle will be registered at the increased weight.

F. The holder of a three-month registration who seeks to increase the gross laden weight of a vehicle shall pay the full three-month registration fee for the increased weight.

R873-22M-8. Expiration of Registration Pursuant to Utah Code Ann. Sections 41-1a-211 and 41-1a-215.

A. Registration issued for a period of three calendar months, six calendar months, or nine calendar months, shall expire at midnight on the last day of the third, sixth, or ninth calendar month from the date issued.

B. If an unexpired registration issued for three calendar months, six calendar months, or nine calendar months is being renewed, the expiration date shall be three calendar months, six calendar months or nine calendar months from the month the previous registration would have expired.

C. When a temporary permit is issued as authorized under Section 41-1a-211, the registration period shall begin on the first day of the calendar month in which the first temporary permit was issued.

R873-22M-11. Copies of Registration Cards Pursuant to Utah Code Ann. Section 41-1a- 214.

A. In lieu of an original registration card, a copy of a registration card may be carried in an intrastate commercial vehicle or a vehicle owned or leased by this state or any of its political subdivisions. Both the front and back of the registration card must be copied.

R873-22M-14. License Plates and Decals Pursuant to Utah Code Ann. Sections 41-1a-215, 41-1a-401, and 41-1a-402.

A. Except as provided under Section 41-1a-215(1), license plates shall be renewed on a yearly basis until new license plates are issued.

B. For all license plates, except vintage vehicle license plates, a month decal and year decal shall be issued upon the first registration of the vehicle. Upon each subsequent registration, the vehicle owner shall receive only a year decal to validate renewal. The registration decals shall be applied as follows:

1. Decals displayed on license plates with black lettering on a white background shall be applied to the lower left hand corner of the rear license plate.

2. Decals displayed on centennial license plates and regular issue license plates with blue lettering on a white background shall be applied to the upper left hand corner of the rear license plate.

3. Decals displayed on special group license plates shall be applied to the upper right hand corner of the rear license plate unless there is a plate indentation on the upper left hand corner of the license plate.

4. All registration decals issued for truck tractors shall be applied to the front license plate in the position described in either Subsection B.1. or B.2.

5. All registration decals issued for motorcycles shall be applied to the upper corner of the license plate opposite the word "Utah".

C. The month decal shall be displayed on the license plate in the left position, and the year decal in the right position.

D. The current year decal shall be placed over the previous year decal.

E. Whenever any license plate, month decal, or year decal is lost or destroyed, a replacement shall be issued upon application and payment of the established fees.

R873-22M-15. Assigned and Replacement Vehicle Identification Number System Pursuant to Utah Code Ann. Section 41-1a-801.

A. The Tax Commission provides a standard Vehicle Identification Number (VIN) plate for vehicles, snowmobiles, trailers, and outboard boat motors that have never had a distinguishing number or if the original VIN has been altered, removed, or defaced.

B. The owner of the unit will make application to the Tax Commission on form TC-162 for an assigned or replacement VIN. In the event the applicant has no title to the unit, the Motor Vehicle Division follows the procedure in Rule R873-22M-2, to determine ownership.

C. The vehicle may be subject to inspection and investigation. Upon determination of the validity of the application, a vehicle identification plate is issued.

1. In cases involving vehicles where the original plate has been removed or obliterated but the original factory number can be verified, a VIN plate is issued with the original VIN entered by means of an approved procedure.

2. In all other instances a prestamped VIN plate is issued bearing an official Utah assigned VIN.

3. The VIN plate must, under the supervision of the Tax Commission, be attached to the unit as follows:

a) passenger and commercial vehicles:

(1) primary location is on a portion of the left front door lock post;

(2) secondary location is on a portion of the firewall, either left or right side, whichever is most advantageous; (This location is to be selected only when the VIN plate cannot be attached to the lock posts.)

b) motorcycles, snowmobiles, and outboard motors:

(1) as near as possible to the original number location; (If an original number, the VIN plate shall be affixed to the headstock.)

c) trailers:

(1) primary location is on a portion of the right side of the tongue or drawbar near the body;

(2) secondary location is on a portion of the metal frame near the front right corner;

d) on units where it is not practical to install rivets, the VIN plate may be attached by adhesive only.

D. The Motor Vehicle Division is responsible for the

control, security, and distribution of the VIN plates and will keep the necessary records and require regular reports from designated branch offices.

E. Following are the specifications of the official Utah assigned identification plate and attachment accessories.

1. Size will be 1 inch x 3 inches x .003 inch deep etched to .002 inch with 1/8 inch radius corners.

2. Material will be color anodized aluminum foil.

3. Color will be blue background with silver lettering.

4. Backing will be laminated with permanent pressure sensitive adhesive.

5. Control numbers will be serialized with 1/8 inch permanent embossed or anodized numbers.

6. The state seal will be in the left center, with appropriate rivet areas designated.

7. The assigned number will be prestamped using the prefix of "UT." The number series to include one letter and five digits with the letter to identify the unit type as follows:

TABLE

a)	Passenger and Commercial	P00001
b)	Motorcycles	M00001
c)	Trailers	T00001
d)	Reconstructed vehicle	R00001
e)	Outboard Motors	E00001
f)	Snowmobiles	S00001

R873-22M-16. Authorization to Issue a Certificate of Title Pursuant to Utah Code Ann. Section 41-1a-104.

A. A lienholder who lawfully repossesses a vehicle may apply for a certificate of title by paying the title fee and filing all of the following documents:

1. the outstanding Utah certificate of title showing the lien recorded;

2. a notarized affidavit of repossession, signed by the lienholder of record;

3. an application for title, properly signed and notarized.

B. If the purpose of the certificate of title is to record a new lien, or to rerecord a lien, and there is no change in the registered owner, all of the following are required:

1. the outstanding Utah certificate of title showing a release of all prior liens;

2. an application for title, properly signed and notarized;

3. the title fee.

C. In order to issue a new certificate of title showing the assignee as the lienholder, an applicant shall submit all of the following:

1. the outstanding Utah certificate of title with the lien recorded;

2. an application for title showing the registered owner and the new lienholder;

3. the title fee.

D. In lieu of the required owner's signature under Subsection C.2., the application may be stamped "Assignment of Lien Pursuant to Section 41-1a-607."

R873-22M-17. Standards for State Impound Lots Pursuant to Utah Code Ann. Section 41-1a-1101.

A. An impound yard may be used by the Motor Vehicle Division and peace officers only if all of the following requirements are satisfied:

1. The yard must be identified by a conspicuously placed, well-maintained sign that:

a) is at least 24 square feet in size;

b) includes the business name, address, phone number, and hours of business; and

c) displays the impound yard identification number issued by the Motor Vehicle Division in characters at least four inches high.

2. The yard shall maintain a hard-surfaced storage area of concrete, black top, gravel, road base, or other similar material.

3. The yard must have adequate lighting.

4. A six-foot chain link or other similar fence that is topped with three strands of barbed wire or razor security wire must surround the yard.

5. Spacing between vehicles must be adequate to allow opening of vehicle doors without interfering with other vehicles or objects.

6. An office shall be located on the premises of the yard.

a) The yard office shall be staffed and open for public business during normal business hours, Monday through Friday, except for designated state and federal holidays.

b) If the yard maintains multiple storage areas, authorization may be requested from the Motor Vehicle Division to maintain a central office facility in a location not to exceed a 10 mile radius from any of its storage areas.

c) If a central office is approved under Subsection 6.b) above, the signs of all storage areas must provide the location of the office.

7. The yard shall provide compressed air and battery boosting capabilities at no additional cost.

B. Persons who can demonstrate an ownership interest in a car held at a state impound yard are allowed to enter the vehicle during normal business hours and remove personal property not attached to the vehicle upon signing a receipt for the property with the yard.

1. An individual has ownership interest in the vehicle if he:

a) is listed as a registered owner or lessee of the vehicle; or

b) has possession of the vehicle title.

2. An individual must show picture identification as evidence of his ownership interest.

3. The storage yard shall maintain a log of individuals who have been given access to vehicles for the purpose of removing personal property.

