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 $35.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	$8.00
Lunch	$11.00
Dinner	$16.00
Total	$35.00

(b) The daily travel meal allowance for out-of-state travel is $43.00 and is computed according to the rates listed in the following table.

TABLE 2

Out-of-State Travel Meal Allowances

Meals	Rate
Breakfast	$10.00
Lunch	$13.00
Dinner	$20.00
Total	$43.00

(4) When traveling to premium cities (New York, Los Angeles, Chicago, San Francisco, Washington DC, Boston, San Diego, Orlando, Atlanta, Blatimore, 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 $57 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 $57 premium allowance as follows:

(i) If breakfast is provided deduct $14, leaving a premium allowance for lunch and dinner of actual up to $43.

(ii) If lunch is provided deduct $17, leaving a premium allowance for breakfast and dinner of actual up to $40.

(iii) If dinner is provided deduct $31, leaving a premium allowance for breakfast and lunch of actual up to $31.

(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	2nd Quarter	3rd Quarter	4th Quarter
a.m.	a.m.	p.m.	p.m.
12:01-6:00	6:01-noon	12:01-6:00	6:01-midnight
*B, L, D	*L, D	*D	*no meals
In-State			
$35.00	$27.00	$16.00	$0
Out-of-State			
$43.00	$33.00	$20.00	$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	$8.00	$19.00	$35.00
Out-of-State			
$0	$10.00	$23.00	$43.00

*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) 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.

(2) For in-state lodging at a non-conference hotel, the state will reimburse the actual cost up to $60 per night for single occupancy plus tax except as noted in the table below:

TABLE 5

Cities with Differing Rates

Cedar City	$65 plus tax
Layton	$65 plus tax
Logan	$70 plus tax
Moab	$70 plus tax
Ogden	$65 plus tax
Panguitch	$65 plus tax
Park City	$80 plus tax
Heber City, Midway	$80 plus tax
Price	$70 plus tax
Provo, Orem	$65 plus tax
Roosevelt	$75 plus tax
Metropolitan Salt Lake City (Draper to Centerville), Tooele	$80 plus tax
St. George	$70 plus tax
Vernal	$75 plus tax

(3) For out-of-state travel stays at a non-conference hotel, the state will reimburse the actual cost per night plus tax, not to exceed the federal lodging rate for the location.

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

(5) Lodging is reimbursed at the rates listed in Table 5 for single occupancy only. For double state employee occupancy, add $20, for triple state employee occupancy, add $40, for quadruple state employee occupancy, add $60.

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

(a) The tissue copy of the 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.

(8) 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) $25 per night with no receipts required or

(ii) Actual cost up to $40 per night with a signed receipt from a facility such as a campground or trailer park, not from a private residence.

(9) 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 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 36 cents per mile or 48.5 cents per mile if a state vehicle is not available to the employee.

(i) To determine which rate to use, the traveler must first determine if their department has an agency vehicle (long-term leased vehicle from Fleet Operations) that meets their needs and is reasonably available for the trip (does not apply to special purpose vehicles). If reasonably available, the employee should use an agency vehicle. If an agency vehicle that meets their needs is not reasonably available, the agency may approve the traveler to use either a daily pool fleet vehicle or a private vehicle. If a daily pool fleet vehicle is not reasonably available, the traveler may be reimbursed at 48.5 cents per mile.

(ii) If a trip is estimated to average 100 miles or more per day, the agency should approve the traveler to rent a daily pool fleet vehicle if one is reasonably available. Doing so will cost less than if the traveler takes a private vehicle. If the agency approves the traveler to take a private vehicle, the employee will be reimbursed at the lower rate of 36 cents per mile.

(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 36 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.

(iii) 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.

(iv) 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.

(c) 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.

(d) 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 Office, 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 State Travel Office 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
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R27. Administrative Services, Fleet Operations.
R27-4. Vehicle Replacement and Expansion of State Fleet.
R27-4-1. Authority.

(1) This rule is established pursuant to Subsections 63A-9-401(1)(a), 63A-9-401(1)(d)(v), 63A-9-401(1)(d)(ix), 63A-9-401(1)(d)(x), 63A-9-401(1)(d)(xi) 63A-9-401(1)(d)(xii), and 63A-9-401(6) which require the Division of Fleet Operations (DFO) to: coordinate all purchases of state vehicles; make rules establishing requirements for the procurement of state vehicles, whether for the replacement or upgrade of current fleet vehicles or fleet expansion; make rules establishing requirements for cost recovery and billing procedures; make rules establishing requirements for the disposal of state vehicles; make rules establishing requirements for the reassignment and reallocation of state vehicles and make rules establishing rate structures for state vehicles.

(a) All agencies exempted from the DFO replacement program shall provide DFO with a complete list of intended vehicle purchases prior to placing the order with the vendor.

(b) DFO shall work with each agency to coordinate vehicle purchases to make sure all applicable mandates, including but not limited to alternative fuel mandates, and safety concerns are met.

(c) DFO shall assist agencies, including agencies exempted from the DFO replacement program, in their efforts to insure that all vehicles in the possession, control, and/or ownership of agencies are entered into the fleet information system.

(2) Pursuant to Subsection 63-38-3.5(8)(f)(ii), vehicles acquired by agencies, or monies appropriated to agencies for vehicle purchases, may be transferred to DFO and, when transferred, become part of the Consolidated Fleet Internal Service Fund.

R27-4-2. Fleet Standards.

(1) Prior to the purchase of replacement and legislatively approved expansion vehicles for each fiscal year, the Fleet Vehicle Advisory Committee (FVAC) shall, on the basis of input from user agencies, recommend to DFO a standard vehicle and the features and miscellaneous equipment to be included in said vehicle for each vehicle class in the fleet.

(2) DFO shall, after reviewing the recommendations made by the FVAC, determine and establish, for each fiscal year, the standard replacement vehicle, along with included features and miscellaneous equipment for each vehicle class in the fleet.

(3) DFO shall establish lease rates designed to recover, in addition to overhead and variable costs, the capital cost associated with acquiring a standard replacement vehicle for each vehicle class in the fleet.

(4) DFO shall establish replacement cycles according to vehicle type and expected use. The replacement cycle that applies to a particular vehicle supposes that the vehicle will be in service for a specified period of time and will be driven an optimum number of miles within that time. Whichever of the time or mileage criterion is reached first shall result in the vehicle's replacement.

R27-4-3. Delegation of Division Duties.

(1) Pursuant to the provisions of UCA 63A-9-401(6), the Director of DFO, with the approval of the Executive director of the Department of Administrative Services, may delegate motor vehicle procurement and disposal functions to institutions of higher education by contract or other means authorized by law, provided that:

(a) The funding for the procurement of vehicles that are subject to the agreement comes from funding sources other than state appropriations, or the vehicle is procured through the federal surplus property donation program;

(b) Vehicles procured with funding from sources other than state appropriations, or through the federal surplus property donation program shall be designated "do not replace;" and

(c) In the event that the institution of higher education is unable to designate said vehicles as "do not replace," the institution shall warrant that it shall not use state appropriations to procure their respective replacements without legislative approval.

(2) Agreements made pursuant to Section 63A-9-401(6) shall, at a minimum, contain:

(a) a precise definition of each duty or function that is being allowed to be performed; and

(b) a clear description of the standards to be met in performing each duty or function allowed; and

(c) a provision for periodic administrative audits by either the DFO or the Department of Administrative Services; and

(d) a representation by the institution of higher education that the procurement or disposal of the vehicles that are the subject matter of the agreement shall be coordinated with DFO. The institution of higher education shall, at the request of DFO, provide DFO with a list of all conventional fuel and alternative fuel vehicles it anticipates to procure or dispose of in the coming year. Alternative fuel vehicles shall be purchased by the agency or institution of higher education, when necessary, to insure state compliance with federal AFV mandates; and

(e) a representation by the institution of higher education that the purchase price is less than or equal to the state contract price for the make and model being purchased; and in the event that the state contract price is not applicable, that the provisions of Section 63-56-1 shall be complied with; and

(f) a representation that the agreement is subject to the provisions of UCA 63-38-3.5, Internal Service Funds - Governance and review; and

(g) a representation by the institution of higher education that it shall enter into DFO's fleet information system all information that would be otherwise required for vehicles owned, leased, operated or in the possession of the institution of higher education; and

(h) a representation by the institution of higher education that it shall follow state surplus rules, policies and procedures on related parties, conflict of interest, vehicle pricing, retention, sales, and negotiations; and

(i) a date on which the agreement shall terminate if the agreement has not been previously terminated or renewed.

(3) An agreement made pursuant to Section 63A-9-401(7) may be terminated by DFO if the results of administrative audits conducted by either DFO or the Department of Administrative Services reveal a lack of compliance with the terms of the agreement.

R27-4-4. Vehicle Replacement.

(1) All state fleet motor vehicles shall, subject to budgetary constraints, be replaced when the vehicle meets the first of either the mileage or time component of the established replacement cycle criteria.

(2) Prior to the purchase of replacement motor vehicles, DFO shall provide each agency contact with a list identifying all vehicles that are due for replacement, and the standard replacement vehicle for the applicable class that has been established by DFO after reviewing the recommendations of the FVAC that will be purchased to take the place of each vehicle on the list.

(3) Agencies may request that state fleet motor vehicles in their possession or control that have a history of excessive repairs, but have not reached either the mileage or time component of the applicable replacement cycle, be replaced. The request to replace motor vehicles with a history of excessive repairs is subject to budgetary constraints and the approval of the Director of DFO or the director's designee.

(4) Agencies may petition the Executive Director of the Department of Administrative Services, or the executive

director's designee, for a review in the event that the Director of DFO or the director's designee denies a request for the replacement of motor vehicles with a history of excessive repairs.

(5) In the event that the replacement vehicle is not delivered to the agency by the vendor, the agency shall have five working days to pick-up the replacement vehicle from DFO, after receiving official notification of its availability. If the vehicles involved are not exchanged within the five-day period, a daily storage fee will be assessed and the agency will be charged the monthly lease fee for both vehicles.

(6) DFO is responsible for insuring that the state motor vehicle fleet complies with United States Department of Energy alternative fuel vehicle (AFV) mandates. DFO may require that a certain number of replacement vehicles, regardless of the requesting agency, be alternate fuel vehicles to insure compliance with said AFV mandates.

R27-4-5. Fleet Expansion.

(1) Any expansion of the state motor vehicle fleet requires legislative approval.

(2) The agency requesting a vehicle that will result in fleet expansion or that a vehicle currently designated "do not replace" be placed on a replacement cycle, shall be required to provide proof of the requisite legislative approval and funding for the procurement of an expansion vehicle or the placement of a "do not replace" vehicle on a replacement cycle, and any additional features and miscellaneous equipment, before DFO is authorized to purchase the expansion vehicle.

(3) For the purposes of this rule, an agency shall be deemed to have the requisite legislative approval under the following circumstances only:

(a) The procurement of expansion vehicles or the placement of a "do not replace" vehicle on a replacement cycle is explicitly authorized by the Appropriations Committee during the general legislative session; or

(b) The procurement of expansion vehicles or the placement of a "do not replace" vehicle on a replacement cycle is explicitly authorized by a special session of the legislature convened for the express purpose of approving fleet expansion.

(4) For the purposes of this rule, only the following shall constitute acceptable proof of legislative approval of the requested expansion or placement of a "do not replace" vehicle on a replacement cycle:

(a) A letter, signed by the agency's Chief Financial Officer, citing the specific line item in the appropriations bill providing said authorization; or

(b) Written verification from the agency's analyst in the Governor's Office of Planning and Budget (GOPB) indicating that the request for expansion was authorized and funded by the legislature.

(5) Upon receipt of proof of legislative approval of an expansion from the requesting agency, DFO shall provide to the State Division of Finance copies of the proof submitted in order for the Division of Finance to initiate the process for the formal transfer of funds necessary to procure the expansion vehicle(s) from the requesting agency to DFO. In no event shall DFO purchase expansion vehicles for requesting agencies until the Division of Finance has completed the process for the formal transfer of funds.

(6) In the event that the requesting agency receives legislative approval for placing a "do not replace" vehicle on a replacement cycle, the requesting agency shall, in addition to providing DFO with proof of approval and funding, provide the Division of Finance with funds, for transfer to DFO, equal to the amount of depreciation that DFO would have collected for the number of months between the time that the "do not replace" vehicle was put into service and the time that the requesting agency begins paying the applicable monthly lease rate for the replacement cycle chosen. In no event shall DFO purchase a replacement vehicle for the "do not replace" vehicle if the requesting agency fails to provide funds necessary to cover said depreciation costs.

(7) When the expansion vehicle is procured, the vehicle shall be added to the fleet and a replacement cycle established.

(8) DFO is responsible for insuring that the state motor vehicle fleet complies with United States Department of Energy alternative fuel vehicle (AFV) mandates. DFO may require that a certain number of expansion vehicles, regardless of the requesting agency, be alternate fuel vehicles to insure in compliance with said AFV mandates.

R27-4-6. Vehicle Feature and Miscellaneous Equipment Upgrade.

(1) Additional feature(s) or miscellaneous equipment to be added to the standard replacement vehicle in a given class, as established by DFO after reviewing the recommendations of the Fleet Vehicle Advisory Committee (FVAC), that results in an increase in vehicle cost shall be deemed a feature and miscellaneous equipment upgrade. A feature or miscellaneous equipment upgrade occurs when an agency requests:

(a) That a replacement vehicle contains a non-standard feature. For example, when an agency requests that an otherwise standard replacement vehicle have a diesel rather than a gasoline engine, or that a vehicle contain childproof locks.

(b) The installation of additional miscellaneous equipment not installed by the vehicle manufacturer. For example, when an agency requests that light bars or water tanks be installed on an otherwise standard replacement vehicle.

(2) Requests for feature and miscellaneous equipment upgrades shall be made in writing and:

(a) Present reasons why the upgrades are necessary in order to meet the agency's needs, and

(b) Shall be signed by the requesting agency's director, or the appropriate budget or accounting officer.

(3) All requests for vehicle feature and/or miscellaneous equipment upgrades shall be subject to review and approval by the Director of DFO or the director's designee. Vehicle feature and/or miscellaneous equipment upgrades shall be approved when in the judgment of the Director of DFO or the director's designee, the requested feature and/or miscellaneous equipment upgrades are necessary and appropriate for meeting the agency's needs.

(4) Agencies may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the Director of DFO or the director's designee denies a request for a feature and/or miscellaneous equipment upgrade.

(5) Agencies obtaining approval for feature and/or miscellaneous equipment upgrades shall, prior to the purchase of the vehicle, pay in full to DFO, a feature and/or miscellaneous equipment upgrade rate designed to recover the total cost associated with providing the additional feature(s) and/or miscellaneous equipment, unless the requesting agency otherwise negotiates an agreement with DFO for payments to be made in installments, and provided that the terms of the installment agreement do not delay the payment of the general fund debt.

(6) In the event that an agreement providing for the payment of a feature and/or miscellaneous equipment upgrade in installments is reached, the agency shall indemnify and make DFO whole for any losses incurred resulting from damage to, loss or return of the vehicle and/or equipment prior to the receipt of all payment installments by DFO.

R27-4-7. Agency Installation of Miscellaneous Equipment.

(1) The director of the Division of Fleet Operations, with the approval of the Executive Director of the Department of

Administrative Services, may enter into Memoranda of Understanding allowing customer agencies to install miscellaneous equipment on or in state vehicles if:

(a) the agency or institution has the necessary resources and skills to perform the installations; and

(b) the agency or institution has received approval for said miscellaneous equipment as required by R27-4-6.

(2) Each memorandum of understanding for the installation of miscellaneous equipment shall, at a minimum, contain the following:

(a) a provision that monthly lease fees shall be charged to the agency from the date of the agency's receipt of the replacement vehicle as required under R27-4-9(7)(b); and

(b) a provision that said agency shall indemnify and hold DFO harmless for any claims made by a third party that are related to the installation of miscellaneous equipment in or on state vehicles in the agency's possession and/or control; and

(c) a provision that said agency shall indemnify DFO for any damage to state vehicles resulting from installation or de-installation of miscellaneous equipment; and

(d) a provision that agencies with permission to install miscellaneous equipment shall enter into the DFO fleet information system the following information regarding the miscellaneous equipment procured for installation in or on state vehicles, whether the item is held in inventory, currently installed on a vehicle, or sent to surplus;

(i) item description or nomenclature; and

(ii) manufacturer of item; and

(iii) item identification information for ordering purposes; and

(iv) procurement source; and

(v) purchase price of item; and

expected life of item in years; and

(vi) warranty period; and

(vii) serial number;

(viii) initial installation date; and

(ix) current location of item (warehouse, vehicle number); and

(x) anticipated replacement date of item; and

(xi) actual replacement date of item; and

(xii) date item sent to surplus; and SP-1 number.

(e) a provision requiring the agency or institution with permission to install being permitted to install miscellaneous equipment to obtain insurance from the Division of Risk Management in amounts sufficient to protect itself from damage to, or loss of, miscellaneous equipment installed on state vehicles. Agencies or institutions with permission to install miscellaneous equipment shall hold DFO harmless for any damage to, or loss of miscellaneous equipment installed in state vehicles.

(f) a provision that DFO shall provide training and support services for the fleet information system and charge agencies with permission to install miscellaneous equipment an MIS fee to recover these costs.

(g) a date on which the agreement shall terminate if the agreement has not been previously terminated or renewed.

(3) Agreements permitting agencies or institutions to install miscellaneous equipment in or on state vehicles may be terminated if there is a lack of compliance with the terms of the agreement by the state agency or institution.

R27-4-8. Vehicle Class Differential Upgrade.

(1) For the purposes of this rule, requests for vehicles other than the planned replacement vehicle established by DFO after reviewing the recommendations of the Fleet Vehicle Advisory Committee (FVAC), that results in an increase in vehicle cost shall be deemed a vehicle class differential upgrade. For example, a vehicle class differential upgrade occurs when, regardless of additional features and/or miscellaneous equipment:

(a) The replacement vehicle requested by the agency, although within the same vehicle class as the vehicle being replaced, is not the standard replacement vehicle established by DFO for that class.

(b) The agency requests that a vehicle be replaced with a more expensive vehicle belonging to another class. For example, when an agency requests to have a standard 1/2 ton truck replaced with a standard 3/4 ton truck, or a compact sedan be replaced with a mid-size sedan.

(2) Requests for vehicle class differential upgrades shall be made in writing and:

(a) Present reasons why the upgrades are necessary in order to meet the agency's needs, and

(b) Shall be signed by the requesting agency's director or the appropriate budget or accounting officer.

(3) All requests for vehicle class differential upgrades shall be subject to review and approval by the Director of DFO or the director's designee. Vehicle class differential upgrades shall be approved only when:

(a) In the judgment of the Director of DFO or the director's designee, the requested vehicle upgrade is necessary and appropriate for meeting the demands of changing operational needs for which the planned replacement vehicle is clearly inadequate or inappropriate;

(b) In the judgment of the Director of DFO or the director's designee, the requested vehicle upgrade is necessary and appropriate for meeting safety, environmental, or health or other special needs for drivers or passengers.

(4) Agencies may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review in the event that the Director of DFO or the director's designee denies a request for a vehicle class differential upgrade.

(5) Agencies obtaining approval for vehicle class differential upgrade(s) at the end of the applicable replacement cycle shall pay to DFO, in full, prior to the purchase of the vehicle, a vehicle class differential upgrade rate designed to recover the difference in cost between the planned replacement vehicle and the actual replacement vehicle when the replacement vehicle is a more expensive vehicle belonging to the same or another class.

(6) Agencies obtaining approval for vehicle class differential upgrade(s) prior to the end of the current vehicle's replacement cycle shall, prior to the purchase of the replacement vehicle, pay to DFO, in full, an amount equal to the difference in cost between the actual replacement vehicle and the planned replacement vehicle plus the amount of depreciation still owed on the vehicle being replaced, less the salvage value of the vehicle being replaced.

R27-4-9. Cost Recovery.

(1) State vehicles shall be assessed a lease fee designed to recover depreciation costs, and overhead costs, including AFV and MIS fees, and where applicable, the variable costs, associated with each vehicle.

(2) Lease rates are calculated by DFO according to vehicle cost, class, the period of time that the vehicle is expected to be in service, the optimum number of miles that the vehicle is expected to accrue over that period, and the type of lease applicable:

(a) A capital only lease is designed to recover depreciation plus overhead costs, including AFV and MIS fees, only. All variable costs, such as fuel and maintenance, are not included in the lease rate.

(i) Capital only leases are subject to DFO approval; and

(ii) Shall be permitted only when the requesting agency provides proof that its staffing, facilities and other infrastructure costs, and preventive maintenance and repair costs are less than,

or equal to those incurred by DFO under the current preventive maintenance and repair services contract.

(iii) DFO shall, upon giving approval for a capital only lease, issue a delegation agreement to each agency.

(b) A full-service lease is designed to recover depreciation and overhead costs, including AFV and MIS fees, as well as all variable costs.

(3) DFO shall review agency motor vehicle utilization on a quarterly basis to identify vehicles in an agency's possession or control that, on the basis of the applicable replacement cycle, are either being under-utilized or over-utilized.

(4) DFO shall provide the results of the motor vehicle utilization review to each agency for use in agency efforts to insure full utilization of all state fleet motor vehicles in its possession or control.

(5) In the event that a vehicle is turned in for replacement as a result of reaching the optimum mileage allowed under the applicable replacement cycle mileage schedule, prior to the end of the period of time that the vehicle is expected to be in service, a rate containing a shorter replacement cycle period that reflects actual utilization of the vehicle being replaced may be implemented for said vehicle's replacement.

(6) In the event that a vehicle is turned in for replacement as scheduled, but is not in compliance with optimum mileage allowed under the applicable replacement cycle, a rate containing a longer replacement cycle period that reflects actual utilization of the vehicle being replaced may be implemented for said vehicle's replacement.

(7) DFO shall begin the monthly billing process when the agency receives the vehicle.

(a) Agencies that choose to keep any vehicle on the list of vehicles recommended for replacement after the receipt of the replacement vehicle, pursuant to the terms of a memorandum of understanding between the leasing agencies and DFO that allows the agency to continue to possess or control an already replaced vehicle, shall continue to pay a monthly lease fee on the vehicle until it is turned over to the Surplus Property Program for resale. Vehicles that are kept after the receipt of the replacement vehicle shall be deemed expansion vehicles for vehicle count report purposes.

(b) Agencies that choose to install miscellaneous equipment to the replacement vehicle, in house, shall be charged a monthly lease fee from date of receipt of the replacement vehicle. If DFO performs the installation, the billing process shall not begin until the agency has received the vehicle from DFO.

R27-4-10. Executive Vehicle Replacement.

(1) Executive Vehicles shall be available to only those with employment positions that have an assigned vehicle as part of a compensation package in accordance with state statute.

(a) Each fiscal year DFO shall establish a standard executive vehicle type and purchase price.

(b) Executives may elect to replace their assigned vehicle at the beginning of each elected term, or appointment period, or as deemed necessary for the personal safety and security of the elected or appointed official.

(c) When the executive leaves office, the vehicle shall be sold in accordance with State Surplus Property Program policies and procedures.

(2) Executives shall have the option of choosing a vehicle other than the standard executive vehicle.

(a) The alternative vehicle selection should not exceed the standard executive vehicle price parameter guidelines.

(b) In the event that the agency chooses an alternative vehicle that exceeds the standard vehicle guidelines, the agency shall pay for the difference in price between the vehicle requested and the standard executive vehicle.

R27-4-11. Capital Credit or Reservation of Vehicle Allocation for Surrendered Vehicles.

(1) This section implements that part of Item 59 of S.B. 1 of the 2002 General Session which requires the Division of Fleet Operations to "create a capitalization credit program that will allow agencies to divest themselves of vehicles without seeing a future capitalization cost if programs require replacement of the vehicle."

(2) In the event that an agency voluntarily surrenders a vehicle to DFO under the capitalization credit program, the agency shall receive a capital credit equal to: the total depreciation collected by DFO on the vehicle (D), plus the estimated salvage value for the vehicle (S), for use towards the purchase of the replacement vehicle.

(3) Prior to the purchase of the replacement vehicle, the surrendering agency shall pay DFO, an amount equal to the difference between the purchase price of the replacement vehicle and amount of the capital credit.

(4) DFO shall, in the event that an agency voluntarily surrenders a vehicle to DFO, hold the vehicle allocation open, or maintain the capital credit for the surrendering agency, for a period not to exceed the remainder of the fiscal year within which the surrender took place, plus an additional fiscal year.

(5) The surrendering agency's failure to request the return of the vehicle surrendered prior to the end of the period established in R27-4-11(4), above, shall result in the removal of the surrendered vehicle or allotment from the state fleet, the loss of the agency's capital credit, and effect a reduction in state fleet size.

(6) DFO shall not hold vehicle allocations or provide capital credit to an agency when the vehicle that is being surrendered:

(a) has been identified for removal from the state fleet in order to comply with legislatively mandated reductions in state fleet size; or

(b) is identified as a "do not replace" vehicle in the fleet information system; or

(c) is a state vehicle not purchased by DFO; or

(d) is a seasonal vehicle that has already been replaced.

(7) Any agency that fails to request the return of a voluntarily surrendered vehicle prior to the end of the period set forth in R27-4-11(4), above, must comply with the requirements of R27-4-5, Fleet Expansion, to obtain a vehicle to replace the one surrendered.

R27-4-12. Inter-agency Vehicle Reassignment or Reallocation Guidelines.

(1) DFO is responsible for state motor vehicle fleet management, and in the discharge of that responsibility, one of DFO's duties is to insure that the state is able to obtain full utilization of, and the greatest residual value possible for state vehicles.

(2) DFO shall, on a quarterly basis, conduct a review of state fleet motor vehicle utilization to determine whether the vehicles are being utilized in accordance with the mileage requirements contained in the applicable replacement cycles.

(3) DFO shall provide the results of the motor vehicle utilization review to each agency for use in agency efforts to insure full utilization of all state fleet vehicles in its possession or control.

(4) In conducting the review, DFO shall collect the following information on each state fleet vehicle:

(a) year, make and model;

(b) vehicle identification number (VIN);

(c) actual miles traveled per month;

(d) driver and/or program each vehicle is assigned to;

(e) location of the vehicle;

(f) class code and replacement cycle.

(4) Agencies shall be responsible for verifying the

information gathered by DFO.

(5) Actual vehicle utilization shall be compared to the scheduled mileage requirements contained in the applicable replacement cycle, and used to identify vehicles that may be candidates for reassignment or reallocation, reclassification, or elimination.

(6) In the event that intra-agency reassignment or reallocation of vehicles fails to bring vehicles into compliance with applicable replacement cycle mileage schedules within a replacement cycle, DFO may, in the exercise of its state motor vehicle fleet management responsibilities, reassign, reallocate or eliminate the replacement vehicles for vehicles that are chronically out of compliance with applicable replacement cycle mileage requirements to other agencies to ensure that all vehicles in the state fleet are fully utilized.

(7) Agencies required to relinquish vehicles due to a reassignment or reallocation may petition the Executive Director of the Department of Administrative Services, or the executive director's designee, for a review of the reallocation or reassignment made by DFO. However, vehicles that are the subject matter of petitions for review shall remain with the agencies to which they have been reassigned or reallocated until such time as the Executive Director of the Department of Administrative Services or the executive director's designee renders a decision on the matter.

R27-4-13. Disposal of State Vehicles.

(1) State vehicles shall be disposed of in accordance with the requirements of Section 63A-9-801 and Rule R28-1.

KEY: fleet expansion, vehicle replacement

January 10, 2005	**63A-9-401(1)(a)**
Notice of Continuation July 25, 2007	**63A-9-401(1)(d)(v)**
	63A-9-401(1)(d)(ix)
	63A-9-401(1)(d)(x)
	63A-9-401(1)(d)(xi)
	63A-9-401(1)(d)(xii)

R81. Alcoholic Beverage Control, Administration.
R81-1. Scope, Definitions, and General Provisions.
R81-1-1. Scope and Effective Date.

These rules are adopted pursuant to Section 32A-1-107(1), and shall be interpreted so as to be consistent with the Alcoholic Beverage Control Act. These rules shall govern the department and all licensees and permittees of the commission.

R81-1-2. Definitions.

Definitions of terms in the Act are used in these rules, except where the context of the terms in these rules clearly indicates a different meaning.

(1) "ACT" means the Alcoholic Beverage Control Act, Title 32A.

(2) "BAR" means a service structure maintained on a licensed premises to furnish glasses, ice and setups and to mix and serve liquor and to serve beer.

(3) "COMMISSION" means the Utah Alcoholic Beverage Control Commission.

(4) "COUNTER" means a level surface on which patrons consume food.

(5) "DECISION OFFICER" means a person who has been appointed by the commission or the director of the Department of Alcoholic Beverage Control to preside over the prehearing phase of all disciplinary actions, and, in all cases not requiring an evidentiary hearing.

(6) "DEPARTMENT" or "DABC" means the Utah Department of Alcoholic Beverage Control.

(7) "DIRECTOR" means the director of the Department of Alcoholic Beverage Control.

(8) "DISCIPLINARY ACTION" means the process by which violations of the Act and these rules are charged and adjudicated, and by which administrative penalties are imposed.

(9) "DISPENSING SYSTEM" means a dispensing system or device which dispenses liquor in controlled quantities not exceeding one ounce and has a meter which counts the number of pours served.

(10) "GUEST ROOM" means a space normally utilized by a natural person for occupancy, usually a traveler who lodges at an inn.

(11) "HEARING OFFICER" or "PRESIDING OFFICER" means a person who has been appointed by the commission or the director to preside over evidentiary hearings in disciplinary actions, and who is authorized to issue written findings of fact, conclusions of law, and recommendations to the commission for final action.

(12) "LETTER OF ADMONISHMENT" is a written warning issued by a decision officer to a respondent who is alleged to have violated the Act or these rules.

(13) "MANAGER" means a person chosen or appointed to manage, direct, or administer the affairs of another person, corporation, or company.

(14) "MEMBER" means an individual who regularly pays dues to a private club. Member does not include any corporation or other business enterprise or association, or any other group or association.

(15) "POINT OF SALE" means that portion of a package agency, restaurant, limited restaurant, airport lounge, on-premise banquet premises, private club, on-premise beer retailer, single event permitted area, temporary special event beer permitted area, or public service special use permitted area that has been designated by the department as an alcoholic beverage selling area. It also means that portion of an establishment that sells beer for off-premise consumption where the beer is displayed or offered for sale.

(16) "REASONABLE" means ordinary and usual thinking, speaking, or acting, which is fit and appropriate to the end in view.

(17) "RESPONDENT" means a department licensee, or permittee, or employee or agent of a licensee or permittee, or other entity against whom a letter of admonishment or notice of agency action is directed.

(18) "STAFF" or "authorized staff member" means a person duly authorized by the director of the department to perform a particular act.

(19) "UTAH ALCOHOLIC BEVERAGE CONTROL LAWS" means any Utah statutes, commission rules and municipal and county ordinances relating to the manufacture, possession, transportation, distribution, sale, supply, wholesale, warehousing, and furnishing of alcoholic beverages.

(20) "VIOLATION REPORT" means a written report from any law enforcement agency or authorized department staff member alleging a violation of the Utah Alcoholic Beverage Control Act or rules of the commission by a department licensee, or permittee, or employee or agent of a licensee or permittee or other entity.

(21) "WARNING SIGN" means a sign no smaller than six inches high by twelve inches wide, with print no smaller than one half inch bold letters and clearly readable, stating: "Warning: Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."

R81-1-3. General Policies.

(1) Official State Label.

Pursuant to Section 32A-1-109(6)(m), the department shall affix an official state label to every container of liquor that is at least 187 ml sold in the state, and to every box containing containers of liquor under 187 ml in size. Removal of the label is prohibited.

(2) Labeling.

No licensee or permittee shall sell or deliver any alcoholic beverage in containers not marked, branded or labeled in conformity with regulations enacted by the agencies of the United States government pertaining to labeling and advertising.

(3) Manner of Paying Fees.

Payment of all fees for licenses or permits, or renewals thereof, shall be made in legal tender of the United States of America, certified check, bank draft, cashier's check, United States post office money order, or personal check.

(4) Copy of Commission Rules.

Copies of the commission rules shall be available at the department's office, 1625 South 900 West, P. O. Box 30408, Salt Lake City, Utah 84130-0408 for an administrative cost of $20 per copy, or on the department's website at http://www.abc.utah.gov.

(5) Interest Assessment on Delinquent Accounts.

The department may assess the legal rate of interest provided in Sections 15-1-1 through -4 for any debt or obligation owed to the department by a licensee, permittee, package agent, or any other person.

(6) Returned Checks.

(a) The department will assess a $20 charge for any check payable to the department returned for the following reasons:

(i) insufficient funds;

(ii) refer to maker; or

(iii) account closed.

(b) Receipt of a check payable to the department which is returned by the bank for any of the reasons listed in Subsection (6)(a) may result in the immediate suspension of the license, permit, or operation of the package agency of the person tendering the check until legal tender of the United States of America, certified check, bank draft, cashier's check, or United States post office money order is received at the department offices, 1625 South 900 West, Salt Lake City, Utah, plus the $20 returned check charge. Failure to make good the returned check and pay the $20 returned check charge within thirty days after the license, permit, or operation of the package agency is suspended, is grounds for revocation of the license or permit, or

termination of the package agency contract, and the forfeiture of the licensee's, permittee's, or package agent's bond.

(c) In addition to the remedies listed in Subsection (6)(b), the department shall require that the licensee, permittee, or package agent transact business with the department on a "cash only" basis under the following guidelines:

(i) Except as provided in Subsection (6)(c)(ii):

(A) two or more returned checks received by the department from or on behalf of a licensee, permittee, or package agent within three consecutive months shall require that the licensee, permittee, or package agent be on "cash only" status for a period of three to six consecutive months from the date the department received notice of the second returned check;

(B) one returned check received by the department from or on behalf of a licensee, permittee, or package agent within six consecutive months after the licensee, permittee, or package agent has come off "cash only" status shall require that the licensee, permittee, or package agent be returned to "cash only" status for an additional period of six to 12 consecutive months from the date the department received notice of the returned check;

(C) one returned check received by the department from or on behalf of a licensee, permittee, or package agent at any time after the licensee, permittee, or package agent has come off "cash only" status for a second time shall require that the licensee, permittee, or package agent be on "cash only" for an additional period of 12 to 24 consecutive months from the date the department received notice of the returned check;

(D) a returned check received by the department from or on behalf of an applicant for a license, permit, or package agency for either an application or initial license or permit fee shall require that the applicant be on "cash only" status for a period of three consecutive months from the date the department received notice of the returned check;

(E) a returned check received by the department from or on behalf of a licensee or permittee for a license or permit renewal fee shall require that the licensee or permittee be on "cash only" status for a period of three consecutive months from the date the department received notice of the returned check;

(ii) a returned check received by the department from or on behalf of an applicant for or holder of a single event permit or temporary special event beer permit shall require that the person or entity that applied for or held the permit be on "cash only" status for any future events requiring permits from the commission that are conducted within a period of up to18 consecutive months from the date the department received notice of the returned check;

(iii) in instances where the department has discretion with respect to the length of time a licensee, permittee, or package agent is on "cash only" status, the department may take into account:

(A) the dollar amount of the returned check(s);

(B) the length of time required to collect the amount owed the department;

(C) the number of returned checks received by the department during the period in question; and

(D) the amount of the licensee, permittee, or package agency bond on file with the department in relation to the dollar amount of the returned check(s).

(iv) for purposes of this Subsection (6)(c), a licensee, permittee, or package agent that is on "cash only" status may make payments to the department in cash, with a cashier's check, or with a current debit card with an authorized pin number; and

(v) the department may immediately remove a licensee, permittee, or package agent from "cash only" status if it is determined that the cause of the returned check was due to bank error, and was not the fault of the person tendering the check.

(d) In addition to the remedies listed in Subsections (6)(a), (b) and (c), the department may pursue any legal remedies to effect collection of any returned check.

(7) Disposition of unsaleable merchandise.

The department, after determining that certain alcoholic products are distressed or unsaleable, but consumable, may make those alcoholic products available to the Utah Department of Public Safety for education or training purposes.

All merchandise made available to the Utah Department of Public Safety must be accounted for as directed by the Department of Alcoholic Beverage Control.

R81-1-4. Employees.

The department is an Equal Opportunity Employer.

R81-1-5. Notice of Public Hearings and Meetings.

Notice of all department meetings and public hearings, other than disciplinary hearings, shall be done in the following manner:

(1) The public notice shall specify the date, time, agenda, and location of each hearing or meeting.

(2) In the case of public meetings, notice shall be made as provided in Section 52-4-202.

(3) In the case of hearings, other than disciplinary hearings, public notice shall be made not less than ten days prior to the hearing.

(4) The procedure for posting public notice and the definition of public meeting for purposes of these rules, shall be the same as provided in Section 52-4-202.

R81-1-6. Violation Schedule.

(1) Authority. This rule is pursuant to Sections 32A-1-107(1)(c)(i), 32A-1-107(1)(e), 32A-1-107(4)(b), 32A-1-119(5), (6) and (7). These provisions authorize the commission to establish criteria and procedures for imposing sanctions against licensees and permittees and their officers, employees and agents who violate statutes and commission rules relating to alcoholic beverages. For purposes of this rule, holders of certificates of approval are also considered licensees. The commission may revoke or suspend the licenses or permits, and may impose a fine against a licensee or permittee in addition to or in lieu of a suspension. The commission also may impose a fine against an officer, employee or agent of a licensee or permittee. Violations are adjudicated under procedures contained in Section 32A-1-119 and disciplinary hearing Section R81-1-7.

(2) General Purpose. This rule establishes a schedule setting forth a range of penalties which may be imposed by the commission for violations of the alcoholic beverage laws. It shall be used by department decision officers in processing violations, and by presiding officers in charging violations, in assisting parties in settlement negotiations, and in recommending penalties for violations. The schedule shall be used by the commission in rendering its final decisions as to appropriate penalties for violations.

(3) Application of Rule.

(a) This rule governs violations committed by all commission licensees and permittees and their officers, employees and agents except single event permittees. Violations by single event permittees and their employees and agents are processed under Section 32A-7-106.

(b) This rule does not apply to situations where a licensee or permittee fails to maintain the minimum qualifications provided by law for holding a license or permit. These might include failure to maintain a bond or insurance, or a conviction for a criminal offense that disqualifies the licensee or permittee from holding the license or permit. These are fundamental licensing and permitting requirements and failure to maintain them may result in immediate suspension or forfeiture of the license or permit. Thus, they are not processed in accordance

with the Administrative Procedures Act, Title 63, Chapter 46b or Section R81-1-7. They are administered by issuance of an order to show cause requiring the licensee or permittee to provide the commission with proof of qualification to maintain their license or permit.

(c) If a licensee or permittee has not received a letter of admonishment, as defined in Sections R81-1-2 and R81-1-7(2)(b), or been found by the commission to be in violation of Utah statutes or commission rules for a period of 36 consecutive months, its violation record shall be expunged for purposes of determining future penalties sought. The expungement period shall run from the date the last offense was finally adjudicated by the commission.

(d) In addition to the penalty classifications contained in this rule, the commission may:

(i) upon revocation of a license or permit, take action to forfeit the bond of any licensee or permittee;

(ii) prohibit an officer, employee or agent of a licensee or permittee from serving, selling, distributing, manufacturing, wholesaling, warehousing, or handling alcoholic beverages in the course of employment with any commission licensee or permittee for a period determined by the commission;

(iii) order the removal of a manufacturer's, supplier's or importer's products from the department's sales list and a suspension of the department's purchase of those products for a period determined by the commission if the manufacturer, supplier, or importer directly committed the violation, or solicited, requested, commanded encouraged, or intentionally aided another to engage in the violation.

(iv) require a licensee to have a written responsible alcohol service plan as provided in R81-1-24.

(e) When the commission imposes a fine or administrative costs, it shall establish a date on which the payment is due. Failure of a licensee or permittee or its officer, employee or agent to make payment on or before that date shall result in the immediate suspension of the license or permit or the suspension of the employment of the officer, employee or agent to serve, sell, distribute, manufacture, wholesale, warehouse or handle alcoholic beverages with any licensee or permittee until payment is made. Failure of a licensee or permittee to pay a fine or administrative costs within 30 days of the initial date established by the commission shall result in the issuance of an order to show cause why the license or permit should not be revoked and the licensee's or permittee's compliance bond forfeited. The commission shall consider the order to show cause at its next regularly scheduled meeting.

(f) Violations of any local ordinance are handled by each individual local jurisdiction.

(4) Penalty Schedule. The department and commission shall follow these penalty range guidelines:

(a) Minor Violations. Violations of this category are lesser in nature and relate to basic compliance with the laws and rules. If not corrected, they are sufficient cause for action. Penalty range: Verbal warning from law enforcement or department compliance officer(s) to revocation of the license or permit and/or up to a $25,000 fine. A record of any letter of admonishment shall be included in the licensee's or permittee's and the officer's, employee's or agent's violation file at the department to establish a violation history.

(i) First occurrence involving a minor violation: the penalty shall range from a verbal warning from law enforcement or department compliance officer(s), which is documented to a letter of admonishment to the licensee or permittee and the officer, employee or agent involved. Law enforcement or department compliance officer(s) shall notify management of the licensee or permittee when verbal warnings are given.

(ii) Second occurrence of any type of minor violation: a written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a $100 to $500 fine for the licensee or permittee, and a letter of admonishment to a $25 fine for the officer, employee or agent.

(iii) Third occurrence of any type of minor violation: a one to five day suspension of the license or permit and employment of the officer, employee or agent, and/or a $200 to $500 fine for the licensee or permittee and up to a $50 fine for the officer, employee or agent.

(iv) More than three occurrences of any type of minor violation: a six day suspension to revocation of the license or permit and a six to ten day suspension of the employment of the officer, employee or agent, and/or a $500 to $25,000 fine for the licensee or permittee and up to a $75 fine for the officer, employee or agent.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the monetary penalties for each of the charges in their respective categories. If other minor violations are discovered during the same investigation, a verbal warning shall be given for each violation on a first occurrence. If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(b) Moderate Violations. Violations of this category demonstrate a general disregard for the laws or rules. Although the gravity of the acts are not viewed in the same light as in the serious and grave categories, they are still sufficient cause for action. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a letter of admonishment to revocation of the license or permit and/or up to a $25,000 fine.