C. Impound yards holding five or less vehicles in a month may be required to tow those vehicles to another yard for the purpose of centralizing sales of vehicles or, at the discretion of the Motor Vehicle Division, be required to hold the vehicles until additional impounded vehicles may be included.

D. Operators of impound yards shall remove license plates from impounded vehicles prior to the time of sale and turn them over to the Tax Commission at the time the vehicles are sold.

E. The Motor Vehicle Division has the authority to review the qualifications of state impound yards to assure compliance with the requirements set forth in this rule. Any yard not in compliance shall be notified in writing and given 30 days from that notice to rectify any noncompliance. If no action or insufficient action is taken by the impound yard, the Motor Vehicle Division may order it to be suspended as a state impound yard. Any yard contesting suspension, or any yard directly and adversely affected by the Motor Vehicle Division's refusal to designate it a state impound yard, has the right to appeal that suspension to the Tax Commission.

R873-22M-20. Aircraft Registration Pursuant to Utah Code Ann. Sections 72-10-102, 72-10-109 through 72-10-112.

A. "Aircraft" is as defined in Section 72-10-102.

1. Aircraft includes fixed wing airplanes, balloons, airships, and any other contrivance subject to the registration requirements of the Federal Aviation Administration (FAA).

2. Aircraft does not include ultralight vehicles or hang gliders.

B. For purposes of this rule, all aircraft that meet requirements for registration by the FAA are subject to annual registration in this state. FAA registration documents must be made available for review at the time application for state

registration is made.

C. The registration period is from January 1 through December 31. Newly purchased aircraft and aircraft moved to Utah from another state shall be registered immediately. A grace period to January 31 is allowed for renewal registrations.

D. A registration fee shall be collected at the time of registration. This fee shall be paid every time the registration changes and every time the registration is renewed.

E. If an aircraft is purchased or moved to Utah during the year and newly registered in Utah, the registration fee shall be prorated based on the number of months remaining in the registration period.

1. For Purposes of determining the number of months remaining in the registration period, the month during which the aircraft is originally registered shall be considered a full month.

2. For example, if an aircraft is newly registered in Utah on July 31, 50 percent of the registration fee shall be paid at the time of original registration.

F. Aircraft assessed as part of an airline by the Tax Commission are exempt from the registration requirements of Section 72-10-109. Aircraft centrally assessed by the Tax Commission and not part of an airline remain subject to taxation as property and are subject to the registration requirements of Section 72-10-109.

G. Aircraft not legally registered are subject to seizure and impound under the provisions of Section 72-10-112.

H. The registration certificate shall be surrendered upon the sale of an aircraft or at the time of registration renewal. A duplicate certificate may be obtained for a fee.

I. The Utah decal shall be displayed on the registered aircraft in accordance with instructions given with the decal. Decals must be applied and maintained in a manner that permits identification of the calendar-year expiration date and the registration number. In the event of loss or damage, a decal replacement shall be obtained for a fee.

R873-22M-22. Salvage Certificate and Branded Title Pursuant to Utah Code Ann. Sections 41-1a-522, 41-1a-1001, 41-1a-1004, and 41-1a-1009 through 41-1a-1011.

A. If a vehicle with an out-of-state branded title is roadworthy, a comparably branded Utah certificate of title may be issued upon proper application and payment of applicable fees.

B. The Utah registration of a vehicle qualifying for any of the following designations expires effective with that qualification or declaration and the title to that vehicle is restricted from that time:

1. salvage vehicle,

2. dismantled vehicle,

3. any vehicle for which a dismantling permit has been issued in accordance with Section 41-1a-1010;

4. any vehicle for which a certificate of abandoned and inoperable vehicle has been issued in accordance with Section 41-1a-1009; and

5. manufacturer buyback nonconforming vehicle.

C. For purposes of Section 41-1a-1001, the cost to repair or restore a vehicle for safe operation is the total cost shown on a certified and notarized repair order or estimate from an authorized representative of an insurance adjusting firm, or a bonded Utah automobile dealer or body shop. The repair order or estimate must be current at the time of application and must show all costs, including a detailed list of all parts, materials, and labor, required to repair the vehicle.

R873-22M-23. Registration Information Update for Vintage Vehicle Special Group License Plates Pursuant to Utah Code Ann. Section 41-1a-1209.

A. The registration information update for vintage vehicle plates required by Section 41-1a-1209 shall be due on July 1, 1995, and every five years thereafter.

R873-22M-24. Salvage Vehicle Definitions Pursuant to Utah Code Ann. Sections 41-1a-1001 and 41-1a-1002.

A. "Cosmetic repairs" means repairs that are not necessary to promote the structural soundness or safety of the vehicle or to prevent accelerated wear or deterioration.

1. Cosmetic repairs include:

a) cracks or chips in windows if the vehicle will pass a safety inspection;

b) paint chips or scratches that do not extend below the rust preventive primer coating;

c) decals or decorative paint;

d) decorative molding and trim made from plastic, light metal, or other similar material;

e) hood ornaments;

f) wheel covers;

g) final coats of paint applied over any rust preventive primer, primer surfacer, or primer sealer;

h) vinyl roof covers or imitation convertible tops;

i) rubber inserts in bumpers or bumper guards; and

j) minor damage to seats, dashboard, door panels, carpet, headliner, or other interior components if the damage does not affect the comfort of the driver or passengers, or the safe operation of the vehicle.

2. Cosmetic repairs do not include:

a) primer coats or sealer necessary to prevent deterioration of any structural body component, such as fenders, doors, hood, or roof;

b) repair or replacement of any sheet metal;

c) repair or replacement of exterior or interior body panels;

d) repair or replacement of mounting or attachment brackets and all other components and attaching hardware associated with the body of the vehicle; and

e) cracks or chips in windows if the vehicle will not pass a safety inspection.

3. The determination of whether a specific repair is cosmetic shall be made by the Administrator of the Motor Vehicle Enforcement Division.

B. "Collision estimating guide recognized by the Motor Vehicle Enforcement Division" means the current edition of the:

1. Mitchell Collision Estimating Guide;

2. Motor Estimating Guide;

3. Delmar Auto Series Complete Automotive Estimating;

4. CCC Autobody Systems EZEst Software;

5. ADP Collision Estimating Services; or

6. an equivalent estimating guide recognized by the industry.

C. For purposes of Section 41-1a-1002, the determination of whether a vehicle is seven years old or older is made by subtracting the model year of the vehicle from the current calendar year.

R873-22M-25. Written Notification of a Salvage Certificate or Branded Title Pursuant to Utah Code Ann. Section 41-1a-1004.

A. The Motor Vehicle Division shall brand a vehicle's title if, at the time of initial registration or transfer of ownership, evidence exists that the vehicle is a salvage vehicle.

B. Written notification that a vehicle has been issued a salvage certificate or branded title shall be made to a prospective purchaser on a form approved by the Administrator of the Motor Vehicle Enforcement Division.

C. The form must clearly and conspicuously disclose that the vehicle has been issued a salvage certificate or branded title.

D. The form must be presented to and signed by the prospective purchaser and the prospective lienholder, if any, prior to the sale of the vehicle.

E. If the seller of the vehicle is a dealer, the form must be

prominently displayed in the lower passenger-side corner of the windshield for the period of time the vehicle is on display for sale.

F. The original disclosure form shall be given to the purchaser and a copy shall be given to the new lienholder, if any. A copy shall be kept on file by the seller for a period of three years from the date of sale if the seller is a dealer.

R873-22M-26. Interim Inspections and Repair Standards Pursuant to Utah Code Ann. Section 41-1a-1002.

A. Each certified vehicle inspector shall independently determine:

1. if one or more interim inspections are required; and

2. when any required interim inspection shall be made.

B. A vehicle that is repaired beyond the point of a required interim inspection prior to that interim inspection may not receive an unbranded title.

C. A vehicle is repaired in accordance with Motor Vehicle Enforcement Division standards if it meets or exceeds the standards established by the Inter-Industry Conference on Auto Collision Repair ("I-CAR").

1. Repairs must be performed in licensed body shops.

2. All repairs must be certified by an individual who:

a) owns or is employed by that body shop;

b) has repaired the vehicle or supervised any repairs he did not make;

c) is certified with I-CAR for structural repair and has either five years experience in repairing structural collision damage in a licensed body shop, or three years experience in repairing structural collision damage in a licensed body shop and an associate degree in the structural repair of an automobile from an accredited institution; and

d) completes ten hours of division approved continuing training in repair of structural collision damage every three years.

D. Individuals certifying repairs under Subsection (C) must be certified with I-CAR by January 1, 1994.

E. A person who repairs or replaces major damage identified by a certified vehicle inspector shall keep records of the repairs made, and the time required to make those repairs, for a period of three years from the date of repair.

R873-22M-27. Issuance of Special Group License Plates Pursuant to Utah Code Ann. Sections 41-1a-418, 41-1a-419, 41-1a-420, and 41-1a-421.

(1) Except as otherwise provided, a special group license plate shall consist of a symbol affixed to the left-hand side of the plate, followed by five characters. The first four characters shall be numbers and the fifth shall be a letter.

(2)(a) Legislature special group license plates shall carry the letter combination SEN or REP with the number of the district from which the legislator was elected or appointed.

(b) A state legislator may register a maximum of two vehicles with Legislature special group license plates.

(c) Upon leaving office, a legislator may not display the Legislature special group license plates on any motor vehicle. Legislators not reelected to office may not display the Legislature special group license plates after December 31 of the election year.

(3)(a) United States Congress special group license plates shall carry, in the case of representatives, the letter combination HR, followed by the number of the district from which the representative was elected or appointed, or, in the case of senators, USS 1 or USS 2, signifying the senior and junior senators.

(b) Upon leaving office, a member of Congress may not display United States Congress special group license plates on any motor vehicle. A member of Congress not reelected to office may not display United States Congress special group license plates after December 31 of the election year.

(4) Survivor of the Japanese attack on Pearl Harbor special group license plates may be issued to qualified U.S. military veterans who:

(a) provide a copy of their discharge papers, notice of separation, or other government issued document acceptable to the division verifying dates and locations of active service; or

(b) present evidence of membership in the Pearl Harbor Survivors Association.

(5) Former prisoner of war special group license plates shall be issued to qualified U.S. military veterans.

(6) Recipient of a purple heart special group license plates shall be issued to qualified U.S. military veterans who:

(a) provide a copy of their discharge papers, notice of separation, or other government issued document acceptable to the division indicating the veteran was awarded the purple heart; or

(b) present evidence of current membership in the Military Order of the Purple Heart.

(7) An applicant for a National Guard special group license plate must present a current military identification card that shows active membership in the Utah National Guard.

(8) The issuance, renewal, surrender, and design of disability special group license plates and windshield placards shall be subject to the provisions of the federal Uniform System for Parking for Persons with Disabilities, 23 C.F.R. Ch. 11, Subch. B, Pt. 1235.2 (1991), which is adopted and incorporated by reference.

(9)(a) An applicant for a licensed amateur radio operator special group license plate shall present a current Federal Communication Commission (FCC) license.

(b) The license plate number for a licensed amateur radio operator special group license plate shall be the same combination of alpha and numeric characters that comprise the FCC assigned radio call letters of the licensed operator.

(c) Only one set of licensed amateur radio operator special group license plates may be issued per FCC license.

(10) A farm truck special group license plate may be issued for a vehicle that is qualified to register as a farm truck under Section 41-1a-1206.

(11)(a) To qualify for a firefighter special group license plate, an applicant must present one of the following:

(i) evidence indicating the applicant has a current membership in the Utah Firefighters' Association;

(ii) an official identification card issued by the firefighting entity identifying the applicant as an employee or volunteer of that firefighting entity;

(iii) a letter on letterhead of the firefighting entity, or the municipality or county in which the firefighting entity is located, identifying the applicant as an employee or volunteer of that firefighting entity; or

(iv) a letter on letterhead from a firefighting entity, or the municipality or county in which the firefighting entity is located, identifying the applicant as a retired firefighter, whether employed or volunteer, of that firefighting entity.

(b) The division shall revoke a firefighter special group license plate issued under Section 41-1a-418 upon receipt of written notification from the head of a firefighting entity indicating:

(i) the name of the individual whose license plate is revoked;

(ii) the license plate number that is revoked;

(iii) the reason the license plate is revoked; and

(iv) that the firefighting entity has notified the individual described in Subsection (11)(b)(i) that the license plate will be revoked.

(12) An individual who no longer qualifies for the particular special group license plate may not display that special group license plate on any motor vehicle and must

reregister the vehicle and obtain new license plates.

R873-22M-28. Option to Exchange Horseless Carriage License Plates Issued Prior to July 1, 1992, Pursuant to Utah Code Ann. Section 41-1a-409.

A. The registered owner of a vehicle that is forty years old or older and for which a horseless carriage license plate was issued prior to July 1, 1992, may exchange that plate at no charge for a vintage vehicle special group license plate issued after July 1, 1992.

R873-22M-29. Removable Windshield Placards Pursuant to Utah Code Ann. Section 41-1a-408.

A. A removable windshield placard is a two-sided placard, renewable on an annual basis, which includes on each side:

1. the International Symbol of Access, the wheelchair symbol adopted by Rehabilitation International in 1969, which is at least three inches in height, is centered on the placard, and is white on a blue background;

2. an identification number;

3. a date of expiration which is one year from the later of the initial issuance of the placard or the most recent renewal of the placard; and

4. a facsimile of the Great Seal of the State of Utah.

B. Upon application, a removable windshield placard shall be issued to a person with a disability which limits or impairs ability to walk or for a vehicle that is used by an organization primarily to transport persons with disabilities that limit or impair their ability to walk.

1. The definition of the phrase "persons with disabilities which limit or impair the ability to walk" shall be identical to the definition of that phrase in Uniform System for Handicapped Parking, 58 Fed. Reg. 10328, 10329 (1991).

2. An applicant for a removable windshield placard shall present a licensed physician's certification upon initial application, stating that the applicant has a permanent disability which limits or impairs ability to walk, or sign an affidavit attesting that the vehicle is used by an organization primarily for the transportation of persons with disabilities that limit or impair their ability to walk.

3. A physician's certification is not required for renewal of a removable windshield placard.

4. The Tax Commission may, on a case by case basis, issue a removable windshield placard to persons with disabilities other than disabilities which limit or impair the ability to walk.

5. The original and one additional removable windshield placard shall be issued free of charge. Replacement placards, for placards that are lost or destroyed, shall be issued for a fee.

C. A temporary removable windshield placard is a two-sided placard, issued on a temporary basis, which includes on each side:

1. the International Symbol of Access, the wheelchair symbol adopted by Rehabilitation International in 1969, which is at least three inches in height, is centered on the placard, and is white on a red background;

2. an identification number;

3. a date of expiration not to exceed six months from the date of issuance; and

4. a facsimile of the Great Seal of the State of Utah.

D. Upon application, a temporary removable windshield placard shall be issued.

1. The application must be accompanied by the certification of a licensed physician that the applicant meets the definition of a person with a disability which limits or impairs ability to walk. The certification shall include the period of time that the physician determines the applicant will have the disability, not to exceed six months.

2. Applications for renewal of a temporary removable windshield placard shall be supported by a licensed physician's certification of the applicant's disability dated within the previous three months.

3. The Tax Commission may, on a case by case basis, issue a temporary removable windshield placard to persons with disabilities other than disabilities which limit or impair the ability to walk.

4. The original and one additional temporary removable windshield placard shall be issued free of charge. Replacement placards, for placards that are lost or destroyed, shall be issued for a fee.

E. Any placard, whether permanent or temporary, shall be hung from the rearview mirror so that it may be viewed from the front and rear of any vehicle utilizing a parking space reserved for persons with disabilities. If there is no rearview mirror, the placard shall be clearly displayed on the dashboard of the vehicle. The placard shall not be displayed when the vehicle is moving.

R873-22M-30. Standards for Issuance of Original Issue License Plates Pursuant to Utah Code Ann. Section 41-1a-416.