(i) First occurrence involving a moderate violation: a written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a letter of admonishment to a $1000 fine for the licensee or permittee, and a letter of admonishment to a $50 fine for the officer, employee or agent.

(ii) Second occurrence of any type of moderate violation: a three to ten day suspension of the license or permit and a three to ten day suspension of the employment of the officer, employee or agent, and/or a $500 to $1000 fine for the licensee or permittee and up to a $75 fine for the officer, employee or agent.

(iii) Third occurrence of any type of moderate violation: a ten to 20 day suspension of the license or permit and a ten to 20 day suspension of the employment of the officer, employee or agent, and/or a $1000 to $2000 fine for the licensee or permittee and up to a $100 fine for the officer, employee or agent.

(iv) More than three occurrences of any type of moderate violation: a 15 day suspension to revocation of the license or permit and a 15 to 30 day suspension of the employment of the officer, employee or agent, and/or a $2000 to $25,000 fine for the licensee or permittee and up to a $150 fine for the officer, employee or agent.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(vi) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(c) Serious Violations. Violations of this category directly or indirectly affect or potentially affect the public safety, health and welfare, or may involve minors. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a five day

suspension to revocation of the license or permit and/or up to a $25,000 fine.

(i) First occurrence involving a serious violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a five to 30 day suspension of the license or permit and a five to 30 day suspension of the employment of the officer, employee or agent, and/or a $500 to $3000 fine for the licensee or permittee and up to a $100 fine for the officer, employee or agent.

(ii) Second occurrence of any type of serious violation: a ten to 90 day suspension of the license or permit and a ten to 90 day suspension of the employment of the officer, employee or agent, and/or a $1000 to $9000 fine for the licensee or permittee and up to a $150 fine for the officer, employee or agent.

(iii) More than two occurrences of any type of serious violation: a 15 day suspension to revocation of the license or permit and a 15 to 120 day suspension of the employment of the officer, employee or agent, and/or a $9000 to $25,000 fine for the licensee or permittee and up to a $500 fine for the officer, employee or agent.

(iv) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(v) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(d) Grave Violations. Violations of this category pose or potentially pose, a grave risk to public safety, health and welfare, or may involve lewd acts prohibited by title 32A, fraud, deceit, willful concealment or misrepresentation of the facts, exclusion of competitors' products, unlawful tied house trade practices, commercial bribery, interfering or refusing to cooperate with authorized officials in the discharge of their duties, unlawful importations, or industry supplying liquor to persons other than the department and military installations. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a ten day suspension to revocation of the license or permit and/or up to a $25,000 fine.

(i) First occurrence involving a grave violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a ten day suspension to revocation of the license or permit and a 10 to 120 day suspension of the employment of the officer, employee or agent, and/or a $1000 to $25,000 fine to the licensee or permittee and up to a $300 fine for the officer, employee or agent.

(ii) More than one occurrence of any type of grave violation: a fifteen day suspension to revocation of the license or permit, and a 15 to 180 day suspension of the employment of the officer, employee or agent and/or a $3000 to $25,000 fine for the licensee or permittee and up to a $500 fine for the officer, employee or agent.

(iii) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(iv) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(e) The following table summarizes the penalty ranges contained in this section of the rule for licensees and permittees.

TABLE

Violation Degree and Frequency	Warning Verbal/Written	Fine $ Amount	Suspension No. of Days	Revoke License
Minor				
1st	X	X		
2nd		100 to 500		
3rd		200 to 500	1 to 5	
Over 3		500 to 25,000	6 to	X
Moderate				
1st		X to 1,000		
2nd		500 to 1,000	3 to 10	
3rd		1,000 to 2,000	10 to 20	
Over 3		2,000 to 25,000	15 to	X
Serious				
1st		500 to 3,000	5 to 30	
2nd		1,000 to 9,000	10 to 90	
Over 2		9,000 to 25,000	15 to	X
Grave				
1st		1,000 to 25,000	10 to	X
Over 1		3,000 to 25,000	15 to	X

(f) The following table summarizes the penalty ranges contained in this section of the rule for officers, employees or agents of licensees and permittees.

TABLE

Violation Degree and Frequency	Warning Verbal/Written	Fine $ Amount	Suspension No. of Days
Minor			
1st	X	X	
2nd		X to 25	
3rd		to 50	1 to 5
Over 3		to 75	6 to 10
Moderate			
1st		X to 50	
2nd		to 75	3 to 10
3rd		to 100	10 to 20
Over 3		to 150	15 to 30
Serious			
1st		to 100	5 to 30
2nd		to 150	10 to 90
Over 2		to 500	15 to 120
Grave			
1st		to 300	10 to 120
Over 1		to 500	15 to 180

(5) Aggravating and Mitigating Circumstances. The commission and presiding officers may adjust penalties within penalty ranges based upon aggravating or mitigating circumstances. Examples of mitigating circumstances are: no prior violation history, good faith effort to prevent a violation, existence of written policies governing employee conduct, and extraordinary cooperation in the violation investigation that shows the licensee or permittee and the officer, employee or agent of the licensee or permittee accepts responsibility. Examples of aggravating circumstances are: prior warnings about compliance problems, prior violation history, lack of written policies governing employee conduct, multiple violations during the course of the investigation, efforts to conceal a violation, intentional nature of the violation, the violation involved more than one patron or employee, the violation involved a minor and, if so, the age of the minor, and whether the violation resulted in injury or death.

(6) Violation Grid. A violation grid describing each violation of the alcoholic beverage control laws, the statutory and rule reference, and the degree of seriousness of each violation is available for public inspection in the department's administrative office. A copy will be provided upon request at reproduction cost. It is entitled "Alcoholic Beverage Control Commission Violation Grid" and is incorporated by reference as part of this rule.

R81-1-7. Disciplinary Hearings.

(1) General Provisions.

(a) This rule is promulgated pursuant to Section 32A-1-107(1)(c)(i) and shall govern the procedure for disciplinary actions under the jurisdiction of the commission. Package agencies are expressly excluded from the provisions of this rule, and are governed by the terms of the package agency contract.

(b) Liberal Construction. Provisions of this rule shall be liberally construed to secure just, speedy and economical determination of all issues presented in any disciplinary action.

(c) Emergency Adjudication Proceedings. The department or commission may issue an order on an emergency basis without complying with the Utah Administrative Procedures Act in accordance with the procedures outlined in Section 63-46b-20.

(d) Utah Administrative Procedures Act. Proceedings under this rule shall be in accordance with Title 63, Chapter 46b, Utah Administrative Procedures Act (UAPA), and Sections 32A-1-119 and -120.

(e) Penalties.

(i) This rule shall govern the imposition of any penalty against a commission licensee, permittee, or certificate of approval holder, an officer, employee or agent of a licensee, permittee, or certificate of approval holder, and a manufacturer, supplier or importer whose products are listed in this state.

(ii) Penalties may include a letter of admonishment, imposition of a fine, the suspension or revocation of a commission license, permit, or certificate of approval, the requirement that a licensee have a written responsible alcohol service plan as provided in R81-1-24, the assessment of costs of action, an order prohibiting an officer, employee or agent of a licensee, permittee, or certificate of approval holder, from serving, selling, distributing, manufacturing, wholesaling, warehousing, or handling alcoholic beverages in the course of employment with any commission licensee, permittee, or certificate of approval holder for a period determined by the commission, the forfeiture of bonds, an order removing a manufacturer's, supplier's or importer's products from the department's sales list and a suspension of the department's purchase of those products for a period determined by the commission, and an order removing the products of a certificate of approval holder from the state approved sales list, and a suspension of the purchase of the products in the state.

(iii) Department administrative costs are the hourly pay rate plus benefits of each department employee involved in processing and conducting the adjudicative proceedings on the violation, an hourly charge for department overhead costs, the amount billed the department by an independent contractor for services rendered in conjunction with an adjudicative proceeding, and any additional extraordinary or incidental costs incurred by the department. The commission may also assess additional costs if a respondent fails to appear before the commission at the final stage of the adjudicative process. Department overhead costs are calculated by taking the previous year's total department expenditures less staff payroll charges expended on violations, dividing it by the previous year's total staff hours spent on violations, and multiplying this by a rate derived by taking the previous year's total staff payroll spent on violations to the previous year's total payroll of all office employees. The overhead cost figure shall be recalculated at the beginning of each fiscal year.

(f) Perjured Statements. Any person who makes any false or perjured statement in the course of a disciplinary action is subject to criminal prosecution under Section 32A-12-304.

(g) Service. Service of any document shall be satisfied by service personally or by certified mail upon any respondent, or upon any officer or manager of a corporate or limited liability company respondent, or upon an attorney for a respondent, or by service personally or by certified mail to the last known address of the respondent or any of the following:

(i) Service personally or by certified mail upon any employee working in the respondent's premises; or

(ii) Posting of the document or a notice of certified mail upon a respondent's premises; or

(iii) Actual notice. Proof of service shall be satisfied by a receipt of service signed by the person served or by a certificate of service signed by the person served, or by certificate of service signed by the server, or by verification of posting on the respondent's premises.

(h) Filing of Pleadings or Documents. Filing by a respondent of any pleading or document shall be satisfied by timely delivery to the department office, 1625 South 900 West, Salt Lake City, or by timely delivery to P. O. Box 30408, Salt Lake City, Utah 84130-0408.

(i) Representation. A respondent who is not a corporation or limited liability company may represent himself in any disciplinary action, or may be represented by an agent duly authorized by the respondent in writing, or by an attorney. A corporate or limited liability company respondent may be represented by a member of the governing board of the corporation or manager of the limited liability company, or by a person duly authorized and appointed by the respondent in writing to represent the governing board of the corporation or manager of the limited liability company, or by an attorney.

(j) Presiding Officers.

(i) The commission or the director may appoint presiding officers to receive evidence in disciplinary proceedings, and to submit to the commission orders containing written findings of fact, conclusions of law, and recommendations for commission action.

(ii) If fairness to the respondent is not compromised, the commission or director may substitute one presiding officer for another during any proceeding.

(iii) A person who acts as a presiding officer at one phase of a proceeding need not continue as presiding officer through all phases of a proceeding.

(iv) Nothing precludes the commission from acting as presiding officer over all or any portion of an adjudication proceeding.

(v) At any time during an adjudicative proceeding the presiding officer may hold a conference with the department and the respondent to:

(A) encourage settlement;

(B) clarify issues;

(C) simplify the evidence;

(D) expedite the proceedings; or

(E) facilitate discovery, if a formal proceeding.

(k) Definitions. The definitions found in Sections 32A-1-105 and Title 63, Chapter 46b apply to this rule.

(l) Computation of Time. The time within which any act shall be done shall be computed by excluding the first day and including the last day, unless the last day is a Saturday, Sunday, or state or federal holiday, in which case the next business day shall count as the last day.

(m) Default.

(i) The presiding officer may enter an order of default against a respondent if the respondent in an adjudicative proceeding fails to attend or participate in the proceeding.

(ii) The order shall include a statement of the grounds for default, and shall be mailed to the respondent and the department.

(iii) A defaulted respondent may seek to have the default order set aside according to procedures outlined in the Utah Rules of Civil Procedure.

(iv) After issuing the order of default, the commission or presiding officer shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the respondent in default and shall determine all

issues in the adjudicative proceeding, including those affecting the defaulting respondent.

(2) Pre-adjudication Proceedings.

(a) Staff Screening. Upon receipt of a violation report, a decision officer of the department shall review the report, and the alleged violator's violation history, and in accordance with R81-1-6, determine the range of penalties which may be assessed should the alleged violator be found guilty of the alleged violation.

(b) Letters of Admonishment. Because letters of admonishment are not "state agency actions" under Section 63-46b-1(1)(a), no adjudicative proceedings are required in processing them, and they shall be handled in accordance with the following procedures:

(i) If the decision officer of the department determines that the alleged violation does not warrant an administrative fine, or suspension or revocation of the license, permit, or certificate of approval, or action against an officer, employee or agent of a licensee, permittee, or certificate of approval holder, or against a manufacturer, supplier or importer of products listed in this state, a letter of admonishment may be sent to the respondent.

(ii) A letter of admonishment shall set forth in clear and concise terms:

(A) The case number assigned to the action;

(B) The name of the respondent;

(C) The alleged violation, together with sufficient facts to put a respondent on notice of the alleged violations and the name of the agency or staff member making the report;

(D) Notice that a letter of admonishment may be considered as a part of the respondent's violation history in assessing appropriate penalties in future disciplinary actions against the respondent; and

(E) Notice that a rebuttal is permitted under these rules within ten days of service of the letter of admonishment.

(F) Notice that the letter of admonishment is subject to the approval of the commission.

(iii) A copy of the law enforcement agency or department staff report shall accompany the letter of admonishment. The decision officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

(iv) A respondent may file a written rebuttal with the department within ten days of service of the letter of admonishment. The rebuttal shall be signed by the respondent, or by the respondent's authorized agent or attorney, and shall set forth in clear and concise terms:

(A) The case number assigned to the action;

(B) The name of the respondent;

(C) Any facts in defense or mitigation of the alleged violation, and a brief summary of any attached evidence. The rebuttal may be accompanied by supporting documents, exhibits, or signed statements.

(v) If the decision officer is satisfied, upon receipt of a rebuttal, that the letter of admonishment was not well taken, it may be withdrawn and the letter and rebuttal shall be expunged from the respondent's file. Letters of admonishment so withdrawn shall not be considered as a part of the respondent's violation history. If no rebuttal is received, or if the decision officer determines after receiving a rebuttal that the letter of admonishment is justified, the matter shall be submitted to the commission for final approval. Upon commission approval, the letter of admonishment, together with any written rebuttal, shall be placed in the respondent's department file and may be considered as part of the respondent's violation history in assessing appropriate penalties in future disciplinary actions against the respondent. If the commission rejects the letter of admonishment, it may either direct the decision officer to dismiss the matter, or may direct that an adjudicative proceeding be commenced seeking a more severe penalty.

(vi) At any time prior to the commission's final approval of a letter of admonishment, a respondent may request that the matter be processed under the adjudicative proceeding process.

(c) Commencement of Adjudicative Proceedings.

(i) Alleged violations shall be referred to a presiding officer for commencement of adjudicative proceedings under the following circumstances:

(A) the decision officer determines during screening that the case does not fit the criteria for issuance of a letter of admonishment under section (2)(b)(i);

(B) a respondent has requested that a letter of admonishment be processed under the adjudicative proceeding process; or

(C) the commission has rejected a letter of admonishment and directed that an adjudicative proceeding be commenced seeking a more severe penalty.

(ii) All adjudicative proceedings shall commence as informal proceedings.

(iii) At any time after commencement of informal adjudicative proceedings, but before the commencement of a hearing, if the department determines that it will seek administrative fines exceeding $3000, a suspension of the license, permit or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), the presiding officer shall convert the matter to a formal adjudicative proceeding.

(iv) At any time before a final order is issued, a presiding officer may convert an informal proceeding to a formal proceeding if conversion is in the public interest and does not unfairly prejudice the rights of any party.

(3) The Informal Process.

(a) Notice of agency action.

(i) Upon referral of a violation report from the decision officer for commencement of informal adjudicative proceedings, the presiding officer shall issue and sign a written "notice of agency action" which shall set forth in clear and concise terms:

(A) The names and mailing addresses of all persons to whom notice is being given by the presiding officer, and the name, title, and mailing address of any attorney or employee who has been designated to appear for the department;

(B) The department's case number;

(C) The name of the adjudicative proceeding, "DABC vs. ";

(D) The date that the notice of agency action was mailed;

(E) A statement that the adjudicative proceeding is to be conducted informally according to the provisions of this rule and Sections 63-46b-4 and -5 unless a presiding officer converts the matter to a formal proceeding pursuant to Sections (2)(c)(iii) or (iv) of this rule, in which event the proceeding will be conducted formally according to the provisions of this rule and Sections 63-46b-6 to -11;

(F) The date, time and place of any prehearing conference with the presiding officer;

(G) A statement that a respondent may request a hearing for the purpose of determining whether the violation(s) alleged in the notice of agency action occurred, and if so, the penalties that should be imposed;

(H) A statement that a respondent who fails to attend or participate in any hearing may be held in default;

(I) A statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;

(J) A statement of the purpose of the adjudicative proceeding and questions to be decided including:

(I) the alleged violation, together with sufficient facts to put the respondent on notice of the alleged violation and the name of the agency or department staff member making the violation report;

(II) the penalty sought, which may include assessment of costs under Section 32A-1-119(5)(c) and (d) if the respondent

is found guilty of the alleged violation, and forfeiture of any compliance bond on final revocation under Section 32A-1-119(5)(f) if revocation is sought by the department;

(K) Any violation history of the respondent which may be considered in assessing an appropriate penalty should the respondent be found guilty of the alleged violation; and

(L) The name, title, mailing address, and telephone number of the presiding officer.

(ii) A copy of the law enforcement agency or staff report shall accompany the notice of agency action. The presiding officer shall delete from the report any information that might compromise the identity of a confidential informant or undercover agent.

(iii) The notice of agency action and any subsequent pleading in the case shall be retained in the respondent's department file.

(iv) The notice of agency action shall be mailed to each respondent, any attorney representing the department, and, if applicable, any law enforcement agency that referred the alleged violation to the department.

(v) The presiding officer may permit or require pleadings in addition to the notice of agency action. All additional pleadings shall be filed with the presiding officer, with copies sent by mail to each respondent and to the department.

(vi) Amendment to Pleading. The presiding officer may, upon motion of the respondent or department made at or before the hearing, allow any pleading to be amended or corrected. Defects which do not substantially prejudice a respondent or the department shall be disregarded.

(vii) Signing of Pleading. Pleadings shall be signed by the department or respondent, or their authorized attorney or representative, and shall show the signer's address and telephone number. The signature shall be deemed to be a certification by the signer that he has read the pleading and that he has taken reasonable measures to assure its truth.

(b) The Prehearing Conference.

(i) The presiding officer may hold a prehearing conference with the respondent and the department to encourage settlement, clarify issues, simplify the evidence, or expedite the proceedings.

(ii) All or part of any adjudicative proceeding may be stayed at any time by a written settlement agreement signed by the department and respondent or their authorized attorney or representative, and by the presiding officer. The stay shall take effect immediately upon the signing of the settlement agreement, and shall remain in effect until the settlement agreement is approved or rejected by the commission. No further action shall be required with respect to any action or issue so stayed until the commission has acted on the settlement agreement.

(iii) A settlement agreement approved by the commission shall constitute a final resolution of all issues agreed upon in the settlement. No further proceedings shall be required for any issue settled. The approved settlement shall take effect by its own terms and shall be binding upon the respondent and the department. Any breach of a settlement agreement by a respondent may be treated as a separate violation and shall be grounds for further disciplinary action. Additional sanctions stipulated in the settlement agreement may also be imposed.

(iv) If the settlement agreement is rejected by the commission, the action shall proceed in the same posture as if the settlement agreement had not been reached, except that all time limits shall have been stayed for the period between the signing of the agreement and the commission rejection of the settlement agreement.

(v) If the matter cannot be resolved by settlement agreement, the department shall notify the respondent and the presiding officer whether it will seek administrative fines exceeding $3000, a suspension of the license, permit or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s).

(vi) If the department does not seek administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), any hearing on the matter shall be adjudicated informally.

(vii) If the department does seek administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval for the alleged violation(s), the presiding officer shall convert the matter to a formal adjudicative proceeding, and any hearing on the matter shall be adjudicated formally. The department may waive the formal adjudicative proceeding requirement that the respondent file a written response to the notice of agency action.

(c) The Informal Hearing.

(i) The presiding officer shall notify the respondent and department in writing of the date, time and place of the hearing at least ten days in advance of the hearing. Continuances of scheduled hearings are not favored, but may be granted by the presiding officer for good cause shown. Failure by a respondent to appear at the hearing after notice has been given shall be grounds for default and shall waive both the right to contest the allegations, and the right to the hearing. The presiding officer shall proceed to prepare and serve on respondent an order pursuant to R81-1-7(3)(d).

(ii) All hearings shall be presided over by the presiding officer.

(iii) The respondent named in the notice of agency action and the department shall be permitted to testify, present evidence, and comment on the issues. Formal rules of evidence shall not apply, however, the presiding officer:

(A) may exclude evidence that is irrelevant, immaterial or unduly repetitious;

(B) shall exclude evidence privileged in the courts of Utah;

(C) shall recognize presumptions and inferences recognized by law;

(D) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all the pertinent portions of the original document;

(E) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the commission, and of technical or scientific facts within the commission's specialized knowledge;

(F) may not exclude evidence solely because it is hearsay; and

(G) may use his experience, technical competence, and specialized knowledge to evaluate the evidence.

(iv) All testimony shall be under oath.

(v) Discovery is prohibited.

(vi) Subpoenas and orders to secure the attendance of witnesses or the production of evidence shall be issued by the presiding officer when requested by a respondent or the department, or may be issued by the presiding officer on his own motion.

(vii) A respondent shall have access to information contained in the department's files and to material gathered in the investigation of respondent to the extent permitted by law.

(viii) Intervention is prohibited.

(ix) The hearing shall be open to the public, provided that the presiding officer may order the hearing closed upon a written finding that the public interest in an open meeting is clearly outweighed by factors enumerated in the closure order. The presiding officer may take appropriate measures necessary to preserve the integrity of the hearing.

(x) Record of Hearing. The presiding officer shall cause an official record of the hearing to be made, at the department's expense, as follows:

(A) The record of the proceedings may be made by means of an audio or video recorder or other recording device at the department's expense.

(B) The record may also be made by means of a certified shorthand reporter employed by the department or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the department chooses not to employ a reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the department. Those desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.

(C) Any respondent, at his own expense, may have a person approved by the department, prepare a transcript of the hearing, subject to any restrictions that the department is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or audio or video recording of a hearing is made, it will be available at the department for use by the parties, but the original transcript or recording may not be withdrawn.

(D) The department shall retain the record of the evidentiary hearing for a minimum of one year from the date of the hearing, or until the completion of any court proceeding on the matter.

(xi) The presiding officer may grant continuances or recesses as necessary.

(xii) Order of presentation. Unless otherwise directed by the presiding officer at the hearing, the order of procedure and presentation of evidence will be as follows: (1) department; (2) respondent; (3) rebuttal by department.

(xiii) Time limits. The presiding officer may set reasonable time limits for the presentations described above.

(xiv) Continuances of the hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a respondent or the department indicating good cause why a continuance is necessary. The continuance of the hearing may also be made upon the motion of the presiding officer when in the public interest.

(xv) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the presiding officer may, in his discretion, permit a respondent and the department to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the presiding officer.

(d) Disposition.

(i) Presiding Officer's Order; Objections.

(A) Within a reasonable time after the close of the hearing, the presiding officer shall issue a signed order in writing that includes the following:

(I) the decision;

(II) the reasons for the decision;

(III) findings of facts;

(IV) conclusions of law;

(V) recommendations for final commission action;

(VI) notice that a respondent or the department having objections to the presiding officer's order may file written objections with the presiding officer within ten days of service of the order, setting forth the particulars in which the report is alleged to be unfair, inaccurate, incomplete, unreasonable, unlawful or not supported by the evidence.

(B) The order shall be based on the facts appearing in the department's files and on the facts presented in evidence at the informal hearing. Any finding of fact that was contested may not be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence. The order shall not recommend a penalty more severe than that sought in the notice of agency action, and in no event may it recommend administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval.

(C) A copy of the presiding officer's order shall be promptly mailed to the respondent and the department.

(D) The presiding officer shall wait ten days from service of his order for written objections, if any. The presiding officer may then amend or supplement his findings of fact, conclusions of law, and recommendations to reflect those objections which have merit or which are not disputed.

(E) Upon expiration of the time for filing written objections, the order of the presiding officer and any written objections timely filed, shall be submitted to the commission for final consideration.

(ii) Commission Action.

(A) Upon expiration of the time for filing objections, the order shall be placed on the next available agenda of a regular commission meeting for consideration by the commission. Copies of the order, together with any objections filed shall be forwarded to the commission, and the commission shall finally decide the matter on the basis of the order and any objections submitted.

(B) The commission shall be deemed a substitute presiding officer for this final stage of the informal adjudicative proceeding pursuant to Sections 63-46b-2(1)(h)(ii) and (iii). This stage is not considered a "review of an order by an agency or a superior agency" under Sections 63-46b-12 and -13.

(C) No additional evidence shall be presented to the commission. The commission may, in its discretion, permit the respondent and department to present oral presentations.

(D) After the commission has reached a final decision, it shall issue or cause to be issued a signed, written order pursuant to Section 32A-1-119(3)(c) and (6) and 63-46b-5(1)(i), containing:

(I) the decision;

(II) the reasons for the decision;

(III) findings of fact;

(IV) conclusions of law;

(V) action ordered by the commission and effective date of the action taken;

(VI) notice of the right to seek judicial review of the order within 30 days from the date of its issuance in the district court in accordance with Sections 63-46b-14, -15, -17, and -18, and 32A-1-119 and -120.

(E) The commission may adopt in whole or in part, any portion(s) of the initial presiding officer's order.

(F) The order shall be based on the facts appearing in the department's files and on the facts presented in evidence at the informal hearing.

(G) The order shall not impose a penalty more severe than that sought in the notice of agency action, and in no event may it impose administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval.

(H) The commission, after it has rendered its final decision and order, may direct the department director to prepare, issue, and cause to be served on the parties the final written order on behalf of the commission.

(I) A copy of the commission's order shall be promptly mailed to the parties.

(e) Judicial Review.

(i) Any petition for judicial review of the commission's final order must be filed within 30 days from the date the order is issued.

(ii) Appeals from informal adjudicative proceedings shall be to the district court in accordance with Sections 63-46b-15, -17, and -18, and 32A-1-119 and -120.

(4) The Formal Process.

(a) Conversion Procedures. If a presiding officer converts an informal adjudicative proceeding to a formal adjudicative proceeding pursuant to sections (2)(c)(iii) or (iv):

(i) the presiding officer shall notify the parties that the adjudicative proceeding is to be conducted formally according to the provisions of this rule and Sections 63-46b-6 to -11;

(ii) the case shall proceed without requiring the issuance of a new or amended notice of agency action;

(iii) the respondent shall be required to file a written response to the original notice of agency action within 30 days of the notice of the conversion of the adjudicative proceeding to a formal proceeding, unless this requirement is waived by the department. Extensions of time to file a response are not favored, but may be granted by the presiding officer for good cause shown. Failure to file a timely response shall waive the respondent's right to contest the matters stated in the notice of agency action, and the presiding officer may enter an order of default and proceed to prepare and serve his final order pursuant to R81-1-7(4)(e). The response shall be signed by the respondent, or by an authorized agent or attorney of the respondent, and shall set forth in clear and concise terms:

(A) the case number assigned to the action;

(B) the name of the adjudicative proceeding, "DABC vs. ";

(C) the name of the respondent;

(D) whether the respondent admits, denies, or lacks sufficient knowledge to admit or deny each allegation stated in the notice of agency action, in which event the allegation shall be deemed denied;

(E) any facts in defense or mitigation of the alleged violation or possible penalty;

(F) a brief summary of any attached evidence. Any supporting documents, exhibits, signed statements, transcripts, etc., to be considered as evidence shall accompany the response;

(G) a statement of the relief the respondent seeks;

(H) a statement summarizing the reasons that the relief requested should be granted.

(iv) the presiding officer may permit or require pleadings in addition to the notice of agency action and the response. All additional pleadings shall be filed with the presiding officer, with copies sent by mail to each party.

(v) the presiding officer may, upon motion of the responsible party made at or before the hearing, allow any pleading to be amended or corrected. Defects which do not substantially prejudice any of the parties shall be disregarded;

(vi) Pleadings shall be signed by the party or the party's attorney and shall show the signer's address and telephone number. The signature shall be deemed to be a certification by the signer that he has read the pleading and that he has taken reasonable measures to assure its truth;

(b) Intervention.

(i) Any person not a party may file a signed, written petition to intervene in a formal adjudicative proceeding with the presiding officer. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:

(A) the agency's case number;

(B) a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceedings or that the petitioner qualifies as an intervenor under any provision of law; and

(C) a statement of the relief that the petitioner seeks from the agency;

(ii) Response to Petition. Any party to a proceeding into which intervention is sought may make an oral or written response to the petition for intervention. The response shall state the basis for opposition to intervention and may suggest limitations to be placed upon the intervenor if intervention is granted. The response must be presented or filed at or before the hearing.

(iii) Granting of Petition. The presiding officer shall grant a petition for intervention if the presiding officer determines that:

(A) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and

(B) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

(iv) Order Requirements.

(A) Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

(B) An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.

(C) The presiding officer may impose conditions at any time after the intervention.

(D) If it appears during the course of the proceeding that an intervenor has no direct or substantial interest in the proceeding and that the public interest does not require the intervenor's participation, the presiding officer may dismiss the intervenor from the proceeding.

(E) In the interest of expediting a hearing, the presiding officer may limit the extent of participation of an intervenor. Where two or more intervenors have substantially like interests and positions, the presiding officer may at any time during the hearing limit the number of intervenors who will be permitted to testify, cross-examine witnesses or make and argue motions and objections.

(c) Discovery and Subpoenas.

(i) Discovery. Upon the motion of a party and for good cause shown that it is to obtain relevant information necessary to support a claim or defense, the presiding officer may authorize the manner of discovery against another party or person, including the staff, as may be allowed by the Utah Rules of Civil Procedure.

(ii) Subpoenas. Subpoenas and orders to secure the attendance of witnesses or the production of evidence in formal adjudicative proceedings shall be issued by the presiding officer when requested by any party, or may be issued by the presiding officer on his own motion.

(d) The Formal Hearing.

(i) Notice. The presiding officer shall notify the parties in writing of the date, time, and place of the hearing at least ten days in advance of the hearing. The presiding officer's name, title, mailing address, and telephone number shall be provided to the parties. Continuances of scheduled hearings are not favored, but may be granted by the presiding officer for good cause shown. Failure to appear at the hearing after notice has been given shall be grounds for default and shall waive both the respondent's right to contest the allegations, and the respondent's right to the hearing. The presiding officer shall proceed to prepare and serve on respondent his order pursuant to R81-1-7(4)(e).

(ii) Public Hearing. The hearing shall be open to all parties. It shall also be open to the public, provided that the presiding officer may order the hearing closed upon a written finding that the public interest in an open hearing is clearly outweighed by factors enumerated in the closure order. The presiding officer may take appropriate measures necessary to preserve the integrity of the hearing.

(iii) Rights of Parties. The presiding officer shall regulate the course of the hearings to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions, present evidence, argue, respond, conduct cross-examinations, and submit rebuttal evidence.

(iv) Public Participation. The presiding officer may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.

(v) Rules of Evidence. Technical rules of evidence shall not apply. Any reliable evidence may be admitted subject to the following guidelines. The presiding officer:

(A) may exclude evidence that is irrelevant, immaterial or unduly repetitious;

(B) shall exclude evidence privileged in the courts of Utah;

(C) shall recognize presumptions and inferences recognized by law;

(D) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all the pertinent portions of the original document.

(E) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the agency, and of technical or scientific facts within the agency's specialized knowledge;

(F) may not exclude evidence solely because it is hearsay; and

(G) may use his experience, technical competence, and specialized knowledge to evaluate the evidence.

(vi) Oath. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

(vii) Order of presentation. Unless otherwise directed by the presiding officer at the hearing, the order of procedure and presentation of evidence will be as follows: (1) agency; (2) respondent; (3) intervenors (if any); (4) rebuttal by agency.

(viii) Time limits. The presiding officer may set reasonable time limits for the presentations described above.

(ix) Continuances of the hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a party indicating good cause why a continuance is necessary. The continuance of the hearing may also be made upon the motion of the presiding officer when in the public interest.

(x) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the presiding officer may, in his discretion, permit the parties to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the presiding officer.

(xi) Record of Hearing. The presiding officer shall cause an official record of the hearing to be made, at the agency's expense, as follows:

(A) The record may be made by means of an audio or video recorder or other recording device at the department's expense.

(B) The record may also be made by means of a certified shorthand reporter employed by the department or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the department chooses not to employ a reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the department. Those desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.

(C) Any respondent, at his own expense, may have a person approved by the department prepare a transcript of the hearing, subject to any restrictions that the agency is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or audio or video recording of a hearing is made, it will be available at the department for use by the parties, but the original transcript or recording may not be withdrawn.

(D) The department shall retain the record of the evidentiary hearing for a minimum of one year from the date of the hearing, or until the completion of any court proceeding on the matter.

(xii) Failure to appear. Inexcusable failure of the respondent to appear at a scheduled evidentiary hearing after receiving proper notice constitutes an admission of the charged violation. The validity of any hearing is not affected by the failure of any person to attend or remain in attendance pursuant to Section 32A-1-119(5)(c).

(e) Disposition.

(i) Presiding Officer's Order; Objections.

(A) Within a reasonable time of the close of the hearing, or after the filing of any post-hearing papers permitted by the presiding officer, the presiding officer shall sign and issue a written order that includes the following:

(I) the findings of fact based exclusively on evidence found in the record of the adjudicative proceedings, or facts officially noted. No finding of fact that was contested may be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence, except if the respondent fails to respond as per R81-1-7(4)(a)(iii), then the findings of fact shall adopt the allegations in the notice of agency action;

(II) conclusions of law;

(III) the decision;

(IV) the reasons for the decision;

(V) recommendations for final commission action. The order shall not recommend a penalty more severe than that sought in the notice of agency action;

(VI) notice that a respondent or the department having objections to the presiding officer's order may file written objections with the presiding officer within ten days of service of the order setting forth the particulars in which the report is alleged to be unfair, inaccurate, incomplete, unreasonable, unlawful, or not supported by the evidence.

(B) A copy of the presiding officer's order shall be promptly mailed to the parties.

(C) The presiding officer shall wait ten days from service of his order for written objections, if any. The presiding officer may then amend or supplement his findings of fact, conclusions of law, and recommendations to reflect those objections which have merit and which are not disputed.

(D) Upon expiration of the time for filing written objections, the order of the presiding officer and any written objections timely filed, shall be submitted to the commission for final consideration.

(ii) Commission Action.

(A) Upon expiration of the time for filing objections, the order shall be placed on the next available agenda of a regular commission meeting for consideration by the commission. Copies of the order, together with any objections filed by the respondent, shall be forwarded to the commission, and the commission shall finally decide the matter on the basis of the order and any objections submitted.

(B) The commission shall be deemed a substitute presiding officer for this final stage of the formal adjudicative proceeding pursuant to Sections 63-46b-2(h)(ii) and (iii). This stage is not considered a "review of an order by an agency or a superior agency" under Sections 63-46b-12 and -13.

(C) No additional evidence shall be presented to the commission. The commission may, in its discretion, permit the parties to present oral presentations.

(D) After the commission has reached a final decision, it shall issue or cause to be issued a signed, written order pursuant to Section 32A-1-119(3)(c) and (6) and 63-46b-10(1) that includes:

(I) findings of fact based exclusively on evidence found in the record of the adjudicative proceedings, or facts officially noted. No finding of fact that was contested may be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence, except if the respondent fails to respond as per R81-1-7(4)(a)(iii), then the findings of

fact shall adopt the allegations in the notice of agency action and the respondent is considered in default;

(II) conclusions of law;

(III) the decision;

(IV) the reasons for the decision;

(V) action ordered by the commission and effective date of the action taken. The order shall not impose a penalty more severe than that sought in the notice of agency action;

(VI) notice of the right to file a written request for reconsideration within ten days of the service of the order;

(VII) notice of the right to seek judicial review of the order within thirty days of the date of its issuance in the court of appeals in accordance with Sections 32A-1-120 and 63-46b-16, -17, and -18.

(E) The commission may adopt in whole or in part, any portion(s) of the initial presiding officer's order.

(F) The commission may use its experience, technical competence and specialized knowledge to evaluate the evidence.

(G) The commission, after it has rendered its final decision and order, may direct the department director to prepare, issue, and cause to be served on the parties the final written order on behalf of the commission.

(H) A copy of the commission's order shall be promptly mailed to the parties.

(I) A respondent having objections to the order of the commission may file, within ten days of service of the order, a request for reconsideration with the commission, setting forth the particulars in which the order is unfair, unreasonable, unlawful, or not supported by the evidence. If the request is based upon newly discovered evidence, the petition shall be accompanied by a summary of the new evidence, with a statement of reasons why the respondent could not with reasonable diligence have discovered the evidence prior to the formal hearing, and why the evidence would affect the commission's order.

(J) The filing of a request for reconsideration is not a prerequisite for seeking judicial review of the commission's order.

(K) Within twenty days of the filing of a request for reconsideration, the commission may issue or cause to be issued a written order granting the request or denying the request in whole or in part. If the request is granted, it shall be limited to the matter specified in the order. Upon reconsideration, the commission may confirm its former order or vacate, change or modify the same in any particular, or may remand for further action. The final order shall have the same force and effect as the original order.

(L) If the commission does not issue an order within twenty days after the filing of the request, the request for reconsideration shall be considered denied.

(f) Judicial Review.

(i) Respondent may file a petition for judicial review of the commission's final order within 30 days from the date the order is issued.

(ii) Appeals from formal adjudicative proceedings shall be to the Utah Court of Appeals in accordance with Sections 63-46b-16, -17, and -18, and Section 32A-1-120.

R81-1-8. Consent Calendar Procedures.

(1) Authority. This rule is pursuant to the commission's authority to establish procedures for suspending or revoking permits, licenses, and package agencies under 32A-1-107(1)(b) and (e), and the commission's authority to adjudicate violations of Title 32A.

(2) Purpose. This rule establishes a consent calendar procedure for handling letters of admonishment issued and settlement agreements proposed pursuant to R81-1-7 that meet the following criteria:

(a) Uncontested letters of admonishment where no written objections have been received from the respondent; and

(b) Settlement agreements except those where the respondent is allowed to present further argument to the commission under the terms of the settlement agreement.

(3) Application of the Rule.

(a) A consent calendar may be utilized by the commission at their meetings to expedite the handling of letters of admonishment and settlement agreements that meet the criteria of Section (2).

(b) Consent calendar items shall be briefly summarized by department staff or the assistant attorney general assigned to the department. The summary shall describe the nature of the violations and the penalties sought.

(c)(i) The commission shall be furnished in advance of the meeting a copy of each letter of admonishment and settlement agreement on the consent calendar and any documents essential for the commission to make an informed decision on the matter.

(ii) If the case involves anything unusual or out of the ordinary, it shall be highlighted on the letter of admonishment or settlement agreement and shall be noted by the department staff person or assistant attorney general during the summary of the case.

(iii) Settlement agreements on the consent calendar shall include specific proposed dates for the suspension of any license or permit, and for payment of any fines or administrative costs.

(d) If the case involves a serious or grave violation as defined in R81-1-6, the licensee or permittee, absent good cause, shall be in attendance at the commission meeting. The licensee or permittee shall be present not to make a presentation, but to respond to any questions from the commission. Individual employees of a licensee or permittee are not required to be in attendance at the commission meeting.

(e) Any commissioner may have an item removed from the consent calendar if the commissioner feels that further inquiry is necessary before reaching a final decision. In the event a commissioner elects to remove an item from the consent calendar, and the licensee or permittee is not in attendance, the matter may be rescheduled for the next regular commission meeting. Otherwise, the action recommended by department staff or the assistant attorney general presenting the matter shall be approved by unanimous consent of the commission.

(f) All consent calendar items shall be approved in a single motion at the conclusion of the presentation of the summary.

(g) All fines and administrative costs shall be paid on or before the day of the commission meeting unless otherwise provided by order of the commission.

R81-1-9. Liquor Dispensing Systems.

A licensee may not install or use any system for the automated mixing or dispensing of spirituous liquor unless the dispensing system has been approved by the department.

(1) Minimum requirements. The department will only approve a dispensing system which:

(a) dispenses spirituous liquor in calibrated quantities not to exceed one ounce; and

(b) has a meter which counts the number of pours dispensed.

The margin of error of the system for a one ounce pour size cannot exceed 1/16 of an ounce or two milliliters.

(2) Types of systems. Dispensing systems may be of various types including: gun, stationary head, tower, insertable spout, ring activator or similar method.

(3) Method of approval.

(a) Suppliers. Companies which manufacture, distribute, sell, or supply dispensing systems must first have their product approved by the department prior to use by any liquor licensee in the state. They shall complete the "Supplier Application for Dispensing System Approval" form provided by the department, which includes: the name, model number, manufacturer and

supplier of the product; the type and method of dispensing, calibrating, and metering; the degree or tolerance of error, and a verification of compliance with federal and state laws, rules, and regulations.

(b) Licensees. Before any dispensing system is put into use by a licensee, the licensee shall complete the "Licensee Application for Dispensing System Approval" form provided by the department. The department shall maintain a list of approved products and shall only authorize installation of a product previously approved by the department as provided in subsection (a). The licensee is thereafter responsible for verifying that the system, when initially installed, meets the specifications which have been supplied to the department by the manufacturer. Once installed, the licensee shall maintain the dispensing system to ensure that it continues to meet the manufacturer's specifications. Failure to maintain the system may be grounds for suspension or revocation of the licensee's liquor license.

(c) Removal from approved list. In the event the system does not meet the specifications as represented by the manufacturer, the licensee shall immediately notify the department. The department shall investigate the situation to determine whether the product should be deleted from the approved list.

(4) Operational restrictions.

(a) The system must be calibrated to pour a quantity of spirituous liquor not to exceed one ounce.

(b) Voluntary consent is given that representatives of the department, State Bureau of Investigation, or any law enforcement officer shall have access to any system for inspection or testing purposes. A licensee shall furnish to the representatives, upon request, samples of the alcoholic products dispensed through any system for verification and analysis.

(c) Spirituous liquor bottles in use with a dispensing system at the dispensing location must be affixed to the dispensing system by the licensee. Spirituous liquor bottles in use with a remote dispensing system must be in a locked storage area. Any other primary spirituous liquor not in service must remain unopened. There shall be no opened primary spirituous liquor bottles at a dispensing location that are not affixed to an approved dispensing device. This rule does not prohibit the presence of opened containers of wine for use as provided by law.

(d) The dispensing system and spirituous liquor bottles attached to the system must be locked or secured in such a place and manner as to preclude the dispensing of spirituous liquor at times when liquor sales are not authorized by law.