A. "Series" means the general alpha-numeric sequence from which plate numbers are assigned.

B. An original issue license plate is unique and does not conflict with existing plate series in the state if the particular plate number is not currently registered or displayed on the motor vehicle master file record.

R873-22M-31. Determination of Special Interest Vehicle Pursuant to Utah Code Ann. Section 41-1a-102.

A. The division shall maintain a list of all vehicles currently eligible for classification as special interest vehicles.

1. A request for the classification of a vehicle as a special interest vehicle shall be approved if the vehicle is on the list.

2. If a vehicle not on the list qualifies for classification as a special interest vehicle pursuant to Section 41-1a-102, the division director shall add that vehicle to the list.

R873-22M-32. Rescinding Dismantling Permit Pursuant to Utah Code Ann. Section 41-1a-1010.

A. For purposes of Section 41-1a-1010, a Utah certificate of title does not include a salvage certificate, an Affidavit of Facts, or Tax Commission form TC-839, Certificate of Sale.

B. An applicant with a vehicle eligible for retitling under Section 41-1a-1010 shall receive a title consistent with the title of the vehicle at the time of application for a permit to dismantle.

R873-22M-33. Private Institution of Higher Education Pursuant to Utah Code Ann. Section 41-1a-408.

A. "Private institution of higher education" means a private institution that is accredited pursuant to Section 41-1a-408 and that issues a standard collegiate degree.

B. "Standard collegiate degree" means an associate, bachelor's, master's, or doctorate degree.

R873-22M-34. Rule for Denial of Personalized Plate Requests Pursuant to Utah Code Ann. Sections 41-1a-104 and 41-1a-411.

A. The personalized plate is a non-public forum. Nothing in the issuance of a personalized plate creates a designated or limited public forum. The presence of a personalized plate on a vehicle does not make the plate a traditional public forum.

B. Pursuant to Section 41-1a-411(2), the division may not issue personalized license plates in the following formats:

1. Combination of letters, words, or numbers with any connotation that is vulgar, derogatory, profane, or obscene.

2. Combinations of letters, words, or numbers that connote breasts, genitalia, pubic area, buttocks, or relate to sexual and

eliminatory functions. Additionally, "69" formats are prohibited unless used in a combination with the vehicle make, for example, "69 CHEV."

3. Combinations of letters, words, or numbers that connote the substance, paraphernalia, sale, user, purveyor of, or physiological state produced by any illicit drug, narcotic, or intoxicant.

4. Combinations of letters, words, or numbers that express contempt, ridicule, or superiority of a race, religion, deity, ethnic heritage, gender, or political affiliation.

C. If the division denies a requested combination, the applicant may request a review of the denial, in writing, within 15 days from the date of notification. The request must be directed to the Director of the Motor Vehicle Division and should include a detailed statement of the reasons why the applicant believes the requested license plates are not offensive or misleading.

D. The director shall review the format for connotations that may reasonably be detected through linguistic, numerical, or phonetic modes of communication. The review may include:

1. translation from foreign languages;

2. an upside down or reverse reading of the requested format;

3. the use of references such as dictionaries or glossaries of slang, foreign language, or drug terms.

E. The director shall consider the applicant's declared definition of the format, if provided.

F. If the requested format is rejected by the director, the division shall notify the applicant in writing of the right to appeal the decision through the appeals process outlined in Tax Commission rule R861-1A-22.

G. If, after issuance of a personalized license plate, the commission becomes aware through written complaint that the format may be prohibited under B., the division shall again review the format.

H. If the division determines pursuant to F. that the issued format is prohibited, the holder of the plates shall be notified in writing and directed to surrender the plates. This determination is subject to the review and appeal procedures outlined in B. through E.

I. A holder required to surrender license plates shall be issued a refund for the amount of the personalized license plate application fee and for the prorated amount of the personalized license plate annual renewal fee, or shall be allowed to apply for replacement personalized license plates at no additional cost.

J. If the holder of plates found to be prohibited fails to voluntarily surrender the plates within 30 days after the mailing of the notice of the division's final decision that the format is prohibited, the division shall cancel the personalized license plates and suspend the vehicle registration.

R873-22M-35. Reissuance of Personalized License Plates Pursuant to Utah Code Ann. Sections 41-1a-413 and 41-1a-1211.

A. If a person who has been issued personalized license plates fails to renew the personalized license plates within six months of the plates' expiration, the license plates shall be deemed to be surrendered to the division and the division may reissue the personalized license plates to a new requestor.

R873-22M-36. Access to Protected Motor Vehicle Records Pursuant to Utah Code Ann. Section 41-1a-116.

A. "Advisory notice" means:

1. notices from vehicle manufacturers, the manufacturers' authorized representative, or government entities regarding information that is pertinent to the safety of vehicle owners or occupants; and

2. statutory notices required by Sections 38-2-4 and 72-9-603 or by other state or federal law directing a party to mail a notice to a vehicle owner at the owner's last known address as shown on Motor Vehicle Division records.

B. Telephone accounts.

1. Public records may be released by phone to any person who has established a telephone account pursuant to Section 41-1a-116 (7).

2. A person who is authorized to access protected records must submit a written request in person, by mail, or by facsimile to the Motor Vehicle Division. Protected records may be released by phone to a person who has established a telephone account only under the following conditions:

a) The applicant for a telephone account must complete an application form prescribed by the Commission annually.

b) Protected records may be released by phone to private investigators, tow truck operators or vehicle mechanics who are licensed to conduct business in that capacity by the appropriate state or local authority.

c) Towers and mechanics are entitled to access protected records only for the purpose of making statutory notification of the owner at the last known address according to motor vehicle records. Prior to release of the information, the tower or mechanic must deliver or fax to the Motor Vehicle Division a copy of the work order or other evidence of a possessory lien on the vehicle. The lien claim must arise under a statute that requires notification of the vehicle owner at the owner's last known address according to state motor vehicle records.

C. An authorized agent of an individual allowed access to protected records under Section 41-1a-116 must evidence a signed statement indicating that he is acting as an authorized representative and the extent of that representative authority.

D. Utah law governs only the release of Utah motor vehicle records. The Motor Vehicle Division shall not release out-of-state motor vehicle registration information.

R873-22M-37. Standard Issue License Plates Pursuant to Utah Code Ann. Sections 41-1a-402 and 41-1a-1211.

A. In the absence of a designation of one of the standard issue license plates at the time of the license plate transaction, the license plate provided shall be the statehood centennial license plate.

B. Any exchange of one type of standard issue license plate for the other type of standard issue license plate shall be subject to the plate replacement fee provided in Section 41-1a-1211.

R873-22M-40. Age of Vehicle for Purposes of Safety Inspection Pursuant to Utah Code Ann. Section 53-8-205.

A. The age of a vehicle, for purposes of determining the frequency of the safety inspection required under Section 53-8-205, shall be determined by subtracting the vehicle model year from the current calendar year.

KEY: taxation, motor vehicles, aircraft, license plates
June 8, 2005 **41-1a-102**
Notice of Continuation April 5, 2002 **41-1a-104**
41-1a-108
41-1a-116
41-1a-211
41-1a-215
41-1a-214
41-1a-401
41-1a-402
41-1a-408
41-1a-409
41-1a-411
41-1a-413
41-1a-414
41-1a-416
41-1a-418

41-1a-419
41-1a-420
41-1a-421
41-1a-522
41-1a-701
41-1a-1001
41-1a-1002
41-1a-1004
41-1a-1009
through
41-1a-1011
41-1a-1101
41-1a-1209
41-1a-1211
41-1a-1220
41-6-44
53-8-205
59-12-104
59-2-103
72-10-109 through 72-10-112
72-10-102

R912. Transportation, Motor Carrier, Ports-of-Entry.
R912-6. Ports-of-Entry By-Pass Permit Provisions.
R912-6-1. Purpose.

This rule establishes procedures that allow the Motor Carrier Division to issue a temporary port-of-entry by-pass permit to accommodate multi-trip, highway transportation needs.

R912-6-2. Definitions.

Except for the following, this rule uses the same definitions as those listed in R909-16:

(1) "Commercial Vehicle" means a motor vehicle, vehicle, trailer, or semi trailer used or maintained for business, compensation, or profit to transport passengers or property on a highway if the commercial vehicle:

(a) has a manufacturer's gross vehicle weight rating or gross combination weight rating of 10,001 or more pounds;

(b) is designed to transport more than 15 passengers, including the driver; or

(c) is used in the transportation of hazardous materials found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, chapter I, subchapter C;

(2) "Intrastate" means transportation movement entirely within the state.

(3) "Multi-Trip" means two or more daily or weekly trips in the proximity of a port-of-entry.

R912-6-3. Port-of-Entry By-Pass Permits.

(1) Pursuant to Substitute Senate Bill 144, Motor Vehicle Ports-of-Entry, enacted during the 2005 General Session of the Legislature, by-pass privileges will be granted to a motor carrier for multiple motor vehicles. Decals will be issued to individual vehicles within a motor carrier's fleet.

(2) By-pass permit privileges expire one year after they are issued.

(3) Motor Carriers shall meet the "Multi-Trip" definition to receive and maintain by-pass privileges. A motor carrier may be excused from this requirement on a case-by-case basis if the carrier does not meet the "Multi-Trip" definition but is able to demonstrate to the Department that denial of a permit will cause a hardship if the vehicle has to be diverted to a port-of-entry. A Motor Carrier may appeal a denial pursuant to R912-6-7.

(4) By-pass privileges may be granted to carriers traversing multiple ports-of-entry within the same route.

(5) Unless otherwise authorized by the Department, Motor Carriers that have by-pass privilege must have a weight ticket, from a scale certified by the Department of Agriculture, available for inspection by law enforcement. Scale tickets must be electronically printed and shall specify the time, date, and unit-specific information.

(6) The Department will notify local law enforcement agencies of those carriers meeting the criteria for by-pass privileges.

R912-6-4. Enrollment Criteria.

A Motor Carrier requesting a port-of-entry by-pass permit from the Department shall have an overall company safety fitness rating of satisfactory standing, as set forth under R909-16.

R912-6-5. Assignment of Provisional Standing.

The Department may issue provisional standing to a Motor Carrier for which there is insufficient data to determine compliance with the Safety Standard or if the Motor Carrier has not received a safety rating in accordance with the Federal Motor Carrier Safety Regulations, Title 49 Part 385.

R912-6-6. Application Process.

(1) Motor Carriers requesting a port-of-entry by-pass annual permit shall make application to the Motor Carrier Division by contacting the Central Permitting Office at (801) 965-4880.

(2) Motor Carriers are required to submit routing information including point of origin, destination, and routine routes traveled.

(3) Carriers denied by-pass privileges by the Department for reasons other than conditions constituting a satisfactory standing, such as proximity, travel pattern, number of trips, etc., may appeal the Department's decision by providing additional documentation as to why the by-pass privilege should be authorized.

R912-6-7. Steering Committee - Appeal Process.

When an application for a by-pass permit is denied for reasons other than the conditions set forth in R912-6-3, the Motor Carrier may file an appeal. The appeals shall be handled by a steering committee created by the Motor Carrier Division. The steering committee shall have the powers granted to the Deputy Director in R907-1-3 for appeals from other Motor Carrier Division administrative actions. This committee's decision, if adopted by the Director of the Motor Carrier Division, will be considered a final agency order under the Utah Administrative Procedures Act.

R912-6-8. Suspensions and Revocations of Port-of-Entry By-Pass Permit.

The Department may suspend or revoke the Motor Carrier's by-pass permit if the Motor Carrier fails to meet conditions set forth under R909-16-3. If a Motor Carrier is denied by-pass privileges as a result of the assessment of an unsatisfactory standing issued by the Department, the Motor Carrier must appeal that standing assessment pursuant to R909-16-11.

R912-6-9. Audits.

As a condition of receiving a by-pass permit, a Motor Carrier is subject to compliance reviews, safety assessments, and inspections as the Department considers necessary in order to carry out state and federal law, including Utah Code Ann. Section 72-9-301.

KEY: motor carrier, permits, ports of entry, trucks
June 27, 2005 **72-9-301**
72-9-502

R916. Transportation, Operations, Construction.
R916-4. Construction Manager/General Contractor Contracts.
R916-4-1. Purpose.

(1) Pursuant to Utah Code Ann. Section 63-56-13, this rule establishes the Department's ability to procure transportation construction under the Construction Manager/ General Contractor (CM/GC)approach authorized in Utah Code Ann. Section 63-56-36.1. CM/GC seeks to provide: a savings of time, and cost; improved quality expectations as to the end product, schedule, and budget; and risk management savings due to lack of duplication of expenses, early and continuous and coordination of efforts.

R916-4-2. Authority.

(1) The provisions of this rule are authorized by the following grants of rulemaking authority and provisions of Utah Code: Title 63, Chapter 56; Title 63, Chapter 46a; and Sections 72-1-201, 72-5-114, and 72-6-105.

R916-4-3. Policy.

(1) When the Executive Director or designee determines it appropriate, Department may use CM/GA method of project delivery. CM/GC is not recommended for every project; therefore, the decision to use the method must take into account the individual specific needs of the project.

R916-4-4. Request for Proposals (RFP).

(1) The Department will issue a request for proposals (RFP) from interested contractors.

(2) The RFP may require separate technical and price proposals, meeting requirements as stated in the RFP.

(3) The RFP may require a minimum mandatory technical level.

R916-4-5. Evaluation Team.

(1) The Department may establish a team for evaluating the technical proposals consisting of not more than 7 people.

(2) At least one member of the team may be a registered professional engineer; and

(3) At least one member may be a senior management employee of a licensed contractor.

R916-4-6. Evaluation of Proposals and Discussions with Proposers.

(1) The Department shall evaluate proposals, in accordance with the evaluation factors set forth in the RFP.

(2) As part of the qualifications specified in the RFP, the Department may require that potential contractors at least demonstrate their:

(a) construction experience in similar projects;

(b) financial, manpower and equipment resources available for the project;

(c) experience in other negotiated contracts; and

(d) preconstruction or design support experience.

R916-4-7. Acceptable Bid Security; Performance and Payment Bonds.

(1) The Executive Director or designee shall have the right to waive the requirement to provide bid security, or may reduce the amount of such security, if he or she determines that the bid security otherwise required by Utah Code Ann. Sections 63-56-37 through 39 to be unnecessary to protect the State.

(2) The Executive Director or designee may reduce the amount of the payment and performance bonds below the 100% level required by Utah Code Ann. Sections 63-56-37 through 39, if he or she determines that a 100% bond is unnecessary to protect the State.

(3) Bid security, payment bonds and performance bonds must be provided on the forms included in the RFP.

R916-4-8. Required Contract Clauses.

The CM/GC contract documents shall include the contract clauses set forth in Utah Administrative Code R23-1-7, subject to such modifications as the Executive Director or designee believes appropriate. Any modifications shall be supported by a written determination of the Executive Director or designee that describes the circumstances justifying the variations, and notice of any material variation shall be included in the RFP.

R916-4-9. Selection.

The basis for selection shall be stated in the RFP. Selection may be based on any of the following approaches.

(1) By the responsible proposer offering the lowest priced responsive proposal. If the RFP includes a mandatory technical level, no proposal shall be considered responsive unless it meets that level; or

(2) By the responsible proposer whose proposal is evaluated as providing the best value to Department.

R916-4-10. Award of Contract.

(1) The Contract will be awarded in two phases. The first is for preconstruction or design services, which may include value engineering, cost estimating, conceptual estimating, constructability reviews, scheduling, and Maintenance of Traffic plans.

(2) The second phase is for construction services. The second phase will be awarded after the plans have been sufficiently developed and a Guaranteed Maximum Price for construction services has been successfully negotiated. In the event that a Guaranteed Maximum Price is not negotiated, the Department will not award construction phase of the contract.

(3) In order to accelerate completion, incremental construction phases may be awarded after Guaranteed Maximum Prices are negotiated for each phase.

(4) The Department is not required to ever award a contract. Following award, however, a contract shall be executed and notice given to the successful CM/GC proposer to proceed with the work.