(e) All dispensing systems and devices must

(i) avoid an in-series hookup which would permit the contents of liquor bottles to flow from bottle to bottle before reaching the dispensing spigot or nozzle;

(ii) not dispense from or utilize containers other than original liquor bottles; and

(iii) prohibit the intermixing of different kinds of products or brands in the liquor bottles from which they are being dispensed.

(f) Pursuant to federal law, all liquor dispensed through a dispensing system shall be from its original container, and there shall be no re-use or refilling of liquor bottles with any substance whatsoever. The commission adopts federal regulations 27 CFR 194 and 26 USCA Section 5301 and incorporates them by reference.

(g) Each licensee shall keep daily records for each dispensing outlet as follows:

(i) brands of liquor dispensed through the dispensing system;

(ii) beginning and ending meter readings by brand or sales price level and the number of portions dispensed through the dispensing system;

(iii) number of portions sold by brand or sales price level; and

(iv) a comparison of the number of portions dispensed to the number of portions sold including an explanation of any variances by brand or sales price level.

(v) These records must be made available for inspection and audit by the department or law enforcement.

(h) This rule does not prohibit the sale of pitchers of mixed drinks as long as the pitcher contains no more than one ounce of primary spirituous liquor per person to which the pitcher is served.

(i) Licensees shall display in a prominent place on the premises a list of the types and brand names of spirituous liquor being served through its dispensing system. This requirement may be satisfied either by printing the list on an alcoholic beverage menu or by wall posting or both.

(j) A licensee or his employee shall not:

(i) sell or serve any brand of spirituous liquor not identical to that ordered by the patron; or

(ii) misrepresent the brand of any spirituous liquor contained in any drink sold or offered for sale.

(k) All dispensing systems and devices must conform to federal, state, and local health and sanitation requirements. Where considered necessary, the department may:

(i) require the alteration or removal of any system,

(ii) require the licensee to clean, disinfect, or otherwise improve the sanitary conditions of any system.

R81-1-10. Wine Dispensing.

(1) Each licensee shall keep daily records that compare the number of portions of wine by the glass dispensed to the number of portions sold. These records shall indicate:

(a) the brands of each wine dispensed by the glass;

(b) the portion size, not to exceed five ounces per portion, and the number of portions dispensed by the glass of each wine by brand and sales price level;

(c) the portion size and number of portions sold by the glass of each wine by brand and sales price level; and

(d) a comparison of the number of portions dispensed to the number of portions sold including an explanation of any variances.

These records must be made available for inspection and audit by the department or law enforcement.

R81-1-11. Multiple-Licensed Facility Storage and Service.

(1) For the purposes of this rule:

(a) "premises" as defined in Section 32A-1-105(37) shall include the location of any licensed restaurant, limited restaurant, club, or on-premise beer retailer facility or facilities operated or managed by the same person or entity that are located within the same building or complex. Multiple licensed facilities shall be termed "qualified premises" as used in this rule.

(b) the terms "sell", "sale", "to sell" as defined in Section 32A-1-105(48) shall not apply to a cost allocation of alcoholic beverages as used in this rule.

(c) "cost allocation" means an apportionment of the as purchased cost of the alcoholic beverage product based on the amount dispensed in each outlet as reconciled by the record keeping requirements of this rule.

(d) "remote storage alcoholic beverage dispensing system" means a dispensing system where the alcoholic product is stored in a single centralized location, and may have separate dispensing heads at different locations, and is capable of accounting for the amount of alcoholic product dispensed to each location.

(2) Where qualified premises have consumption areas in reasonable proximity to each other, the dispensing of alcoholic beverages may be made from the alcoholic beverage inventory

of an outlet in one licensed location to patrons in either consumption area of the qualified premises subject to the following requirements:

(a) for liquor and wine dispensing, daily dispensing records as required in R81-1-9 and R81-1-10 must also show the amount of alcoholic beverage products dispensed to each licensed location;

(b) for beer dispensing, daily records must be kept in a form acceptable to the department that show the amount of beer dispensed to each outlet;

(c) point of sale control systems must be implemented that will record the amounts of each alcoholic beverage product sold in each location. Sales records and dispensing records must be balanced daily;

(d) cost allocation of the alcoholic beverage product cost must be made for each location on at least a monthly basis. Allocations must be able to be supported by the record keeping requirements of Section 32A-4-106, 32A-4-307, 32A-5-107, or 32A-10-206;

(e) dispensing of alcoholic beverages to a licensed location may not be made on prohibited days or at prohibited hours pertinent to that license type;

(f) if separate inventories of liquor are maintained in one dispensing location, the storage area of each licensee's liquor must remain locked during the prohibited hours and days of sale for each license type;

(g) dispensing of alcoholic beverages to a licensed location may not be made in any manner prohibited by the statutory or regulatory operational restrictions of that license type;

(h) a licensee must obtain department approval before dispensing alcoholic beverages as described in this section. Applications for approval shall be in a form prescribed by the department and shall include a floor plan of all storage, dispensing, sales, service, and consumption areas involved.

(i) alcoholic beverages dispensed under this section may be delivered by servers from one outlet to the various approved consumption areas, or dispensed to each outlet through the use of a remote storage alcoholic beverage dispensing system.

(3) On qualified premises where each licensee maintains an inventory of alcoholic beverage products, the alcoholic beverages owned by each licensee may be stored in a common location in the building subject to the following guidelines:

(a) each licensee shall identify the common storage location when applying for or renewing their license, and shall receive department approval of the location;

(b) each licensee must be able to account for its ownership of the alcoholic beverages stored in the common storage location by keeping records, balanced monthly, of expenditures for alcoholic beverages supported by items such as delivery tickets, invoices, receipted bills, canceled checks, petty cash vouchers; and

(c) the common storage area may be located on the premises of one of the licensed liquor establishments.

R81-1-12. Alcohol Training and Education Seminar.

(1) The alcohol training and education seminar, as described in Section 62A-15-401, shall be completed by every individual of every new and renewing licensee under title 32A who:

(a) is employed to sell or furnish alcoholic beverages to the public within the scope of his employment for consumption on the premises;

(b) is employed to manage or supervise the service of alcoholic beverages; or

(c) holds an ownership interest in an on-premise licensed establishment and performs the duties of a manager, supervisor, or server of alcoholic beverages.

(2) Persons described in subsection 1(a) and (b) must complete the training within 30 days of commencing employment. Persons described in subsection 1(c) must complete the training within 30 days of engaging in the duties described in subsection 1(a) and (b).

(3) Each licensee shall maintain current records on each individual indicating:

(a) date of hire, and

(b) date of completion of training.

(4) The seminar shall include the following subjects in the curriculum and training:

(a) alcohol as a drug and its effect on the body and behavior;

(b) recognizing the problem drinker;

(c) an overview of state alcohol laws;

(d) dealing with problem customers; and

(e) alternate means of transportation to get a customer safely home.

(5) Persons required to complete the seminar shall pay a fee to the seminar provider.

(6) The seminar is administered by the Division of Substance Abuse of the Utah Department of Human Services.

(7) Persons who are not in compliance with subsection (2) may not:

(a) serve or supervise the serving of alcoholic beverages to a customer for consumption on the premises of a licensee; or

(b) engage in any activity that would constitute managing operations at the premises of a licensee.

R81-1-13. Utah Government Records Access and Management Act.

(1) Purpose. To provide procedures for access to government records of the commission and the department.

(2) Authority. The authority for this rule is Sections 63-2-204, and 63-2-904 of the Government Records Access and Management Act (GRAMA).

(3) Requests for Access. Requests for access to government records of the commission or the department should be written and made to the executive secretary of the commission or the records officer of the department, as the case may be, at the following address: Department of Alcoholic Beverage Control, 1625 South 900 West, P.O. Box 30408, Salt Lake City, Utah 84130-0408.

(4) Fees. A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from the commission and the department by contacting the appropriate official specified in paragraph (3) above. The department may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed $50 or if the requester has not paid fees from previous requests. Fees for duplication and compilation of a record may be waived under certain circumstances described in Section 63-2-203(4). Requests for this waiver of fees must be made to the appropriate official specified in paragraph (3) above.

(5) Requests for Access for Research Purposes. Access to private or controlled records for research purposes is allowed by Section 63-2-202(8). Requests for access to these records for research purposes may be made to the appropriate official specified in paragraph (3) above.

(6) Intellectual Property Rights. Whenever the commission or department determines that it owns an intellectual property right to a portion of its records, it may elect to duplicate and distribute, or control any materials, in accordance with the provisions of Section 63-2-201(10). Decisions affecting records covered by these rights will be made by the appropriate official specified in paragraph (3) above. Any questions regarding the duplication and distribution of materials should be addressed to that individual.

(7) Requests to Amend a Record. An individual may contest the accuracy or completeness of a document pertaining to him pursuant to Section 63-2-603. The request should be

made to the appropriate official specified in paragraph (3) above.

(8) Time Periods Under GRAMA. The provisions of Rule 6 of the Utah Rules of Civil Procedure shall apply to calculate time periods specified in GRAMA.

R81-1-14. Americans With Disabilities Act Complaint Procedure.

(1) Authority and Purpose. This rule is promulgated pursuant to Section 63-46a-3(3). The commission, pursuant to 28 CFR 35.107, July 1, 1992 Ed., adopts, defines, and publishes within this rule complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act, with the commission or the department.

(2) No qualified individual with a disability, by reason of disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of the commission, or department, or be subjected to discrimination by the commission or department.

(3) Definitions.

"ADA coordinator" means the commission's and department's coordinator or designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.

"ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies: Office of Planning and Budget; Department of Human Resource Management; Division of Risk Management; Division of Facilities Construction Management; and Office of the Attorney General.

"Disability" means with respect to an individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of an impairment; or being regarded as having an impairment.

"Individual with a disability" means a person who has a disability which limits one of his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the commission or department, or who would otherwise be an eligible applicant for vacant positions with the commission or department, as well as those who are employees of the commission or department.

"Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(4) Filing of Complaints.

(a) The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 60 days from the date of the alleged act of discrimination.

(b) The complaint shall be filed with the commission's and department's ADA coordinator in writing or in another accessible format suitable to the individual.

(c) Each complaint shall:

(i) include the individual's name and address;

(ii) include the nature and extent of the individual's disability;

(iii) describe the commission's or department's alleged discriminatory action in sufficient detail to inform the commission or department of the nature and date of the alleged violation;

(iv) describe the action and accommodation desire; and

(v) be signed by the individual or by his legal representative.

(d) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

(5) Investigation of Complaint.

(a) The ADA coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in paragraph (4)(c) of this rule if it is not made available by the individual.

(b) When conducting the investigation, the ADA coordinator may seek assistance from the commission's or department's legal, human resource, and budget staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve an expenditure of funds which is not absorbable within the commission's or department's budget and would require appropriation authority; facility modifications; or reclassification or reallocation in grade, the ADA coordinator shall consult with the ADA State Coordinating Committee.

(6) Issuance of Decision.

(a) Within 15 working days after receiving the complaint, the ADA coordinator shall issue a decision outlining in writing or in another acceptable suitable format stating what action, if any, shall be taken on the complaint.

(b) If the coordinator is unable to reach a decision within the 15 working day period, he shall notify the individual with a disability in writing or by another acceptable, suitable format why the decision is being delayed and what additional time is needed to reach a decision.

(7) Appeals.

(a) The individual may appeal the decision of the ADA coordinator by filing an appeal within five working days from the receipt of the decision.

(b) Appeals involving the commission shall be filed in writing with the commission. Appeals involving the department shall be filed in writing with the department's executive director or a designee other than the ADA coordinator.

(c) The filing of an appeal shall be considered as authorization by the individual to allow review of all information, including information classified as private or controlled, by the commission, executive director, or designee.

(d) The appeal shall describe in sufficient detail why the ADA coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

(e) The commission, executive director, or designee, shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the ADA coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making any decision that would involve an expenditure of funds which is not absorbable within the commission's or department's budget and would require appropriation authority; facility modifications; or reclassification or reallocation in grade, the commission, executive director, or designee shall also consult with the State ADA Coordinating Committee.

(f) The decision shall be issued within ten working days after receiving the appeal and shall be in writing or in another accessible suitable format to the individual.

(g) If the commission, executive director, or designee is unable to reach a decision within the ten working day period, the individual shall be notified in writing or by another acceptable, suitable format why the decision is being delayed and the additional time needed to reach a decision.

(8) Classification of records. The record of each complaint and appeal, and all written records produced or received as part of the action, shall be classified as protected as defined under Section 63-2-304 until the ADA coordinator, executive director, or their designees issue the decision, at

which time any portions of the record which may pertain to the individual's medical condition shall remain classified as private as defined under Section 63-2-302, or controlled as defined in Section 63-2-303. All other information gathered as part of the complaint record shall be classified as private information. Only the written decision of the ADA coordinator, executive director, or designees shall be classified as public information.

(9) Relationship to other laws. This rule does not prohibit or limit the use of remedies available to individuals under the state Anti-Discrimination Complaint Procedures Section 67-19-32; the Federal ADA Complaint Procedures, 28 CFR 35.170, et seq.; or any other Utah or federal law that provides equal or greater protection for the rights of individuals with disabilities.

R81-1-15. Commission Declaratory Orders.

(1) Authority. As required by Section 63-46b-21, and as authorized by Section 32A-1-107, this rule provides the procedures for the submission, review, and disposition of petitions for commission declaratory orders on the applicability of statutes administered by the commission and department, rules promulgated by the commission, and orders issued by the commission.

(2) Petition Procedure.

(a) Any person or government agency directly affected by a statute administered by the commission, a rule promulgated by the commission, or an order issued by the commission may petition for a declaratory order.

(b) The petitioner shall file the petition with the commission's executive secretary.

(3) Petition Form. The petition shall:

(a) be clearly designated as a request for a declaratory order;

(b) identify the statute, rule, or order to be reviewed;

(c) describe the situation or circumstances giving rise to the need for the declaratory order, or in which applicability of the statute, rule, or order is to be reviewed;

(d) describe the reason or need for the applicability review;

(e) identify the person or agency directly affected by the statute, rule, or order;

(f) include an address and telephone number where the petitioner can be reached during regular work days; and

(g) be signed by the petitioner.

(4) Petition Review and Disposition.

(a) The commission shall:

(i) review and consider the petition;

(ii) prepare a declaratory order stating:

(A) the applicability or non-applicability of the statute, rule, or order at issue;

(B) the reasons for the applicability or non-applicability of the statute, rule, or order; and

(C) any requirements imposed on the department, the petitioner, or any person as a result of the declaratory order;

(iii) serve the petitioner with a copy of the order.

(b) The commission may:

(i) interview the petitioner;

(ii) hold an informal adjudicative hearing to gather information prior to making its determination;

(iii) hold a public information-gathering hearing on the petition;

(iv) consult with department staff, the Attorney General's Office, other government agencies, or the public; and

(v) take any other action necessary to provide the petition adequate review and due consideration.

R81-1-16. Disqualification Based Upon Conviction of Crime.

(1) The Alcoholic Beverage Control Act generally disqualifies persons from being employees of the department, operating a package agency, holding a license or permit, or being employed in a managerial or supervisory capacity with a package agency, licensee or permittee if they have been convicted of:

(a) a felony under any federal or state law;

(b) any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;

(c) any crime involving moral turpitude; or

(d) driving under the influence of alcohol or drugs on two or more occasions within the last five years.

(2) In the case of a partnership, corporation, or limited liability company the proscription under Subsection (1) applies if any of the following has been convicted of any offense described in Subsection (1):

(a) a partner;

(b) a managing agent;

(c) a manager;

(d) an officer;

(e) a director;

(f) a stockholder who holds at least 20% of the total issued and outstanding stock of the corporation; or

(g) a member who owns at least 20% of the limited liability company.

(3) As used in the Act and these rules:

(a) "convicted" or "conviction" means a determination of guilt by a judge or a jury, upon either a trial or entry of a plea, in any court, including a court not of record, that has not been reversed on appeal;

(b) "felony" means any crime punishable by a term of imprisonment in excess of one year; and

(c) a "crime involving moral turpitude" means a crime that involves actions done knowingly contrary to justice, honesty, or good morals. It is also described as a crime that is "malum in se" as opposed to "malum prohibitum" - actions that are immoral in themselves regardless of being punishable by law as opposed to actions that are wrong only since they are prohibited by statute. A crime of moral turpitude ordinarily involves an element of falsification or fraud or of harm or injury directed to another person or another's property. For purposes of this rule, crimes of moral turpitude may include crimes involving controlled substances, illegal drugs, and narcotics.

R81-1-17. Advertising.

(1) Authority and General Purpose. This rule is pursuant to Section 32A-12-401(4) which authorizes the commission to establish guidelines for the advertising of alcoholic beverages in this state except to the extent prohibited by Title 32A.

(2) Definitions.

(a) For purposes of this rule, "advertisement" or "advertising" includes any written or verbal statement, illustration, or depiction which is calculated to induce alcoholic beverage sales, whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or any written, printed, graphic, or other matter accompanying the container, representations made on cases, billboard, sign, or other public display, public transit card, other periodical literature, publication or in a radio or television broadcast, or in any other media; except that such term shall not include:

(i) labels on products; or

(ii) any editorial or other reading material (i.e., news release) in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any alcoholic beverage industry member or retailer, and which is not written by or at the direction of the industry member or retailer.

(b) For purposes of this rule, "minor" or "minors" shall mean persons under the age of 21 years.

(3) Application.

(a) This rule shall govern the regulation of advertising of alcoholic beverages sold within the state, except where the regulation of interstate electronic media advertising is preempted by federal law. This rule incorporates by reference the Federal Alcohol Administration Act, 27 U.S.C. 205(f), and Subchapter A, Parts 4, 5, 6 and 7 of the regulations of the Bureau of Alcohol, Tobacco and Firearms, United States Department of the Treasury in 27 CFR 4, 5, 6 and 7 (1993 Edition). These provisions shall regulate the labeling and advertising of alcoholic beverages sold within this state, except where federal statutes and regulations are found to be contrary to or inconsistent with the provisions of the statutes and rules of this state.

(b) 27 CFR Section 7.50 provides that federal laws apply only to the extent that the laws of a state impose similar requirements with respect to advertisements of malt beverages manufactured and sold or otherwise disposed of in the state. This rule, therefore, adopts and incorporates by reference federal laws, previously referenced in subparagraph (a), relating to the advertising of malt beverage products.

(4) Current statutes and rules restricting the advertising, display, or display of price lists of liquor products, as defined in 32A-1-105(25), by the department, state stores, or type 1, 2 or 3 package agencies as defined in R81-3-1, are applicable.

(5) All advertising of liquor and beer by manufacturers, suppliers, importers, local industry representatives, wholesalers, permittees, and licensed retailers of such products, and type 4 and 5 package agencies as defined in R81-3-1 shall comply with the advertising requirements listed in Section (6) of this rule.

(6) Advertising Requirements. Any advertising or advertisement authorized by this rule:

(a) May not violate any federal laws referenced in Subparagraph (3);

(b) May not contain any statement, design, device, or representation that is false or misleading;

(c) May not contain any statement, design, device, or representation that is obscene or indecent;

(d) May not refer to, portray or imply illegal conduct, illegal activity, abusive or violent relationships or situations, or anti-social behavior, except in the context of public service advertisements or announcements to educate and inform people of the dangers, hazards and risks associated with irresponsible drinking or drinking by persons under the age of 21 years;

(e) May not encourage over-consumption or intoxication, promote the intoxicating effects of alcohol consumption, or overtly promote increased consumption of alcoholic products;

(f) May not advertise any unlawful discounting practice such as "happy hour", "two drinks for the price of one", "free alcohol", or "all you can drink for $...".

(g) May not encourage or condone drunk driving;

(h) May not depict the act of drinking;

(i) May not promote or encourage the sale to or use of alcohol by minors;

(j) May not be directed or appeal primarily to minors by:

(i) using any symbol, language, music, gesture, cartoon character, or childhood figure such as Santa Claus that primarily appeals to minors;

(ii) employing any entertainment figure or group that appeals primarily to minors;

(iii) placing advertising in magazines, newspapers, television programs, radio programs, or other media where most of the audience is reasonably expected to be minors, or placing advertising on the comic pages of magazines, newspapers, or other publications;

(iv) placing advertising in any school, college or university magazine, newspaper, program, television program, radio program, or other media, or sponsoring any school, college or university activity;

(v) using models or actors in the advertising that are or reasonably appear to be minors;

(vi) advertising at an event where most of the audience is reasonably expected to be minors; or

(vii) using alcoholic beverage identification, including logos, trademarks, or names on clothing, toys, games or game equipment, or other materials intended for use primarily by minors.

(k) May not portray use of alcohol by a person while that person is engaged in, or is immediately about to engage in, any activity that requires a high degree of alertness or physical coordination;

(l) May not contain claims or representations that individuals can obtain social, professional, educational, athletic, or financial success or status as a result of alcoholic beverage consumption, or claim or represent that individuals can solve social, personal, or physical problems as a result of such consumption;

(m) May not offer alcoholic beverages without charge;

(n) May not require the purchase, sale, or consumption of an alcoholic beverage in order to participate in any promotion, program, or other activity; and

(o) May provide information regarding product availability and price, and factual information regarding product qualities, but may not imply by use of appealing characters or life-enhancing images that consumption of the product will benefit the consumer's health, physical prowess, sexual prowess, athletic ability, social welfare, or capacity to enjoy life's activities.

(7) Violations. Any violation of this rule may result in the imposition of any administrative penalties authorized by 32A-1-119(5), (6) and (7), and may result in the imposition of the criminal penalty of a class B misdemeanor pursuant to 32A-12-104 and -401.

R81-1-19. Emergency Meetings.

(1) Purpose. The commission recognizes that there may be times when, due to the necessity of considering matters of an emergency or urgent nature, the public notice provisions of Utah Code Sections 52-4-6(1), (2) and (3) cannot be met. Pursuant to Utah Code Section 52-4-6(5), under such circumstances those notice requirements need not be followed but rather the "best notice practicable" shall be given.

(2) Authority. This rule is enacted under the authority of Sections 63-46a-3 and 32A-1-107.

(3) Procedure. The following procedure shall govern any emergency meeting:

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

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

(i) Written posting of the agenda and notice at the offices of the department;

(ii) If members of the commission may appear electronically or telephonically, all such notices shall specify the anchor location for the meeting at which interested persons and members of the public may attend, monitor, and participate in the open portions of the meeting;

(iii) Notice to the commissioners shall advise how they may participate telephonically or electronically and be counted as present for all purposes, including the determination of a quorum.

(iv) Written, electronic or telephonic notice shall be provided to at least one newspaper of general circulation within the state and at least one local media correspondent.

(c) If one or more members of the commission appear

electronically or telephonically, the procedures governing electronic meetings shall be followed, except for the notice requirements which shall be governed by these provisions.

(d) In convening the meeting and voting in the affirmative to hold such an emergency meeting, the commission shall affirmatively state and find what unforeseen circumstances have rendered it necessary for the commission to hold an emergency meeting to consider matters of an emergency or urgent nature such that the ordinary public notice of meetings provisions of Utah Code Section 52-4-6 could not be followed.

R81-1-20. Electronic Meetings.

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

(2) Authority. This rule is enacted under the authority of Sections 52-4-207, 63-46a-3 and 32A-1-107.

(3) Procedure. The following provisions govern any meeting at which one or more commissioners appear telephonically or electronically pursuant to Utah Code Section 52-4-207:

(a) If one or more members of the commission may participate electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the commission not participating electronically or telephonically will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(b) Notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be provided to at least one newspaper of general circulation within the state and to a local media correspondent. These notices shall be provided at least 24 hours before the meetings.

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

(d) When notice is given of the possibility of a commissioner appearing electronically or telephonically, any commissioner may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the commission. At the commencement of the meeting, or at such time as any commissioner initially appears electronically or telephonically, the chair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the commission who are not at the physical location of the meeting shall be confirmed by the chair.

(e) The anchor location, unless otherwise designated in the notice, shall be at the offices of the Department of Alcoholic Beverage Control, 1625 South 900 West, Salt Lake City, Utah. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

R81-1-21. Beer Advertising in Event Venues.

(1) Authority. This rule is pursuant to the commission's powers and duties as the plenary policymaking body on the subject of alcoholic beverage control under 32A-1-107, and its authority to establish guidelines for the advertising of alcoholic beverages under 32A-12-401(4).

(2) Purpose.

(a) This rule establishes a "safe harbor" from administrative action being taken against beer manufacturers and retailers under the circumstances and conditions below. This rule is necessary to allow certain advertising relations to occur even though they have the appearance of violating the "tied-house" provisions of 32A-12-603, but where the reasons and purposes for the "tied-house" provisions do not apply.

(b) "Tied-house" provisions have been enacted at both the federal and state level in response to historical forces and concerns. The thrust of the laws is to prevent two particular dangers: the ability and potential ability of large firms to dominate local markets through vertical and horizontal integration, and excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The principle method used to avoid these developments was the establishment of a triple-tiered distribution system and licensing scheme where separate and distinct business enterprises engaged in the production, handling, and final sale of alcoholic beverages. The laws also prohibited certain economic arrangements and agreements between each of the three tiers of the distribution system.

(c) Utah's "tied-house" and trade practice laws prohibit a beer industry member, directly or indirectly or through an affiliate, from inducing any beer retailer to purchase alcoholic beverages from the industry member to the exclusion in whole or in part of any of those products sold or offered for sale by other persons by furnishing the retailer signs, money or other things of value except to the extent allowed under 32A-12-603. The laws prohibit a beer industry member, directly or indirectly or through an affiliate, from paying or crediting a beer retailer for any advertising, display, or distribution service. 32A-12-603(5). This includes the purchase, by an industry member, of advertising on signs, scoreboards, programs, scorecards, and the like at ballparks, racetracks or stadiums, from the retail concessionaire. See 27 C.F.R. Sec. 6.53 as referenced in 32A-12-603(5)(a). The laws also prohibit an industry member from making payments for advertising to a retailer association or a display company where the resulting benefits flow to the individual retailers. 32A-12-603(3)(b)(i)(B).

(d) Throughout the state, there are a number of large facilities which put on or allow events to occur on their premises. This includes sports arenas, ballparks, raceways, fairgrounds, equestrian facilities and the like. These facilities have a recognized area of advertising for sale in connection with the events and which is standard for their events, e.g., fence signage at ballparks. Many of these facilities are or have associated with their on-premise beer retailer, either on an annual basis, or as a temporary event permit holder. The issue is thus raised as to the legality of the advertising of beer products as part of the general advertising where other items are advertised and the facility is or has within it an on-premise beer retailer.

(3) Application of the Rule. If the conditions listed below are met, the reasons and purposes behind the "tied-house" provisions restricting relations between manufacturers and retailers do no apply or are not significantly impacted. In addition, an event facility may be unduly restricted in its ability to sell advertising and be competitive. This is based upon the facility's primary purpose being other than the sale of food and beverages, that advertising is a normal and accepted part of the business of the facility and the events that occur at the facility, that beer advertisers would be on equal footing with other advertisers, and that there is little, if any, likelihood of the purchasing of advertising space or time either having an impact on the beer retailing decisions of the retailer or of allowing the manufacturer to obtain or assert control over the retailer. Therefore, if the following conditions are met, the sale of advertising space or time to a beer manufacturer for display at the facility does not constitute the payment to a retailer for advertising, display or distribution service, and does not otherwise constitute the furnishing of any signs, money, or other

things of value to a retailer in violation of the "tied-house" provisions of 32A-12-603:

(a) The primary purpose of the facility is the hosting or putting on events, and not the sale or service of food and beverages, including alcoholic beverages;

(b) The retail licensee operates with a fixed seating capacity of more than 2,000 persons;

(c) The advertising space or time is purchased only in connection with events to be held on the premises, and not as point-of-sale advertising. The advertising space or time is not located near the beer concession area and does not reference the on-premise retailer or the availability of beer;

(d) Sales of event advertising space or time and retail beer sales are handled by different entities or divisions, that are separate and do not influence each other, and no preference in terms of beer sales or facilities are extended to a beer advertiser;

(e) The retail licensee serves other brands of malt beverages or beer than the brand manufactured or sold by the manufacturer purchasing advertising space or time. Unless demonstrated for sound business reasons unrelated to "tied-house" laws, the percentage of taps in a facility may not exceed by 10% the actual percentage of sales, by brand, in that facility or the community in the previous year;

(f) The advertising space or time is available to all types of advertisers, is not limited to any type of product, such as beer, is pursuant to an established rate card that sets forth the advertising rates equally available to any other industry member or (and at rates substantially similar for any) non-industry advertiser, and the advertising agreement does not provide for an exclusive right to an advertiser or a right to exclude other advertisers;

(g) The industry member may not share in the costs or contribute to the costs of the advertising or promotion of the beer retailer or the facility, or obtain or have any interest in the retailer or the facility; and

(h) The purchase of advertising space or time is by written agreement, a copy of which shall be provided to the department as a confidential business document, non-public, and only to be used for enforcement purposes, and the term of the agreement may not be for a period in excess of three years, including any right of renewal.

(4) This "safe harbor" is limited to its express terms, does not undermine or infringe upon general "tied-house" prohibitions, and shall be strictly construed against its applicability. This "safe harbor" also does not limit or abrogate any exception to "tied-house" prohibitions.

R81-1-22. Diplomatic Embassy Shipments and Purchases.

(1) Purpose. The Vienna Conventions on Diplomatic and Consular Relations grant foreign diplomatic missions certain exemptions from federal, state and local taxes. The United States, by treaty, is a party to the Vienna Conventions, and is obligated under international law to grant these exemptions under these agreements to accredited diplomatic missions of those countries that grant the United States reciprocal privileges. These privileges include the purchase of alcoholic beverages duty and tax free subject to certain exceptions such as indirect taxes normally incorporated in the price of goods or services, and charges levied for specific services rendered to benefit the mission.

This rule establishes department guidelines for shipments and purchases of alcohol by a foreign diplomatic mission with an accredited embassy having full diplomatic privileges under the Vienna Conventions that establishes an embassy presence in the state of Utah (hereafter "accredited foreign diplomatic mission").

(2) Application of Rule.

(a) Shipments. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may have or possess, for official diplomatic use, and not for sale or resale, alcoholic beverages that have not been purchased in the state of Utah. Such products may be shipped or transported into the state of Utah under the following conditions:

(i) The embassy must first obtain the approval of this department prior to shipping or transporting its alcoholic beverages into the state.

(ii) Alcoholic beverages shipped or transported into the state must clear U.S. Customs duty free.

(iii) The department shall affix the official state label to the alcoholic beverages.

(iv) The embassy shall pay the department an administrative handling fee of $1.00 per smallest unit (bottle, can, or keg). Payment of handling fees shall be made by the embassy using an official embassy check or embassy credit card.

(v) The alcoholic beverages may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

(b) Purchases.

(i) Special Orders. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may special order from the department alcoholic beverage products not presently sold in the state of Utah under the following procedures:

(A) The company or importer supplying the product must submit a price quotation to the department indicating the case price (in US dollars) for which it will sell the product to the state.

(B) The quoted case price must be reasonable (a minimum of $10.00 per case).

(C) The product will be marked up using the department=s standard pricing formula (less the state sales tax).

(D) Special orders must be placed by the embassy at least two months in advance to allow the department sufficient time to purchase and receive the product for the embassy.

(E) The product must be paid for by the embassy using an official embassy check or embassy credit card.

(F) The product may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

(ii) Presently Available Merchandise. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may purchase alcoholic beverages that are presently sold in the state of Utah under the following procedures:

(A) Alcoholic beverage product purchases, other than large quantity purchases, may be made by the embassy at any state store. The store shall deduct state sales tax from the purchase price.

(B) Large quantity purchase orders must be placed by the embassy at the department's licensee warehouse. The warehouse shall deduct state sales tax from the purchase price.

(C) The products must be paid for by the embassy using an official embassy check or embassy credit card.

(D) The product may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

R81-1-23. Sales Restrictions on Products of Limited Availability.

(1) Purpose. Some alcoholic beverage products, especially wines, are of very limited availability from their manufacturers and suppliers to retailers including the department. When the department perceives that customer demand for these limited products may exceed the department=s current and future stock levels, the department, as a public agency, may place restrictions on their sales to ensure their fair distribution to all consumers. This also encourages manufacturers and suppliers to continue to provide their products to the department. This rule establishes the procedure for allocating products of limited availability.

(2) Application of Rule.

(a) The purchasing and wine divisions of the department

shall identify those products that are of limited availability and designate them as "Limited /Allocated Status" ("L Status") items. The products shall be given a special "L Status" product code designation.

(b) "L Status" products on the department's price list, in stock, or on order, do not have to be sold on demand. Their sales to the general public and to licensees and permittees may be restricted. The purchasing and wine divisions of the department may issue system-wide restrictions directing the allocation of such products which may include placing limits on the number of bottles sold per customer.

(c) Signs noting this rule shall be posted in state stores and package agencies that carry "L Status" products.

R81-1-24. Responsible Alcohol Service Plan.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32A-1-107 to act as a general policymaking body on the subject of alcoholic beverage control; set policy by written rules that establish criteria and procedures for suspending or revoking licenses; and prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule allows the commission to require a business licensed by the commission to sell, serve or store alcoholic beverages for consumption on the licensed premises that has been found by the commission to have violated any provision of the Alcoholic Beverage Control Act relating to the sale, service, or furnishing of alcoholic beverages to an intoxicated person, or to a person under the age of 21, to have a written Responsible Alcohol Service Plan.

(3) Definitions.

(a) "Commission" means the Alcoholic Beverage Control Commission.

(b) "Department" means the Department of Alcoholic Beverage Control.

(c) "Intoxication" and "intoxicated" means a person who is actually, apparently, or obviously under the influence of an alcoholic beverage, a controlled substance, a substance having the property of releasing toxic vapors, or a combination of alcoholic beverages or said substances, to a degree that the person may endanger himself or another.

(d) "Licensed Business" is a person or business entity licensed by the commission to sell, serve, and store alcoholic beverages for consumption on the premises of the business.

(e) "Manager" means a person chosen or appointed to manage, direct, or administer the operations at a licensed business. A manager may also be a supervisor.

(f) "Responsible Alcohol Service Plan" or "Plan" means a written set of policies and procedures of a licensed business that outline measures that will be taken by the business to prevent employees of the licensed business from:

(i) over-serving alcoholic beverages to customers;

(ii) serving alcoholic beverages to customers who are actually, apparently, or obviously intoxicated; and

(iii) serving alcoholic beverages to persons under the age of 21.

(h) "Server" means an employee who actually makes available, serves to, or provides an alcoholic beverage to a customer for consumption on the business premises.

(i) "Supervisor" means an employee who, under the direction of a manager or owner, directs or has the responsibility to direct, transfer, or assign duties to employees who actually provide alcoholic beverages to customers on the premises of the business.

(4) Application of Rule.

(a)(i) The commission may direct that a licensed business that has been found by the commission to have violated any provision of the Alcoholic Beverage Control Act relating to the sale, service, or furnishing of alcoholic beverages to an intoxicated person, or to a person under the age of 21, submit to the department a Responsible Alcohol Service Plan.

(ii) The licensee thereafter shall maintain a Plan as a condition of continued licensing and relicensing by the commission.

(b) Any Plan at a minimum shall:

(i) outline the policies and procedures of the licensed business to:

(A) prevent over-service of alcohol;

(B) prevent service of alcohol to persons who are intoxicated;

(C) prevent service of alcohol to persons under the age of 21;

(D) provide alternate transportation options for problem customers; and

(E) deal with hostile customers;

(ii) require that all managers, supervisors, servers, security personnel, and others who are involved in the sale, service or furnishing of alcohol, agree to follow the policies and procedures of the Plan;

(iii) require adherence to the Plan as a condition of employment;

(iv) require a commitment by management to monitor employee compliance with the Plan;

(v) require periodic training sessions on the house policies and procedures in the Plan, and on the techniques of responsible service of alcohol taught in the Alcohol Training and Education Seminar required by 62A-15-401, such as:

(A) identifying legal forms of ID, checking ID, and recognizing fake ID;

(B) identifying persons under the age of 21;

(C) discussing the legal definition of intoxication;

(D) identifying behavioral signs of intoxication;

(E) discussing techniques for monitoring and controlling consumption such as:

(1) drink counting;

(2) slowing down alcohol service;

(3) offering food or nonalcoholic beverages; and

(4) cutting off alcohol service;

(F) discussing third party or "dram shop" liability for the unlawful service of alcohol to intoxicated persons and persons under the age of 21 as outlined in 32A-14a-101 through -105; and

(G) discussing the potential criminal, civil and administrative penalties for over-serving alcohol, selling, serving, or otherwise furnishing alcohol to persons who are intoxicated, or to persons who are under the age of 21.

(c) The licensed business may choose to include in the Plan incentives for those employees who deserve special recognition for their responsible service of alcohol.

(d) The Plan shall be available on the premises of the licensed business so as to be accessible to all employees of the licensed business who are involved in the sale, service or furnishing of alcohol.

(e) The Plan shall be available on the premises of the licensed business for inspection by representatives of the commission, department and by law enforcement officers.

(f) Any licensed business that fails to submit to the department a Plan as directed by the commission pursuant to Subsection (4)(a), or to have a Plan available for inspection as required by Subsection (4)(e), shall be subject to the immediate suspension or revocation of its current license, and shall not be granted a renewal of its license by the commission.

(g) The department, at the request of a licensed business, may provide assistance in the preparation of a Plan.

R81-1-25. Sexually-Oriented Entertainers and Stage Approvals.

(1) Authority. This rule is pursuant to:

(a) the police powers of the state under 32A-1-103 to regulate the sale, service and consumption of alcoholic beverages in a manner that protects the public health, peace, safety, welfare, and morals;

(b) the commission's powers and duties under 32A-1-107 to prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored; and

(c) 32A-1-601 through -604 that prescribe the attire and conduct of sexually-oriented entertainers in premises regulated by the commission and require them to appear or perform only in a tavern or class D private club and only upon a stage or in a designated area approved by the commission in accordance with commission rule.

(2) Purpose. This rule establishes guidelines used by the commission to approve stages and designated performance areas in a tavern or class D private club where sexually-oriented entertainers may appear or perform in a state of seminudity.

(3) Definitions.

(a) "Seminude", "seminudity, or "state of seminudity"means a state of dress as defined in 32A-1-105(49).

(b) "Sexually-oriented entertainer" means a person defined in 32A-1-105(50).

(4) Application of Rule.

(a) A sexually-oriented entertainer may appear or perform seminude only on the premises of a tavern or class D private club.

(b) A tavern or class D private club licensee, or an employee, independent contractor, or agent of the licensee shall not allow:

(i) a sexually-oriented entertainer to appear or perform seminude except in compliance with the conditions and attire and conduct restrictions of 32A-1-602 and -603;

(ii) a patron to be on the stage or in the performance area while a sexually-oriented entertainer is appearing or performing on the stage or in the performance area; and

(iii) a sexually-oriented entertainer to appear or perform seminude except on a stage or in a designated performance area that has been approved by the commission.

(c) Stage and designated performance area requirements.

(i) The following shall submit for commission approval a floor-plan containing the location of any stage or designated performance area where sexually-oriented entertainers appear or perform:

(A) an applicant for a tavern or class D private club license from the commission who intends to have sexually-oriented entertainment on the premises;

(B) a current tavern or class D private club licensee of the commission that did not have sexually-oriented entertainment on the premises when application was made for the license or permit, but now intends to have such entertainment on the premises; or

(C) a current tavern or class D private club licensee of the commission that has sexually-oriented entertainment on the premises, but has not previously had the stage or performance area approved by the commission.

(ii) The commission may approve a stage or performance area where sexually-oriented entertainers may perform in a state of seminudity only if the stage or performance area:

(A) is horizontally separated from the portion of the premises on which patrons are allowed by a minimum of three (3) feet, which separation shall be delineated by a physical barrier or railing that is at least three (3) feet high from the floor;

(B) is configured so as to preclude a patron from:

(I) touching the sexually-oriented entertainer;

(II) placing any money or object on or within the costume or the person of any sexually-oriented entertainer;

(III) is configured so as to preclude a sexually-oriented entertainer from touching a patron; and

(IV) conforms to the requirements of any local ordinance of the jurisdiction where the premise is located relating to distance separation requirements between sexually-oriented entertainers and patrons that may be more restrictive than the requirements of Sections (4)(c)(i) and (ii) of this rule.

(iii) The person applying for approval of a stage or performance area shall submit with their application:

(A) a diagram, drawn to scale, of the premises of the business including the location of any stage or performance area where sexually-oriented entertainers will appear or perform;

(B) a copy of any applicable local ordinance relating to distance separation requirements between sexually-oriented entertainers and patrons; and

(C) evidence of compliance with any such applicable local ordinance.

R81-1-26. Criminal History Background Checks.

(1) Authority. This rule is pursuant to:

(a) the commission's powers and duties under 32A-1-107 to set policy by written rules that establish criteria and procedures for granting, denying, suspending, or revoking permits, licenses, and package agencies; and

(b) 32A-3-103, 32A-4-103, 32A-4-203, 32A-4-304, 32A-4-403, 32A-5-103, 32A-6-103, 32A-7-103, 32A-8-103, 32A-8-503, 32A-9-103, 32A-10-203, 32A-10-303, and 32A-11-103 that prohibit certain persons that have been convicted of certain criminal offenses from holding or being employed by the holder of an alcoholic beverage license, permit, or package agency.

(2) Purpose. This rule:

(a) establishes the circumstances under which a person identified in the statutory sections enumerated in Subparagraph (1)(b), must provide the department with a criminal history background report that shows the person meets the qualifications of those statutory sections as a condition of the commission granting a license, permit, or package agency to an applicant for a license, permit, or package agency; and

(b) establishes the procedures for the filing and processing of criminal history background reports.

(3) Application of Rule.

(a)(i) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), and (vi) a person identified in Subparagraph (1)(b) who has been a resident of the state of Utah for at least one year, shall submit a criminal history background report from the Utah Bureau of Criminal Identification, Department of Public Safety.

(ii) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), and (vi) and (3)(b) through (g), a person identified in Subparagraph (1)(b) who has been a resident of the state of Utah for less than one year, shall submit a criminal history background report from the Federal Bureau of Investigation (hereafter "F.B.I.").

(iii) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), and (vi) and (3)(b) through (g), a person identified in Subparagraph (1)(b) who currently resides outside the state of Utah shall submit a criminal history background report from the F.B.I.