KEY: transportation, highways, contracts, construction
June 27, 2005 **63-56-36.1**
63-56-13
72-1-201

R986. Workforce Services, Employment Development.
R986-700. Child Care Assistance.
R986-700-701. Authority for Child Care Assistance (CC) and Other Applicable Rules.

(1) The Department administers Child Care Assistance (CC) pursuant to the authority granted in Section 35A-3-310.

(2) Rule R986-100 applies to CC except as noted in this rule.

(3) Applicable provisions of R986-200 apply to CC, except as noted in this rule or where in conflict with this rule.

R986-700-702. General Provisions.

(1) CC is provided to support employment.

(2) CC is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:

(a) parents;

(b) specified relatives; or

(c) clients who have been awarded custody or appointed guardian of the child.

(3) Child care is provided only for children living in the home and only during hours when neither parent is available to provide care for the children.

(4) If a client is eligible to receive CC, the following children, living in the household unit, are eligible:

(a) children under the age of 13; and

(b) children up to the age of 18 years if the child;

(i) meets the requirements of rule R986-700-717, and/or

(ii) is under court supervision.

(5) Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children, homeless children and FEP or FEPTP eligible children will be prioritized at the top of the list and will be served first. "Special needs child" means a child identified by the Department of Human Services, Division of Services to People with Disabilities or other entity as determined by the Department, as having a physical or mental disability requiring special child care services.

(6) The amount of CC might not cover the entire cost of care.

(7) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.

(8) CC can only be provided for an eligible provider and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.

(9) Neither the Department nor the state of Utah are liable for injuries that may occur when a child is placed in child care even if the parent receives a subsidy from the Department.

(10) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC for the foster children.

(11) Once eligibility for CC has been established, eligibility must be reviewed at least once every six months. The review is not complete until the re-certification forms are signed and returned to the local office. All requested verifications must be provided at the time of the review. If the Department has reason to believe the client's circumstances have changed, affecting either eligibility or payment amount, the Department will reduce or terminate CC even if the certification period has not expired.

R986-700-703. Client Rights and Responsibilities.

In addition to the client rights and responsibilities found in R986-100, the following client rights and responsibilities apply:

(1) A client has the right to select the type of child care which best meets the family's needs.

(2) If a client requests help in selecting a provider, the Department will refer the client to the local Child Care Resource and Referral agency.

(3) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.

(4) A client is responsible to pay all costs of care charged by the provider. If the child care assistance payment provided by the Department is less than the amount charged by the provider, the client is responsible for paying the provider the difference.

(5) The only changes a client must report to the Department within ten days of the change occurring are:

(a) that the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in R986-700-710(3);

(b) that the client is no longer in an approved training or educational program;

(c) if the client's and/or child's schedule changes so that child care is no longer needed during the hours of approved employment and/or training activities;

(d) that the client does not meet the minimum work requirements of an average of 15 hours per week or 15 and 30 hours per week when two parents are in the household and it is expected to continue;

(e) the client is separated from his or her employment;

(f) a change of address;

(g) any of the following changes in household composition; a parent, stepparent, spouse, or former spouse moves into the home, a child receiving child care moves out of the home, or the client gets married; or

(h) a change in the child care provider, including when care is provided at no cost.

(6) If a material change which would result in a decrease in the amount of the CC payment is reported within 10 days, the decrease will be made effective beginning the next month and sums received in the month in which the change occurred will not be treated as an overpayment. If it is too late to make the change to the next month's CC payment, the client is responsible for repayment even if the 10 days for reporting the change has not expired If the client fails to report the change within 10 days, the decrease will occur as soon as the Department learns of the change and the overpayment will be assessed back to the date of the change.

(7) A client is responsible for payment to the Department of any overpayment made in CC.

(8) If the client has failed to provide all necessary information and the child care provider requests information about payment of CC to the client, the Department is authorized to inform the provider that further information is needed before payment can be determined.

(9) The Department may also release the following information to the designated provider:

(a) limited information regarding the status of a CC payment including that no payment was issued or services were denied;

(b) information contained on the Form 980;

(c) the date the child care subsidy was issued;

(d) the subsidy amount for that provider;

(e) the subsidy deduction amount;

(f) the date a two party check was mailed to the client; and

(g) a copy of the two party check on a need to know basis.

(10) If child care funds are issued on the Horizon Card (electronic benefit transfer) unused child care funds will be removed from the Horizon Card 60 days after the last child care

transaction/transfer occurred ("aged off") and will no longer be available to the client.

R986-700-704. Establishment of Paternity.

The provisions of rules R986-100 and R986-200 pertaining to cooperation with ORS in the establishment of paternity and collection of child support do not apply to ES CC.

R986-700-705. Eligible Providers and Provider Settings.

(1) The Department will only pay CC to clients who select eligible providers. The only eligible providers are:

(a) licensed and accredited providers:

(i) licensed homes;

(ii) licensed family group homes; and

(iii) licensed child care centers.

(b) license exempt providers who are not required by law to be licensed and are either;

(i) license exempt centers; or

(ii) related to the client and/or the child. Related under this paragraph means: siblings who are at least 18 years of age and who live in a different residence than the parent, grandparents, step grandparents, aunts, step aunts, uncles, step uncles or people of prior generations of grandparents, aunts, or uncles, as designated by the prefix grand, great, great-great, or great-great-great or persons who meet any of the above relationships even if the marriage has been terminated.

(c) homes with a Residential Certificate obtained from the Bureau of Licensing.

(2) If a new client has a provider who is providing child care at the time the client applies for child care assistance or has provided child care in the past and has an established relationship with the child(ren), but the provider is not currently eligible, the client may receive child care assistance for a period not to exceed three months if the provider is willing to become an eligible provider and actively pursues eligibility.

(3) The Department may, on a case by case basis, grant an exception and pay for CC when an eligible provider is not available:

(a) within a reasonable distance from the client's home. A reasonable distance, for the purpose of this exception only, will be determined by the transportation situation of the parent and child care availability in the community where the parent resides; or

(b) because a child in the home has special needs which cannot be otherwise accommodated; or

(c) which will accommodate the hours when the client needs child care; or

(d) if the provider lives in an area where the Department of Health lacks jurisdiction, which includes tribal lands, to provide licensing or certification; or

(4) If an eligible provider is available, an exception may be granted in the event of unusual or extraordinary circumstances but only with the approval of a Department supervisor.

(5) If an exception is granted under paragraph (4) or (5) above, the exception will be reviewed at each of the client's review dates to determine if an exception is still appropriate.

(6) License exempt providers must register with the Department and agree to maintain minimal health and safety criteria by signing a certification before payment to the client can be approved. The minimum criteria are that:

(a) the provider be at least 18 years of age and physically and mentally capable of providing care to children;

(b) the provider's home is equipped with hot and cold running water, toilet facilities, and is clean and safe from hazardous items which could cause injury to a child. This applies to outdoor areas as well;

(c) there are working smoke detectors and fire extinguishers on all floors of the house where children are provided care;

(d) there are no individuals residing in the home who have a conviction for a misdemeanor which is an offense against a person, or any felony conviction, or have been subject to a supported finding of child abuse or neglect by the Utah Department of Human Services, Division of Child and Family Services or a court;

(e) there is a telephone in operating condition with a list of emergency numbers located next to the phone which includes the phone numbers for poison control and for the parents of each child in care;

(f) food will be provided to the child in care of sufficient amount and nutritional value to provide the average daily nutrient intake required. Food supplies will be maintained to prevent spoilage or contamination. Any allergies will be noted and care given to ensure that the child in care is protected from exposure to those items; and

(g) the child in care will be immunized as required by the Utah Immunization Act and;

(h) good hand washing practices will be maintained to discourage infection and contamination.

(7) The following providers are not eligible for receipt of a CC payment:

(a) a member of household assistance unit who is receiving one or more of the following assistance payments: FEP, FEPTP, diversion assistance or food stamps for any child in that household assistance unit. The person may, however, be paid as a provider for a child in a different household assistance unit;

(b) a sibling of the child living in the home;

(c) household members whose income must be counted in determining eligibility for CC;

(d) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;

(e) illegal aliens;

(f) persons under age 18;

(g) a provider providing care for the child in another state; and

(h) a provider who has committed fraud as a provider, as determined by the Department or by a court.

R986-700-706. Provider Rights and Responsibilities.

(1) Providers assume the responsibility to collect payment for child care services rendered. Neither the Department nor the State of Utah assumes responsibility for payment to providers.

(2) A provider may not charge clients receiving a CC subsidy a higher rate than their customers who do not receive a CC subsidy.

(3) Providers must keep accurate records of subsidized child care payments, time and attendance. The Department has the right to investigate child care providers and audit their records.

(4) The provider is entitled to know the date on which payment for CC was made to the parent and the amount of the payment.

(5) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider may be referred for criminal prosecution and will no longer be an approved provider. A provider cannot require that a client give the provider the client's Horizon card and/or the client's PIN or otherwise obtain the card and/or PIN.

(6) If an overpayment is established and it is determined that the provider was at fault in the creation of the overpayment, the provider is responsible for repayment of the overpayment.

(7) Records will be kept by the Department for individuals who are not approved providers and against whom a referral or complaint is received. Provider case records will be maintained according to Office of Licensing standards.

R986-700-707. Subsidy Deduction.

(1) "Subsidy deduction" means a dollar amount which is deducted from the standard CC subsidy for Employment Support CC. The deduction is determined on a sliding scale and the amount of the deduction is based on the parent(s) countable earned and unearned income and household size.

(2) The parent must pay the amount of the subsidy deduction directly to the child care provider.

(3) If the subsidy deduction exceeds the actual cost of child care, the family is not eligible for child care assistance.

(4) The full monthly subsidy deduction is taken even if the client receives CC for only part of the month.

R986-700-708. FEP, and Diversion CC.

(1) FEP CC may be provided to clients receiving financial assistance from FEP or FEPTP. FEP CC will only be provided to cover the hours a client needs child care to support the activities required by the employment plan. FEP CC is not subject to the subsidy deduction.

(2) Additional time for travel may be included on a case by case basis when circumstances create a hardship for the client because the required activities necessitate travel of distances taking at least one hour each way.

(3) Diversion CC is available for clients who have received a diversion payment from FEP. There is no subsidy deduction for the months covered by the FEP diversion payment.

(4) If the client is working a minimum of 15 hours per week and meets all employment support criteria in the three months immediately following the period covered by the diversion payment or if the client's FEP or FEPTP assistance was terminated as "transitional", the client is not subject to a subsidy deduction until the fourth month after the period covered by the diversion payment. A new application is not required during this transitional period.

R986-700-709. Employment Support (ES) CC.

(1) Parents who are not eligible for FEP CC or Diversion CC may be eligible for Employment Support (ES) CC. To be eligible, a parent must be employed or be employed while participating in educational or training activities. Work Study is not considered employment. A parent who attends school but is not employed at least 15 hours per week, is not eligible for ES CC. ES CC will only be provided to cover the hours a client needs child care for work or work and approved educational or training activities.

(2) If the household has only one parent, the parent must be employed at least an average of 15 hours per week.

(3) If the family has two parents, CC can be provided if:

(a) one parent is employed at least an average of 30 hours per week and the other parent is employed at least an average of 15 hours per week and their work schedules cannot be changed to provide care for the child(ren). CC will only be provided during the time both parents are in approved activities and neither is available to care for the children; or

(b) one parent is employed and the other parent cannot work, or is not capable of earning $500 per month and cannot provide care for their own children because of a physical, emotional or mental incapacity. Any employment or educational or training activities invalidate a claim of incapacity. The incapacity must be expected to last 30 days or longer. The individual claiming incapacity must verify that incapacity in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) 100 percent disabled by VA; or

(iii) by submitting a written statement from:

(A) a licensed medical doctor;

(B) a doctor of osteopathy;

(C) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(D) a licensed Advanced Practice Registered Nurse; or

(E) a licensed Physician's Assistant.

(4) Employed or self-employed parent client(s) must make, either through wages or profit from self-employment, a rate of pay equal to or greater than minimum wage multiplied by the number of hours the parent is working. If the prevailing community standard is below minimum wage, the employed parent client must make at least the prevailing community standard. To be eligible for ES CC, a self employed parent must provide business records for the most recent three month time period to establish that the parent is likely to make at least minimum wage or, if the prevailing community standard is below minimum wage, the parent must establish that he or she is likely to make at least the prevailing community standard. If a parent has a barrier to other types of employment, exceptions can be made in extraordinary cases with the approval of the state program specialist.

(5) The stipend received by Americorps*Vista volunteers meets the prevailing community standard test for this section even though the stipend is not counted as income. The activities of Americorps*Vista volunteers are considered to be work and not training. Job Corps activities are considered to be training and a client in the Job Corps would also have to meet the work requirements to be eligible for ES CC.

(6) If a parent was receiving FEP or FEPTP, and their financial assistance was terminated due to increased income, and the parent is otherwise eligible for ES CC, the subsidy deduction will not be taken for the two months immediately following the termination of FEP or FEPTP, provided the client works a minimum of 15 hours per week. The third month following termination of FEP or FEPTP CC is subject to the subsidy deduction.

(7) Applicants must verify identity but are not required to provide a Social Security Number (SSN) for household members. Benefits will not be denied or withheld if a customer chooses not to provide a Social Security Number if all factors of eligibility are met. SSN's that are supplied will be verified. If an SSN is provided but is not valid, further verification will be requested to confirm identity.

R986-700-710. Income Limits for ES CC.

(1) Rule R986-200 is used to determine:

(a) who must be included in the household assistance unit for determining whose income must be counted to establish eligibility. In some circumstances, determining household composition for a ES CC household is different from determining household composition for a FEP or FEPTP household. ES CC follows the parent and the child, not just the child so, for example, if a parent in the household is ineligible, the entire ES CC household is ineligible. A specified relative may not opt out of the household assistance unit when determining eligibility for CC. The income of the specified relatives in the household must be counted. The income of some household members in multi-generational households is counted in full instead of being deemed as in FEP or FEPTP;

(b) what is counted as income except:

(i) the earned income of a minor child who is not a parent is not counted; and

(ii) child support, including in kind child support payments, is counted as unearned income, even if it exceeds the court or ORS ordered amount of child support, if the payments are made directly to the client. If the child support payments are paid to a third party, only the amount up to the court or ORS ordered child support amount is counted.

(c) how to estimate income.

(2) The following income deductions are the only deductions allowed on a monthly basis:

(a) the first $50 of child support received by the family;

(b) court ordered and verified child support and alimony paid out by the household;

(c) $100 for each person with countable earned income; and

(d) a $100 medical deduction. The medical deduction is automatic and does not require proof of expenditure.

(3) The household's countable income, less applicable deductions in paragraph (2) above, must be at, or below, a percentage of the state median income as determined by the Department. The Department will make adjustments to the percentage of the state median income as funding permits. The percentage currently in use is available at the Department's administrative office.

(4) Charts establishing income limits and the subsidy deduction amounts are available at all local Department offices.

(5) An independent living grant paid by DHS to a minor parent is not counted as income.

R986-700-711. ES CC to Support Education and Training Activities.

(1) CC may be provided when the client(s) is engaged in education or training and employment, provided the client(s) meet the work requirements under Section R986-700-709(1).

(2) The education or training is limited to courses that directly relate to improving the parent(s)' employment skills.

(3) ES CC will only be paid to support education or training activities for a total of 24 calendar months. The months need not be consecutive.

(a) On a case by case basis, and for a reasonable length of time, months do not count toward the 24 month time limit when a client is enrolled in a formal course of study for any of the following:

(i) obtaining a high school diploma or equivalent,

(ii) adult basic education, and/or

(iii) learning English as a second language.

(b) Months during which the client received FEP child care while receiving education and training do not count toward the 24 month time limit.

(c) CC can not ordinarily be used to support short term workshops unless they are required or encouraged by the employer. If a short term workshop is required or encouraged by the employer, and approved by the Department, months during which the client receives child care to attend such a workshop do not count toward the 24 month time limit.