(iv) A person identified in Subparagraph (1)(b) who previously submitted a criminal background check as part of the application process for a different license, permit, or package agency that was issued by the commission shall not be required to file a new criminal history background report as part of the application process for a new license, permit, or package agency if the person attests that he or she has not been convicted of any disqualifying criminal offense identified in Subparagraph (1)(b).

(v) An applicant for a single event permit under Title 32A, Chapter 7 shall not be required to submit a criminal history background report if the applicant attests that the persons identified in Subparagraph (1)(b) have not been convicted of any disqualifying criminal offense.

(vi) An applicant for a temporary special event beer permit under 32A-10-301 to -306 shall not be required to submit a criminal history background report if the applicant attests that the persons identified in Subparagraph (1)(b) have not been convicted of any disqualifying criminal offense identified in Subparagraph (1)(b).

(b) An application that requires F.B.I. criminal history background report(s) may be included on a commission meeting agenda, and may be considered by the commission for issuance of a license, permit, or package agency if:

(i) the applicant has completed all requirements to apply for the license, permit, or package agency other than providing the required F.B.I. criminal history background report(s);

(ii) the applicant attests in writing that he or she is not aware of any criminal conviction of any person identified in Subparagraph (1)(b) that would disqualify the applicant from applying for and holding the license, permit, or package agency;

(iii) the applicant attests in writing that all request(s) for any required F.B.I. criminal history background report(s) have been submitted to the F.B.I, and provides the following information and documentation:

(A) the date the request(s) were submitted to the F.B.I.

(B) a copy of the written request(s) submitted to the F.B.I.

(C) a copy of the fingerprint card(s) submitted to the F.B.I.;

(iv) the applicant at the time of application supplies the department with a current criminal history background report conducted by a third-party background check reporting service on any person for which an F.B.I. background check is required; and

(v) the applicant stipulates in writing that if an F.B.I. report shows a criminal conviction that would disqualify the applicant from holding the license, permit, or package agency, the applicant shall immediately surrender the license, permit, or package agency to the department.

(c) The commission may issue a license, permit, or package agency to an applicant that has met the requirements of Subparagraph (3)(b), and the license, permit, or package agency shall be valid during the period the F.B.I. is processing the criminal history report(s).

(d) The department shall use a unique file tracking system for such licenses, permits, and package agencies.

(e) If the required F.B.I. report(s) are not received by the department within six (6) months of the date the license, permit, or package agency is issued by the commission, the licensee, permittee, or package agent shall appear at the next regular meeting of the commission for a status report, and the commission may either order the surrender of the license, permit, or package agency, or may extend the reporting period.

(f) Upon the department's receipt of the F.B.I. report(s):

(i) if there is no disqualifying criminal history, the license, permit, or package agency shall continue for the balance the license or permit period, or the package agency contract period; or

(ii) if there is a disqualifying criminal history, the license, permit, or package agency shall be immediately surrendered, and the commission may enter an order accepting the surrender, or an order revoking the license, permit, or package agency depending on the circumstances.

(g) In the case of a license or permit, if the statutory deadline for renewing the license or permit occurs before receipt of the F.B.I. report(s), the licensee or permittee may file for renewal of the license or permit subject to meeting all of the requirements in Subparagraphs (3)(b) through (f).

KEY: alcoholic beverages
June 29, 2007 **32A-1-107**
Notice of Continuation August 31, 2006 **32A-1-119(5)(c)**
32A-3-103(1)(a)
32A-4-103(1)(a)
32A-4-106(22)
32A-4-203(1)(a)
32A-4-304(1)(a)
32A-4-307(22)
32A-4-401(1)(a)
32A-4-403(1)(a)
32A-5-103(1)(a)
32A-5-107(40)
32A-6-103(2)(a)
32A-7-103(2)(a)
32A-7-106(5)
32A-8-103(1)(a)
32A-8-503(1)(a)
32A-9-103(1)(a)
32A-10-203(1)(a)
32A-10-206(14)
32A-10-303(1)(a)
32A-10-306(5)
32A-11-103(1)(a)

R81. Alcoholic Beverage Control, Administration.
R81-4D. On-Premise Banquet License.
R81-4D-1. Licensing.

(1) An on-premise banquet license may be issued only to a hotel, resort facility, sports center or convention center as defined in this rule.

(a) "Hotel" is a commercial lodging establishment:

(i) that offers temporary sleeping accommodations for compensation;

(ii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iii) that has adequate kitchen or culinary facilities on the premises of the hotel to provide complete meals; and

(iv) that has at least 1000 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 75 people, provided that in cities of the third, fourth or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(b) "Resort facility" is a publicly or privately owned or operated commercial recreational facility or area:

(i) that is designed primarily to attract and accommodate people to a recreational or sporting environment;

(ii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iii) that has adequate kitchen or culinary facilities on the premises of the resort to provide complete meals; and

(iv) that has at least 1500 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(c) "Sports center" is a publicly or privately owned or operated facility:

(i) that is designed primarily to attract people to and accommodate people at sporting events;

(ii) that has a fixed seating capacity for more than 2,000 persons;

(iii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iv) that has adequate kitchen or culinary facilities on the premises of the sports center to provide complete meals; and

(v) that has at least 2500 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(d) "Convention center" is a publicly or privately owned or operated facility:

(i) the primary business or function of which is to host conventions, conferences, and food and beverage functions under a banquet contract;

(ii) that is a total of at least 30,000 square feet;

(iii) that has adequate kitchen or culinary facilities on the premises of the convention center to provide complete meals; and

(iv) that has at least 3000 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated counties, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(2)(a) A "banquet contract" as used in this rule means an agreement between an on-premise banquet licensee and a host of a banquet to provide alcoholic beverage services at a meal, reception, or other private banquet function at a defined location on a specific date and time for a pre-arranged, guaranteed number of attendees at a negotiated price.

(b) Each "banquet contract" shall:

(i) clearly define the location of the private banquet function;

(ii) require that the private banquet function be separate from other areas of the facility that are open to the general public; and

(iii) require signage at or near the entrance to the private banquet function to indicate that the location has been reserved for a specific group.

(3) On-premise banquet licenses are issued to persons as defined in Section 32A-1-105(36). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32A-4-402(4), 32A-4-403, and 32A-4-406(26).

R81-4D-2. Application.

(1) A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of an on-premise banquet license when the requirements of Sections 32A-4-402, -403, and -405 have been met, a completed application has been received by the department, and the on-premise banquet premises have been inspected by the department.

(2)(a) The application shall include a floor plan showing the locations of function space in or on the applicant=s business premises that may be reserved for private banquet functions where alcoholic beverages may be stored, sold or served, and consumed. Hotels shall also indicate the number of sleeping rooms where room service will be provided and include a sample floor plan of a guest room level. No application will be accepted that merely designates the entire hotel, resort, sports center or convention center facility as the proposed licensed premises.

(b) After an on-premise banquet license has been issued, the licensee may apply to the commission for approval of additional locations in or on the premises of the hotel, resort, sports center or convention center that were not included in the licensee=s original application.

R81-4D-3. Bonds.

No part of any corporate or cash bond required by Section 32A-4-405, may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4D-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32A-4-402(1)(h) and (i) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-4D-5. On-Premise Banquet Licensee Liquor Order and Return Procedures.

The following procedures shall be followed when an on-premise banquet licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow

department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee=s order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier=s check.

(3) The licensee or the licensee=s designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5)(a) Spirituous liquor may be returned by the licensee for the original purchase price only under the following conditions:

(i) the bottle has not been opened;

(ii) the seal remains intact;

(iii) the label remains intact; and

(iv) upon a showing of the original cash register receipt.

(b) A restocking fee of 10% shall be assessed on the entire amount on any returned spirituous liquor order that exceeds $1,000. All spirituous liquor returned that is based on a single purchase on a single cash register receipt must be returned at the same time at a single store, package agency, or satellite warehouse location.

(b) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

R81-4D-6. On-Premise Banquet Licensee Operating Hours.

Allowable hours of alcoholic beverage sales shall be in accordance with Section 32A-4-406(7). However, the licensee may open the alcoholic beverage storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4D-7. Sale and Purchase of Alcoholic Beverages.

Liquor dispensing shall be in accordance with Section 32A-4-406; and Sections R81-1-9 (Liquor Dispensing Systems), and R81-1-10 (Wine Dispensing) of these rules.

R81-4D-8. Liquor Storage.

Liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the on-premise banquet licensee as approved by the department.

R81-4D-9. Alcoholic Product Flavoring.

On-premise banquet licensees may use alcoholic products as flavoring subject to the following guidelines:

(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the on-premise banquet license. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No on-premise banquet licensee employee under the age of 21 years may handle alcoholic product flavorings.

R81-4D-10. State Label.

All liquor consumed on the premises of an on-premise banquet license must come from a container or package having an official state label affixed.

R81-4D-11. Menus; Price Lists.

(1) An on-premise banquet licensee shall have readily available for any host of a contracted banquet a printed alcoholic beverage price list, or menu containing prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any charges for the service of packaged wines or heavy beer.

(2) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and it meets the requirements of this rule.

(3) Any host of a contracted banquet shall be notified of the price charged for any packaged wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

(4) The on-premise banquet licensee or an employee of the licensee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R81-4D-12. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R81-4D-13. On-Premise Banquet License Room Service - Mini-Bottle/187 ml Wine Sales.

(1) Purpose. Pursuant to 32A-1-116, the department may not purchase or stock alcoholic beverages in containers smaller than 200 milliliters. except as otherwise allowed by the commission. The commission hereby allows the limited use of 50 milliliter "mini-bottles" of distilled spirits and 187 milliliter bottles of wine for room service sales by on-premise banquet licensees located in hotels and resorts. The following conditions are imposed to ensure that these smaller bottle sales are limited to patrons of sleeping rooms, and are not offered to the general public.

(2) Application of Rule.

(a) The department will not maintain a regular inventory of distilled spirits and wine in the smaller bottle sizes, but will accept special orders for these products from an on-premise banquet licensee. Special orders may be placed with the department=s purchasing division, any state store, or any Type 2 or 3 package agency.

(b) The on-premise banquet licensee must order in full case lots, and all sales are final.

(c) Sale and use of alcohol in the smaller bottle sizes is restricted to providing room service to guests in sleeping rooms in the hotel/resort, and may not be used for other banquet catering services, or be sold to the general public.

(d) Failure of the on-premise banquet licensee to strictly adhere to the provisions of this rule is grounds for the department to take disciplinary action against the on-premise banquet licensee.

R81-4D-14. Reporting Requirement.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32A-1-107 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored, and pursuant to 32A-4-406(24).

(2) Purpose. This rule implements the requirement of 32A-4-406(24) that requires the commission to provide by rule procedures for on-premise banquet licensees to report scheduled banquet events to the department to allow random inspections of banquets by authorized representatives of the commission, the department, or by law enforcement officers to monitor compliance with the alcoholic beverage control laws.

(3) Application of the Rule.

(a) An on-premise banquet licensee shall file with the department at the beginning of each quarter a report containing advance notice of events or functions that have been scheduled as of the reporting date for that quarter to be held under a banquet contract as defined in R81-4D-1.

(b) The quarterly reports are due on or before January 1, April 1, July 1, and October 1 of each year and may be hand-delivered or submitted by mail or electronically.

(c) Each report shall include the name and specific location of each event.

(d) The department shall make copies of the reports available to a commissioner, authorized representative of the department, and any law enforcement officer upon request to be used for the purpose stated in Section (2).

(e) The department shall retain a copy of each report until the end of each reporting quarter.

(f) Because any report filed under this rule contains commercial information, the disclosure of which could reasonably be expected to result in unfair competitive injury to the licensee submitting the information, and the licensee submitting the information has a greater interest in prohibiting access than the public in obtaining access to the report:

(i) any report filed shall be deemed to include a claim of business confidentiality, and a request that the report be classified as protected pursuant to 63-2-304 and -308;

(ii) any report filed shall be classified by the department as protected pursuant to 63-2-304; and

(iii) any report filed shall be used by the department and law enforcement only for the purposes stated in this rule.

(g) Failure of an on-premise banquet licensee to timely file the quarterly reports may result in disciplinary action pursuant to 32A-1-119, 32A-4-406, and R81-1-6 and -7.

KEY: alcoholic beverages
August 26, 2005 **32A-1-107**
32A-4 Part 4

R151. Commerce, Administration.
R151-35. Powersport Vehicle Franchise Act Rule.
R151-35-1. Title.

This rule shall be known as the "Powersport Vehicle Franchise Act Rule".

R151-35-2. Authority - Purpose.

In accordance with the Powersport Vehicle Franchise Act, Title 13, Chapter 35, this rule governs adjudicative proceedings before the Utah Powersport Vehicle Franchise Advisory Board and the Executive Director of the Department of Commerce, and is adopted under the authority of Subsection 13-35-104(2).

R151-35-3. Adjudicative Proceedings.

(1) Informal Proceeding. Adjudicative proceedings before the Board and the Executive Director are designated as informal adjudicative proceedings.

(2) Applicable Rules. In addition to Title 63, Chapter 46b, Utah Administrative Procedures Act, any adjudicative proceedings under the Powersport Vehicle Franchise Act shall be conducted in accordance with this rule and with the Department of Commerce Administrative Procedures Act Rule, R151-46b.

(3) Procedure for Substitution of Presiding Officer. In accordance with Section 63-46b-2(1)(h), the Executive Director of the Department may upon his/her own motion substitute an administrative law judge as the presiding officer to conduct certain aspects of the adjudicative proceedings before the Board if he/she determines that fairness to the parties would not be compromised by such substitution. The substitution order shall give any party who feels that such substitution would compromise fairness an opportunity to request the Executive Director to reconsider the substitution by submitting written objections and supporting arguments to the Executive Director. Upon reconsideration, the Executive Director may leave the order intact or make such other orders as he/she deems appropriate.

(4) Submissions. Except as otherwise expressly required or permitted in this Rule or in the Powersport Vehicle Franchise Act, all correspondence or other submissions shall be directed to the Chair of the Utah Powersport Vehicle Franchise Advisory Board at the Utah Department of Commerce.

(5) Form of Pleadings. A notice of agency action by the agency shall comply with the requirements of the Utah Administrative Procedures Act, Section 63-46b-3(2). A request to commence an adjudicative proceeding pursuant to Section 13-35-107(1), shall be a pleading headed "BEFORE THE DEPARTMENT OF COMMERCE, UTAH POWERSPORT VEHICLE FRANCHISE ADVISORY BOARD" and captioned "Request for Agency Action." The pleading shall substantially comply with the Utah Administrative Procedures Act, Section 63-46b-3(3), and the Department of Commerce Administrative Procedures Act Rule, R151-46b-7.

(6) Answer. If the presiding officer determines that an answer to any notice of agency action or request for agency action would be helpful to the proceedings, the presiding officer may order a party to the proceedings to file an answer.

(7) Memoranda. If the presiding officer determines that prehearing briefs would be helpful to the proceedings, the presiding officer may order the parties to submit memoranda in accordance with any scheduling order entered by the presiding officer.

(8) GRAMA. Any request for records of the proceedings before the Board and the Executive Director will be governed by GRAMA (Government Records Access and Management Act), Utah Code Ann. Section 63-2-101 et seq. Any schedule of records classifications maintained by the Department shall be made available to the parties upon request.

R151-35-4. Registration.

(1) Each newly formed or otherwise not previously registered franchisor or franchisee shall request an initial registration form from the Department.

(2) Annual Renewals. The Department shall provide a renewal form to each registered franchisor and franchisee at least 30 and not more than 60 days prior to the expiration of the current registration.

(3) A registrant may use the form provided by the Department as its initial or renewal registration or may submit a registration or renewal request in another format so long as that request contains the following information:

(a) Name of dealership/manufacturer;

(b) Address of dealership/manufacturer;

(c) Owners or stockholders and percentage of holding (5% or above only);

(d) Line-makes manufactured, distributed, or sold;

(e) If applicable, dealer number; and

(f) Name and address of person designated for the purpose of receiving notices or process pursuant to the provisions of the Powersport Vehicle Franchise Act.

(4) The processing of an application for registration by the Department may be delayed for a reasonable time to give the registrant an opportunity to cure technical defects in an application for registration.

KEY: motorcycles, powersport vehicles, off road vehicles, franchises
May 2, 2006 13-35-101 et seq.
Notice of Continuation July 13, 2007

R156. Commerce, Occupational and Professional Licensing.
R156-63. Security Personnel Licensing Act Rule.
R156-63-101. Title.

This rule is known as the "Security Personnel Licensing Act Rule."

R156-63-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 63, as used in Title 58, Chapters 1 and 63 or this rule:

(1) "Approved basic education and training programs" as used in this rule means basic education and training that meets the standards set forth in Sections R156-63-602 and R156-63-603 and that is approved by the division.

(2) "Approved basic firearms education and training program", as used in this rule means basic firearms education and training that meets the standards set forth in Section R156-63-604 and that is approved by the Division.

(3) "Authorized emergency vehicle" is as defined in Subsection 41-6a-102(3).

(4) "Contract security company" includes:

(a) a peace officer who engages in providing security or guard services when acting in a capacity other than as an employee of the law enforcement agency by whom he is employed, or for other than the regular salary, whether at regular pay or overtime pay, from the law enforcement agency by whom he is employed; but does not include:

(b) a company which hires as employees, individuals to provide security or guard services for the purpose of protecting tangible personal property, real property, or the life and well being of personnel employed by, or animals owned by or under the responsibility of the that company, as long as the security or guard services provided by the company do not benefit any person other than the employing company.

(5) "Employee" means an individual providing services in the security guard industry for compensation when the amount of compensation is based directly upon the security guard services provided and upon which the employer is required under law to withhold federal and state taxes, and for whom the employer is required under law to provide worker's compensation insurance coverage and pay unemployment insurance.

(6) "Immediate supervision" means the supervisor is available for immediate voice communication and can be available for in-person consultation within a reasonable period of time with an on-the-job trainee.

(7) "Officer" as used in Subsections 58-63-201(1)(a) and R156-63-302a(1)(b) means a manager, director, or administrator of a contract security company.

(8) "Practical experience" means experience as an unarmed or armed private security officer obtained under the immediate supervision of a supervisor who has been assigned to train and develop the unarmed or armed private security officer.

(9) "Qualified continuing education" as used in this rule means continuing education that meets the standards set forth in Subsection R156-63-304.

(10) "Qualifying agent" means an individual who is an officer, director, partner, proprietor or manager of a contract security company who exercises material authority in the conduct of the contract security company's business by making substantive technical and administrative decisions relating to the work performed for which a license is required under this chapter and who is not involved in any other employment or activity which conflicts with his duties and responsibilities to ensure the licensee's performance of work regulated under this chapter does not jeopardize the public health, safety, and welfare.

(11) "Soft uniform" means a business suit or a polo-type shirt with appropriate slacks. The coat or shirt has an embroidered badge or contract security company logo that clips on to or is placed over the front pocket.

(12) "Supervised on-the-job training" means training of an armed or unarmed private security officer under the immediate supervision of a licensed private security officer who has been assigned to train and develop the on-the-job trainee.

(13) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 63, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-63-502.

R156-63-103. Authority - Purpose.

This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 63.

R156-63-104. 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.

R156-63-302a. Qualifications for Licensure - Application Requirements.

(1) An application for licensure as a contract security company shall be accompanied by:

(a) a certification of criminal record history for the applicant's qualifying agent issued by the Bureau of Criminal Identification, Utah Department of Public Safety, in accordance with the provisions of Subsection 53-10-108(1)(f)(ii);

(b) two fingerprint cards for the applicant's qualifying agent, and all of the applicant's officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel;

(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 Bureau of Criminal Identification, Utah Department of Public Safety, for each of the applicant's qualifying agent, officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel; and

(d) a copy of the driver license or Utah identification card issued to the applicant's qualifying agent, officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel.

(2) An application for licensure as an armed private security officer shall be accompanied by:

(a) a certification of criminal record history for the applicant issued by the Bureau of Criminal Identification, Utah Department of Public Safety, in accordance with the provisions of Subsection 53-10-108(1)(f)(ii);

(b) two fingerprint cards for 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:

(i) the Federal Bureau of Investigation for the applicant; and

(ii) the Bureau of Criminal Identification of the Utah Department of Public Safety; and

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

(3) An application for licensure as an unarmed private security officer shall be accompanied by:

(a) a certification of criminal record history for the applicant issued by the Bureau of Criminal Identification, Utah Department of Public Safety, in accordance with the provisions of Subsection 53-10-108(1)(f)(ii);

(b) two fingerprint cards for 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:

(i) the Federal Bureau of Investigation for the applicant; and

(ii) the Bureau of Criminal Identification of the Utah Department of Public Safety; and

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

(4) An applicant for licensure as an armed private security officer, unarmed private security officer, or as a qualifying agent for a contract security company by a person currently licensed under Title 58, Chapter 63, shall submit an application for change in license classification and shall be required to only document compliance with those requirements for licensure which have not been previously met in obtaining the currently held license.

R156-63-302b. Qualifications for Licensure - Basic Education and Training Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the basic education and training requirements for licensure in Section 58-63-302 are defined, clarified, or established as follows:

(1) each applicant for licensure as an armed private security officer shall successfully complete a basic education and training program approved by the division, the content of which is set forth in Section R156-63-603 and R156-63-604; and

(2) each applicant for licensure as an unarmed private security officer shall successfully complete a basic education and training program approved by the division, the content of which is set forth in Section R156-63-603.

R156-63-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the examination requirements for licensure in Section 58-63-302 are defined, clarified, or established as follows:

(1) the qualifying agent for each applicant who is a contract security company shall obtain a passing score of at least 75% on the Utah Security Personnel Qualifying Agent's Examination; and

(2) each applicant for licensure as an armed private security officer or an unarmed private security officer shall obtain a score of at least 75% on the basic education and training final examination approved by the division and offered by each provider of basic education and training as a part of the program.

R156-63-302d. Qualification for Licensure - Liability Insurance for a Contract Security Company.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the insurance requirements for licensure as a contract security company in Subsection 58-63-302(1)(j)(i) are defined, clarified, or established as follows.

(1) An applicant shall file with the division a "Certificate of Insurance" providing liability insurance for the following exposures:

(a) general liability;
(b) assault and battery;
(c) personal injury;
(d) false arrest;
(e) libel and slander;
(f) invasion of privacy;
(g) broad form property damage;
(h) damage to property in the care, custody or control of the contract security company; and
(i) errors and omissions.

(2) Said insurance shall provide liability limits in amounts not less than $300,000 for each incident and not less than $1,000,000 total aggregate for each annual term.

(3) The insurance carrier must be an insurer which has a certificate of authority to do business in Utah, or is an authorized surplus lines insurer in Utah, or is authorized to do business under the laws of the state in which the corporate offices of foreign corporations are located.

(4) All contract security companies shall have a current insurance certificate of coverage as defined in Subsection (1) on file at all times and available for immediate inspection by the division during normal working hours.

(5) All contract security companies shall notify the division immediately upon cancellation of the insurance policy, whether such cancellation was initiated by the insurance company or the insured agency.

R156-63-302e. Qualifications for Licensure - Age Requirement for Armed Private Security Officer.

An armed private security officer must be 18 years of age or older at the time of submitting an application for licensure in accordance with Subsection 76-10-509(1).

R156-63-302f. Qualifications for Licensure - Good Moral Character - Disqualifying Convictions.

(1) In addition to those criminal convictions prohibiting licensure as set forth in Subsections 58-63-302(1)(h), (2)(c) and (3)(c), the following is a list of criminal convictions which may disqualify a person from obtaining or holding an unarmed private security officer license, an armed private security officer license, or a contract security company license:

(a) crimes against a person as defined in Title 76, Chapter 5, Part 1;
(b) theft, including retail theft, as defined in Title 76;
(c) larceny;
(d) sex offenses as defined in Title 76, Part 4;
(e) any offense involving controlled dangerous substances;
(f) fraud;
(g) extortion;
(h) treason;
(i) forgery;
(j) arson;
(k) kidnapping;
(l) perjury;
(m) conspiracy to commit any of the offenses listed herein;
(n) hijacking;
(o) burglary;
(p) escape from jail, prison, or custody;
(q) false or bogus checks;
(r) terrorist activities;
(s) desertion;
(t) pornography; and
(u) any attempt to commit any of the above offenses.

(2) Applications for licensure or renewal of licensure in which the applicant, or in the case of a contract security company, the officers, directors, and shareholders with 5% or more of the stock of the company, has a criminal background shall be considered on a case by case basis, including a consideration of the following:

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

R156-63-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 63 is established by rule in Section R156-1-308.

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

R156-63-304. Continuing Education for Armed and Unarmed Private Security Officers as a Condition of Renewal.

(1) In accordance with Subsections 58-1-203(1)(g) and

58-1-308(3)(b), there is created a continuing education requirement as a condition of renewal or reinstatement of licenses issued under Title 58, Chapter 63 in the classifications of armed private security officer and unarmed private security officer.

(2) Armed and unarmed private security officers shall complete 16 hours of continuing education every two years consisting of formal classroom education.

(3) In addition to the required 16 hours of continuing education, armed private security officers shall complete not less than 16 additional hours of continuing firearms education and training every two years. The continuing firearms education and training shall be completed in four-hour blocks every six months and shall not include any hours for the continuing education requirement in Subsection R156-63-304(2). The continuing firearms education and training shall include as a minimum:

(a) live classroom instruction concerning the restrictions in the use of deadly force and firearms safety on duty, at home and on the range; and

(b) a recognized practical pistol recertification course on which the licensee achieves a minimum score of 80% using regular or low light conditions.

(4) Firearms education and training shall comply with the provisions of Public Law 103-54, the Armored Car Industry Reciprocity Act of 1993.

(5) An individual holding a current armed private security officer license in Utah who fails to complete the required four hours of continuing firearms education within the appropriate six month period will be required to complete one and one half times the number of continuing firearms education hours the licensee was deficient for the reporting period (this requirement is hereafter referred to as penalty hours). The penalty hours shall not be considered to satisfy in whole or in part any of the continuing firearms education hours required for subsequent renewal of the license.

(6) If a renewal period is shortened or lengthened to effect a change of renewal cycle, the continuing education hours required for that renewal period shall be increased or decreased accordingly as a pro rata amount of the requirements of a two-year period.

(7) Continuing education to qualify under the provisions of Subsection (2) shall include:

(a) company operational procedures manual;

(b) applicable state laws and rules;

(c) legal powers and limitations of private security officers;

(d) observation and reporting techniques;

(e) ethics; and

(f) emergency techniques.

R156-63-305. Demonstration of Clear Criminal History for Licensees as Renewal Requirement.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b), there is created a demonstration of a clear criminal history as a condition of renewal or reinstatement of licenses issued under Title 58, Chapter 63 in the classifications of armed private security officer, unarmed private security officer, and for the qualifying agent for a contract security company.

(2) Each application for renewal or reinstatement of the license of a contract security company shall be conditioned upon the licensee having obtained within 120 days prior to submission of the application for renewal or reinstatement, a clear criminal history certification from the Bureau of Criminal Identification, Utah Department of Public Safety, for the licensee's qualifying agent.

(3) Each application for renewal or reinstatement of the license of an armed private security officer, or unarmed private security officer shall be conditioned upon the licensee having obtained within 120 days prior to submission of the application for renewal or reinstatement, a clear criminal history certification from the Bureau of Criminal Identification, Utah Department of Public Safety.

R156-63-306. Change of Qualifying Agent.

Within 30 days after a qualifying agent for a licensed contract security company ceases employment with the licensee, or for any other reason is not qualified to be the licensee's qualifier, the contract security company shall file with the division an application for change of qualifier on forms provided by the division, accompanied by a fee established in accordance with Section 63-38-3.2.

R156-63-307. Exemptions from Licensure.

(1) In accordance with Subsection 58-1-307(1)(c), an applicant who has applied for licensure as an unarmed or armed private security officer is exempt from licensure and may engage in practice as an unarmed or armed private security officer in a supervised on-the-job training capacity, for a period of time not to exceed the earlier of 30 days or action by the division upon the application.

(2) Upon receipt of an application for licensure as an unarmed private security officer or as an armed private security officer, an on-the-job training letter may be issued to the applicant, if the applicant meets the following criteria:

(a) the applicant has not been licensed as an unarmed or as an armed private security officer in the state of Utah at least two years prior to applying for licensure;

(b) the applicant submits with his application an official criminal history re port from the Bureau of Criminal Identification showing "No Criminal Record Found";

(c) the applicant has not answered "yes" to any question on the qualifying questionnaire section of the application;

(d) the applicant has not had a license to practice an occupation or profession denied, revoked, suspended, restricted or placed on probation; and

(e) the applicant has submitted all information required with the exception of the 16 hours of classroom or on-the-job education and training in accordance with Subsection R156-63-603(2).

R156-63-502. Unprofessional Conduct.

"Unprofessional conduct" includes the following:

(1) making any statement that would reasonably cause another person to believe that a private security officer functions as a law enforcement officer or other official of this state or any of its political subdivisions or any agency of the federal government;

(2) employment of an unarmed or armed private security office by a contract security company, as an on-the-job trainee pursuant to Section R156-63-307, who has been convicted of a felony or a misdemeanor crime of moral turpitude;

(3) employment of an unarmed or armed private security officer by a contract security company who fails to meet the requirements of Section R156-63-307; and

(4) 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 an individual has entered into participation in a first offender, deferred adjudication or other program or arrangement where judgment of conviction is withheld.

(5) utilizing a vehicle whose markings, lighting, and/or signal devices imply or suggest that the vehicle is an authorized emergency vehicle as defined in Subsection 41-6a-102(3) and Section 41-6a-310 and in Title R722, Chapter 340;

(6) utilizing a vehicle with an emergency lighting system which violates the requirements of Section 41-6a-1616 of the Utah Motor Vehicle Code;

(7) wearing a uniform, insignia, or badge that would lead a reasonable person to believe that the unarmed or armed private security officer is connected with a federal, state, or municipal law enforcement agency;

(8) incompetence or negligence by an unarmed private security officer, an armed private security officer or by a contract security company that results in injury to a person or that creates an unreasonable risk that a person may be harmed;

(9) failure by the contract security company or its officers, directors, partners, proprietors or responsible management personnel to adequately supervise employees to the extent that the public health and safety are at risk;

(10) failing to immediately notify the division of the cancellation of the contract security company's insurance policy

(11) failure of the contract security company or an armed or unarmed private security officer to report a criminal offense pursuant to Section R156-63-613.

R156-63-503. Administrative Penalties.

(1) In accordance with Subsection 58-63-503, the following citation fine schedule shall apply to citations issued under Title 58, Chapter 63:

TABLE

FINE SCHEDULE

FIRST OFFENSE

Violation	Contract Security Company	Armed or Unarmed Security Officer
58-63-501(1)	$ 800.00	N/A
58-63-501(3)	$ 800.00	$ 500.00
SECOND OFFENSE		
58-63-501(1)	$1,600.00	$1,000.00
58-63-501(3)	$1,600.00	$1,000.00

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-63-503(3)(h)(iii).

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-63-601. Operating Standards - Firearms.

(1) An armed private security officer shall carry only that firearm with which he has passed a firearms qualification course as defined in Section R156-63-603.

(2) Shotguns and rifles, owned and issued by the contract security company, may be used in situations where they would constitute an appropriate defense for the armed private security officer and where the officer has completed an appropriate qualification course in their use.

(3) An armed private security officer shall not carry a firearm except when acting on official duty as an employee of a contract security company, unless the licensee is otherwise qualified under the laws of the state to carry a firearm.

R156-63-602. Operating Standards - Approved Basic Education and Training Program for Armed and Unarmed Private Security Officers.

To be designated by the division as an approved basic education and training program for armed private security officers and unarmed private security officers, the following standards shall be met.

(1) There shall be a written education and training manual which includes performance objectives.

(2) The program for armed private security officers shall provide content as established in Sections R156-63-603 and R156-63-604 of this rule.

(3) The program for unarmed private security officers shall provide content as established in Section R156-63-603 of this rule.

(4) An instructor is a person who directly facilitates learning through means of live in-class lecture, group participation, practical exercise, or other means, where there is a direct student-teacher relationship. All instructors providing the basic classroom instruction shall have at least three years of training and experience reasonably related to providing of security guard services.

(5) All instructors providing firearms training shall have the following qualifications:

(a) current Peace Officers Standards and Training firearms instructors certification; or

(b) current certification as a firearms instructor by the National Rifle Association, a Utah law enforcement agency, a Federal law enforcement agency, a branch of the United States military, or other qualification or certification found by the director to be equivalent.

(6) All approved basic education and training programs shall maintain training records on each individual trained including the dates of attendance at training, a copy of the instruction given, and the location of the training. These records shall be maintained in the files of the education and training program for at least three years.

(7) In the event an approved provider of basic education and training ceases to engage in business, the provider shall establish a method approved by the division by which the records of the education and training shall continue to be available for a period of at least three years after the education and training is provided.

(8) Instructors, who present continuing education hours and are licensed armed or unarmed private security officers, shall receive credit for actual preparation time for up to two times the number of hours to which participants would be entitled. For example, for learning activities in which participants receive four continuing education hours, instructors may receive up to eight continuing education hours (four hours for preparation plus four hours for presentation).

R156-63-603. Operating Standards - Content of Approved Basic Education and Training Program for Armed and Unarmed Private Security Officers.

An approved basic education and training program for armed and unarmed private security officers shall have the following components:

(1) at least eight hours of basic classroom instruction to include the following:

(a) the nature and role of private security, including the limits of, scope of authority and the civil liability of a private security officer and the private security officer's role in today's society;

(b) state laws and rules applicable to private security;

(c) legal responsibilities of private security, including constitutional law, search and seizure and other such topics;

(d) situational response evaluations, including protecting and securing crime or accident scenes, notification of intern and external agencies, and controlling information;

(e) ethics;

(f) use of force, emphasizing the de-escalation of force and alternatives to using force;

(g) report writing, including taking witness statements, log maintenance, the control of information, taking field notes, report preparation and basic writing skills;

(h) patrol techniques, including mobile vs. fixed post, accident prevention, responding to calls and alarms, security breeches, and monitoring potential safety hazards;

(i) police and community relations, including fundamental duties and personal appearance of security officers;

(j) sexual harassment in the work place; and

(k) a final examination which competently examines the student on the subjects included in the eight hours of basic classroom instruction in the approved program of education and training and which the student passes with a minimum score of 80%.

(2) an additional 16 hours of basic education and training in the classroom, on-the-job or a combination thereof to include the following:

(a) for unarmed and armed private security officers:

(i) two hours concerning the legal responsibilities of private security, including constitutional law, search and seizure and other such topics;

(ii) two hours of situational response evaluations, including protecting and securing crime or accident scenes, notification of internal and external agencies, and controlling information;

(iii) three hours covering the use of force, emphasizing the de-escalation of force and alternatives to using force;

(iv) two hours of report writing, including taking witness statements, log maintenance, the control of information, taking field notes, report preparation and basic writing skills;

(v) four hours of patrol techniques, including mobile vs. fixed post, accident prevention, responding to calls and alarms, security breeches, homeland security and monitoring potential safety hazards;

(vi) two hours of police and community relations, including fundamental duties and personal appearance of security officers; and

(vii) one hour regarding sexual harassment in the work place; or

(b) for unarmed and armed private security officers who work in the armored car service:

(i) eight hours of driving policies and procedures, driver training and vehicle orientation;

(ii) four hours of emergency situation response including terminal security, traffic accidents, robbery situations, homeland security and reducing risk potential through street procedures and tactics, securing robbery scenes, dealing with the media, etc.;

(iii) three hours of armored operations, including proper paperwork, street control procedures, vehicle transfers, vault procedures, and other proper branch procedures; and

(iv) one hour regarding sexual harassment in the work place; and

(c) a final examination approved by the Division, which competently examines the applicant on the subjects included in the additional 16 hour program of basic education and training and which the student passes with a minimum score of 80%.

R156-63-604. Operating Standards - Content of Approved Basic Firearms Training Program for Armed Private Security Officers.

An approved basic firearms training program for armed private security officers shall have the following components:

(1) at least six hours of classroom firearms instruction to include the following:

(a) the firearm and its ammunition;

(b) the care and cleaning of the weapon;

(c) no alterations of firing mechanism;

(d) firearm inspection review procedures;

(e) firearm safety on duty;

(f) firearm safety at home;

(g) firearm safety on range;

(h) legal and ethical restraints on firearms use;

(i) explanation and discussion of target environment;

(j) stop failure drills;

(k) explanation and discussion of stance, draw stroke, cover and concealment and other firearm fundamentals;

(l) armed patrol techniques;

(m) use of deadly force under Utah law and the provisions of Title 76, Chapter 2, Part 4 and a discussion of 18 CFR 44 Section 922;

(n) the instruction that armed private security officers shall not fire their weapon unless there is an eminent threat to life and at no time will the weapon be drawn as a threat or means to force compliance with any verbal directive not involving eminent threat to life; and

(2) at least six hours of firearms range instruction to include the following:

(a) basic firearms fundamentals and marksmanship;

(b) demonstration and explanation of the difference between sight picture, sight alignment and trigger control; and

(c) a recognized practical pistol course on which the applicant achieves a minimum score of 80% using regular and low light conditions.

R156-63-605. Operating Standards - Uniform Requirements.

(1) All unarmed and armed private security officers while on duty shall wear the uniform of their contract security company employer unless assigned to work undercover.

(2) Each armed and unarmed private security officer wearing a soft uniform unless assigned to an undercover status shall at a minimum display on the outermost garment of the uniform the name of the contract security company under whom the armed and unarmed private security officer is employed, and the word "Security", "Contract Security", or "Security Officer".

(3) The name of the contract security company and the word "Security" shall be of a size, style, shape, design and type which is clearly visible by a reasonable person under normal conditions.

(4) Each armed and unarmed private security officer wearing a regular uniform shall display on the outermost garment of the uniform in a style, shape, design and type which is clearly visible by a reasonable person under normal conditions identification which contains:

(a) the name or logo of the contract security company under whom the armed or unarmed private security officer is employed; and

(b) the word "Security", "Contract Security", or "Security Officer".

(5) Contract security companies shall have until July 1, 2005 to ensure that all uniforms comply with the requirements of this section. Thereafter, all uniforms, soft and regular, must meet all requirements established in this section.

R156-63-606. Operating Standards - Badges.

Badges may be worn under the following conditions:

(1) they do not carry the seal of the state of Utah nor have the words "State of Utah";

(2) they shall contain the word "Security" and may contain the name of the company; and

(3) the use of a star badge with any number of points on a uniform, in writing, advertising, letterhead, or other written communication is prohibited.

R156-63-607. Operating Standards - Criminal Status of Officer, Qualifying Agent, Director, Partner, Proprietor, Private Security Officer or Manager of Contract Security

Companies.

In the event an officer, qualifying agent, director, partner, proprietor, private security officer, or any management personnel having direct responsibility for managing operations of the contract security company is found guilty of a felony, or of a misdemeanor which impacts upon that individual's ability to function within the security industry, said company shall within ten days reorganize and exclude said individual from participating at any level or capacity in the management, operations, sales, ownership, or employment of that company.

R156-63-608. Operating Standards - Implying an Association with Public Law Enforcement Prohibited.

(1) No contract security company shall use any name which implies intentionally or otherwise that they are connected or associated with any public law enforcement agency.

(2) No contract security company shall permit the use of the words "special police", "special officer", "cop", or any other words of a similar nature whether used orally or appearing in writing or on any uniform, badge, or cap.

(3) No person licensed under this chapter shall use words or designations which would cause a reasonable person to believe he is associated with a public law enforcement agency.

R156-63-609. Operating Standards - Proper Identification of Private Security Officers.

All armed and unarmed private security officers shall carry a valid security license together with a Utah identification card issued by the Division of Driver License or a current Utah driver license whenever he is performing the duties of an armed or unarmed private security officer and shall exhibit said license and identification upon request.

R156-63-610. Operating Standards - Vehicles.

(1) No contract security company or its personnel shall utilize a vehicle whose markings, lighting, or signal devices imply that the vehicle is an authorized emergency vehicle pursuant to Subsection 41-6a-102(3).

(2) The word "Security", either alone or in conjunction with the company name, shall appear on each side and the rear of the company vehicle in letters no less than 4 inches in height and in a color contrasting with the color of the contract security company vehicle.

(3) Contract security companies shall have six months from the effective date of this rule to ensure that all vehicles comply with the requirements of this section.

(4) Subsection R156-63-610(2) does not apply to armored cars as defined in the Armored Car Industry Reciprocity Act of 1993.

R156-63-611. Operating Standards - Operational Procedures Manual.

(1) Each contract security company shall develop and maintain an operational procedures manual which includes the following topics:

(a) detaining or arresting;
(b) restraining, detaining, and search and seizure;
(c) felony and misdemeanor definitions;
(d) observing and reporting;
(e) ingress and egress control;
(f) natural disaster preparation;
(g) alarm systems, locks, and keys;
(h) radio and telephone communications;
(i) crowd control;
(j) public relations;
(k) personal appearance and demeanor;
(l) bomb threats;
(m) fire prevention;
(n) mental illness;
(o) supervision;
(p) criminal justice system;
(q) code of ethics for private security officers; and
(r) sexual harassment in the workplace.

(2) The operations and procedures manual shall be immediately available to the division upon request.

R156-63-612. Operating Standards - Display of License.

The license issued to a contract security company shall be prominently displayed in the company's principal place of business and a copy of the license shall be displayed prominently in all branch offices.

R156-63-613. Operating Standards - Standards of Conduct.

All armed and unarmed private security officers licensed pursuant to Title 58, Chapter 63 if arrested, charged, or indicted for a criminal offense above the level of a Class C misdemeanor, shall within 72 hours notify the contract security company they are employed with of the criminal offense. The contract security company shall notify the Division of the criminal offense within 72 hours of notification by the licensee, in writing, including name, name of the arresting agency, the agency case number and the nature of the criminal offense.

KEY: licensing, security guards, private security officers

July 19, 2007	**58-1-106(1)(a)**
Notice of Continuation September 1, 2005	**58-1-202(1)(a)**
	58-63-101

R162. Commerce, Real Estate.
R162-107. Unprofessional Conduct.
R162-107-1. Unprofessional Conduct.