(4) Education or training can only be approved if the parent can realistically complete the course of study within 24 months.

(5) Any child care assistance payment made for a calendar month, or a partial calendar month, counts as one month toward the 24-month limit.

(6) There are no exceptions to the 24-month time limit, and no extensions can be granted.

(7) CC is not allowed to support education or training if the parent already has a bachelor's degree.

(8) CC cannot be approved for graduate study or obtaining a teaching certificate if the client already has a bachelor's degree.

(9) In a two-parent family receiving CC for education or training activities, the monthly CC subsidy cannot exceed the established monthly local market rates.

R986-700-712. CC for Certain Homeless Families.

(1) CC can be provided for homeless families with one or two parents when the family meets the following criteria:

(a) The family must present a referral for CC from an agency known by the local office to be an agency that works with homeless families, including shelters for abused women and children. This referral will serve as proof of their homeless state. Local offices will provide a list of recognized homeless agencies in local office area.

(b) The family must show a need for child care to resolve an emergency crisis.

(c) The family must meet all other relationship, income, and asset eligibility criteria.

(2) CC for homeless families is only available for up to three months in any 12-month period. When a payment is made for any part of a calendar month, that month counts as one of the three months. The months need not be consecutive.

(3) Qualifying families may use child care assistance for any activity including, but not limited to, employment, job search, training, shelter search or working through a crisis situation.

(4) If the family is eligible for a different type of CC, the family will be paid under the other type of CC.

(5) When a homeless family presents a referral from a recognized agency, the Department will, if possible, schedule the application interview within three working days of the date of the application.

R986-700-713. Amount of CC Payment.

(1) CC will be paid at the lower of the following levels:

(a) the maximum monthly local market rate as calculated using the Local Market Survey. The Local Market Survey is conducted by the Department and based on the provider category and age of the child. The Survey results are available for review at any Department office through the Department web site on the Internet; or

(b) the rate established by the provider for services; or

(c) the unit cost multiplied by the number of hours approved by the Department. The unit cost is determined by dividing the maximum monthly local market rate by 137.6 hours.

(2) An enhanced CC payment is available to clients who are participating more than 172 hours per month. The enhanced subsidy cannot exceed $100 more than the maximum monthly local market rate for the type of provider used by the client and in no event can an enhanced subsidy payment exceed the accredited center rate for infant care. A two-parent family receiving CC for education or training activities is not eligible for the enhanced CC subsidy.

R986-700-714. CC Payment Method.

(1) CC payments to parents will be generated monthly by a two-party check issued in the parent's name and the chosen provider's name, except as noted in paragraph (2) below. The check is mailed to the client. In the event of an emergency, a payment up to a maximum of $125 can be made on the Horizon card. Emergency payments can only be made where a parent is in danger of not being able to obtain necessary child care if the parent is required to wait until the two party check can be issued.

(2) CC payments will be made by electronic benefit transfer (EBT) either through a point of sale (POS) machine or interactive voice recording (IVR) system to authorized provider types as determined by the Department. The provider may elect which option of EBT to use. The provider must sign an agreement with the Department's contractor in order to be eligible to receive CC payments. If the provider elects to use the POS method of payment, the provider must lease a POS machine at the provider's own expense.

(3) In the event that a check is reported as lost or stolen, both the parent and the provider are required to sign a statement that they have not received funds from the original check before a replacement check can be issued. The check must be reported as lost or stolen within 60 days of the date the check was mailed. The statement must be signed on an approved Department form and the signing witnessed, and in some cases notarized, at a local office of the Department. If the provider is unable to come into a Department office to sign the form, the form may be accepted if the signature is notarized. If the original check has been redeemed, a copy of the check will be

reviewed and both the parent and provider must provide a sworn, notarized statement that the signature on the endorsed check is a forgery. The Department may require a waiting period prior to issuing a replacement check.

(4) The Department is authorized to stop payment on a CC check without prior notice to the client if:

(a) the Department has determined that the client was not eligible for the CC payment, the Department has confirmed with the child care provider that no services were provided for the month in question or the provider cannot be located, and the Department has made an attempt to contact the parent: or

(b) when the check has been outstanding for at least 90 days; or

(c) the check is lost or stolen.

(5) No stop payment will be issued by the Department without prior notice to the provider unless the provider is not providing services or cannot be contacted.

R986-700-715. Overpayments.

(1) An overpayment occurs when a client or provider received CC for which they were not eligible. If the Department fails to establish one or more of the eligibility criteria and through no fault of the client, payments are made, it will not be considered to have been an overpayment if the client would have been eligible and the amount of the subsidy would not have been affected.

(2) If the overpayment was because the client committed fraud, including forging a provider's name on a two party CC check, the client will be responsible for repayment of the resulting overpayment and will be disqualified from further receipt of CC:

(a) for a period of one year for the first occurrence of fraud;

(b) for a period of two years for the second occurrence of fraud; and

(c) for life for the third occurrence of fraud.

(3) If the client was at fault in the creation of an overpayment for any reason other than fraud in paragraph (2) above, the client will be responsible for repayment of the overpayment. There is no disqualification or ineligibility period for a fault overpayment.

(4) All child care overpayments must be repaid to the Department.

Overpayments may be deducted from ongoing child care payments for clients who are receiving child care. If the Department is at fault in the creation of an overpayment, the Department will deduct $10 from each month's child care payment unless the client requests a larger amount.

(5) CC will be terminated if a client fails to cooperate with the Department's efforts to investigate alleged overpayments.

(6) If the Department has reason to believe an overpayment has occurred and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the discretion of the Department, to offset any overpayment which may be determined.

R986-700-716. CC in Unusual Circumstances.

(1) CC may be provided for study time, to support clients in education or training activities if the parent has classes scheduled in such a way that it is not feasible or practical to pick up the child between classes. For example, if a client has one class from 8:00 a.m. to 9:00 a.m. and a second class from 11:00 a.m. to noon it might not be practical to remove the child from care between 9:00 a.m. and 11:00 a.m.

(2) An away-from-home study hall or lab may be required as part of the class course. A client who takes courses with this requirement must verify study hall or lab class attendance. The Department will not approve more study hall hours or lab hours in this setting than hours for which the client is enrolled. For example: A client enrolled for 10 hours of classes each week may not receive more than 10 hours of this type of study hall or lab.

(3) CC will not be provided for private kindergarten or preschool activities when a publicly funded education program is available.

(4) CC may be authorized to support employment for clients who work graveyard shifts and need child care services during the day. If no other child care options are available, child care services may be authorized for the graveyard shift or during the day, but not for both.

(5) CC may be authorized to support employment for clients who work at home, provided the client makes at least minimum wage from the at home work, and the client has a need for child care services. The client must choose a provider setting outside the home.

R986-700-717. Child Care for Children With Disabilities or Special Needs.

(1) The Department will fund child care for children with disabilities or special needs at a higher rate if the child has a physical, social, or mental condition or special health care need that requires;

(a) an increase in the amount of care or supervision and/or

(b) special care, which includes but is not limited to the use of special equipment, assistance with movement, feeding, toileting or the administration of medications that require specialized procedures.

(2) To be eligible under this section, the client must submit a statement from one of the following professionals or agencies documenting the child's disability or special child care needs;

(a) medical doctor, doctor of osteopathy, licensed or certified psychologist, or mental health professional,

(b) Social Security Administration showing that the child is a SSI recipient,

(c) Division of Services for People with Disabilities,

(d) Division of Mental Health,

(e) State Office of Education, or

(f) Baby Watch, Early Intervention Program.

(3) Verification to support that the child is disabled or has a special need must be dated and signed by the preparer and include the following;

(a) the child's name,

(b) a description of the child's disability, and

(c) the special provisions that justify a higher payment rate.

(4) The Department may require additional information and may deny requests if adequate or complete information or justification is not provided.

(5) The higher rate is available through the month the child turns 18 years of age.

(6) Clients qualify for child care under this section if the household is at or below 85% of the state median income.

(7) The higher rate in effect for each child care category is available at any Department office.

KEY: child care
July 1, 2005 **35A-3-310**