107.1 Unprofessional conduct includes the following specific acts or omissions:

107.1.1 Violating or disregarding a disciplinary order of the Utah Appraiser Licensing and Certification Board or the division;

107.1.2 Signing an appraisal report containing a statement indicating that an appraiser has inspected a property if the appraiser has not inspected the property;

107.1.3 Signing an appraisal report as the supervising appraiser without having given adequate supervision to the registered appraiser or the unclassified assistant;

107.1.4 Allowing an appraiser in his employ, or an appraiser whom he is otherwise responsible to supervise, to:

(a) exceed the authority of the subordinate appraiser's classification;

(b) engage in conduct which is a violation of Title 61, Chapter 2b.

107.1.5 Allowing a non-appraiser to:

(a) exceed the authority granted to an unclassified person by these rules;

(b) engage in conduct which would be a violation of Title 61, Chapter 2b if done by an appraiser; or

(c) accept an appraisal assignment.

107.1.6 Splitting appraisal fees with any person who is not a State-Licensed Appraiser or a State-Certified Appraiser, except that an appraisal trainee may be paid reasonable compensation proportionate to lawful services actually performed in connection with appraisals. Such payment must be paid to the trainee by the trainee's supervisor or the supervisor's appraisal firm and not by any other person or entity.

107.2 The Board may appoint members of the appraisal industry to serve as a Technical Advisory Panel to provide advice to the Division concerning technical appraisal issues and conduct constituting unprofessional conduct.

KEY: real estate appraisals, conduct
November 23, 2005 61-2b-8
Notice of Continuation July 16, 2007

R164. Commerce, Securities.
R164-1. Fraudulent Practices.
R164-1-3. Fraudulent Practices of Broker-Dealers, Broker-Dealer Agents, and Issuer-Agents.

(A) Authority and purpose.

(1) The Division enacts this rule under authority granted by Subsection 61-1-1(3) and Section 61-1-24.

(2) This rule identifies practices by broker-dealers, broker-dealer agents, or issuer-agents which are generally associated with schemes to manipulate the securities markets.

(3) A broker-dealer, broker-dealer agent, or issuer-agent who engages in one or more of the practices listed below will be deemed to have engaged in an "act, practice or course of business which operates or would operate as a fraud" as used in Subsection 61-1-1(3).

(4) This rule is not intended to be all-inclusive. Thus, acts or practices not listed may also be deemed fraudulent.

(5) This rule does not preclude application of the anti-fraud provisions of Subsection 61-1-1(3) against anyone for practices similar in nature to the practices listed in Subsection (C).

(B) Definitions used in the rule.

(1) "Customer" means potential, current, or past clients.

(2) "Designated security" means any equity security other than a security

(2)(a) listed, or approved for listing upon notice of issuance, on a national securities exchange and makes transaction reports available as required under SEC Rule 11Aa3-1, Dissemination of transaction reports and last sale data with respect to transactions in reported securities, 17 CFR 240.11Aa3-1 (1992), which is adopted and incorporated by reference and available from the SEC;

(2)(b) listed, or approved for listing upon notice of issuance, on the NASDAQ system;

(2)(c) issued by an investment company registered under the Investment Company Act of 1940;

(2)(d) that is a put option or call option issued by The Options Clearing Corporation; or

(2)(e) whose issuer has net tangible assets in excess of $4,000,000 as demonstrated by financial statements, dated less than fifteen months previous to the date of the transaction with the person, that you have reviewed and have a reasonable basis to believe are true and complete, and

(2)(e)(i) in the event the issuer is other than a foreign private issuer, are the most recent financial statements for the issuer that have been audited and reported on by an independent public accountant in accordance with SEC Rule 2-02, Accountant's reports, 17 CFR 210.2-02 (1992), which is adopted and incorporated by reference and available from the SEC; or

(2)(e)(ii) in the event the issuer is a foreign private issuer, are the most recent financial statements for the issuer that have been filed with the Commission; furnished to the Commission pursuant to SEC Rule 12g3-2(b), Exemptions for American depositary receipts and certain foreign securities, 17 CFR 240.12g3-2 (1992), which is adopted and incorporated by reference and available from the SEC; or prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdiction.

(3) "Exempt transactions" under subparagraph (C)(1)(h) means:

(3)(a) transactions in which the price of the designated security is five dollars or more, exclusive of costs or charges; provided, however, that if the designated security is a unit composed of one or more securities, the unit price divided by the number of components of the unit other than warrants, options, rights, or similar securities must be five dollars or more, and any component of the unit that is a warrant, option, right, or similar securities, or a convertible security must have an exercise price or conversion price of five dollars or more;

(3)(b) transactions that are not recommended by you or your agent;

(3)(c) transactions by you:

(3)(c)(i) where commissions, commission equivalents, and mark-ups from transactions in designated securities during each of the immediately preceding three months, and during eleven or more of the preceding twelve months, did not exceed five percent of your total commissions, commission-equivalents, and mark-ups from transactions in securities during those months; and

(3)(c)(ii) you have not executed principal transactions in connection with the solicitation to purchase the designated security that is the subject of the transaction in the immediately preceding twelve months.

(3)(d) transactions that, upon prior written request or upon its own motion, the Division conditionally or unconditionally exempts as not encompassed within this definition.

(4) "Division" means the Division of Securities, Utah Department of Commerce.

(5) "Market-maker" means a broker-dealer who, with respect to a particular security,

(5)(a) regularly publishes bona fide, competitive bid and ask quotations in a recognized inter-dealer quotation system, or

(5)(b) regularly furnishes bona fide competitive bid and offer quotations to other broker-dealers upon request; and

(5)(c) is ready, willing and able to effect transactions in reasonable quantities at his quoted price with other broker-dealers on a regular basis.

(6) "NASDAQ" means National Association of Securities Dealers Automatic Quotation System.

(7) "You" means broker-dealers, broker-dealer agents, or issuer-agents as applicable.

(C) Acts which will be deemed fraudulent.

(1) If you engage in any of the following acts you will be deemed to be violating the anti-fraud provisions of Subsection 61-1-1(3):

(1)(a) Effecting a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security.

(1)(b) Receiving an unreasonable commission or profit.

(1)(c) Contradicting or negating the importance of information contained in a prospectus or other offering materials with intent to deceive or mislead.

(1)(d) Using advertising or sales presentations in a deceptive or misleading manner.

(1)(e) Leading a customer to believe that you are in possession of material, non-public information which would impact on the value of a security whether or not you are in possession of the material non-public information.

(1)(f) Making contradictory recommendations to different customers of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstance of each customer.

(1)(g) Failing to make a bona fide public offering of all the securities allotted to you for distribution by, among other things,

(1)(g)(i) transferring securities to a customer, another broker-dealer or a fictitious account with the understanding that those securities will be returned to you or your nominee, or;

(1)(g)(ii) parking or withholding securities.

(1)(h) in connection with the solicitation of a purchase of a designated security which is not an exempt transaction as defined above:

(1)(h)(i) failing to disclose to your customer the bid and ask price, at which you effect transactions with individual, retail

customers, of the designated security as well as its spread in both percentage and dollar amounts at the time of solicitation and on the trade confirmation documents.

(1)(h)(ii) failing to advise your customer, both at the time of solicitation and on the confirmation, of any and all compensation related to a specific securities transaction to be paid to you, including commissions, sales charges, or concessions.

(1)(h)(iii) failing, to disclose, both at the time of solicitation and on the confirmation, your firm's short inventory position of more than 5%, or your firm's long inventory position of more than 10%, of the issued and outstanding shares of that class of securities of the issuer, if:

(1)(h)(iii)(aa) your firm is a market-maker at the time of the solicitation, and

(1)(h)(iii)(bb) the transaction is a principal transaction;

(1)(h)(iv) conducting or participating in sales contests in a particular designated security.

(1)(h)(v) failing to include with the confirmation, in a form satisfactory to the Division, a written explanation of the bid and ask price.

(1)(h)(vi) failing or refusing to execute sell orders from a customer from whom you or your firm solicited the purchase of the designated security in a principal transaction.

(1)(h)(vii) soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market.

(1)(h)(viii) engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same designated security.

(1)(i) effecting transactions in, or inducing the purchase or sale of any security by means of any manipulative, deceptive or other fraudulent device or contrivance, including the use of boiler room tactics or use of fictitious or nominee accounts.

KEY: securities, securities regulation, fraud

1991	**61-1-1**
Notice of Continuation July 30, 2007	**61-1-3**
	61-1-24

R164. Commerce, Securities.
R164-4. Licensing Requirements.
R164-4-1. Broker-Dealer, Broker-Dealer Agent, and Issuer-Agent Licensing Requirements.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule sets forth the procedure and requirements to license as a broker-dealer, broker-dealer agent, or issuer-agent.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "CRD" means the Central Registration Depository.

(3) "NASD" means the National Association of Securities Dealers.

(4) "NASAA" means the North American Securities Administrators Association, Inc.

(5) "SEC" means the United States Securities and Exchange Commission.

(C) Broker-dealer licensing, post licensing, renewal, and withdrawal requirements

(1) License requirements

(1)(a) To license as a broker-dealer, applicant must be a member of the NASD and submit to the CRD the following:

(1)(a)(i) SEC Form BD - Uniform Application for Broker-Dealer Registration;

(1)(a)(ii) application for a license as an agent in Utah, as specified in paragraph (D), for each principal, officer, agent or employee who directly supervises, or will directly supervise, any licensed agent associated with applicant in Utah; and

(1)(a)(iii) a license fee as specified in the Division's fee schedule, and in the form of payment prescribed by the CRD.

(1)(b) A certificate of license will not be issued. Proof of status is available from the CRD.

(2) Post-licensing requirements

(2)(a) Applicant must file amendments to SEC Form BD with the CRD only.

(2)(b) Applicant must file SEC Form X-17A-5, FOCUS reports in a timely manner with the NASD. However, the Division may request applicant to provide a copy of the FOCUS Report.

(3) License renewal requirements

(3)(a) All licenses expire on December 31 of each year.

(3)(b) To renew license, applicant must submit to the CRD the license fee specified in the Division's fee schedule before December 31.

(4) License or application withdrawal requirements

(4)(a) To withdraw a license or application, applicant must file with the CRD, or with the Division if not required by the CRD, SEC Form BDW - Uniform Request for Withdrawal from Registration as a Broker-Dealer.

(4)(b) A withdrawal is effective 30 days following receipt of SEC Form BDW, unless the Division notifies applicant otherwise.

(D) Broker-dealer agent licensing, renewal, and withdrawal requirements

(1) License requirements

(1)(a) To license as a broker-dealer agent, applicant or the sponsoring broker-dealer must submit to the CRD the following, in addition to any information required by the NASD, the CRD, or the SEC:

(1)(a)(i) NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer;

(1)(a)(ii) proof that applicant passed the Series 63, Uniform Securities Agent State Law Examination (Series 63 Exam), or the Series 66, Uniform Combined State Law Examination (Series 66 Exam), which are administered by the NASD, and any other exams required by the SEC or the NASD; and

(1)(a)(iii) a license fee as specified in the Division's fee schedule, and in the form of payment prescribed by the CRD.

(1)(b) A certificate of license will not be issued. Proof of status is available from the CRD.

(2) License renewal requirements

(2)(a) All licenses expire on December 31 of each year.

(2)(b) To renew license, applicant must submit to the CRD the license fee specified in the Divisions fee schedule before December 31.

(3) License or application withdrawal requirements

(3)(a) To withdraw a license or application, applicant must file with the CRD, NASD Form U-5 - Uniform Termination Notice for Securities Industry Registration.

(3)(b) A withdrawal is effective 30 days following receipt of NASD Form U-5, unless the Division notifies applicant otherwise.

(4) Miscellaneous provisions

(4)(a) Except as provided in subparagraph (D)(4)(b), applicant may associate with only one broker-dealer at a time.

(4)(b) A dual license may be allowed by the director if:

(4)(b)(i) applicant requests a dual license in writing to the Division which identifies the broker-dealers with which applicant will associate and sets forth the reasons for the dual license;

(4)(b)(ii) both broker-dealers with which applicant intends to associate represent in writing to the Division that each assumes full responsibility for applicant at all times; and

(4)(b)(iii) applicant discloses the dual license to each client.

(E) Issuer-agent licensing, renewal, and withdrawal requirements

(1) License requirements

(1)(a) To license as an issuer-agent, applicant or the sponsoring issuer must submit to the Division the following:

(1)(a)(i) NASD Form U-4 with original signatures;

(1)(a)(ii) proof that applicant passed the Series 63 Exam or the Series 66 Exam;

(1)(a)(iii) a license fee as prescribed in the Division's fee schedule; and

(1)(a)(iv) a surety bond if required by Section R164-11-1.

(2) License renewal requirements

(2)(a) All licenses expire on December 31 of each year.

(2)(b) To renew license, applicant must submit to the Division the following before December 31 of each year:

(2)(b)(i) NASD Form U-4 with original signatures; and

(2)(b)(ii) The license fee specified in the Division's fee schedule.

(3) License or application withdrawal requirements

(3)(a) To withdraw a license or application, applicant must file with the Division a written request for withdrawal or NASD Form U-5.

(3)(b) A withdrawal is effective thirty days following receipt of the written request for withdrawal, unless the Division notifies applicant otherwise.

(4) Miscellaneous provisions

(4)(a) If applicant applies for a license two or more times in a twelve-month period, the Division deems applicant to be a broker-dealer. Applicant must then license as a broker-dealer.

R164-4-2. Investment Adviser and Investment Adviser Representative Licensing Requirements.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule sets forth the procedure and requirements to license as an investment adviser and investment adviser representative.

(B) Definitions

(1) "CRD" means the Central Registration Depository.

(2) "Designated Official" means a person that is a partner, officer, director, sole proprietor, or a person occupying a similar status or performing similar functions in an investment adviser firm.

(3) "Division" means the Division of Securities, Utah Department of Commerce.

(4) "Fee" means any remuneration received, directly or indirectly, for investment advice given or investment advisory services rendered, including, among other things, charges for a publication which includes investment advice and commissions paid or received when securities are purchased or sold as a result of investment advice given or investment advisory services rendered. License fees referred to in this rule are not included.

(5) "IARD" means the Investment Adviser Registration Depository.

(6) "Investment advice" or "investment advisory services" means advice given or services rendered concerning the value of securities or as to the advisability of investing in, or purchasing or selling securities.

(7) "NASAA" means the North American Securities Administrators Association, Inc.

(8) "NASD" means the National Association of Securities Dealers.

(9) "SEC" means the United States Securities and Exchange Commission.

(10) "SIPC" means the Securities Investor Protection Corporation.

(C) Investment adviser and investment adviser representative licensing requirements

(1) Investment adviser licensing requirements. To license as an investment adviser, applicant must submit the following:

(1)(a) To the IARD:

(1)(a)(i) SEC Form ADV - Uniform Application for Investment Adviser Registration, including applicant's audited balance sheet if required under item 14 of part II of Form ADV; and

(1)(a)(ii) a license fee as specified in the Division's fee schedule. (This fee includes the fee for one designated official.)

(1)(b) To the CRD:

(1)(b)(i) NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer for applicant's designated official; and

(1)(b)(ii) proof that applicant's designated official has passed the Series 65 or both the Series 66 Exam and Series 7 Exam.

(1)(c) To the Division:

(1)(c)(i) Part II of SEC Form ADV - Uniform Application for Investment Adviser Registration; and

(1)(c)(ii) Division Form 4-5BIA - Indemnity Bond of Investment Adviser, if required by Section R164-4-5, or proof of membership in SIPC.

(2) Investment Adviser Representative Licensing Requirements. To license as an investment adviser representative, the investment adviser or federal covered adviser with which the applicant will associate must submit the following:

(2)(a) To the CRD:

(2)(a)(i) NASD Form U-4; and

(2)(a)(ii) proof applicant passed the Series 65 Exam or both the Series 66 Exam and Series 7 Exam.

(2)(b) To the IARD, a license fee as specified in the Division's fee schedule.

(3) Miscellaneous provisions

(3)(a) Except as provided in Subparagraph (C)(3)(b), applicant may associate with only one investment adviser or federal covered adviser at a time.

(3)(b) A dual license may be allowed by the director if:

(3)(b)(i) Applicant requests a dual license in writing to the Division which identifies the investment advisers or federal covered advisers with which applicant intends to associate and sets forth the reasons for the dual license;

(3)(b)(ii) Both investment advisers or federal covered advisers with which applicant intends to associate represent in writing to the Division that each assumes full responsibility for applicant at all times; and

(3)(b)(iii) Applicant discloses the dual license to each client.

(D) Investment adviser and associated investment adviser representative renewal requirements

(1) All licenses expire on December 31 of each year.

(2) To renew licenses of the investment adviser and associated investment adviser representatives, the investment adviser must submit the following to the IARD before December 31:

(2)(a) a copy of applicant's most recent SEC Form ADV - Uniform Application for Investment Adviser Registration;

(2)(b) a license fee for the investment adviser and a license fee for each associated investment adviser representative as specified in the Division's fee schedule (the license fee for the investment adviser includes the fee for one designated official);

(2)(c) Division Form 4-5BIA, Indemnity Bond of Investment Adviser, if required by Section R164-4-5;

(2)(d) the investment adviser's most recently audited balance sheet, if the investment adviser requires payment of advisory fees six months or more in advance and in excess of $500 per client, or if the investment adviser has custody or possession of clients' funds or securities; and

(2)(e) a copy of the alternate disclosure brochure given or offered if the investment adviser delivered or offered to deliver a written disclosure statement in lieu of Part II of Form ADV during the last calendar year of the licensing period.

(E) Investment adviser representatives of federal covered advisers

(1) All licenses expire on December 31 of each year.

(2) To renew licenses of the investment adviser representatives of a federal covered adviser, the federal covered adviser must submit to the IARD before December 31, a license fee for each investment adviser representative as specified in the Division's fee schedule.

(F) Investment adviser and investment adviser representative withdrawal requirements

(1) Investment adviser withdrawal requirements

(1)(a) To withdraw a license or application, applicant must file with the IARD, SEC Form ADV-W - Notice of Withdrawal from Registration as Investment Adviser.

(1)(b) A withdrawal is effective thirty days following receipt of SEC Form ADV-W, unless the Division notifies applicant otherwise.

(2) Investment adviser representative withdrawal requirements

(2)(a) To withdraw a license or application, applicant must file with the CRD, a completed NASD Form U-5.

(2)(b) A withdrawal is effective thirty days following receipt of applicant's NASD Form U-5, unless the Division notifies applicant otherwise.

(G) Acts or practices which require licensing as an investment adviser and compliance with statutes and rules pertaining thereto

(1) Lawyers, accountants, engineers or teachers

(1)(a) A lawyer, accountant, engineer or teacher (professional) must be licensed as an investment adviser or investment adviser representative if the professional provides investment advice or investment advisory services to the professional's clients for a fee, if the advice is not "solely incidental" to the professional's regular professional practice with respect to clients.

(1)(b) For purposes of this subparagraph (1), providing investment advice under ANY of the following circumstances

would NOT be considered to be "solely incidental":

(1)(b)(i) The investment advice the professional or the investment advisory service the professional renders clients is the primary professional advice for which the professional charges or is paid a fee;

(1)(b)(ii) The professional advertises or otherwise holds himself out to the public as a provider of investment advice; or

(1)(b)(iii) The professional holds funds for clients pursuant to discretionary authority to invest such funds.

(1)(c) Following are examples to assist in understanding the meaning of "solely incidental":

(1)(c)(i) If the primary professional advice for which the professional receives a fee involves business or tax planning and the professional neither advertises or otherwise holds himself out as a provider of investment advice, nor holds funds which the professional invests for clients. The professional may also provide investment advice to clients in connection with the planning or other professional services, without being required to become licensed as an investment adviser.

(1)(c)(ii) If the professional advertises or otherwise holds himself out as a provider of investment advice, the professional must be licensed as an investment adviser whether or not the professional actually provides investment advice.

(1)(c)(iii) If the professional holds client funds which the professional invests for the client, the professional must be licensed as an investment adviser whether or not the professional actually provides investment advice.

(2) Broker-dealers and broker-dealer agents

(2)(a) A broker-dealer or broker-dealer agent must be licensed as an investment adviser or investment adviser representative if for a fee, the securities broker-dealer or sales agent of the securities broker-dealer provides investment advice to clients if the investment advice is not "solely incidental" to the conduct of business as a broker-dealer or broker-dealer agent.

(2)(b) For purposes of this subparagraph, providing investment advice under ANY of the following circumstances would NOT be considered "solely incidental":

(2)(b)(i) Providing investment advice to a client for a fee in addition to any commission received in connection with transactions in which the client either purchases or sells securities;

(2)(b)(ii) Providing investment advice, for a fee, to clients who are not clients of the broker-dealer with which the agent is licensed; or

(2)(b)(iii) Receiving compensation from an investment adviser to whom the broker-dealer or agent refers clients.

(3) Insurance agents

(3)(a) An insurance agent who, for a fee, provides investment advice to a client, must be licensed as an investment adviser or investment adviser representative.

(3)(b) An insurance agent who, performs an analysis of a client's estate, for a fee, which recommends that the client purchases or sells either specific securities or specific types of securities must be licensed as an investment adviser or investment adviser representative.

(3)(c) An insurance agent who, receives a commission from the sale of insurance to a client who makes such purchase with the proceeds of securities the insurance agent recommended be sold, must be licensed as an investment adviser or investment adviser representative.

(4) Others

(4)(a) One must be licensed as an investment adviser or investment adviser representative, as appropriate, whether or not described in subparagraphs (1), (2), or (3) of paragraph (E) if:

(4)(a)(i) Providing, advertising, or otherwise holding oneself out as a provider of investment advice;

(4)(a)(ii) Publishing a newspaper, news column, news letter, news magazine, or business or financial publication, which, for a fee, gives investment advice based upon the specific investment situations of the clients; or

(4)(a)(iii) Receiving a fee from an investment adviser for client referrals.

R164-4-3. General Licensing Requirements.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule applies to the licensing of broker-dealers, broker-dealer agents, issuer-agents, investment advisers, and investment adviser representatives.

(B) Definitions

(1) "CRD" means the Central Registration Depository operated by the NASD.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "IARD" means the Investment Adviser Registration Depository operated by the NASD.

(4) "NASAA" means the North American Securities Administrators Association, Inc.

(5) "NASD" means the National Association of Securities Dealers.

(6) "SEC" means the United States Securities and Exchange Commission.

(7) "Termination" means the date on which the NASD processes NASD Form U-5 - Uniform Termination Notice for Securities Industry Registration.

(C) Examination requirements

(1) A broker-dealer agent must pass the Series 63, Uniform Securities Agent State Law Examination (Series 63 Exam) or the Series 66, Uniform Combined State Law Examination (Series 66 Exam). If the broker-dealer agent's most recent license terminated two or more years before the date of receipt by the Division of a new application, the agent will be required to retake the examination.

(2) An issuer-agent must pass the Series 63 Exam or the Series 66 Exam. If the issuer-agent's most recent license terminated two or more years before the date of receipt by the Division of a new application, the agent will be required to retake the examination.

(3) Investment advisers and investment adviser representatives

(3)(a) Examination requirements. An individual applying to be licensed as an investment adviser or investment adviser representative shall provide the Division with proof of obtaining a passing score on one of the following examinations:

(3)(a)(i) Series 65, Uniform Investment Adviser Law Examination (Series 65 Exam); or

(3)(a)(ii) Series 7, General Securities Representative Examination (Series 7 Exam) and Series 66 Exam.

(3)(b) If an investment adviser or investment adviser representative has not been licensed in any jurisdiction for a period of two (2) years, the investment adviser or investment adviser representative will be required to retake the examination.

(3)(c) Waivers. The investment adviser or investment adviser representative may request a waiver of the examination requirement if such individual currently holds one of the following professional designations:

(3)(c)(i) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.;

(3)(c)(ii) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;

(3)(c)(iii) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;

(3)(c)(iv) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts;

(3)(c)(v) Chartered Investment Counselor (CIC) awarded

by the Investment Counsel Association of America, Inc.; or

(3)(c)(vi) Such other professional designation as the Division may recognize by order.

(D) Electronic Filing

(1) The Division designates and authorizes the web-based CRD to receive and store filings and collect related fees on behalf of the Division whenever this rule requires filings to be submitted to the CRD.

(2) The Division designates and authorizes the web-based IARD to receive and store filings and collect related fees on behalf of the Division whenever this rule requires filings to be submitted to the IARD.

(3) Unless otherwise provided, all broker-dealer, agent, investment adviser, and investment adviser representative applications, amendments, reports, notices, related filings and fees required to be filed with the Division pursuant to this rule, shall be filed electronically with and transmitted to either the CRD or the IARD as designated in this rule. The following additional conditions relate to such electronic filings:

(3)(a) When a signature or signatures are required by the particular instruction of any filing to be made through the CRD or the IARD, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to the CRD or the IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.

(3)(b) Solely for purposes of a filing made through the CRD or the IARD, a document is considered filed with the Division when all fees are received and the filing is accepted by the CRD or the IARD on behalf of the state.

(4) Notwithstanding Subparagraph (D)(3), the electronic filing of any particular document shall not be required until such time as the CRD or the IARD provides for receipt of such filings. Any documents required to be filed with the Division, the CRD or the IARD that are not permitted to be filed with or cannot be accepted by the CRD or the IARD shall be filed directly with the Division in either a paper format or as an attachment to an email to the Division in a format that can be viewed by the Division.

(5) This Subparagraph provides two "hardship exemptions" from the requirements to make electronic filings as required by this rule.

(5)(a) Temporary Hardship Exemption.

(5)(a)(i) Investment advisers licensed or required to be licensed under the Act who experience unanticipated technical difficulties that prevent submission of an electronic filing to the IARD may request a temporary hardship exemption from the requirements to file electronically.

(5)(a)(ii) To request a temporary hardship exemption, the investment adviser must:

(5)(a)(ii)(aa) File Form ADV-H in paper format with the state securities agency where the investment adviser's principal place of business is located, no later than one business day after the filing that is the subject of the Form ADV-H was due; and

(5)(a)(ii)(bb) Submit the filing that is the subject of the Form ADV-H in electronic format to the IARD no later than seven business days after the filing was due.

(5)(a)(iii) The temporary hardship exemption will be deemed effective upon receipt by the Division of the complete Form ADV-H. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the Division.

(5)(b) Continuing Hardship Exemption.

(5)(b)(i) A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate that the electronic filing requirements of this rule are prohibitively burdensome.

(5)(b)(ii) To apply for a continuing hardship exemption, the investment adviser must:

(5)(b)(ii)(aa) File Form ADV-H in paper format with the Division at least twenty business days before a filing is due; and

(5)(b)(ii)(bb) If a filing is due to more than one state securities agency, the Form ADV-H must be filed with the state securities agency where the investment adviser's principal place of business is located. The state securities agency who receives the application will grant or deny the application within ten business days after the filing of Form ADV-H.

(5)(b)(iii) The exemption is effective upon approval by the Division. The time period of the exemption may be no longer than one year after the date on which the Form ADV-H is filed. If the Division approves the application, the investment adviser must, no later than five business days after the exemption approval date, submit filings to the Division in paper format along with the appropriate processing fees for the period of time for which the exemption is granted.

(5)(c) The decision to grant or deny a request for a hardship exemption will be made by the state securities agency where the investment adviser's principal place of business is located, which decision will be followed by the state securities agency in the other state(s) where the investment adviser is licensed.

(E) Correcting amendments

(1) At a time when a material change occurs:

(1)(a) a broker-dealer must promptly file amendments to SEC Form BD - Uniform Application for Broker-Dealer Registration with the CRD;

(1)(b) a broker-dealer agent must promptly file amendments to NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer with the CRD;

(1)(c) an issuer-agent must promptly file amendments to NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer with the Division;

(1)(d) an investment adviser must promptly file amendments to SEC Form ADV - Uniform Application for Investment Adviser Registration with the IARD;

(1)(e) an investment adviser representative must promptly file amendments to NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer with the CRD; and

(1)(f) a federal covered adviser must promptly file amendments to SEC Form ADV - Uniform Application for Investment Adviser Registration with the IARD.

(2) Amendments should be filed in accordance with the instructions on the respective forms.

(F) Service of process

(1) The requirement in Subsection 61-1-4(1) that requires filing a consent to service of process may be fulfilled by execution of SEC Form BD, NASD Form U-4, or SEC Form ADV, as applicable.

(G) License transfer

(1) A broker-dealer or broker-dealer agent may transfer a license by following CRD procedures. The Division recognizes and participates in the NASAA/CRD Temporary Agent Transfer ("TAT") program and will honor transfers effected through TAT procedures.

R164-4-4. Minimum Financial Requirements and Financial Reporting Requirements of Licensed Broker-Dealers and Investment Advisers.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule provides the minimum financial requirements and financial reporting requirements for broker-dealers and investment advisers.

(B) Definitions

(1) "Act" means Title 61, Chapter 1, Utah Uniform

Securities Act.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "Net worth" means an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified as current assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature; home, home furnishing, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

(4) "SEC" means the United States Securities and Exchange Commission.

(C) Broker-Dealer - Minimum Financial Requirements

(1) Each broker-dealer licensed or required to be licensed under the Act shall comply with SEC Rules 15c3-1 (17 CFR 240.15c3-1(1996)), 15c3-2 (17 CFR 240.15c3-2(1996)), and 15c3-3 (17 CFR 240.15c3-3(1996)), which are adopted and incorporated by reference.

(2) Each broker-dealer licensed or required to be licensed under the Act shall comply with SEC Rule 17a-11 (17 CFR 240.17a-11(1996)) and shall file with the Division upon request copies of notices and reports required under SEC Rules 17a-5 (17 CFR 240.17a-5(1996)), 17a-10 (17 CFR 240.17a-10(1996)), and 17a-11 (17 CFR 240.17a-11(1996)), which are adopted and incorporated by reference.

(3) To the extent the SEC promulgates changes to the above referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the Division for violation of this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended SEC rule.

(D) Investment Adviser - Minimum Financial Requirements

(1) Except as provided in subparagraph (D)(4), unless an investment adviser posts a bond pursuant to Section R164-4-5, an investment adviser licensed or required to be licensed under the Act who has custody of client funds or securities shall maintain at all times a minimum net worth of $35,000, and every investment adviser licensed or required to be licensed under the Act who has discretionary authority over client funds or securities but does not have custody of client funds or securities, shall maintain at all times a minimum net worth of $10,000.

(2) An investment adviser registered or required to be registered who accepts prepayment of more than $500 per client and six or more months in advance shall maintain at all times a positive net worth.

(3) Unless otherwise exempted, as a condition of the right to continue to transact business in this state, every investment adviser licensed or required to be licensed under the Act shall by the close of business on the next business day notify the Division if such investment adviser's net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a report with the Division of its financial condition, including the following:

(3)(a) A trial balance of all ledger accounts;

(3)(b) A statement of all client funds or securities which are not segregated;

(3)(c) A computation of the aggregate amount of client ledger debit balances; and

(3)(d) A statement as to the number of client accounts.

(4) The Division may require that a current appraisal be submitted in order to establish the worth of any asset.

(5) Every investment adviser that has its principal place of business in a state other than this state shall maintain such minimum capital as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state's minimum capital requirements.

R164-4-5. Bonding Requirements for Broker-Dealers, Broker-Dealer Agents, Issuer-Agents, and Investment Advisers.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4 and 61-1-24.

(2) This rule sets the surety-bond requirements for broker-dealers, broker-dealer agents, issuer-agents, and investment advisers.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "SEC" means the United States Securities and Exchange Commission.

(3) "SIPC" means the Securities Investor Protection Corporation.

(C) Bonding requirements for broker-dealers

(1) A broker-dealer who is a member of SIPC and is not excluded from membership assessments need not provide a bond.

(2) Every broker-dealer licensed or required to be licensed under this Act whose business is exclusively intrastate, who does not make use of any facility of a national securities exchange and who is not registered under section 15 of the Securities Exchange Act of 1934, shall be bonded in an amount of not less than $100,000 by a bonding company qualified to do business in this state.

(D) Bonding requirements for broker-dealer agents

(1) A broker-dealer agent need not provide a bond.

(E) Bonding requirements for issuer-agents

(1) An issuer-agent need not provide a bond unless otherwise required by Section R164-11-1.

(2) If an issuer-agent must provide a bond, it must be:

(2)(a) issued by a corporate bonding company qualified to do business in Utah;

(2)(b) on or in substantially the same form as Division Form 4-5BI, "Corporate Indemnity Bond of Issuer"; and

(2)(c) be in the amount of $25,000.

(3) Upon written request the Division may waive the bond requirement and accept instead the escrow of funds.

(3)(a) The issuer or issuer-agent must place in escrow at least $25,000.

(3)(b) The issuer or issuer-agent may place the money in escrow at any federal or state bank or savings institution, only.

(3)(c) The term of the escrow must extend for a period terminating no earlier than four years after expiration of the issuer's registration statement.

(3)(d) The escrow must be on or in substantially the same form as Division Form 4-5EIA, "Escrow Agreement", which is available from the Division.

(3)(e) The funds in escrow may be released only by an order of the Division, in accordance with the following:

(3)(e)(i) If claims have been made against the issuer-agent in a court of competent jurisdiction and the court has finally adjudicated the dispute, or the claimant and the issuer-agent have agreed in writing to resolve the dispute, the amount of funds at issue may be ordered released by the Division in accordance with the order or agreement, up to the amount placed in escrow; or

(3)(e)(ii) The issuer's registration statement expired not less than four (4) years ago.

(F) Bonding requirements for certain investment advisers

(1) Except as provided in subparagraphs (F)(2) and (3), every investment adviser having custody of or discretionary authority over client funds or securities shall be bonded:

(1)(a) in an amount determined by the Division based upon the number of clients and the total assets under management of the investment adviser, which shall be at a minimum of $10,000;

(1)(b) issued by a bonding company qualified to do business in this state;

(1)(c) on or in substantially the same form as Division Form 4-5BIA, Corporate Indemnity Bond of Investment Adviser.

(2) The requirements of subparagraph (F)(1) shall not apply to those applicants or licensees who comply with the requirements of Section R164-4-4.

(3) An investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of subparagraph (F)(1), provided that the investment adviser is licensed as in investment adviser in the state where it has its principal place of business and is in compliance with such state's requirements relating to bonding.

(4) Upon request and for good cause shown, the Division may waive the bond requirement and accept instead the escrow of funds.

(4)(a) The investment adviser must place in escrow an amount determined by the Division based upon the number of clients and the total assets under management of the investment adviser, which shall be at a minimum of $10,000.

(4)(b) The investment adviser may place the money in escrow at any federal or state bank or savings institution, only.

(4)(c) The term of the escrow must extend for a period terminating no earlier than three years after expiration of the investment adviser's license.

(4)(d) The escrow must be on, or in substantially the same form as, Division Form 4-5EIA, Escrow Agreement.

(4)(e) The funds in escrow may be released only by an order of the Division, in accordance with the following:

(4)(e)(i) Where claims have been made against the investment adviser in a court of competent jurisdiction and the court has finally adjudicated the dispute, or the claimant and the investment adviser have agreed in writing to resolve the dispute, the amount of funds at issue may be ordered released by the division in accordance with the order or agreement, up to the amount placed in escrow; or

(4)(e)(ii) The investment adviser has not been licensed by the Division for a period of at least four years.

R164-4-6. Notice Filing Requirements for Federal Covered Advisers.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4 and 61-1-24.

(2) This rule provides the notice filing requirements for federal covered advisers.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "SEC" means the United States Securities and Exchange Commission.

(C) Notice Filings

Federal covered advisers required to file notice filings pursuant to Subsection 61-1-4(2), must file with IARD the following:

(1) an executed SEC Form ADV - Uniform Application for Investment Adviser Registration; and

(2) a filing fee as specified in the Division's fee schedule.

(D) Notice filing renewals

(1) All notice filings expire on December 31 of each year.

(2) To renew notice filings, a federal covered adviser must submit the following to IARD before December 31:

(2)(a) a copy of the federal covered adviser's most recent SEC Form ADV; and

(2)(b) a filing fee as specified in the Division's fee schedule.

(E) Until IARD provides for the filing of Part 2 of Form ADV, the Division will deem filed Part 2 of Form ADV if a federal covered adviser provides, within 5 days of a request, Part 2 of Form ADV to the Division. Because the Division deems Part 2 of the Form ADV to be filed, a federal covered adviser is not required to submit Part 2 of Form ADV to the Division unless requested.

R164-4-7. Broker-dealers, Investment Advisers and Other Securities Personnel Using the Internet for General Dissemination of Information on Products and Services.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-13 and 61-1-24.

(2) This rule clarifies when broker-dealers, investment advisers, broker-dealer agents and investment adviser representatives are transacting business in this state for purposes of Section 61-1-4 by distributing information on available products and services through Internet Communications available to persons in this state.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "Internet" means the global information system comprised of independent computer networks which are interconnected and share information without the use of a central processing center by use of the Transmission Control Protocol/Internet Protocol (TCP/IP) suite, to include without limitation, the World Wide Web, proprietary or "common carrier" electronic delivery systems, or similar medium.

(3) "Internet Communications" means a communication made on the Internet which is directed generally to anyone who has access to the Internet, including persons in Utah, to include without limitation, postings on Bulletin Boards, displays on "Home Pages" or similar methods.

(C) Licensing Exclusion

Broker-dealers, investment advisers, broker-dealer agents ("BD agents") and investment adviser representatives ("IA reps") who use the Internet to distribute information on available products and services through Internet Communications shall not be deemed to be "transacting business" in this state for purposes of Subsections 61-1-3(1) and 61-1-3(3) based solely on that fact if the following conditions are observed:

(1) The Internet Communication contains a legend in which it is clearly stated that:

(1)(a) the broker-dealer, investment adviser, BD agent or IA rep in question may only transact business in this state if first licensed, excluded or exempted from state broker-dealer, investment adviser, BD agent or IA rep licensing requirements, as may be; and

(1)(b) follow-up, individualized responses to persons in this state by such broker-dealer, investment adviser, BD agent or IA rep that involve either the effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, as may be, will not be made absent compliance with state broker-dealer, investment adviser, BD agent or IA rep licensing requirements, or an applicable exemption or exclusion;

(2) The Internet Communication contains a mechanism, including and without limitation, technical "firewalls" or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in this state, said broker-dealer,

investment adviser, BD agent or IA rep is first licensed in this state or qualifies for an exemption or exclusion from such requirement. Nothing in this subparagraph shall be construed to relieve a state licensed broker-dealer, investment adviser, BD agent or IA rep from any applicable securities registration requirement in this state;

(3) The Internet Communication does not involve either effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, as may be, in this state over the Internet, but is limited to the dissemination of general information on products and services; and

(4) In the case of a BD agent or IA rep:

(4)(a) the affiliation with the broker-dealer or investment adviser of the BD agent or IA rep is prominently disclosed within the Internet Communication;

(4)(b) the broker-dealer or investment adviser with whom the BD agent or IA rep is associated retains responsibility for reviewing and approving the content of any Internet Communication by a BD agent or IA rep;

(4)(c) the broker-dealer or investment adviser with whom the BD agent or IA rep is associated first authorizes the distribution of information on the particular products and services through the Internet Communication; and

(4)(d) in disseminating information through the Internet Communication, the BD agent or IA rep acts within the scope of the authority granted by the broker-dealer or investment adviser.

(D) Limitations of Exclusion

(1) The exclusion provided in paragraph (C) extends to state broker-dealer, investment adviser, BD agent and IA rep licensing requirements only, and does not excuse compliance with applicable securities registration, antifraud or related provisions.

(2) Nothing in this exclusion shall be construed to affect the activities of any broker-dealer, investment adviser, BD agent and IA rep engaged in business in this state that is not subject to the jurisdiction of the Division as a result of the National Securities Markets Improvements Act of 1996, as amended.

R164-4-8. Exclusion for Certain Canadian Brokers and Securities Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsections 61-1-13(3)(i) and 61-1-14(2)(s) and Section 61-1-24.

(2) This rule provides an exclusion from the definition of "Broker-dealer" for certain Canadian brokers and provides an exemption for transactions effectuated by these certain Canadian brokers.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Broker-Dealer Exclusion

"Broker-dealer" as defined in Section 61-1-13(3) excludes a person who is resident in Canada, has no office or other physical presence in this state, and complies with the following conditions:

(1) Only effects or attempts to effect transactions in securities:

(1)(a) with or through the issuers of the securities involved in the transactions, broker-dealers, banks, saving institutions, trust companies, insurance companies, investment companies defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;

(1)(b) with or for a person from Canada who is temporarily present in this state, with whom the Canadian person had a bona fide business-client relationship before the person entered this state; or

(1)(c) with or for a person from Canada who is in this state, whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor;

(2) files a notice in the form of his current application required by the jurisdiction in which their head office is located and a consent to service of process;

(3) is a member of a self-regulatory organization or stock exchange in Canada;

(4) Maintains his provincial or territorial registration and his membership in a self-regulatory organization or stock exchange in good standing;

(5) Discloses to his clients in this state that he is not subject to the full regulatory requirements of the Utah Uniform Securities Act; and

(6) Is not in violation of Section 61-1-1 and all rules promulgated thereunder.

(D) Transactional Securities Exemption

The Division finds that registration is not necessary or appropriate for the protection of investors in connection with an offer or sale of a security in a transaction effected by a person excluded from the definition of broker-dealer under Paragraph (C)

KEY: securities, securities regulation

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R164. Commerce, Securities.
R164-5. Broker-Dealer and Investment Adviser Books and Records.
R164-5-1. Recordkeeping Requirements of Broker-Dealers and Investment Advisers.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-5 and 61-1-24.

(2) This rule specifies the books and records a broker-dealer and an investment adviser must maintain.

(B) Definitions

(1) "Act" means Title 61, Chapter 1, Utah Uniform Securities Act.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "SEC" means the United States Securities and Exchange Commission.

(C) Broker-dealer requirements

(1) Unless otherwise provided by order of the SEC, each broker-dealer licensed or required to be licensed under this Act shall make, maintain and preserve books and records in compliance with SEC Rules 17a-3 (17 CFR 240.17a-3(1996)), 17a-4 (17 CFR 240.17a-4(1996)), 15c2-6 (17 CFR 240.15c2-6(1991)) and 15c2-11 (17 CFR 240.15c2-11(1996)), which are adopted and incorporated by reference.

(2) To the extent that the SEC promulgates changes to the above referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the Division for violation of this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended rule.

(D) Investment adviser requirements

(1) Except as provided in subparagraph (D)(3), unless otherwise provided by order of the SEC, each investment adviser licensed or required to be licensed under the Act shall make, maintain and preserve books and records in compliance with SEC Rule 204-2 (17 CFR 275.204-2(1996)), which is adopted and incorporated by reference, notwithstanding the fact that such investment adviser is not registered or required to be registered under section 203 of the Investment Advisers Act of 1940.

(2) To the extent that the SEC promulgates changes to the above-referenced rules, investment advisers in compliance with such rules as amended shall not be subject to enforcement action by the Division for violation of this rule to the extent that the violation results solely from the investment adviser's compliance with the amended rule.

(3) Every investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of subparagraph (D), provided the investment adviser is licensed or registered in such state and is in compliance with such state's record keeping requirements.

R164-5-3. Financial Reporting of Broker-Dealers and Investment Advisers.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-5 and 61-1-24.

(2) This rule specifies the annual financial reports required of a broker-dealer and an investment adviser.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Broker-Dealer required financial statements

(1) Upon request, each broker-dealer must file with the Division audited financial statements as of the end of its fiscal year. The statements must meet the requirements of Paragraph (E).

(D) Investment Adviser required financial statements

(1) Except as provided in subparagraph (D)(2), each investment adviser who has custody or possession of client's funds or securities or requires payment of advisory fees six months or more in advance and in excess of $500 per client shall file with the Division audited financial statements as of the end of the investment adviser's fiscal year. The statements must meet the requirements of Paragraph (E).

(2) Every investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of subparagraph (D), provided the investment adviser is licensed or registered in such state, is in compliance with such state's financial reporting requirements, and annually files with the Division a copy of any financial reports filed with such state.

(E) Financial statement requirements

The financial statements filed pursuant to this rule must:

(1) include a balance sheet, a statement of income or operations, a statement of shareholder equity, and a statement of cash flows, accompanied by appropriate notes stating the accounting principles and practices followed in their preparation, the basis at which securities are included and other notes as may be necessary for an understanding of the statements.

(2) be prepared in accordance with generally accepted accounting principles.

(3) be audited by an independent certified public accountant. The audit must:

(a) be made in accordance with generally accepted auditing standards;

(b) include a review of the accounting system, the internal accounting controls and procedures for the safeguarding of securities and funds including appropriate tests thereof since the prior examination.

(4) be accompanied by an unqualified opinion of the auditor as to the report of financial condition. In addition, the auditor shall submit as a supplementary opinion any comments, based upon the audit, as to any material inadequacies found to exist in the accounting system, the internal accounting controls and procedures for safeguarding securities and funds, and shall indicate any corrective action taken or proposed.

(5) The financial statements shall be filed with the Division within 90 days following the end of the investment adviser's fiscal year.

KEY: securities, securities regulation
March 4, 1998 61-1-5
Notice of Continuation July 30, 2007 61-1-24

R164. Commerce, Securities.
R164-6. Denial, Suspension or Revocation of a License.
R164-6-1g. Dishonest or Unethical Business Practices.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-6 and 61-1-24.

(2) This rule identifies certain acts and practices which the Division deems violative of Subsection 61-1-6(1)(g). The list contained herein should not be considered to be all-inclusive of acts and practices which violate that subsection, but rather is intended to act as a guide to broker-dealers, agents, investment advisers, and federal covered advisers as to the types of conduct which are prohibited.

(3) Conduct which violates Section 61-1-1 may also be considered to violate Subsection 61-1-6(1)(g).

(4) This rule is patterned after well-established standards in the industry which have been adopted by the SEC, the NASD, NASAA, the national securities exchanges and various courts. It represents one of the purposes of the securities laws: to create viable securities markets in which those persons involved are held to a high standard of fairness with respect to their dealings with the public.

(5) The provisions of this rule apply to federal covered advisers to the extent that the conduct alleged is fraudulent or deceptive, or to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290).

(6) The federal statutory and regulatory provisions referenced in Paragraph (E) shall apply to investment advisers and federal covered advisers, regardless of whether the federal provision limits its application to advisers subject to federal registration.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "Market maker" means a broker-dealer who, with respect to a particular security:

(2)(a) regularly publishes bona fide, competitive bid and ask quotations in a recognized inter-dealer quotation system, or

(2)(b) regularly furnishes bona fide competitive bid and offer quotations to other broker-dealers upon request; and

(2)(c) is ready, willing and able to effect transactions in reasonable quantities at his quoted price with other broker-dealers on a regular basis.

(3) "NASAA" means the North American Securities Administrators Association, Inc.

(4) "NASD" means the National Association of Securities Dealers.

(5) "NASDAQ" means National Association of Securities Dealers Automated Quotation System.

(6) "OTC" means over-the-counter.

(7) "SEC" means the United States Securities and Exchange Commission.

(C) Broker-Dealers

In relation to Broker-Dealers, as used in Subsection 61-1-6(1)(g) "dishonest or unethical practices" shall include:

(1) engaging in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers or in the payment, upon request, of free credit balances reflecting completed transactions of any of its customers, or both.

(2) inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account.

(3) recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other relevant information known by the broker-dealer.

(4) executing a transaction on behalf of a customer without prior authorization to do so.

(5) exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders, or both.

(6) executing any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account.

(7) failing to segregate a customer's free securities or securities held in safekeeping.

(8) hypothecating a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by the rules and regulations of the SEC.

(9) entering into a transaction with or for a customer at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

(10) failing to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus.

(11) charging fees for services without prior notification to a customer as to the nature and amount of the fees.

(12) charging unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business.

(13) offering to buy from or sell to any person any security at a stated price unless the broker-dealer is prepared to purchase or sell, as the case may be, at the price and under the conditions as are stated at the time of the offer to buy or sell.

(14) representing that a security is being offered to a customer "at the market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the broker-dealer, or by any person for whom the broker-dealer is acting or with whom the broker-dealer is associated in the distribution, or any person controlled by, controlling or under common control with the broker-dealer.

(15) effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

(15)(a) effecting any transaction in a security which involves no change in the beneficial ownership thereof;

(15)(b) entering an order or orders for the purchase or sale of a security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of the security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however, nothing in this subparagraph shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers; or

(15)(c) effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in a security or raising or depressing the price of a security, for the purpose of inducing the purchase or sale of the security by others.

(16) guaranteeing a customer against loss in any securities account of the customer carried by the broker-dealer or in any

securities transaction effected by the broker-dealer with or for the customer.

(17) publishing or circulating, or causing to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which:

(17)(a) purports to report any transaction as a purchase or sale of any security unless the broker-dealer believes that the transaction was a bona fide purchase or sale of the security; or

(17)(b) purports to quote the bid price or asked price for any security, unless the broker-dealer believes that the quotation represents a bona fide bid for, or offer of, the security.

(18) using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of the prohibited practice would be distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure.

(19) failing to disclose to a customer that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of the security, and if the disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction.

(20) failing to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member.

(21) failure or refusal to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint.

(22) permitting a person to open an account for another person or transact business in the account unless there is on file written authorization for the action from the person in whose name the account is carried.

(23) permitting a person to open or transact business in a fictitious account.

(24) permitting an agent to open or transact business in an account other than the agent's own account, unless the agent discloses in writing to the broker-dealer or issuer with which the agent associates the reason therefor.

(25) in connection with the solicitation of a sale or purchase of an OTC, non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under Section 13 of the Securities Exchange Act of 1934, when requested to do so by a customer.

(26) marking any order tickets or confirmations as "unsolicited" when in fact the transaction is solicited.

(27) for any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide each customer with a statement of account which, with respect to all OTC non-NASDAQ equity securities in the account, contains a value for each security based on the closing market bid on a date certain; provided that, this subsection shall apply only if the firm has been a market maker in the security at any time during the month in which the monthly or quarterly statement is issued.

(28) failing to comply with any applicable provision of the Conduct Rules of the NASD or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization to which the broker-dealer is subject and which is approved by the SEC.

(29) any acts or practices enumerated in Section R164-1-3.

(30) failing to comply with a reasonable request from the Division for information or testimony, or an examination request made pursuant to Subsection 61-1-5(5), or a subpoena of the Division.

(D) Agents.

In relation to agents of broker-dealers or agents of issuers, as used in Subsection 61-1-6(1)(g) "dishonest or unethical practices" shall include:

(1) engaging in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer.

(2) effecting securities transactions not recorded on the regular books or records of the broker-dealer which the agent represents, in the case of agents of broker-dealers, unless the transactions are authorized in writing by the broker-dealer prior to execution of the transaction.

(3) establishing or maintaining an account containing fictitious information in order to execute transactions which would otherwise be prohibited.

(4) sharing directly or indirectly in profits or losses in the account of any customer without the prior written authorization of the customer and the broker-dealer which the agent represents.

(5) dividing or otherwise splitting the agent's commissions, profits or other compensation from the purchase or sale of securities with any person not also licensed as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control.

(6) for agents who are dually under Rule R164-4-1(D)(4)(b), failing to disclose the dual license to a client.

(7) engaging in conduct specified in subsections (C)(2), (C)(3), (C)(4), (C)(5), (C)(6), (C)(9), (C)(10), (C)(15), (C)(16), (C)(17), (C)(18), (C)(24), (C)(25), (C)(26), (C)(28), (C)(29) or (C)(30) of Rule R164-6-1g.

(E) Investment Advisers and Federal Covered Advisers

In relation to investment advisers, as used in Subsection 61-1-6(1)(g) "dishonest or unethical practices" shall include the following listed practices. In relation to federal covered advisers, as used in Subsection 61-1-6(1)(g), "dishonest or unethical practices" shall include the following, but only if such conduct involves fraud or deceit:

(1) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser.

(2) Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

(3) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account if that an adviser in such situations can directly benefit from the number of securities transactions effected in a client's account. The rule appropriately forbids an excessive number of transaction orders to be induced by an adviser for a "customer account."

(4) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(5) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

(6) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds.

(7) Loaning money to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.

(8) To misrepresent to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or to misrepresent the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(9) Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact. (This prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.)

(10) Charging a client an unreasonable advisory fee.

(11) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser or any of its employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

(11)(a) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(11)(b) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or its employees.

(12) Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered.

(13) Publishing, circulating or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940.

(14) Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client.

(15) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the requirements of Reg. 206(4)-2 under the Investment Advisers Act of 1940.

(16) Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.

(17) Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information in violation of Section 204A of the Investment Advisers Act of 1940.

(18) Entering into, extending, or renewing any advisory contract which would violate section 205 of the Investment Advisers Act of 1940. This provision shall apply to all advisers registered or required to be registered under this Act, notwithstanding whether such adviser would be exempt from federal registration pursuant to section 203(b) of the Investment Advisers Act of 1940.

(19) To indicate, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of this act or of the Investment Advisers Act of 1940, or any other practice that would violate section 215 of the Investment Advisers Act of 1940.

(20) Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative in contravention of section 206(4) of the Investment Advisers Act of 1940 notwithstanding the fact that such investment adviser is not registered or required to be registered under section 203 of the Investment Advisers Act of 1940.

(21) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of this act or any rule or regulation thereunder.

KEY: securities regulation
March 4, 1998 **61-1-6(1)(g)**
Notice of Continuation July 30, 2007 **61-1-24**

R164. Commerce, Securities.
R164-9. Registration by Coordination.
R164-9-1. Registration by Coordination.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-9, 61-1-11 and 61-1-24.

(2) This rule sets forth the procedure and requirements to be met when applying for registration by coordination in Utah. Any security for which a registration statement under the Securities Act of 1933 or a notification under Regulation A, 17 C.F.R. sections 230.251 through 230.263 (1994), has been filed with the SEC in connection with the same offering may be registered by coordination under Section 61-1-9.

(3) The rule also authorizes optional electronic filing of registration statements and allows an optional modification of the term of effectiveness to facilitate simultaneous electronic filing.

(4) Offerings which are registered, as opposed to being exempt from registration, in less than 20 states, including the state of Utah, are subject to the requirements of Section R164-11-1. Failure to comply with the requirements of Section R164-11-1 may be grounds for denial, suspension or revocation of effectiveness of a registration statement filed under Section 61-1-9.

(B) Definitions

(1) "Designee" means any person or entity authorized and recognized by the Division in this rule to accept filings on behalf of the Division by electronic or other means of communication.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "NASAA" means the North American Securities Administrators Association, Inc.

(4) "Registration Statement" means the registration statement filed under the Securities Act of 1933 or the notification filed under Regulation A, 17 C.F.R. sections 230.251 through 230.263 (1994).

(5) "SEC" means the United States Securities and Exchange Commission.

(6) "SRD" means the Securities Registration Depository, Inc.

(C) Registration requirements

(1) An issuer may register securities by submitting to the Division or its designee the following:

(1)(a) One original application on NASAA Form U-1 - Uniform Application to Register Securities;

(1)(b) One copy of the registration statement, including exhibits, together with all amendments as filed with the SEC under the Securities Act of 1933 or SEC Regulation A;

(1)(c) One original NASAA Form U-2 - Uniform Consent to Service of Process;

(1)(d) A fee as specified in the Division's fee schedule; and

(1)(e) Any additional documents or information which the Division requests.

(2) No document or application shall be deemed to be filed, and the ten working day period referred to in Subsection 61-1-9(3)(b) shall not begin, until all items required by Subparagraph (C)(1) have been received by the Division or its designee.

(3) Where the Division notifies the registrant in writing of any missing or incomplete documents or information, or other deficiencies in the registration statement, registrant must respond promptly. If the registrant does not respond to the Division in writing within 30 calendar days of the mailing date of the Division's letter, the registration statement will be deemed incomplete and action may be taken to deny the effectiveness of the registration statement, and to impose a fine.

(D) Additional notification to the Division

The registrant shall notify the Division within two business days upon the receipt of any stop order, denial, order to show cause, suspension or revocation order, injunction or restraining order, or similar order entered or issued by any state or other regulatory authority or by any court, concerning the securities covered by this application or other securities of the issuer currently being offered to the public.

(E) Effective date

(1) The registration statement becomes effective as set forth in Subsection 61-1-9(3).

(2) The registration statement is effective for one year from its effective date with the Division.

(3) A registration statement which does not become effective within one year from the filing date may be deemed materially incomplete and action may be taken to deny effectiveness to the registration statement.

(4) To facilitate the coordination of expiration dates with other states, the issuer may request a specific term of effectiveness which does not exceed one year.

(F) Post effective amendments

A registration statement may be amended by filing with the Division or its designee an amended NASAA Form U-1 - Uniform Application to Register Securities, and an amended registration statement. The amendment becomes effective when the Division so orders.

(G) Re-registration

The registrant may re-register securities, for which a registration statement is about to expire, by submitting to the Division or its designee, a NASAA Form U-1, an updated registration statement and the filing fee specified in the Division's fee schedule.

(H) Closing report

Within 30 days of the close of the offering or the expiration of the registration statement, whichever occurs first, the registrant shall file a closing report. The closing report must be filed on Division Form 9-1.

(I) Recognized designee

(1) The Division authorizes and recognizes the SRD as designee to receive filings under this rule on behalf of the Division, including but not limited to applications, registration statements and fees.

(2) The designation provided in this rule is for the sole purpose of receiving filings on behalf of the Division and then transmitting those documents to the Division, or for any other purpose which the Division may prescribe by order or release.

R164-9-2. MJDS - Financial Statement Requirement.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-9 and 61-1-24.

(2) This rule clarifies that financial statements and other financial information which have been prepared in accordance with Canadian generally accepted accounting principles, consistently applied, will be permitted in registration statements filed by Canadian issuers with the Division under Section 61-1-9 and with the SEC under MJDS.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "MJDS" means the multijurisdictional disclosure system with Canada as adopted by the SEC in Securities Act Release No. 6902, effective July 1, 1991.

(3) "SEC" means the United States Securities and Exchange Commission.

(C) Canadian generally accepted accounting principles

(1) Financial statements and other financial information which have been prepared in accordance with Canadian generally accepted accounting principles, consistently applied, may be contained in a registration statement filed with the Division under Section 61-1-9 and with the SEC under MJDS

on SEC Forms F-7, F-8, F-9 or F-10, Securities Act of 1933 Release No. 6902, effective July 1, 1991, 56 F.R. 30036; amended in Securities Act of 1933 Release No. 6902A, effective July 1, 1991, 57 F.R. 10614, which are available from the SEC, and:

(1)(a) The securities which are the subject of a registration statement filed with the Division on SEC Form F-7 are offered for cash upon the exercise of rights granted to existing security holders.

(1)(b) The securities which are the subject of a registration statement filed with the Division on SEC Form F-8 are securities to be issued in an exchange offer, merger or other business combination.

(1)(c) The securities which are the subject of the registration statement filed with the Division on SEC Form F-9 are either non-convertible preferred stock or non-convertible debt which are to be rated in one of the four highest rating categories by one or more nationally recognized statistical rating organizations.

(1)(d) The securities which are the subject of a registration statement filed with the Division on Form F-10 are offered and sold pursuant to a prospectus in which the SEC has not required reconciliation to United States generally accepted accounting principles with respect to the financial information presented therein.

(D) Preferred stock and certain debt securities

(1) For purposes of this rule, preferred stock and debt securities which are not convertible for at least one year from the date of effectiveness of the registration statement will be deemed to meet the requirement of Subparagraph (C)(1)(c).

R164-9-3b. MJDS - Review Period.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-9(6) and Section 61-1-24.

(2) This rule provides a shorter review period for registration statements filed by Canadian issuers with the Division under Section 61-1-9 and with the SEC under its multijurisdictional disclosure system.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "MJDS" means the multijurisdictional disclosure system with Canada as adopted by the SEC in Securities Act Release No. 6902, effective July 1, 1991.

(3) "SEC" means the United States Securities and Exchange Commission.

(C) Review period

(1) The ten-working day disclosure statement filing requirement set forth in Subsection 61-1-9(3)(b) shall be reduced to seven working days for a registration statement filed with the Division and with the SEC under MJDS on SEC Forms F-7, F-8, F-9 or F-10, Securities Act of 1933 Release No. 6902, effective July 1, 1991, 56 F.R. 30036; amended in Securities Act of 1933 Release No. 6902A, effective July 1, 1991, 57 F.R. 10614, which are available from the SEC.

KEY: securities, securities regulation

July 3, 1997	**61-1-9**
Notice of Continuation July 30, 2007	**61-1-11**
	61-1-24

R164. Commerce, Securities.
R164-10. Registration by Qualification.
R164-10-2. Registration Statements.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-10, 61-1-11, and 61-1-24.

(2) This rule sets forth the procedure and requirements to be met when applying for registration by qualification in Utah. It is available for registration of securities by any person who proposes to issue or sell any security.

(3) This rule requires that the registration statement must contain certain information. The issuer, issuer-agent and broker-dealer should be aware that information not specifically required by this rule or by the Division prior to effectiveness may be necessary to be included so as to meet the disclosure requirements of Section 61-1-1. Review of the registration statement by the Division does not imply that the disclosure requirements of Section 61-1-1 have been met.

(4) Section 61-1-12 enables the Director of the Division to deny effectiveness to, or revoke or suspend effectiveness of, any securities registration statement, and to impose a fine. Applicant should be aware that criteria contained in Section 61-1-12 will be applied in addition to the requirements of this rule.

(5) This rule requires that certain actions be taken by the issuer after the effective date of the registration statement. See paragraph (C) of this rule. Effectiveness of the registration statement may be suspended or revoked, and a fine imposed, for failure to comply with these requirements.

(6) Section 61-1-16 prohibits the filing of false or misleading documents with the Division. Documents and information filed with the Division should be closely scrutinized prior to signing and filing to insure their accuracy.

(7) Any security may be registered by qualification.

(8) Qualifying companies may utilize NASAA Form U-7 to satisfy the prospectus information requirements set forth in subparagraphs (E)(1) and (E)(2) this rule.

(B) Definitions used in this rule

(1) "Development stage company" means a company that is devoting substantially all of its efforts to acquiring or establishing a new business and either of the following conditions exists:

(1)(a) planned principal operations have not commenced; or

(1)(b) planned principal operations have commenced, but there has been no significant revenue therefrom.

(2) "Director" means the Director of the Division of Securities, Utah Department of Commerce.

(3) "Division" means the Division of Securities, Utah Department of Commerce.

(4) "Expert" means any person referred to in Subsection 61-1-10(2)(o), whose opinion, appraisal, report, name or similar information, is used in the registration statement or provides information which is used in the registration statement.

(5) "Financial statements" means a balance sheet, an income statement or statement of operations, a statement of cash flows, a statement of stockholders' equity or partners' capital, and appropriate notes to the financial statements.

(6) "NASAA" means the North American Securities Administrators Association, Inc.

(7) "SEC" means the United States Securities and Exchange Commission.

(C) Registration requirements

(1) The issuer must file with the Division the documents and information required by paragraphs (C) and (D) of this rule, and pay a fee as specified in the Division's fee schedule.

(2) The registration statement must

(2)(a) contain the documents required by paragraph (D) of this rule,

(2)(b) comply with the merit requirements of paragraph (G) of this rule,

(2)(c) comply with the requirements of Section R164-11-1,

(2)(d) comply with the fund impound requirements of Section R164-11-7b, and

(2)(e) comply with the sales commission requirements of Section R164-12-1f.

(3) Within ten working days after the effective date of the registration statement, issuer must file with the Division two copies of the final prospectus.

(4) Within ten working days after the expiration of the effectiveness of the registration statement, sale of the entire amount of the securities registered in the offering, or termination of the offering, whichever occurs first, issuer must file with the Division a completed and executed closing report on Division Form 10-2-1A.

(5) Within ten working days after the expiration of effectiveness of the registration statement, sale of the entire amount of the securities registered in the offering, or termination of the offering, whichever occurs first, issuer must file with the Division a list of persons who have purchased or subscribed to the offering, including the residential address of each purchaser, the dates of and amount of securities purchased or subscribed to, and the consideration paid by each purchaser or subscriber.

(6) Subsequent to the filing date of the registration statement, issuer must file with the Division financial statements which meet the requirements of paragraph (H) of this rule.

(7) Where the Division has notified issuer in writing of any missing or incomplete documents, deficiencies in the registration statement, or changes required in the prospectus, issuer must respond promptly. If issuer does not respond to the Division's deficiency letter within 30 calendar days of the mailing date of its deficiency letter, the registration statement may be deemed incomplete and appropriate action may be taken to deny effectiveness to the registration statement, and to impose a fine.

(D) Documents to be filed with the Division

The registration statement must contain the following:

(1) One original Division Form 10-2-1 which has been manually executed by all officers, directors, or partners;

(2) One original Division Form 10-2-1B certification for each officer, director, promoter, holder of 10% of the outstanding stock, broker-dealer or issuer-agent, and attorney;

(3) One original NASAA Form U-2, Uniform Consent to Service of Process, which is available from NASAA or the Division, appointing the Director, Utah Division of Securities as issuer's agent for service;

(4) Two copies of the preliminary prospectus containing the information required by paragraph (E) of this rule;

(5) Two copies of financial statements conforming to the requirements of paragraph (F) of this rule;

(6) One original opinion of counsel as required by Subsection 61-1-10(2)(n);

(7) One original NASAA Form U-2A, Uniform Corporate Resolution, which is available from NASAA or the Division, of the issuer where the registration statement is filed by or on behalf of a person other than an individual;

(8) One copy of the organizational documents as required by paragraph (I) of this rule;

(9) One copy of the subscription agreement, if any, to be used in connection with the offering;

(10) One original specimen security as required by paragraph (J) of this rule;

(11) One copy of the executed selling documents as required by paragraph (K) of this rule;

(12) One original of completed and executed documents required by Section R164-11-7b;

(13) One copy of any order, judgment or decree described

in subparagraph (E)(2)(d)(ix) of this rule;

(14) At the time of filing the registration statement or not less than five days prior to use, one copy of any item, other than the prospectus, intended to be used to advertise or solicit interest in the offering; except no filing shall be required for notices and advertisements used after the effective date of a registration statement which contains only statements allowed by SEC Rule 134, Communications Not Deemed a Prospectus, 17 CFR 230.134, 1993, which is adopted and incorporated by reference and available from the SEC or the Division;

(15) Original written consents as required by paragraph (L) of this rule;

(16) One copy of each material contract or agreement with an affiliate of the issuer and one copy of any other material contract;

(17) One original of documents supporting the value of assets as shown on the financial statements such as appraisals, assays, reserve reports, engineer reports and similar expert evaluations as discussed in the prospectus; and

(18) Other material documents or information as requested by the Division. The provisions of subparagraph (C)(7) of this rule apply to such requests.

(E) Prospectus information requirements

The prospectus must contain at least the following information:

(1) Facing pages

(1)(a) Title of document;

(1)(b) Number and class of shares or units offered;

(1)(c) Par or stated value;

(1)(d) Entity description, including:

(1)(d)(i) name,

(1)(d)(ii) address,

(1)(d)(iii) type,

(1)(d)(iv) state and date of incorporation or organization;

(1)(e) Statement as to whether or not a public market exists or will exist;

(1)(f) Statement as to how the securities are registered or exempt at both the federal and state level;

(1)(g) Statement that registration with the Division is neither a recommendation or endorsement of any security, individual, firm or corporation;

(1)(h) Statement as to whom offering is made;

(1)(i) In chart form, including:

(1)(i)(i) shares or units offered,

(1)(i)(ii) price per share,

(1)(i)(iii) commissions,

(1)(i)(iv) net proceeds to the issuer, and

(1)(i)(v) minimums and maximums sought;

(1)(j) Footnotes including:

(1)(j)(i) consideration sought,

(1)(j)(ii) manner of offering,

(1)(j)(iii) amount and type of sales commissions to be paid, and

(1)(j)(iv) the maximum amount of offering expenses;

(1)(k) Broker-dealer or agent name, address, and telephone number;

(1)(l) Statement that no person is authorized to make any statements not contained in the disclosure document and that practices to the contrary may be a criminal offense;

(1)(m) Effective date of the prospectus.

(2) Subsequent pages

(2)(a) The issuer:

(2)(a)(i) history,

(2)(a)(ii) purpose,

(2)(a)(iii) intentions,

(2)(a)(iv) predecessors;

(2)(b) Risk factors;

(2)(c) Conflicts of interest;

(2)(d) With respect to every director and officer of the issuer, the following information:

(2)(d)(i) Name, age, residential address;

(2)(d)(ii) Occupation and business experience during the past five years;

(2)(d)(iii) The number of shares or partnership interests of the issuer owned as of a specified date within 30 days of the filing of the registration statement, the approximate date of purchase and the consideration paid for those shares or interests;

(2)(d)(iv) The amount of the securities covered by the registration statement to which an intention to subscribe has been indicated;

(2)(d)(v) Any material interest in any material transaction with the issuer or any significant subsidiary effected within the past three years or proposed to be effected;

(2)(d)(vi) Any family relationship between any director or officer;

(2)(d)(vii) Any other director or officer or similar position held in any other non-public company;

(2)(d)(viii) Any previous involvement in a public company as an officer, director or promoter, including a complete description of the company and affiliation with the company, the dates of and amounts raised in public offerings of the company and, if the company has undergone a reorganization, merger or an acquisition of assets in which an amount of stock representing more than 50% of the company's outstanding stock was issued, the consideration per share received by the company and the book value per share of the company immediately before and after the reorganization, merger or acquisition of assets;

(2)(d)(ix) Involvement in any material legal proceeding;

(2)(d)(x) Any remuneration paid directly or indirectly by the issuer, its predecessors, parents, or subsidiaries, during the past twelve months and estimated to be paid during the succeeding twelve months;

(2)(e) With respect to any person owning of record, or beneficially, 10% of the outstanding shares of any class of equity security of the issuer, the same information specified in subparagraphs (E)(2)(d)(i) and (iii)-(x) of this rule.

(2)(f) With respect to every promoter, if the issuer was organized within the past three years, the same information as specified in subparagraph (E)(2)(d) of this rule and any amount paid by the issuer within the past three years as well as the consideration given for such payments.

(2)(g) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution the following information:

(2)(g)(i) The information required in subparagraph (E)(2)(d)(i) of this rule;

(2)(g)(ii) The amount of securities of the issuer held as of the date the registration statement was filed with the Division;

(2)(g)(iii) The information required in subparagraph (E)(2)(d)(v) of this rule;

(2)(g)(iv) Statement of reasons for making the offering.

(2)(h) Dilution, share ownership and capital contributions: narrative discussion and graphic or tabular illustration, such as bar graphs or pie charts;

(2)(i) Fund impound:

(2)(i)(i) amount,

(2)(i)(ii) duration,

(2)(i)(iii) location, and

(2)(i)(iv) statement that funds will be released only upon order of the Division;

(2)(j) Material litigation which affects the offering;

(2)(k) Summary of the Opinion of Counsel required by Subsection 61-1-10(2)(n);

(2)(l) The substance of reports, findings, appraisals and valuations provided by persons who are named as having prepared or certified such reports or valuations pursuant to Subsection 61-1-10(2)(o);

(2)(m) With respect to Limited Partnerships, net worth of each individual general partner exclusive of home, automobile and home furnishings or, in the alternative, a representation that the general partner meets the net worth requirements of subparagraph (G)(3)(b)(iii) of this rule;

(2)(n) Definition section, where material;

(2)(o) Substance of material contracts and agreements;

(2)(p) The amount of shares subject to transferability restrictions, contractual or otherwise, and the nature of said restriction;

(2)(q) Statement as to the issuer's fiscal year-end date;

(2)(r) Financial statements as required by this rule;

(2)(s) Statement of the intended use of proceeds of the offering as required by Subsection 61-1-10(2)(i);

(2)(t) Transfer agent's name and street address;

(2)(u) Statement that any and all amendments to the prospectus will be promptly filed with the Division, distributed to purchasers in the offering, and made a part of any prospectus used thereafter;

(2)(v) Statement that the Division, market makers, and security holders will be promptly notified in writing of any change in the management, purpose, and control of the issuer, or any material or adverse condition affecting the issuer.

(3) Small Company Offering Registration (SCOR)

(3)(a) A company issuing securities exempt from federal registration under Rule 504 of Regulation D, Regulation A, or Section 3(a)(11) of the Securities Act of 1933, may utilize the NASAA Form U-7, which is available from NASAA or the Division, as the prospectus for the offering to satisfy subparagraph (D)(4) of this rule, provided that the issuer:

(3)(a)(i) complies with each of the requirements set forth in Part I(1) of the NASAA SCOR Issuer's Manual;

(3)(a)(ii) complies with all conditions set forth in, and provides all information required by Part I(2) of the NASAA SCOR Issuer's Manual; and,

(3)(a)(iii) in all material respects complies with all other requirements of this rule.

(3)(b) The filing of one original NASAA Form U-1, Uniform Application to Register Securities, which has been manually executed by all officers and directors of the issuer, satisfies subparagraph (D)(1).

(F) Financial statements

The financial statements contained in the registration statement and the prospectus must meet the requirements of this paragraph (F).

(1) Financial statements of the issuer, or the issuer and its predecessors or any business to which the issuer is a successor, which are to be filed as part of the registration statement must be prepared in accordance with generally accepted accounting principles (GAAP).

(2) Audited financial statements required herein must be accompanied by an unqualified opinion report by an independent certified public accountant.

(3) Consolidated financial statements must be prepared for an issuer that has majority-owned subsidiaries.

(4) The Division may permit the omission of one or more of the financial statements required under this rule and in substitution thereof permit appropriate comparable financial statements, upon the written request of issuer and where consistent with the protection of Utah investors.

(5) The Division may require the filing of other financial statements in addition to or in substitution for the financial statements herein required where such financial statements are necessary or appropriate for an adequate presentation of the issuer's financial condition or the financial condition of any person considered necessary, where consistent with the protection of Utah investors.

(6) Issuer must file audited financial statements for the most recent fiscal year, or as of a date within four months of the date the registration statement is filed with the Division if the issuer, including predecessors, has existed for a period of less than one fiscal year.

(7) When the filing date of the registration statement falls after a date four months subsequent to the issuer's most recent fiscal year end, unaudited interim financial statements dated within four months of the filing date must also be included in the registration statement.

(8) Unaudited financial statements must be filed for the two fiscal years preceding the most recent fiscal year or for such shorter period as the issuer and any predecessors have been in existence if less than three years.

(9) If the financial statements required herein are as of a date more than four months prior to the date that the registration statement is expected to become effective, the financial statements must be updated as of a date within four months of the expected effective date and include the entire period since the last fiscal year end. Such interim financial statements need not be audited.

(10) If any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements shall be required of that business as if it were the issuer.

(11) An issuer which is a limited partnership shall also be required to file the balance sheets of the general partners as described below.

(11)(a) Where a general partner of the limited partnership is a corporation there must be filed an audited balance sheet of such corporation as of the end of its most recently completed fiscal year.

(11)(b) Where a general partner of the limited partnership is a partnership there must be filed an audited balance sheet of such partnership as of the end of its most recently completed fiscal year.

(11)(c) Where a general partner of the limited partnership is a natural person there must be filed, only as supplemental information, an unaudited balance sheet of such natural person as of a date no more than four months prior to the date the registration statement was filed.

(G) Merit requirements

(1) Minimum offering amount for a development stage company

(1)(a) The minimum offering amount for a development stage company shall not be less than an amount such that immediately following the close of the offering the net tangible asset value of the company is equal to or greater than $75,000, based on the net tangible asset value of the most recent balance sheet included in the prospectus as adjusted to give effect to the minimum net proceeds of the offering and, at the discretion of the Division, any value not recognized for financial statement purposes as supported by independent appraisal or other recognized authority.

(2) Dilution

(2)(a) The maximum dilution to the net tangible asset value of the securities offered in a public offering pursuant to Section 61-1-10 shall not exceed 33 1/3% of the public offering price for a development stage company or 50% for all other companies.

(2)(b) This subparagraph (G)(2) of this rule shall apply to all offerings of preferred or common corporate stock.

(2)(c) Dilution shall be equal to the difference between the offering price of the shares and the net tangible asset value per share based on the most recent balance sheet included in the prospectus as adjusted to give effect to the maximum net proceeds of the offering. The net tangible asset value of the shares at the close of the offering shall be determined by dividing the net tangible asset value of the corporation by the total number of shares outstanding at the close of the offering. The net tangible asset value of the corporation shall be equal to

the total assets of the corporation less the intangible assets and the liabilities of the corporation.

(2)(d) In the event that not all shares offered are sold, the shareholders, other than those purchasing in the offering, shall be required to contribute to the company a sufficient number of shares or tangible assets so that dilution, based on the most recent balance sheet included in the prospectus and receipt of the net proceeds from the shares actually sold, does not exceed the maximum dilution allowed.

(2)(e) Registration will not be permitted to close, and will not be issued a closing letter, where the dilution at the close of the offering is greater than the maximum dilution allowed and such violation has not been remedied.

(3) Equity

(3)(a) Corporate Equity and Debt Offering.

(3)(a)(i) Prior to and during the effectiveness of a registration statement pertaining to an offering of securities which are corporate equity securities, rights to obtain corporate equity securities, securities convertible into corporate equity securities, or corporate debt securities, the corporation must have equity equal to at least 10% of the maximum aggregate offering price of the securities which are registered or to be registered. Equity shall be equal to the sum of stated capital, capital surplus which was contributed in cash, and retained earnings. Retained deficits will not reduce the equity of the corporation for purposes of this subparagraph (G)(3)(a) of this rule. In no event shall capital contributed in the form of services or any evidence of indebtedness qualify as any portion of equity in order to meet the requirements of this subparagraph (G)(3)(a) of this rule.

(3)(a)(ii) Tangible property may be considered to satisfy this requirement, in the discretion of the Division, only where the value of such property is ascertained and supported by the issuer, where the value substantially exceeds the necessary equity requirement and where clear title to the property is held by the issuer.

(3)(b) Limited Partnership and Trust Certificate Offering. Prior to the effectiveness of a registration statement relating to limited partnership units, issuer must meet one of the following requirements:

(3)(b)(i) The general partner, promoter, or manager has paid, in cash, at least an amount equal to 5% of the maximum aggregate offering price of the securities to be registered to the issuer for equity interests in the issuer;

(3)(b)(ii) The general partner, promoter, or manager has the ability to pay and commit themselves to pay, in cash, 5% of the maximum aggregate offering price of the securities to be registered into the fund impound prior to the release of the impound and in addition to any other impound which may be required by the rules of the Division; or,

(3)(b)(iii) The general partner, promoter, or manager has an aggregate net tangible asset value exclusive of home, automobile, and home furnishings equal to 10% of the maximum aggregate offering price of the securities to be registered. Where a general partner, promoter or manager is also a general partner, promoter or manager of another partnership or trust for which this subparagraph was used to satisfy the equity requirements for a registered offering of that partnership or trust, the aggregate net tangible asset value will be reduced by the amount required to satisfy the equity requirements of the previous offering.

(4) Offering Expenses

The maximum offering expenses, not including commissions on the sales of the securities, which shall be paid from the proceeds of the public offering or by the issuer in connection with the public offering is the greater of $6,000 or 8% of the minimum aggregate offering price of the securities registered.

(H) Post filing financial statement requirements

(1) The financial statements required by this paragraph (H) of this rule must be prepared in accordance with the requirements set forth in paragraph (F) of this rule.

(2) Subsequent to the filing date of a registration statement, the following financial statements must be filed:

(2)(a) After the end of each fiscal year, through and including the year in which 80% of the offering proceeds will have been used, audited financial statements for the previous fiscal year must be filed with the Division within 90 days after the end of the applicant fiscal year.

(2)(b) If an effective registered offering has not been completely sold at a date six months after the end of the issuer's last fiscal year, unaudited interim financial statements must be filed with the Division within 30 days of that date for the period ending six months from the fiscal year end. Financial statements required by this subparagraph (H)(2) of this rule shall not be required where interim financial statements are filed pursuant to the requirements in paragraph (F) of this rule which cover at least the same period covered by this subparagraph (H)(2).

(3) If an effective registered offering has not been completely sold, the financial statements required by this paragraph (H) of this rule must be appended to every prospectus used thereafter.

(I) Organizational documents

(1) Corporation. A registration statement for the proposed sale of securities of a corporation must contain:

(1)(a) one copy of the certificate and articles of incorporation and all amendments thereto; and

(1)(b) By-laws.

(2) Limited Partnership. A registration statement for the proposed sale of securities of a limited partnership must contain:

(2)(a) one copy of the limited partnership agreement, and

(2)(b) the documentation of the managing general partner which would be required by this paragraph (I) of this rule if the managing general partner was the issuer of the securities.

(3) Others. As the Division specifies in each instance.

(J) Specimen Security

The registration statement must contain either:

(1) An original specimen security which conforms to the description of the security in the registration statement; or

(2)(a) A letter, signed by a director of the issuer, or a person of similar responsibility for an unincorporated issuer, stating that a specimen security meeting the requirements of subparagraph (J)(1) of this rule will be delivered prior to the release of impounded funds, and

(2)(b) A notation on Item 12 of Division Form 11-7B that it shall be a condition of release of such impounded funds for the issuer to provide a specimen security meeting the requirements of subparagraph (J)(1) of this rule.

(K) Selling documents

The registration statement must contain the following documents with respect to the persons who propose to offer or sell the securities pursuant to the registration statement:

(1) Where the securities are to be offered through a licensed agent or broker-dealer, one copy of the signed agreement between the agent OR broker-dealer and the issuer setting forth the compensation each person will receive in connection with such distribution, and a description of any transactions between such person and the issuer within the twelve months preceding the filing of the registration statement.

(2) Where the securities are to be offered through any person not licensed with the Division as a broker-dealer or agent, the broker-dealer or agent application and supporting documents and information, as required in Section R164-4-1, for such person must accompany the registration statement at the time of the original filing.

(3) No registration statement shall become effective where

(3)(a) the only person participating in the distribution is a broker-dealer which is a member of the NASD, and

(3)(b) the Division has not received written confirmation or oral confirmation to be followed by written confirmation that the NASD has no objection to the compensation arrangements set forth in the registration statement.

(4) No registration statement shall be effective or become effective without complete compliance with Section R164-4-1 by at least one person participating in the distribution.

(L) Consent of expert

(1) Where any information provided by an expert is used in the registration statement or prospectus, the registration statement must include the consent of the expert to the specific use of the information in the prospectus or registration statement.

(2) Where the name of an expert is used in the registration statement or prospectus, the registration statement or prospectus must contain the consent of the expert as to the specific use of the expert's name.

(M) Amendments

(1) Whenever there is a material change in any information or document filed with the Division, the issuer must file a correcting amendment with the Division within ten working days after the material change.

(2) There is no charge for filing a correcting amendment.

KEY: financial statements, securities, securities regulation
July 3, 1997 61-1-10
Notice of Continuation July 30, 2007 61-1-24

R164. Commerce, Securities.
R164-11. Registration Statement.
R164-11-1. General Registration Provisions.

A. Preliminary Notes

(1) This R164-11-1 applies to public offerings registered by notification, coordination or qualification pursuant to Sections 8, 9 and 10 of the Utah Uniform Securities Act (the "Act"), except this rule shall not apply to offerings which are registered in twenty or more states, including the state of Utah.

(2) The purpose of the rule is to ensure full disclosure of material information, prohibit offerings which tend to work a fraud on purchasers and prohibit unreasonable amounts of promoters' profits.

(3) Failure to comply with the provisions of this rule shall be grounds for denial, suspension or revocation of the effectiveness of a registration statement.

(4) For purposes of this rule "development stage companies" shall mean those companies that devote substantially all of their efforts to acquiring or establishing a new business and in which either: 1) planned principal operations have not commenced or 2) there have been no significant revenues therefrom.

(5) Selected requirements of this rule may be waived by the Utah Securities Division ("Division") where an applicant makes a specific request for a waiver and the Division finds that such requirement(s) is/are not necessary or appropriate for the protection of investors.

(6) This rule applies to all registration statements filed on or after February 15, 1986.

B. NASAA Statements of Policy

All registration statements for oil and gas programs, church bonds, real estate investment trusts, publicly-offered cattle-feeding programs, real estate programs and equipment programs must satisfy the provisions of the appropriate statements of policy adopted by the North American Securities Administrators Association ("NASAA").

Offerings which are required under this paragraph B to satisfy, and do satisfy, the provisions of a NASAA statement of policy shall not be required to satisfy the provisions of paragraphs C and D of this R164-11-1.

C. Promoters' Investment in Development Stage Companies

An investment by promoters and shareholders in a development stage company shall be required as follows:

(1) Corporate Equity and Debt Offerings.

Prior to and during the effectiveness of a registration statement, where the registrant is the issuer, pertaining to an offering of securities which are corporate equity securities, which are securities convertible into corporate equity securities or which are corporate debt securities, the corporation shall have equity equal to at least the lesser of: 1) ten percent (10%) of the aggregate offering price of the securities which are registered or to be registered or 2) fifty thousand dollars ($50,000). Equity shall be equal to the sum of stated capital, capital surplus which was contributed in cash and retained earnings. Retained deficits will not reduce the equity of the company for purposes of this subparagraph. In no event shall capital contributed in the form of services or any evidence of indebtedness qualify as any portion of equity in order to meet the requirements of this subparagraph.

NOTE: Tangible property may be considered to satisfy this requirement, in the discretion of the Division, only where the value of such property is ascertained and supported by the registrant, where the value substantially exceeds the necessary equity requirement and where clear title to the property is held by the issuer.

(2) Partnership and Trust Certificate Offerings.

Prior to the effectiveness of a registration statement relating to partnership units, the registrant shall meet one of the following requirements:

(a) The general partner(s), promoter(s), and/or manager(s) have paid, in cash, at least an amount equal to five percent (5%) of the aggregate offering price of the securities to be registered to the issuer for equity interests in the issuer; or

(b) The general partner(s), promoter(s), and/or manager(s) have the ability to pay and commit themselves to pay, in cash, the lesser of: 1) five percent (5%) of the aggregate offering price of the securities to be registered or 2) fifty thousand dollars ($50,000); or

(c) The general partner(s), promoter(s), and/or manager(s) have an aggregate net tangible asset value exclusive of home, automobile, and home furnishings equal to ten percent (10%) of the aggregate offering price of the securities to be registered. Where a general partner, promoter or manager is also a general partner, promoter or manager of another partnership or trust for which this subparagraph was used to satisfy the equity requirements for a registered offering of that partnership or trust, the aggregate net tangible asset value will be reduced by the amount required to satisfy the equity requirements of the previous offering.

D. Business Plan and Use of Proceeds for Development State Companies

In a development stage company the business plan and the use of offering proceeds must be disclosed with specificity in the offering prospectus.

Where eighty percent (80%) or more of the net offering proceeds (total offering proceeds less offering expenses and commissions) is not specifically allocated for the purchase, construction or development of identified properties or products, discharge of indebtedness, payment of overhead, etc., the registrant shall comply with the following provisions:

(1) Eighty percent (80%) of the net offering proceeds shall be escrowed in a manner approved by the Division. The escrow shall continue until the registrant can specifically allocate the use of the proceeds, at which time the registrant shall amend or supplement the registration statement to disclose all material information concerning the proposed use of proceeds. Such disclosure shall be in the same form and quality as required in a registration statement.

(2) At the time of the amendment or supplement to the registration statement, the investors in the offering must be given no less than twenty (20) days to ratify or rescind his/her investments. Investors who choose to rescind his/her investments shall receive a pro rata refund of all offering proceeds. However, should enough investors request a refund such that the net tangible asset value of the company after the refund would be less than seventy-five thousand dollars ($75,000) the registrant shall make a pro rata refund of all unused offering proceeds to investors.

(3) The registrant shall not issue stock, deliver stock certificates or allow secondary trading of the stock until the offering proceeds have been released to the registrant.

E. Employment of Agents by Issuers

An issuer shall not employ agents to sell securities which are the subject of the registration statement until: 1) such agent is registered with the Division as an agent of the issuer; and 2) the issuer has filed with the Division a surety bond in the amount of twenty-five thousand dollars ($25,000) conditioned on the agents compliance with the Utah Uniform Securities Act and the rules of the Securities Division of the Utah Department of Commerce and covering the effective period of the issuer's registration statement.

R164-11-2. Hearings for Certain Exchanges of Securities.

(A) Authority and purpose.

(1) The Division enacts this rule under authority granted by Sections 61-1-11.1 and 61-1-24.

(2) This rule sets forth the procedure and requirements to

be met when seeking a fairness hearing for certain exchanges of securities.

(3) A finding of fairness under Section 61-1-11.1 does not constitute a registration or exemption except as provided by Paragraph (H).

(B) Definitions.

(1) "Director" means the Director of the Division of Securities, Utah Department of Commerce.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "Interested person" means any officer, director or security holder of either party involved in the transaction, or any other person as the Division may permit.

(C) Parties.

The Division will only consider an application under Section 61-1-11.1 for a transaction where:

(1) Either party to the transaction is a domestic business entity formed, organized or incorporated under the laws of Utah;

(2) Either party to the transaction is a business entity whose headquarters or principal place of business is located in Utah; or

(3) Thirty percent (30 %) or more of the persons to whom it is proposed to issue securities or to deliver other consideration in an exchange under Subsection 61-1-11.1(1) are persons who are Utah residents.

(D) Application Requirements.

An application may be made to the Division under Subsections 61-1-11.1(1) and 61-1-11.1(5) by filing with the Division:

(1) Division Form 11--Application for Hearing for Certain Exchanges of Securities;

(2) NASAA Form U-2, Uniform Consent to Service of Process;

(3) A fee as specified in the Division's fee schedule; and

(4) Other documents as the Division may request.

(E) Notice.

(1) At least twenty (20) calendar days prior to the hearing, the applicant must provide written notice of the hearing, as approved by the Division, to any person to whom it is proposed to issue securities or to deliver other consideration in an exchange under Subsection 61-1-11.1(1). Such notice shall be effective pursuant to Subsection 16-10a-103(5). Such notice period may be waived upon the demonstration of good cause by the applicant.

(2) The notice must contain the following information:

(a) A brief statement of the facts that give rise to the hearing, including an outline of the terms and conditions of the proposed transaction;

(b) A statement of the issues to be considered at the hearing, together with the relevant statutes and rules;

(c) The time and place of the hearing as specified by the Division;

(d) The procedures for participating in the hearing by telephone or affidavit as approved by the Division; and

(E) Any other information requested by the Division.

(3) Prior to or at the hearing, the applicant must file an affidavit with the Division stating that a notice has been sent, in compliance with Subparagraphs (E)(1) and (E)(2), to all persons to whom it is proposed to issue securities or to deliver other consideration in an exchange under Subsection 61-1-11.1(1), including a description of how and when the notice was sent.

(F) Hearing.

(1) Within a reasonable time after the receipt of an application meeting the requirements of Section 61-1-11.1 and this rule, the Division may schedule a hearing to be conducted under Subsection 61-1-11.1(2).

(2) A hearing under Section 61-1-11.1 shall be conducted by a hearing officer designated by the Director.

(3) Any interested person may attend a hearing under Section 61-1-11.1.

(4) Any interested person may participate in the hearing by giving written notice to the Division at least two (2) days prior to the hearing, indicating such person's intention to appear and participate in the hearing. Interested persons may participate:

(a) In person;

(b) By telephone; or

(c) By affidavit.

(5) The hearing shall be recorded electronically and transcribed by the Division. The transcription costs will be assessed to the Applicant. Upon request, the Division will hire a court reporter at the requester's expense.

(G) Findings and Order.

Within a reasonable time after completion of the hearing, the Director shall issue an order pursuant to Subsection 61-1-11.1(3).

(H) Exemptions.

The Issuer may request that the Division determine that the transaction is exempt from registration under Subsection 61-1-14(2)(s).

R164-11-7b. Fund Impound.

A. Preliminary Notes

(1) R164-11-7b applies only to public offerings which are registered by qualification pursuant to Section 10 of the Utah Uniform Securities Act (the "Act") and the rules thereunder.

(2) This R164-11-7b and R164-10-2 both require certain documents to be filed and provide that failure to comply with these requirements is cause for denial, suspension or revocation of the effectiveness of a registration statement.

(3) This rule R164-11-7b is a statement of what has been the position of the Utah Securities Division (the "Division") in the past under Rule A67-03-12 and applies to all registration statements which become effective on or after May 10, 1983.

B. Term of Impound

(1) The applicant for registration by qualification under Section 10 of the Act and the rules thereunder may choose a term of not less than one month and not more than one year from the effective date of the registration statement.

(2) The term of the impound shall be expressed by the number of months and shall not be expressed by the number of days.

C. Amount to be Impounded

(1) The amount to be impounded shall be the greater of:

(a) Twenty-five percent of the aggregate offering price of the securities to be registered plus offering expenses; OR

(b) The minimum amount required to sustain the business proposed by the registrant for one full year from the release of the impound; OR

(c) The minimum amount proposed to be sold by the applicant pursuant to the registration statement.

D. Where Funds are to be Impounded

Funds may be impounded at any federal or state bank or savings institution.

E. Conditions of Impound

(1) The applicant shall file a completed FORM 11-7b with the Division as part of the registration statement.

(2) The conditions of impound are stated on FORM 11-7b and are herein incorporated as requirements of this R164-11-7b.

F. Release of Impounded Funds

(1) The impounded funds shall be released only by an ORDER OF THE DIVISION.

(2) The impounded funds shall be released to the registrant where:

(a) All registration requirements which, pursuant to the rules of the Division needed to be met by such date, have been met;

(b) The registrant requests the release in writing; and

(c) The Division receives written confirmation from the

financial institution impounding the funds of the amount which has been deposited into the impound.

G. Certain Registrants

Where the registrant in a registration by qualification is a security holder who is not conducting a public offering for or on behalf of the issuer of the securities which are to be sold in the offering, no fund impound is required by this R164-11-7b; provided, however, that where an offering has a "minimum" required to be sold in order to consummate the transaction, a fund impound is required.

KEY: securities regulation
January 5, 2004 61-1-11(7)(b)
Notice of Continuation July 30, 2007

R164. Commerce, Securities.
R164-12. Sales Commission.
R164-12-1f. Commissions on Sales of Securities.

A. Preliminary Notes

(1) This R164-12-1f regulates the compensation which may be received by any person in connection with a public offering of securities pursuant to a registration by qualification under Section 10 of the Utah Uniform Securities Act (the "Act"). The Rule does not effect offerings which are registered by notification or coordination or offerings which are sold pursuant to an exemption from the Act.

(2) This R164-12-1f does not effect the requirements of the Act and the rules thereunder as to registration, supervision and termination of agents.

(3) This R164-12-1f is an extended version of the standards that the Utah Securities Division (the "Division") has in the past required to be met. The standards herein are based upon reasonableness, the NASAA guidelines as to options and warrants issued to underwriters, and the NASD's interpretations of fair compensation. The percentage of cash commissions that is permitted under this R164-12-1f is unchanged from the former Rule A67-03-12.

B. Persons Subject to this Rule

(1) This R164-12-1f regulates compensation to participants in a distribution of securities which are registered by qualification pursuant to Section 10 of the Act and the rules and regulations thereunder.

(2) No registrant, affiliate of a registrant, or person acting on behalf of a registrant in connection with a public offering registered pursuant to Section 10 of the Act may give, directly or indirectly, compensation which is in violation of this R164-12-1f.

(3) No agent, underwriter or affiliate of an agent or underwriter may receive, directly or indirectly in connection with a public offering registered pursuant to Section 10 of the Act, compensation which is in violation of this R164-12-1f.

C. Definitions

As used in this R164-12-1f, the following terms shall have the indicated meanings:

(1) "Compensation" includes all cash; the value of all options, warrants, rights and other securities; the gross amount of the underwriter's discount; total expenses payable by the issuer, whether accountable or non-accountable, to or on behalf of the participant in the distribution which would normally be paid by the participant in the distribution; counsel's fees and expenses of the participant in the distribution payable by the issuer; finder's fees; financial consulting and advisory fees; and the value of all contracts and agreements with respect to the issuer or its affiliates which are connected with the distribution or with the negotiation of compensation in the distribution.

(2) "Corporate equity security" means any security which presently represents an ownership interest in a corporate entity and which includes common stock and preferred stock but does not include a security which is not presently, but is at some future time convertible into, a corporate equity security.

(3) "Participant in the distribution" means any person offering, selling, delivering, distributing, soliciting interest in or otherwise involved in the distribution, offer or sale of securities to the public or to any member of the public and includes persons commonly known as underwriters, agents and finders.

D. Maximum Compensation

(1) Distributions of Corporate Equity Securities: the maximum compensation that shall be given, directly or indirectly, to the participants in a distribution of corporate equity securities is an amount equal to 15% of that portion of the public offering price of the securities being distributed which is actually received by or on behalf of the registrant; provided, however, that any securities issued in connection with such distribution comply with paragraph F of this R164-12-1f.

(2) All Other Distributions: the maximum compensation that shall be given, directly or indirectly, to the participants in a distribution of securities other than corporate equity securities shall be 20% of that portion of the public offering price of the securities being sold which is actually received by or on behalf of the registrant; provided, however, that any securities issued also comply with paragraph F of this R164-12-1f.

E. Determination of Amount Received by or on Behalf of the Registrant

The amount of the public offering price which is actually received shall be determined as follows:

(1) The following shall be included:

(a) Cash received;

(b) Fair market value of any securities received; and

(c) Fair market value of any tangible property received excluding items listed in subparagraph E(2) of this R164-12-1f.

(2) The following shall be excluded:

(a) Promissory notes or similar promises to provide cash or property in the future;

(b) Assessments, whether conditional or obligatory; and

(c) Intangible property such as patents, royalties, etc.

F. Securities Issued to Participants in a Distribution

(1) Options or Warrants:

Options or warrants issued to participants in a distribution must be justified by the applicant. Options or warrants will be considered justified if all of the conditions of this paragraph F are met.

(a) The options or warrants are issued only to a broker-dealer registered with this Division and are not transferable except in cases where the broker-dealer is a partnership and then only within the partnership.

(b) The number of shares covered by all options or warrants does not exceed ten percent of the shares to be outstanding upon completion of the offering.

(c) The options or warrants do not exceed five years in duration and are exercisable no sooner than one year after issuance.

(d) The initial exercise price of the options or warrants is at least equal to the public offering price plus a step-up of said public offering price of either seven per cent each year they are outstanding, so that the exercise price throughout the second year is one hundred seven per cent, throughout the third year one hundred fourteen per cent, throughout the fourth year one hundred twenty-one per cent, throughout the fifth year one hundred twenty-eight per cent; or in the alternative, twenty per cent at any time after one year from the date of issuance; provided that an election as to either alternative must be made by the broker-dealer at the time that the options or warrants are issued.

(e) The options or warrants are issued by a relatively small company, which is in the promotional stage, or which, because of its size, lacks public ownership of its shares, or other facts and circumstances make it appear that the issuance of options is necessary to obtain competent investment banking services.

(f) The prospectus used in connection with the offering fully discloses the terms and the reason for the issuance of such options or warrants; provided that if such reason relates to future advisory services to be performed by the broker-dealer without compensation in consideration for the issuance of such options or warrants, a statement to that effect is placed in the prospectus.

(g) The total amount of options and warrants issued or reserved for issuance at the date of the public offering shall be reasonable. The amount of options and warrants shall be presumed reasonable if the number of shares represented by such options and warrants does not exceed a number equal to ten per cent of the number of shares outstanding during the period the registration is in effect. The number of options and warrants reserved for issuance may be disregarded if the issuer

files an undertaking or states in the prospectus that the amount of outstanding options and warrants shall not exceed the above limitation during the period the registration is in effect.

(2) The value of any securities received, which value shall be included in determining the amount of compensation for the purposes of paragraph D of this R164-12-1f shall be as follows:

(a) Options/Warrants: The market value of such options or warrants, if any, shall be used. In cases where no market value exists, a presumed fair value of twenty per cent of the public offering price of the shares to which the options or warrants pertain shall be used, unless evidence indicates that a contrary valuation exists.

(b) Stock: The amount of compensation received when stock is issued shall be the difference between the cost of such stock and the proposed public offering price or, in the case of securities with a bona fide independent market, the cost of such stock and price of the stock on the market on the date of purchase. If, however, there is a binding obligation to hold such stock for a substantial period of time, an adjustment in such valuation may be made.

(c) Convertible Securities: The amount of compensation received when convertible securities are issued shall be the difference between the conversion price and the proposed public offering price or, in the case of securities with a bona fide independent market, the conversion price and the price of the stock on the market on the date of purchase.

(3) Equity Securities Issued to Participants in a Distribution:

Equity securities or securities convertible into equity securities, when combined with securities issued pursuant to subsection (F)(1) of this Rule, acquired by a participant in a distribution, whether acquired prior to, at the time of, or after, but which are determined to be in connection with or related to, the offering shall not in the aggregate be more than ten percent of the total number of units being offered in the proposed offering. The maximum limitation in the case of "best efforts" underwritings or participations shall be on the basis of no more than one unit received for every ten units actually sold. For the purposes of this paragraph:

(a) No securities shall be issued to a participant in a distribution where such participant is not a broker-dealer registered with this Division;

(b) Over-allotment shares and shares underlying warrants, options, or convertible securities which are part of the proposed offering are not to be counted as part of the aggregate number of shares being offered against which the ten percent limitation is to be applied.

(c) In an exceptional or unusual case involving an offering of convertible securities of a company whose stock already has a public market and where the circumstances require, taking into consideration the conversion terms of the securities to be received by the above persons, the receipt of underlying shares by such persons aggregating the above referred to ten percent limitation may be considered improper and a lesser amount considered more appropriate.

(d) In an exceptional or unusual case, where a large number of shares of a company are already outstanding and/or the purchase price of the securities, risk involved or the time factor as to acquisition or other circumstances justify, a variation from the above limitations may be permitted but in all cases the burden of demonstrating justification for such shall be upon the person seeking the variation.

KEY: securities regulation
1987 **61-1-12(1)(f)**
Notice of Continuation July 30, 2007

R164. Commerce, Securities.
R164-13. Definitions.
R164-13-1. Definitions.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-13 and 61-1-24.

(2) This rule defines several terms used in Title 61, Chapter 1, Utah Uniform Securities Act.

(B) Terms defined

In addition to the definitions in Section 61-1-13, as used in Title 61, Chapter 1:

(1) "Investment contract" includes:

(1)(a) any investment in a common enterprise with the expectation of profit to be derived through the essential managerial efforts of someone other than the investor; or

(1)(b) any investment by which:

(1)(b)(i) an offeree furnishes initial value to an offerer;

(1)(b)(ii) a portion of this initial value is subjected to the risks of the enterprise;

(1)(b)(iii) the furnishing of the initial value is induced by the offerer's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise; and

(1)(b)(iv) the offeree does not receive the right to exercise practical or actual control over the managerial decisions of the enterprise.

(2) "Isolated transaction" means not more than a total of two transactions which occur anywhere during six consecutive months.

KEY: securities, securities regulation
July 3, 1997 61-1-13
Notice of Continuation July 30, 2007 61-1-24

R164. Commerce, Securities.
R164-14. Exemptions.
R164-14-1g. Exchange Listing Exemption.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(1)(g) and Section 61-1-24.

(2) The rule identifies additional exchanges for which the exemption under Subsection 61-1-14(1)(g) is available.

(3) The rule also states the procedure whereby confirmation of the availability of the exemption can be obtained.

(B) Definitions

(1) "Confirmation" means written confirmation of the exemption from registration from the Division.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "Exchange Tiers" means the different levels, groups or markets within an exchange or medium, whereby each level requires substantively different, as opposed to alternate and comparable, listing and maintenance criteria.

(4) "Exemption" means the exemption provided in Subsection 61-1-14(1)(g).

(C) Recognized exchanges

(1) As specifically provided in Subsection 61-1-14(1)(g), a security listed on one of the following exchanges or mediums is exempt from registration:

(1)(a) New York Stock Exchange

(1)(b) American Stock Exchange

(1)(c) National Association of Securities Dealers Automated Quotation System ("NASDAQ").

(2) In addition, a security listed on one of the following exchanges or mediums is exempt from registration:

(2)(a) Chicago Board Options Exchange

(2)(b) Pacific Stock Exchange

(2)(c) Philadelphia Stock Exchange

(3) A security listed on one of the following exchanges or mediums is exempt from registration for the limited purpose of nonissuer transactions effected by or through a licensed broker-dealer:

(3)(a) Boston Stock Exchange

(3)(b) Chicago Stock Exchange

(3)(c) NASDAQ Small Cap Market

(3)(d) Pacific Stock Exchange/Tier II

(3)(e) Philadelphia Stock Exchange/Tier II

(D) Listed securities

(1) As to securities listed with a recognized exchange or medium, the exemption is self-executing.

(2) If desired, any person may request confirmation of the exemption in the manner described below.

(E) Securities approved for listing

(1) A security which is "approved for listing upon notice of issuance" on a recognized exchange or medium enumerated in Subparagraph (C)(1) or (2) of this rule qualifies for the exemption. The exemption is self-executing.

(2) If desired, any person may request confirmation of the exemption in the manner described below.

(F) Senior or substantially equal rank securities

(1) An unlisted security of the same issuer which is of senior or substantially equal rank to the security listed on a recognized exchange or medium enumerated in Subparagraph (C)(1) or (2) of this rule qualifies for the exemption. The exemption is self-executing.

(2) If desired, any person may request confirmation of the exemption in the manner described below.

(G) Delisted or suspended securities

(1) If a listed security becomes delisted or suspended, the exemption is not available to the security or a senior or substantially equal rank security for the period during which the security is delisted or suspended.

(H) Requests for confirmation

(1) A confirmation from the Division may be requested by any person.

(2) The request for confirmation must include documentary proof of the listing or approval for listing upon notice of issuance with the recognized exchange or medium which is relied upon as the basis for the exemption.

(3) The required documentary proof must indicate, where applicable, that the listing is current and must include:

(3)(a) a signed copy of the listing agreement;

(3)(b) a copy of the receipt for payment; or

(3)(c) a signed copy of a letter from the recognized exchange or medium with which the security is listed which acknowledges listing and the effective date thereof, or acknowledges approval for listing upon notice of issuance.

(4) Each request for confirmation must include a filing fee as specified in the Division's fee schedule.

(5) In response to a complete request for confirmation, the Division will issue a letter confirming the availability of the exemption.

(6) The Division will issue a copy of the letter confirming the availability of the exemption to any person so requesting in writing or in person for the cost of the photocopying.

(I) Exchange tiers

(1) Except as provided in Subparagraph (I)(2) of this rule, where a recognized exchange or medium has more than one tier, the exemption applies only to the highest tier.

(2) The exemption applies to a lower tier of a recognized exchange or medium if the lower tier is specifically named in this rule.

R164-14-2b. Manual Listing Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(b) and Section 61-1-24.

(2) The rule specifies recognized securities manuals.

(3) The rule prescribes the information upon which each listing must be based to qualify for the exemption.

(4) The rule sets forth the exclusive method of claiming the transactional exemption contained in Subsection 61-1-14(2)(b).

(4)(a) Except as provided in Paragraph (H), the exemption is not self-executing and may not be relied upon until the Division confirms the exemption as provided below.

(4)(b) A confirmation may only be requested by a broker-dealer licensed with the Division or by the issuer of the securities for which the exemption is sought.

(B) Definitions

(1) "Blank-check company" means a development stage company that:

(1)(a) has no business plan or purpose;

(1)(b) has not fully disclosed its business plan or purpose; or

(1)(c) has only indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies.

(2) "Blind-pool company" means a development stage company that has generally disclosed its business plan or purpose, but such business plan or purpose has not identified specific properties or products to be purchased, constructed or developed.

(3) "Confirmation" means written confirmation of the exemption from registration from the Division.

(4) "Development stage company" means a company that is devoting substantially all of its efforts to acquiring or establishing a new business and either of the following conditions exists:

(4)(a) planned principal operations have not commenced; or

(4)(b) planned principal operations have commenced, but there has been no significant revenues therefrom.

(5) "Division" means the Division of Securities, Utah Department of Commerce.

(6) "Dormant company" means a company which does not pursue nor has the financial capacity to pursue a business plan or purpose, whether or not it is a development stage company.

(7) "Exemption" means the exemption provided in Subsection 61-1-14(2)(b) of the Act.

(8) "Financial statements" means a balance sheet, an income statement or statement of operations, a statement of cash flows, a statement of stockholders' equity, if a corporation or partners' capital, if a partnership, and appropriate notes to the financial statements.

(9) "Shell company" means a company which does not pursue nor has the financial capacity to pursue a business plan or purpose, whether or not it is a development stage company.

(10) "Significant change" means any change involving a reorganization, merger, acquisition, or other change which causes the issuer to increase its issued and outstanding shares of stock by at least 40% of the issued and outstanding shares before the change.

(C) Recognized securities manuals

(1) The Division recognizes the following securities manuals:

(1)(a) Standard and Poor's Corporation Records

(1)(b) Mergent's Industrial Manual

(1)(c) Mergent's Bank and Finance Manual

(1)(d) Mergent's Transportation Manual

(1)(e) Mergent's OTC Industrial Manual

(1)(f) Mergent's Public Utility Manual

(1)(g) Mergent's OTC Unlisted Manual

(1)(h) Mergent's International Manual

(D) Information upon which listing must be based

(1) A listing must be based upon the following information, which must be filed with the selected recognized securities manual:

(1)(a) the issuer's name, current street and mailing address and telephone number;

(1)(b) the names and titles of the executive officers and members of the board of directors of the issuer;

(1)(c) a description of the issuer's business;

(1)(d) the number of shares of each class of stock outstanding at the balance sheet date; and

(1)(e) the issuer's annual financial statements as of a date within 18 months which have been prepared in accordance with generally accepted accounting principles, and audited by an independent certified public accountant who has issued an unqualified opinion; if the issuer has been organized for less than one year, the financial statements must be for the period from inception.

(E) Confirmation requirement

(1) Except as provided in Paragraph (H), confirmation must be obtained prior to relying upon the exemption.

(2) A request for confirmation must include:

(2)(a) all information filed with the selected recognized securities manual;

(2)(b) a copy of the listing with the recognized securities manual which is based upon the information filed under paragraph (D); and

(2)(c) a filing fee as specified in the Division's fee schedule.

(3) In response to a request for confirmation which complies with this rule, the Division will issue a letter confirming the exemption.

(4) The Division will issue a copy of the letter confirming the exemption to any person so requesting in writing or in person for the cost of the photocopying, and mailing if necessary.

(F) Term of exemption

(1) Except as provided in Subparagraph (F)(2), the exemption becomes effective on the date confirmed by the Division.

(2) The exemption for the securities of an issuer which qualify under Paragraph (H) becomes effective on the date a listing, based upon the information required under Paragraph (D), is published in a recognized securities manual.

(3) The exemption shall expire upon the earliest of:

(3)(a) A date 18 months from the date of the annual financial statements required under paragraph (D);

(3)(b) The date of a new annual issue or edition of the recognized securities manual which does not contain a listing based upon the information required under paragraph (D);

(3)(c) A date 45 calendar days from a change in the Chairman of the Board of Directors or a change in any two other members of the Board of Directors unless the recognized securities manual has published this information within the 45 days; or

(3)(d) A date 90 calendar days after a significant change in the issuer unless the recognized securities manual has published, at a minimum, an audited balance sheet and income statement reflecting the significant change within the 90 days.

(G) Blank-check, blind-pool, dormant, or shell company

(1) The exemption is not available to a blank-check, blind-pool, dormant, or shell company which has not previously registered its securities with the Division.

(2) A company which has not previously registered its securities with the Division which, within the past three fiscal years of the company, has merged with or been acquired by a blank-check, blind-pool, dormant, or shell company, which has not previously registered its securities with the Division, must file:

(2)(a) with the recognized securities manual, the information required under paragraph (D), as to all parties to such transaction;

(2)(b) with the Division, the shareholders list reflecting the initial public offering of the blank-check, blind-pool, dormant or shell company; and

(2)(c) with the Division, the shareholders list of the company, current within thirty days of the request for confirmation of the exemption.

(H) Exceptions to confirmation requirement

(1) Confirmation prior to relying upon the exemption shall not be required for any security if at the time of the transaction:

(1)(a) the security is sold at a price reasonably related to the current market price of such security;

(1)(b) the security does not constitute the whole or part of an unsold allotment to, or subscription or participation by, a broker-dealer as an underwriter of the security;

(1)(c) the security has been outstanding in the hands of the public for at least 90 days;

(1)(d) the issuer of the security is a going concern, actually engaged in business and is not in the development stage, in bankruptcy or receivership;

(1)(e) the issuer of the security has been in continuous operation for at least five years; and

(1)(f) the information required by Paragraph (D) is contained in a recognized securities manual listed in Paragraph (C).

R164-14-2m. Secondary Trading Transactional Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(m) and Section 61-1-24.

(2) The rule sets forth the exclusive method of claiming the transactional exemption contained in Subsection 61-1-14(2)(m).

(2)(a) The exemption is not self-executing. It may not be

relied upon until the Division confirms the exemption as provided below.

(2)(b) A confirmation may only be requested by a broker-dealer licensed with the Division or by the issuer of the securities for which the exemption is sought.

(2)(c) The exemption is available only for transactions effected by or through a broker-dealer licensed with the Division.

(B) Definitions

(1) "Blank-check company" means a development stage company that:

(1)(a) has no business plan or purpose;

(1)(b) has not fully disclosed its business plan or purpose; or

(1)(c) has only indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies.

(2) "Blind-pool company" means a development stage company that has generally disclosed its business plan or purpose, but such business plan or purpose has not identified specific properties or products to be purchased, constructed or developed.

(3) "Confirmation" means written confirmation of the exemption from registration from the Division.

(4) "Development stage company" means a company that is devoting substantially all of its efforts to acquiring or establishing a new business and either of the following conditions exists:

(4)(a) planned principal operations have not commenced; or

(4)(b) planned principal operations have commenced, but there has been no significant revenues therefrom.

(5) "Division" means the Division of Securities, Utah Department of Commerce.

(6) "Dormant company" means a company which does not pursue nor has the financial capacity to pursue a business plan or purpose, whether or not it is a development stage company.

(7) "Exemption" means the exemption provided in Subsection 61-1-14(2)(m).

(8) "Financial statements" means a balance sheet, an income statement or statement of operations, a statement of cash flows, a statement of stockholders' equity, if a corporation or partners' capital, if a partnership, and appropriate notes to the financial statements.

(9) "Shell company" means a company which does not pursue nor has the financial capacity to pursue a business plan or purpose, whether or not it is a development stage company.

(C) Request for confirmation

(1) The broker-dealer or issuer should file a request for confirmation with the Division in advance of the expiration of the previous registration statement or exemption to provide the Division a reasonable period of time in which to review the request.

(2) A request for confirmation must include the information required in paragraph (D).

(3) A request for confirmation must include a fee as specified in the Division's fee schedule.

(4) In response to a request for confirmation which complies with this rule, the Division will issue a letter confirming the exemption.

(5) The Division will issue a copy of the letter confirming the exemption to any person so requesting in writing or in person for the cost of the photocopying, and mailing if necessary.

(D) Required information

(1) A reporting company which is required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the preceding year must file one copy of the registration statement or the most recent Form 10-K which was filed with the Securities and Exchange Commission and containing financial statements dated not more than 15 months prior to this filing.

(2) A non-reporting company must file:

(2)(a) The following information:

(2)(a)(i) The exact name of the issuer and its predecessor(s), if any;

(2)(a)(ii) The street address of the issuer's principal executive offices;

(2)(a)(iii) The state of and date of incorporation or organization of the issuer;

(2)(a)(iv) The exact title and class of security for which the exemption is sought;

(2)(a)(v) The par or stated value of the security for which the exemption is sought;

(2)(a)(vi) The number of public, and restricted securities outstanding as of the end of the issuer's most recent fiscal year and a statement as to the date of the last fiscal year end;

(2)(a)(vii) The name and street address of the transfer agent for the securities for which the exemption is sought;

(2)(a)(viii) A description of the nature of the issuer's business;

(2)(a)(ix) A description of the products or services offered by the issuer;

(2)(a)(x) A description of the nature and extent of the issuer's facilities;

(2)(a)(xi) The names, titles and terms of office of the executive officers and members of the board of directors;

(2)(a)(xii) The names and street addresses of broker-dealers in Utah or associated person affiliated, directly or indirectly, with the issuer of the securities for which the exemption is sought.

(2)(b) Financial statements for the issuer's most recent fiscal year which meet all of the following requirements:

(2)(b)(i) be audited or reviewed by an independent Certified Public Accountant (CPA);

(2)(b)(ii) be prepared in conformity with Generally Accepted Accounting Principles (GAAP);

(2)(b)(iii) be prepared in conformity with Generally Accepted Auditing Standards (GAAS), Statements on Standards for Accounting and Review Services (SSARS), or both;

(2)(b)(iv) contain an unqualified audit opinion, where an audit is performed, except that certain qualifications may be allowed in certain circumstances at the discretion of the Division;

(2)(b)(v) contain an accountant's report stating that no material modifications are necessary for the financial statements to conform with GAAP, where a review is performed;

(2)(b)(vi) contain the signature of the preparer of the financial statements;

(2)(c) Financial statements of the issuer for the two fiscal years preceding the most recent fiscal year or for the time the issuer or its predecessor(s) has been in existence. The requirements of paragraph (D)(2)(b) also apply to these financial statements;

(2)(d) Financial statements, dated within 30 days before the merger or acquisition, of the corporation, partnership, or proprietorship which was acquired by or merged with the issuer during the issuer's most recent fiscal year. The requirements of paragraph (D)(2)(b) also apply to these financial statements;

(2)(e) A statement that the person submitting the information has read all of the information submitted and that to the best of his knowledge the information is accurate and complete;

(2)(f) If a broker-dealer is submitting the information, the original signature of the licensed official of the broker-dealer beneath the statement required by item (e) of this paragraph (D)(2) and the signatory's name and street address typed or printed beneath it;

(2)(g) If an issuer is submitting the information, the original signature of a current executive officer or director of the issuer beneath the statement required by item (e) of this paragraph(D)(2) and the signatory's name and street address typed or printed beneath it;

(2)(h) Copies of all complaints and orders with respect to material litigation that occurred during the past five years involving the issuer, the assets, liabilities, or both of the issuer, the securities of the issuer, or any officer or director of the issuer; and

(2)(i) Other documents as the Division may request.

(E) Amended information

(1) The required information filed pursuant to paragraph (D) may be amended by forwarding the correct information to the Division and requesting that the file be amended accordingly.

(2) If the amended information indicates that the issuer has changed its fiscal year, an amendment will not be permitted and the information will be treated as a new request for exemption.

(3) No fee is required for an amendment.

(F) Term of exemption

(1) The exemption becomes effective upon the date confirmed by the Division to the earliest of:

(1)(a) A date three months after the issuer's next fiscal year end; or

(1)(b) A date ten working days from the date of any shareholders meeting unless all material changes resulting from the meeting have been filed pursuant to paragraph (E); or

(1)(c) A date 30 calendar days from the date of any material change, not resulting from a shareholder vote, unless information with respect to the material change has been filed pursuant to paragraph (E).

(G) Blank-check, blind-pool, dormant, or shell company

(1) A blank-check, blind-pool, dormant, or shell company which has not previously registered its securities with the Division may not rely upon the exemption.

(2) A company which has not previously registered its securities with the Division which, within the past three fiscal years of the company, has merged with or been acquired by a blank-check, blind-pool, dormant, or shell company, which has not previously registered its securities with the Division, must file:

(2)(a) the information specified in paragraph (D), as to all parties to the transaction;

(2)(b) the shareholders list reflecting the initial public offering of the blank-check, blind-pool, dormant, or shell company; and

(2)(c) the shareholders list of the company current within thirty days of the request for confirmation of the exemption.

(H) Miscellaneous

(1) The information contained in broker-dealers' files and the information which they use to solicit transactions relying upon the exemption must be kept current.

(2) In no event does compliance with the requirements of this rule relieve broker-dealers or their agents from any obligations imposed by Section 61-1-1 or 61-1-6 or the rules thereunder.

R164-14-2n. Uniform Limited Offering Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(n) and Section 61-1-24.

(2) Nothing in this rule is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the anti-fraud provisions of Section 61-1-1.

(3) In view of the objective of this rule and the purposes and policies underlying Section 61-1-1 et seq., the safe-harbor exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this rule.

(4) Nothing in this rule is intended to relieve a licensed broker-dealer or broker-dealer agent from the due diligence, suitability, know-your-customer standards, or any other requirements of state or federal law otherwise applicable to such licensed persons.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "Safe-harbor exemption" means the exemption provided in this rule.

(3) "SEC" means the United States Securities and Exchange Commission.

(C) Safe-harbor exemption

Any offer or sale of securities offered or sold in compliance with SEC Rule 505, Exemption for Limited Offers and Sales of Securities Not Exceeding $5,000,000, 17 CFR 230.505 (1993), including any offer or sale made exempt by application of SEC Rule 508, Insignificant Deviations from a Term, Condition or Requirement of Regulation D, 17 CFR 230.508 (1993), which are adopted and incorporated by reference and available from the SEC and the Division, and which offer or sale of securities satisfies the following further conditions and limitations is determined to be exempt from the registration requirement of Section 61-1-7:

(1) No commission, fee, or other remuneration shall be paid or given, directly or indirectly, to any person for soliciting any prospective purchaser in this state unless such person is appropriately licensed with the Division.

(a) It is a defense to a violation of this paragraph if the issuer sustains the burden of proof to establish that it did not know and in the exercise of reasonable care could not have known that the person who received a commission, fee, or other remuneration was not appropriately licensed with the Division.

(2) The safe-harbor exemption shall not be available for the securities of any issuer if any of the parties described in SEC Rule 262, Disqualification Provisions, 17 CFR 230.262 (1994), which is adopted and incorporated by reference and available from the Division:

(a) Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any state's securities law.

(b) Has been convicted within five years prior to the filing of the notice required under this rule of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.

(c) Is currently subject to any state administrative enforcement order or judgment entered by that state's securities administrator within five years prior to the filing of the notice required under this rule or is subject to any state's administrative enforcement order or judgment in which fraud or deceit, including making untrue statements of material facts or omitting to state material facts, was found and the order or judgment was entered within five years prior to the filing of the notice required under this rule.

(d) Is subject to any state's administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities.

(e) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, permanently restraining or enjoining, such party from engaging

in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five years prior to the filing of the notice required under this rule.

(f) The prohibitions of Subparagraphs (a) through (c) and (e) above shall not apply if the person subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against such person or if the broker-dealer employing such party is licensed with the Division and SEC Form BD - Uniform Application for Broker-Dealer Registration, July 1988, filed with the CRD discloses the order, conviction, judgment or decree relating to such person. No person disqualified under this paragraph may act in a capacity other than that for which the person is licensed.

(g) Any disqualification caused by this paragraph is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification determines that it is not necessary that the safe-harbor exemption be denied.

(h) It is a defense to a violation of this paragraph if issuer sustains the burden of proof to establish that it did not know and in the exercise of reasonable care could not have known that a disqualification under this paragraph existed.

(D) Notice requirement

(1) The issuer shall file with the Division:

(a) One manually-signed copy of SEC Form D, 17 CFR 239.500 (1993), no later than 15 days after the first sale of securities in Utah in reliance upon this safe-harbor exemption and at such other times and in the form required to be filed with the Securities and Exchange Commission under SEC Rule 503, Filing of Notice of Sales, 17 CFR 230.503 (1993);

(b) One copy of the information furnished by the issuer to offerees located within the state;

(c) NASAA Form U-2 - Uniform Consent to Service of Process, which is available from NASAA or the Division; and

(d) A fee as specified in the Division's fee schedule.

(2) Within 30 days after termination of the offering the issuer shall file with the Division one completed Division Form 14-2n, Uniform Limited Offering Exemption Final Report.

(E) Sales to nonaccredited investors

(1) In all sales to nonaccredited investors in this state one of the following conditions must be satisfied or the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that one of the following conditions is satisfied:

(a) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to the purchaser's other security holdings, financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed 10% of the investor's net worth, it is suitable.

(b) The purchaser either alone or with a representative has such knowledge and experience in financial and business matters that the purchaser is capable of evaluating the merits and risks of the prospective investment.

(F) Effect upon exemption from Section 61-1-7 of failure to comply with certain provisions

A failure to comply with a term, condition or requirement of Subparagraph (C)(1) or Paragraphs (D) or (E) of this rule will not result in loss of the exemption from the requirements of Section 61-1-7 for any offer or sale to a particular individual or entity if the person relying on the exemption shows:

(1) the failure to comply did not pertain to a term, condition, or requirement directly intended to protect that particular individual or entity; and

(2) the failure to comply was insignificant with respect to the offering as a whole; and

(3) a good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of Subparagraph (C)(1), or Paragraphs (D) or (E) of this rule.

(G) Limitation of exemption established in reliance upon Paragraph (F)

Where an exemption is established only through reliance upon Paragraph (F) of this rule, the failure to comply shall nonetheless be actionable by the director under Section 61-1-14 or 61-1-20.

(H) Prohibition against combining exemption with other exemptions

Transactions which are exempt under this rule may not be combined with offers and sales exempt under any other rule or section; however, nothing in this limitation shall act as an election. Should for any reason the offer and sale fail to comply with all of the conditions of this safe-harbor exemption, the issuer may claim the availability of any other applicable exemption.

(I) Authority to modify or waive conditions

The director may, by order, increase the number of purchasers or waive any other conditions of this safe-harbor exemption.

(J) Title

The safe-harbor exemption authorized by this rule shall be known and may be cited as the "Uniform Limited Offering Exemption."

R164-14-2p. Reorganization Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(p) and Section 61-1-24.

(2) The rule sets forth the exclusive method of claiming the exemption contained in Subsection 61-1-14(2)(p). The exemption is not self-executing.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "Exemption" means the exemption provided in Subsection 61-1-14(2)(p).

(3) "SEC" means the United States Securities and Exchange Commission.

(C) Filing Requirements

Persons whose security holders are to consent, vote or resolve as to a transaction or series of transactions involving a merger, consolidation, reorganization, recapitalization, reclassification, or sale of assets may claim the exemption by filing with the Division, not less than ten business days prior to any necessary vote or action on any necessary consent or resolution, all of the following:

(1) the proxy or informational materials required by Paragraph (D);

(2) NASAA Form U-2, Uniform Consent to Service of Process;

(3) a fee as specified in the Division's fee schedule; and

(4) other documents as the Division may request.

(D) Proxy or informational materials

The Proxy or informational materials to be filed with the Division pursuant to Subparagraph (C)(1) and distributed to all securities holders entitled to vote in the transaction or series of transactions shall be:

(1) the proxy or informational materials filed under Section 14(a) or (c) of the Securities Exchange Act of 1934 if any person involved in the transaction is required to file proxy or informational materials under Section 14(a) or (c) of the Securities Exchange Act of 1934 and has so filed;

(2) the proxy or informational materials filed with the appropriate regulatory agency or official of its domiciliary state if any person involved in the transaction is an insurance company who is exempt from filing under Section 12(g)(2)(G) of the Securities Exchange Act of 1934; or

(3) one manually signed Form 14-2p and the information specified in SEC Schedule 14A, Form S-4, or Form F-4 if all persons involved in the transaction are exempt from filing under Section 12(g)(1) of the Securities Exchange Act of 1934.

(E) Transactions eligible for exemption

For purposes of Subsection 61-1-14(2)(p)(i), "each person involved" includes each person whose securities are offered or sold to or purchased from the securities holders of such persons.

R164-14-2s. MJDS - Secondary Trading Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(s) and Section 61-1-24.

(2) This rule provides a secondary trading exemption for securities offered by Canadian issuers which have been offered in the United States pursuant to MJDS through a registration statement on SEC Form F-8, F-9 or F-10 declared effective by the SEC.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "MJDS" means the multijurisdictional disclosure system with Canada as adopted by the SEC in Securities Act Release No. 6902, effective July 1, 1991.

(3) "SEC" means the United States Securities and Exchange Commission.

(C) Exemption

(1) The Division finds that continued registration is not necessary or appropriate for the protection of investors in any class of a Canadian issuer's security which has been offered pursuant to Section 61-1-9 and MJDS through a registration statement on SEC Form F-8, F-9 or F-10 declared effective by the SEC and the Division.

(2) Accordingly, any non-issuer transaction, effected by or through a licensed broker-dealer, involving such a security shall be exempt from registration.

R164-14-21s. Solicitations of Interest Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(s) and Section 61-1-24.

(2) The rule enables an issuer to solicit indications of interest in a future offering of securities by the issuer to determine the likelihood of success of the offering before incurring costs associated with registering the offering.

(3) All communications made in reliance on this rule are subject to the anti-fraud provisions of Section 61-1-1.

(4) The Division may or may not review the materials filed pursuant to this rule. Materials filed, if reviewed, will be judged under anti-fraud principles. Any discussion in the offering documents of the potential rewards of the investment must be balanced by a discussion of possible risks.

(5) Any offer effected in violation of this rule may constitute an unlawful offer of an unregistered security for which civil liability attaches under Section 61-1-22. Likewise any misrepresentation or omission may give rise to civil liability. Under the Act, a subsequent registration of the security for the sale of the security does not "cure" the previous unlawful offer. Only a rescission offer made in accordance with the provisions of the Act can accomplish such a "cure."

(B) Definitions

(1) "Act" means Title 61, Chapter 1, Utah Uniform Securities Act.

(2) "Director" means the director of the Division of Securities, Utah Department of Commerce.

(3) "Division" means the Division of Securities, Utah Department of Commerce.

(4) "SEC" means the United States Securities and Exchange Commission.

(C) Requirements

(1) An offer, but not a sale, of a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus, or its equivalent, for such security is exempt from Section 61-1-7, if all of the following conditions are satisfied:

(1)(a) The issuer is or will be a business entity organized under the laws of one of the states or possessions of the United States or one of the provinces or territories of Canada;

(1)(b) The issuer is engaged in or proposes to engage in a business other than petroleum exploration or production or mining or other extractive industries and is not a "blind pool" offering or other offering for which the specific business or properties cannot now be described;

(1)(c) The offerer intends to register the security in this state and conduct its offering pursuant to either SEC Regulation A, Conditional Small Issues Exemption, 17 CFR 230.251 through 17 CFR 230.263 (1995), SEC Rule 504, Exemption for Limited Offerings and Sales of Securities Not Exceeding $1,000,000, 17 CFR 230.504 (1995), or SEC Rule 147, "Part of an Issue," "Person Resident," and "Doing Business Within" for Purposes of Section 3(a)(11), 17 CFR 230.147 (1995), which are incorporated by reference;

(1)(d) Ten (10) business days prior to the initial solicitation of interest under this rule, the offerer files with the Division, Form 14-21s, Solicitation of Interest Form, any other materials to be used to conduct solicitations of interest, including, but not limited to, the script of any broadcast to be made and a copy of any notice to be published, and a fee as specified in the Division's fee schedule;

(1)(e) Five (5) business days prior to usage, the offerer files with the Division any amendments to the foregoing materials or additional materials to be used to conduct solicitations of interest, except for materials provided to a particular offeree pursuant to a request by that offeree;

(1)(f) No Solicitation of Interest Form, script, advertisement or other material can be used to solicit indications of interest unless approved by the Division;

(1)(g) Except for scripted broadcasts and published notices, the offerer does not communicate with any offeree about the contemplated offering unless the offeree is provided with the most current Solicitation of Interest Form at or before the time of the communication or within five (5) calendar days from the communication;

(1)(h) During the solicitation of interest period, the offerer does not solicit or accept money or a commitment to purchase securities;

(1)(i) No sale is made until seven (7) calendar days after delivery to the purchaser of a final prospectus or in those instances in which delivery of a preliminary prospectus is allowed, a preliminary prospectus; and

(1)(j) The offerer does not know, and in the exercise of reasonable care, could not know that the issuer or any of the issuer's officers, directors, ten percent shareholders or promoters:

(1)(j)(i) Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within five years prior to the filing of the Solicitation of Interest Form;

(1)(j)(ii) Has been convicted within five years prior to the filing of the Solicitation of Interest Form of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(1)(j)(iii) Is currently subject to any federal or state administrative enforcement order or judgment entered by any state securities administrator or the SEC within five years prior to the filing of the Solicitation of Interest Form or is subject to

any federal or state administrative enforcement order or judgment entered within five years prior to the filing of the Solicitation of Interest Form in which fraud or deceit, including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found;

(1)(j)(iv) Is subject to any federal or state administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities; or

(1)(j)(v) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five years prior to the filing of the Solicitation of Interest Form.

(2) The prohibitions listed in Subparagraph (C)(1)(j) shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against such person or if the broker-dealer employing the party is licensed in this state and the SEC Form BD - Uniform Application for Broker-Dealer Registration, filed with this state discloses the order, conviction, judgment or decree relating to the person. No person disqualified under subparagraph (C)(1)(j) may act in a capacity other than that for which the person is licensed or registered. Any disqualification caused by subparagraph (C)(1)(j) is automatically waived if the agency which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

(3)(a) A failure to comply with any condition of Subparagraph (C)(1) will not result in the loss of the exemption from the requirements of Section 61-1-7 for any offer to a particular individual or entity if the offerer shows:

(3)(a)(i) the failure to comply did not pertain to a condition directly intended to protect that particular individual or entity;

(3)(a)(ii) the failure to comply was insignificant with respect to the offering as a whole; and

(3)(a)(iii) a good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of Subparagraph (C)(1).

(3)(b) Where an exemption is established only through reliance on Subparagraph (C)(3)(a), the failure to comply shall nonetheless be actionable as a violation of the Act by the Director under Section 61-1-20 and constitute grounds for denying or revoking the exemption as to a specific security or transaction.

(4) The offerer shall comply with the requirements set forth below. Failure to comply will not result in the loss of the exemption from the requirements of Section 61-1-7, but shall be a violation of the Act, be actionable by the Director under Section 61-1-20, and constitute grounds for denying or revoking the exemption as to a specific security or transaction.

(4)(a) Any published notice or script for broadcast must contain at least the identity of the chief executive officer of the issuer, a brief and general description of its business and products, and the following legends:

(4)(a)(i) NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED;

(4)(a)(ii) NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL DELIVERY OF A PROSPECTUS THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING;

(4)(a)(iii) AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND; and

(4)(a)(iv) THIS OFFER IS BEING MADE PURSUANT TO THE REQUIREMENTS OF FEDERAL AND STATE SECURITIES LAWS. NEITHER THE FEDERAL NOR THE STATE AUTHORITIES HAVE CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT OR ANY OTHER DOCUMENT PRESENTED TO YOU IN CONNECTION WITH THIS OFFER. NO SALE MAY BE MADE UNTIL THE OFFERING STATEMENT IS QUALIFIED BY THE SECURITIES AND EXCHANGE COMMISSION IF MADE PURSUANT TO REGULATION A, AND IS REGISTERED IN THIS STATE;

(4)(b) All communications with prospective investors made in reliance on this rule must cease after a registration statement is filed in this state, and no sale may be made until at least twenty (20) calendar days after the last communication made in reliance on this rule; and

(4)(c) A preliminary prospectus, or its equivalent, may only be used in connection with an offering for which indications of interest have been solicited under this rule if the offering is conducted by a registered broker-dealer.

(5) The Director may waive any condition of this exemption in writing, upon application by the offerer and cause having been shown. Neither compliance nor attempted compliance with this rule, nor the absence of any objection or order by the Director with respect to any offer of securities undertaken pursuant to this rule, shall be deemed to be a waiver of any condition of the rule or deemed to be a confirmation by the Director of the availability of this rule.

(6) Offers made in reliance on this rule will not result in a violation of Section 61-1-7 by virtue of being integrated with subsequent offers or sales of securities unless such subsequent offers and sales would be integrated under federal securities laws.

(7) Issuers on whose behalf indications of interest are solicited under this rule may not make offers or sales in reliance on Subsections 61-1-14(2)(i), 61-1-14(2)(n) or 61-1-14(2)(q) until six (6) months after the last communication with a prospective investor made pursuant to this rule.

R164-14-23s. Foreign Securities - Secondary Trading Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(s) and Section 61-1-24.

(2) This rule provides an exemption for secondary market transactions in securities offered by foreign issuers satisfying the requirements of this rule.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Exemption

(1) The Division finds that continued registration is not necessary or appropriate for the protection of investors in an outstanding security issued by any corporation organized under the laws of a foreign country with which the United States currently maintains diplomatic relations (or an American Depository Receipt relating to such a security), provided either:

(1)(a) the security appears in the most recent Federal Reserve Board List of Foreign Margin Stocks;

(1)(b) the issuer is currently required to file with the Securities and Exchange Commission information and reports pursuant to Sections 13 or 15(d) of the Securities Exchange Act of 1934 and is not delinquent in such filing; or

(1)(c) the issuer is not subject to the reporting requirements of Sections 13 or 15(d) of the Securities Exchange Act of 1934 and all of the following conditions are met:

(1)(c)(i) the issuer, including any predecessors, has been in

continuous operation for at least 5 years and is a going concern actually engaged in business and neither in the organization stage nor in bankruptcy or receivership;

(1)(c)(ii) the number of shares outstanding is at least 2,500,000 and the number of shareholders is at least 5,000;

(1)(c)(iii) the market value of the outstanding shares, other than debt securities and preferred stock, is at least U.S. $100 million;

(1)(c)(iv) the issuer, as of the date of its most recent financial statement, which may not be more than 18 months old and which has been audited in accordance with the generally accepted accounting principles of its country of domicile, has net tangible assets of at least U.S. $100 million;

(1)(c)(v) the issuer had net income after all charges, including taxes and extraordinary losses, and excluding extraordinary gains, of either

(1)(c)(v)(aa) at least U.S. $50 million in total for its last three fiscal years, or

(1)(c)(v)(bb) at least U.S. $20 million in each of its last two fiscal years; and

(1)(c)(vi) if the security is a debt security or preferred stock, the issuer has not during the past 5 years, or during the period of its existence if shorter, defaulted in the payment of any dividend, principal, interest or sinking fund installment thereon.

(2) Accordingly, any non-issuer transaction, effected by or through a licensed broker-dealer, involving such a security shall be exempt from registration.

R164-14-24s. Internet Solicitations Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(s) and Section 61-1-24.

(2) This rule provides an exemption for offers effected through the Internet which do not result in sales in Utah.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "Internet" means the global information system comprised of independent computer networks which are interconnected and share information without the use of a central processing center by use of the Transmission Control Protocol/Internet Protocol (TCP/IP) suite, to include without limitation, the World Wide Web, proprietary or "common carrier" electronic delivery systems, or similar medium.

(3) "Internet Offer" means a communication, regarding the offering of securities within the meaning of Subsection 61-1-13(22)(b), made on the Internet and directed generally to anyone who has access to the Internet, including persons in Utah.

(C) Exemption

(1) The Division finds that registration is not necessary or appropriate for the protection of investors in connection with Internet Offers, provided:

(1)(a) an offer is not specifically directed to any person in Utah;

(1)(b) the Internet Offer indicates that the securities are not being offered to and sales will not be effected with persons in Utah; and

(1)(c) no sales of the issuer's securities are made in Utah as a result of the Internet Offer.

R164-14-25s. Accredited Investor Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(s) and Section 61-1-24.

(2) This rule provides an exemption for offers and sales to accredited investors. The rule also permits a limited use advertisement.

(B) Definitions

(1) "Accredited Investor" means an accredited investor as defined in 17 CFR 230.501(a) which is incorporated by reference.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "Exemption" means the exemption provided in Subsection 61-1-14(2)(s).

(C) Exemption

The Division finds that registration is not necessary or appropriate for the protection of investors pursuant to Section 61-1-14(2)(s) in connection with any offer or sale of a security by an issuer in a transaction that meets the requirements of this rule.

(D) Purchaser qualifications

Sales of securities shall be made only to persons who are or the issuer reasonably believes are accredited investors.

(E) Issuer Limitations

The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

(F) Investment Intent

The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within 12 months of sale shall be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under Section 61-1-8, 61-1-9, or 6-1-10 or to an accredited investor pursuant to an exemption under Section 61-1-14.

(G) Disqualifications

(1) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of 10% or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter:

(1)(a) within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;

(1)(b) within the last five years, has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involving fraud or deceit;

(1)(c) is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(1)(d) is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(2) Subparagraph (G)(1) shall not apply if:

(2)(a) the party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment or decree creating the disqualification was entered against such party;

(2)(b) before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

(2)(c) the issuer establishes that it did not know and in the exercise of reasonable care could not have known that a disqualification existed under Paragraph (G).

(H) General Announcement

(1) A general announcement of the proposed offering may be made by any means.

(2) The general announcement shall include only the following information, unless additional information is specifically permitted by the Division:

(2)(a) The name, address and telephone number of the issuer of the securities;

(2)(b) The name, a brief description and price (if known) of any security to be issued;

(2)(c) A brief description of the business of the issuer in 25 words or less;

(2)(d) The type, number and aggregate amount of securities being offered;

(2)(e) The name, address and telephone number of the person to contact for additional information; and

(2)(f) A statement that:

(2)(f)(i) sales will only be made to accredited investors;

(2)(f)(ii) no money or other consideration is being solicited or will be accepted by way of this general announcement; and

(2)(f)(iii) the securities have not been registered with or approved by any state securities agency or the U.S. Securities and Exchange Commission and are being offered and sold pursuant to an exemption from registration.

(I) Additional Information

The issuer, in connection with an offer, may provide information in addition to the general announcement under paragraph (H), if such information:

(1) is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or

(2) is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

(J) Telephone Solicitations

No telephone solicitation shall be permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

(K) Effect of dissemination of general announcement to nonaccredited investors

Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this rule.

(L) Filing Requirements

The issuer shall file with the Division, within 15 days after the first sale in Utah:

(1) one manually signed Form 14-25s, Accredited Investor Exemption Uniform Notice of Transaction Form;

(2) NASAA Form U-2, Uniform Consent to Service of Process;

(3) a copy of the general announcement; and

(4) a fee as specified in the Division's fee schedule.

R164-14-26s. Reorganization Exemption for Transactions Involving Certain Federal Covered Securities.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(s) and Section 61-1-24.

(2) This rule provides an exemption for any transaction involving a reorganization where the securities issued in the transaction are, or will be upon completion of the transaction, covered securities pursuant to section 18(b)(1) of the Securities Act of 1933.

(3) While the Division is preempted by federal law from requiring registration of a covered security, there is no such preemption of licensing requirements for issuer agents which offer or sell covered securities.

(4) By providing this exemption, issuers that participate in a reorganization whose securities are, or will be upon completion of the transaction, covered securities pursuant to Section 18(b)(1) of the Securities Act of 1933, will not be required to license agents which meet the exclusion requirements of Subsection 61-1-13(2).

(5) This exemption is self-executing and requires no filing with the Division.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Exemption

The Division finds that registration is not necessary or appropriate for the protection of investors in connection with any transaction or series of transactions involving a merger, consolidation, reorganization, recapitalization, reclassification, or sale of assets where the securities issued in connection with the transaction are, or will be upon completion of the transaction, covered securities pursuant to Section 18(b)(1) of the Securities Act of 1933.

R164-14-27s. Compensatory Benefit Plan Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-14(2)(s) and Section 61-1-24.

(2) This rule provides an exemption from the registration requirements of Section 61-1-7 for securities issued in compensatory circumstances. The exemption is not available for plans or schemes to circumvent this purpose, such as to raise capital. This exemption also is not available for any transaction that is in technical compliance with this rule but is part of a plan or scheme to evade the registration provisions of Section 61-1-7. In any of these cases, registration under the Act is required unless another exemption is available.

(3) Nothing in this rule is intended to be or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to employees or other persons within the scope of the rule adequate to satisfy the antifraud provisions of Section 61-1-1.

(4) Attempted compliance with the rule does not act as an exclusive election. The issuer can also claim the availability of any other applicable exemption.

(5) This exemption is self-executing and requires no filing with the Division.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Compensatory Benefit Plan Exemption

(1) Offers and sales made in compliance with SEC Rule 701, Exemption for Offers and Sales of Securities Pursuant to Certain Compensatory Benefit Plans and Contracts Relating to Compensation, 17 CFR 230.701 (1999), which is adopted and incorporated by reference and available from the Division, are determined to be exempt from the registration requirements of Section 61-1-7.

(D) Resale limitations

The resale of securities issued pursuant to this rule must be in compliance with the registration requirements of Section 61-1-7 or an exemption therefrom.

(E) Disqualification

(1) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of 10% or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter:

(1)(a) within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange

Commission;

(1)(b) within the last five years, has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involving fraud or deceit;

(1)(c) is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(1)(d) is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(2) Subparagraph (E)(1) shall not apply if:

(2)(a) the party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment or decree creating the disqualification was entered against such party;

(2)(b) before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

(2)(c) the issuer establishes that it did not know and in the exercise of reasonable care could not have known that a disqualification existed under Paragraph (E).

KEY: securities, securities regulation
March 20, 2000
Notice of Continuation July 30, 2007

61-1-7
61-1-8
61-1-9
61-1-10
61-1-20
61-1-22
61-1-24

R164. Commerce, Securities.
R164-15. Federal Covered Securities.
R164-15-1. Notice Filings for Offerings of Investment Company Securities.

(A) Authority and purpose.

(1) The Division enacts this rule under authority granted by Sections 61-1-15.5 and 61-1-24.

(2) The rule requires a notice filing prior to the offer or sale of securities described in Subsection 61-1-15.5(1) and sets forth the filing procedure.

(3) The rule also authorizes optional electronic filing of notices.

(B) Definitions

(1) "Designee" means any person or entity authorized and recognized by the Division in this rule to accept filings on behalf of the Division by electronic or other means of communication.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "NASAA" means the North American Securities Administrators Association, Inc.

(4) "SEC" means the United States Securities and Exchange Commission.

(C) Filing requirements

(1) Prior to the offer or sale of a security which is a covered security under Section 18(b)(2) of the Securities Act of 1933, the issuer must submit to the Division or its designee the following:

(1)(a) A completed manually signed NASAA Form NF;

(1)(b) A completed manually signed NASAA Form U-2 - Uniform Consent to Service of Process; and

(1)(c) A fee as specified in the Division's fee schedule.

(2) The issuer may submit a copy of all documents that are part of the federal registration statement filed with the SEC as a substitute for NASAA Form NF.

(3) Upon written request of the Division and within the time period set forth in the request, the issuer must submit to the Division a copy of any document, identified in the request, that is part of the federal registration statement filed with the SEC or is part of an amendment to such federal registration statement.

(4) All securities included in the same prospectus may be covered under a single notice filing.

(5) An issuer who has filed a Form U-2 in connection with a previous notice filing need not file another.

(D) Term of notice filing

(1) Except as provided in Subparagraph (D)(2), a notice filing under Paragraph (C) is effective for one year from the date filed with the Division or its designee.

(2) A notice filing under Paragraph (C) for a unit investment trust is for an indefinite period of time from the date filed with the Division or its designee.

(3) To facilitate the coordination of expiration dates with other states, the issuer may request a specific term of effectiveness which does not exceed one year.

(E) Renewal

A notice filing, for which the term is about to expire, may be renewed by submitting to the Division or its designee, another notice and payment of the applicable fee in accordance with Paragraph (C).

(F) Amendments

(1) The materials filed pursuant to Paragraph (C) may be amended by forwarding the corrected information to the Division or its designee and requesting that the file be amended accordingly.

(2) No fee is required for an amendment.

(G) Recognized designee

(1) The Division authorizes and recognizes the Securities Registration Depository, Inc. as a designee to receive notice filings under this rule on behalf of the Division, including but not limited to notices, fees, and all documents that are part of a federal registration statement filed with the SEC under the Securities Act of 1933.

(2) The designation provided in this rule is for the sole purpose of receiving filings on behalf of the Division and then transmitting those documents to the Division, or for any other purpose which the Division may prescribe by order or release.

(H) Sales Report

Within 30 days of the close of the offering or when the issuer ceases to rely upon the notice, whichever occurs first, unit investment trusts shall file a sales report on NASAA Form NF. No sales report is required for open-end management investment companies.

R164-15-2. Notice Filings for Rule 506 Offerings.

(A) Authority and purpose.

(1) The Division enacts this rule under authority granted by Sections 61-1-15.5 and 61-1-24.

(2) The rule requires a notice filing within 15 days after the first sale in this state of securities described in Subsection 61-1-15.5(2) and sets forth the filing procedure.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "NASAA" means the North American Securities Administrators Association, Inc.

(3) "SEC Form D" means the document, as adopted by the United States Securities and Exchange Commission and in effect on September 1, 1996, as may be amended by the SEC from time to time, entitled "Form D; Notice of Sale of Securities pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption", including Part E and the Appendix.

(C) Filing requirements

(1) An issuer offering a security that is a covered security under section 18(b)(4)(D) of the Securities Act of 1933 must submit to the Division, no later than 15 days after the first sale of such federal covered security in this state, the following:

(1)(a) A manually signed notice on SEC Form D;

(1)(b) A completed manually signed NASAA Form U-2 - Uniform Consent to Service of Process; and

(1)(c) A fee as specified in the Division's fee schedule.

(2) An issuer who has filed a Form U-2 in connection with a previous notice filing need not file another.

KEY: mutual funds, securities, securities regulation
September 3, 1997 61-1-15.5
Notice of Continuation July 30, 2007 61-1-24

R164. Commerce, Securities.
R164-18. Procedures.
R164-18-6. Procedures for Administrative Actions.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 63-46b-4, 63-46b-5, 63-46b-21, and 61-1-24.

(2) The purpose of this rule is to:

(a) designate those actions which the Division shall deem to be requests for initial agency action;

(b) designate those categories of adjudicative proceedings which will be conducted on an informal basis, in accordance with the Utah Administrative Procedures Act and the Rules of Procedure for Adjudicative Proceedings before the Department of Commerce;

(c) set forth circumstances in which hearings shall be required or permitted; and

(d) clarify certain Division policies regarding declaratory orders.

(B) Definitions

(1) "Act" means Title 61, Chapter 1, Utah Uniform Securities Act.

(2) "CRD" means the Central Registration Depository, Inc.

(3) "Director" means the Director of the Division of Securities, Utah Department of Commerce.

(4) "Division" means Division of Securities, Utah Department of Commerce.

(C) Categorization of Adjudicative Proceedings

All adjudicative proceedings under the Act are designated as informal adjudicative proceedings, except that the director may convert proceedings to formal adjudicative proceedings in accordance with the provisions of Subsection 63-46b-4(3).

(D) Commencement of Adjudicative Proceedings

Filing of the following documents with the Division shall be deemed to be a request for initial Division action:

(1) SEC Form BD - Uniform Application for Broker-Dealer Registration pursuant to Sections 61-1-4 and R164-4-1 (whether filed with the division or the CRD);

(2) NASD Form U-4 - Uniform Application for Securities Industry Registration or Transfer pursuant to Sections 61-1-4 and R164-4-1 (whether filed with the division or the CRD);

(3) SEC Form ADV - Uniform Application for Investment Adviser Registration pursuant to Sections 61-1-4 and R164-4-2 (whether filed with the division or the CRD);

(4) Application for Registration by Notification - Filed pursuant to Section 61-1-8;

(5) NASAA Form U-1 - Uniform Application to Register Securities pursuant to Sections 61-1-9 and R164-9-1;

(6) Form 10-2-1 - Application for Registration by Qualification pursuant to Sections 61-1-10 and R164-10-2;

(7) Request for declaratory order designating a person as not being within the definition of "broker-dealer" as defined in Subsection 61-1-13(3), or "agent" as defined in Subsection 61-1-13(2);

(8) Request for declaratory order designating a person as not being within the definition of "investment adviser" as defined in Subsection 61-1-13(15), or "investment adviser representative" as defined in Subsection 61-1-13(16);

(9) Request for order finding that registration is not necessary or appropriate pursuant to Subsection 61-1-14(1)(l) (exempt securities);

(10) Request for order finding that registration is not necessary or appropriate pursuant to Subsection 61-1-14(2)(s) (exempt transactions);

(11) Request for order releasing impounded funds pursuant to Section R164-11-7b;

(12) Request for confirmation of exchange listing exemption pursuant to Section R164-14-1g;

(13) Request for confirmation of blue chip fund exemption pursuant to Subsection 61-1-14(1)(k);

(14) Request for confirmation of manual listing exemption pursuant to Section R164-14-2b;

(15) Request for confirmation of secondary trading exemption pursuant to Section R164-14-2m;

(16) Request for confirmation of reorganization exemption pursuant to Section R164-14-2p.

(E) Procedures for Informal Adjudicative Proceedings

A hearing will be held only if required by the Act or by the provisions of this section. When a hearing is permitted but not required, a hearing will be held only if requested by a party within 30 days from the date a notice of agency action is mailed.

(F) Hearings: When Held

(1) Under the Act, a hearing is not required and will not be held in the following adjudicative proceedings:

(a) Licensing of broker-dealer, agent, investment adviser, or investment adviser representative pursuant to Section 61-1-4;

(b) Order requiring applicant to publish announcement of application pursuant to Subsection 61-1-4(1)(c);

(c) Cancellation of registration or application of broker-dealer, agent, investment adviser, or investment adviser representative pursuant to Subsection 61-1-6(5);

(d) Grant of registration by notification pursuant to Section 61-1-8;

(e) Grant of registration by coordination pursuant to Section 61-1-9;

(f) Stop order based on failure to file price amendments pursuant to Subsection 61-1-9(5);

(g) Grant of registration by qualification pursuant to Section 61-1-10;

(h) Order requiring additional information or verification pursuant to Subsection 61-1-10(2)(q);

(i) Order imposing conditions of registration pursuant to Subsection 61-1-11(7);

(j) Order vacating or modifying stop order pursuant to Subsection 61-1-12(2);

(k) Order designating a person as not being within the definition of a "broker-dealer" pursuant to Subsection 61-1-13(3), or "agent" pursuant to Subsection 61-1-13(2);

(l) Order designating a person as not being within the definition of "investment advisor" pursuant to Subsection 61-1-13(15), or "investment adviser representative" pursuant to Subsection 61-1-13(16);

(m) Order finding that registration is not necessary or appropriate pursuant to Subsection 61-1-14(1)(l) (exempt securities);

(n) Order finding that registration is not necessary or appropriate pursuant to Subsection 61-1-14(2)(s) (exempt transactions);

(o) Order requiring filing of prospectus, sales literature, etc.pursuant to Section 61-1-15;

(p) Order releasing impounded funds pursuant to Section R164-11-7b;

(q) Order to show cause pursuant to Subsection 61-1-20(1)(a);

(r) Confirmation of exchange listing exemption pursuant to Section R164-14-1g;

(s) Confirmation of blue chip fund exemption pursuant to Subsection 61-1-14(1)(k);

(t) Confirmation of manual listing exemption pursuant to Section R164-14-2b;

(u) Confirmation of secondary trading exemption pursuant to Section R164-14-2m;

(v) Confirmation of reorganization exemption pursuant to R164-14-2p.

(2) In the following proceedings, a hearing will be held only if timely requested:

(a) Petition for order denying, suspending or revoking registration of broker-dealer, agent, investment adviser, or investment adviser representative pursuant to Section 61-1-6;

(b) Petition for stop order denying, suspending or revoking effectiveness of a securities registration statement pursuant to Section 61-1-12;

(c) Order denying or revoking exemption under Subsection 61-1-14(2)(p)(v);

(d) Petition for order denying or revoking exemption from registration pursuant to Subsection 61-1-14(4);

(G) Declaratory Orders

(1) The Division will not issue declaratory orders when a petition requests a ruling with respect to the applicability of Section 61-1-1.

(2) A request for a "no-action" letter under Section R164-25-5 shall be deemed to be a petition for a declaratory order.

KEY: securities regulation, adjudicative procedure

July 3, 1997	**61-1-18.3**
Notice of Continuation July 30, 2007	**61-1-4**
	61-1-11

R164. Commerce, Securities.
R164-25. Record of Registration.
R164-25-5. Requests for Interpretive Opinions and No-action Letters.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsection 61-1-25(5) and Section 61-1-24.

(2) When requested, the Division may interpret the statutes and rules administered by the Division for members of the general public, prospective registrants, attorneys, and others.

(3) When requested, the Division also may render "no-action" letters in which the Division advises the person soliciting its views that under a described set of facts, the Division staff will not recommend that the Director take any action, such as enjoining a proposed transaction, if the transaction is carried out as described.

(4) As to the requesting party, the Division is bound by an interpretive opinion or no-action letter. However, because of the fact-specific nature of each request, other parties may not rely upon an interpretive opinion or no-action letter addressed to another party. Moreover, an interpretive opinion or no-action letter is no bar to civil or criminal action by other parties.

(B) Request procedure

(1) Requesting parties must file two written copies of the request for interpretive opinions or no-action letters.

(2) Requests must include the following:

(2)(a) a brief summary of the statutory and rule sections to which the request pertains;

(2)(b) a detailed factual representation concerning every relevant aspect of the proposed transaction, event or circumstance;

(2)(c) a discussion of current statutes, rules and legal principles relevant to the facts set forth;

(2)(d) a statement by the person requesting the interpretive opinion or no-action letter which indicates why the person thinks the circumstances call for an interpretive opinion or no-action letter, the person's own opinion in the matter, and the basis for the opinion;

(2)(e) a representation that there is no legal action, judicial or administrative, which relates, directly or indirectly, to the facts set forth;

(2)(f) a representation that the transaction in question has not been commenced or, if it has commenced, the present status of the transaction.

(2)(g) a fee as specified in the Division's fee schedule.

(C) Areas of no comment

The Division will not respond to requests for interpretive opinions or no-action letters that:

(1) involve the anti-fraud provisions of the Utah Uniform Securities Act or the rules thereunder.

(2) involve transactions which have already taken place.

(3) attempt to include every possible type of situation which may arise in the future such that the request is overly broad or calls for a speculative response.

KEY: securities regulation

1994	**61-1-24**
Notice of Continuation July 30, 2007	**61-1-25(5)**

R164. Commerce, Securities.
R164-26. Consent to Service of Process.
R164-26-6. Consent to Service.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-26 and 61-1-24.

(2) This rule designates the form to be used for consents to service of process.

(B) Definitions

(1) "Act" means Title 61, Chapter 1, Utah Uniform Securities Act.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Form

(1) Except as provided in subparagraph (C)(2), for the purposes of all rules, regulations, orders of the Division, or the Act, the Consent to Service of Process which is to be used, is the NASAA Form U-2 - Uniform Consent to Service of Process.

(2) A Form U-4, Uniform Application for Securities Industry Registration or Transfer, Form ADV, Uniform Application for Investment Adviser Registration, and Form BD, Uniform Application for Broker-Dealer Registration, may be used in lieu of the Form U-2 provided that an originally executed copy of such form is filed with the Division

(D) Agent

All consents to service of process filed with the Division shall appoint the "Director, Utah Division of Securities" as agent for service of process.

(E) Incorporation by reference

For purposes of consents to service of process required to be filed under the Act, a broker-dealer, agent, federal covered adviser, investment adviser, investment adviser representative, or issuer may incorporate by reference in a current application any consent to service of process previously filed with the Division by such person or entity.

KEY: securities regulation
March 4, 1998 61-1-24
Notice of Continuation July 30, 2007 61-1-26(6)

R212. Community and Culture, History.
R212-1. Adjudicative Proceedings.
R212-1-1. Scope and Applicability.

This rule is enacted in compliance with the Utah Administrative Procedures Act, Section 63-46b-1 et seq. and applies only to actions which are governed by the Act.

R212-1-2. Definitions.

A. Terms, used in this rule are defined in Section 63-46b-2.

B. In Addition:

1. "agency" means the Division of State History;

2. "applicability" means a determination if a statute, rule, or order should be applied, and if so, how the law stated should be applied to the facts;

3. "director" means the director of the Division of State History; and

4. "board" means the Board of State History.

5. "presiding officer" means the Board or its designee, which may be a subcommittee of the board.

6. "petitioner" means any person aggrieved by a decision or determination of the Division of State History.

R212-1-3. Designation.

The Agency designates all agency actions subject to the scope and applicability of the Utah Administrative Procedures Act, Section 63-46b-1 et seq. as formal proceedings.

R212-1-4. Adjudicative Hearings.

A. Any person aggrieved by a decision or determination of the Division of State History may request a hearing before the Board. That person, hereinafter "the petitioner," shall request the hearing by filing a request in writing with the Chairman of the Board and providing a copy to the director of the Division. The petition shall set forth the reason for the request, including the following:

1. a description of the decision which the petitioner requests a hearing on;

2. the date of the decision, who made the decision, and, if in writing, attach a copy of the decision;

3. the relief sought by the petitioner; and

4. the reason the petitioner is entitled to the relief requested.

B. Upon receipt of the Request for Hearing, the Division shall file a written response within 21 days with the Chairman of the Board and send a copy to the petitioner. The Division response shall include any facts or matters not included in the Request for Hearing that may be necessary for the determination, and set forth the reasons and basis for the decision for which the petitioner is seeking a hearing.

C. After the filing of the response, a meeting shall be scheduled with the petitioner, representative of the agency, and council for the Board as a pre-hearing conference. The purpose of the conference is to have the agency and the petitioner meet to determine what factual and legal matters are in dispute, what discovery may be needed by anyone to process the case, and the best manner for presentation or hearing for the Board. Counsel for the Board shall prepare a discovery and hearing schedule based upon the meeting, which shall govern the proceedings.

D. The Board may act as a presiding officer and conduct the hearing, may appoint a subcommittee of its Board or may appoint an individual or group of individuals to act as the presiding officer to conduct the hearing. If the presiding officer is other than the entire Board, the presiding officer shall make recommended findings of fact, conclusions of law, and proposed order on the petitioner's request for a hearing. That proposed order shall be placed upon and acted upon by the Board at its next scheduled meeting. The Board may adopt, reject or modify the proposed order of the presiding officer.

R212-1-5. Request for Declarative Orders.

A. As required by Section 63-46b-21, this section provides the procedures for submission, review, and disposition of petitions for agency declaratory orders on the applicability of statutes, rules, and orders governing or issued by the agency.

B. In order of importance, procedures governing declaratory orders are:

1. procedures specified in this rule pursuant to Chapter 46b of Title 63;

2. the applicable procedures of Chapter 46b of Title 63;

3. applicable procedures of other governing state and federal law;

4. the Utah Rules of Civil Procedure.

C. The petition, or request for agency action, shall be addressed and delivered to the director, who shall mark the petition with the date of receipt.

1. The petition shall:

a. be clearly designated as a request for an agency declaratory order;

b. identify the statute, rule, or order to be reviewed;

c. describe in detail the situation or circumstances in which applicability is to be reviewed;

d. describe the reason or need for the applicability review, addressing in particular why the review should not be considered frivolous;

e. include an address and telephone where the petitioner can be contacted during regular work days;

f. declare whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; and

g. be signed by the petitioner.

D. The agency will not issue a declaratory order that deals with a question or request that the director determines is:

1. Not within the jurisdiction and competence of the agency;

2. Trivial, irrelevant, or immaterial;

3. Not one that is ripe or appropriate for determination;

4. Currently pending or will be determined in an on-going judicial proceeding;

5. Not in the best interest of the division or the public to consider; or

6. Prohibited by state or federal law.

E. A person may file a petition for intervention under Section 63-46b-9 if delivered to the director within 20 days of the director's receipt of the declaratory order petition filed under Section 3 of this rule.

F. Petitions shall be reviewed under the following procedure:

1. The director shall promptly review and consider the petition and may:

a. meet with the petitioner;

b. consult with counsel or the Attorney General; and

c. take any action consistent with law that the agency deems necessary to provide the petition adequate review and due consideration.

d. the Petitioner shall be advised as to the status or procedures to be used concerning the Petitioner's request.

2. The director may issue an order in accordance with Section 63-46b-21(6).

3. The director may order that an adjudicative proceeding be held in accordance with Section 63-46b-21(6) in connection with review of a petition.

G. A petitioner may seek administrative review or reconsideration of a declaratory order by petitioning the Board of State History or the agency under the procedures of Sections 63-46b, 12 and 13.

KEY: administrative procedures, adjudicative proceedings
January 6, 2003 63-46b-1 et seq.

Notice of Continuation July 17, 2007

R212. Community and Culture, History.
R212-12. Computerized Record of Cemeteries, Burial Locations and Plots, and Granting Matching Funds.
R212-12-1. Scope and Applicability.

To provide grants to assist cemeteries, computerize their records, and to develop a centralized database of names, dates of death, burial locations, and other information. This data base will include data on individuals interred in cemeteries and burial locations where a previous record exists regarding the burial in accordance with UCA 9-8-203(3)(c).

R212-12-2. Definitions.

1. "Board" means the Board of State History.
2. "Burial locations" means locations of human burials outside of established cemeteries where written records exist on the deceased.
3. "Burial Plot" means the burial location of an individual within a cemetery.
4. "Cemeteries" means formal groupings of burial locations, including public and private facilities, whether abandoned or currently used and maintained.
5. "Director" means the Director of the Division of State History.
6. "Division" means the Division of State History.
7. "Eligible Organizations" means cemeteries, genealogical associations, and other nonprofit groups interested in cemeteries and burial locations.
8. "GIS" means Geographic Information System. A system that links information to geographic locations.
9. "In kind" means volunteer hours, labor, equipment, etc., to match grant contributed after July 1, 1997.
10. "Matching grants" means grants made to eligible organizations that are matched, ordinarily on a fifty/fifty basis, through cash or in kind.
11. "Record" means existing record of name and other available information on the interred individual.
12. "Computerized record" means an electronic version of a record meeting the standards established by the Division.

R212-12-3. Application and Distribution of Funds.

Eligible organizations may apply for matching grants on a form approved by the Division. Matching grants shall be provided to the extent that funding is available. No grant will be awarded to any single cemetery for more than $10,000. Larger cemeteries needing more than $10,000 may reapply in phases. Successful applicants may request fifty percent of the funds at the time of approval of the contract. The second fifty percent will be distributed upon receipt of acceptable final report and computerized records in the format agreed upon.

Grants will be allocated to applying eligible organizations on a first come, first served basis. The Division will award the grants and provide a list of successful applicants to the Board.

R212-12-4. Reports and Deliverables.

The grantee must submit complete computer files for the project in a format approved by the Division. The Division may verify the accuracy of the information prior to making final payment. In addition, a final report shall be completed by the grantee in a format designated by the Division. The report shall include a summary of the project, an accounting of matching share contributions, and a request for final payment.

KEY: burial, cemetery, plots
November 4, 2002 9-8-203(3)(c)
Notice of Continuation July 17, 2007

R277. Education, Administration.
R277-464. Highly Impacted Schools.
R277-464-1. Definitions.

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

B. "Data Clearinghouse" means the electronic data collection system used by the USOE to collect information required by law from LEAs about individual students at certain points throughout the school year to support the allocation of funds and accountability reporting.

C. "School" means a public school, other than a special purpose school, primarily intended to serve students from a specific geographical area in any of grades K through 12.

D. "Special purpose school" means a school primarily intended to serve a special population of students such as students at risk, students with disabilities, or other special designation.

E. The "student mobility" factor means the proportion of students who move and have a change in school assignment during a school year. It is a percent, calculated as follows:

(1) stable students (SS), those who are reported as enrolled in the same school for the entire school year; divided by

(2) unduplicated cumulative enrollment (CE) in a school over a given school year; subtracted from

(3) 1, and multiplied by 100; or (1 - (SS/CE))100.

F. The "students who are eligible for free school lunch" factor means the total number of students in a school reported as economically disadvantaged using federal child nutrition income eligibility guidelines.

G. The "English Language Learner (ELL)" factor means the total number of ELL students in a school reported as having proficiency in the English language at or below the level of intermediate on the basis of the Utah Academic Language Proficiency Assessment (UALPA).

H. The "ethnic minority students" factor means the total number of students in a school reported as:

(1) American Indian or Alaskan native;

(2) Hispanic;

(3) Asian;

(4) Pacific Islander; or

(5) Black, using federal guidelines.

I. The "students from single parent families" factor means the total number of students in a school who live in a household headed by a male without a wife present or by a female without a husband present derived from data on persons age 5 through 17 in a geographic area approximating the service area of the school who live in a household with a similar composition.

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

R277-464-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public education system in the Board, Section 53A-15-701(3) which directs the State Superintendent of Public Instruction and the Board to develop a formula, administer the program, distribute the appropriation and monitor the effectiveness of highly impacted school programs, Section 53A-17a-121(2) which directs the Board to develop rules to implement programs for at risk students and distribute funds for at risk programs, 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 establish criteria and procedures for distributing funds to highly impacted schools. The intent of this appropriation is to provide students with increased educational contact with qualified staff.

R277-464-3. Applications and Distribution of Funds.

A. Awards shall be made to individual schools and funds allocated to school districts or charter schools shall be fully distributed to designated schools.

B. Applications shall be provided through the USOE.

C. Schools shall be selected for funding based on an analysis of the eligibility factors designated in Section 53A-15-701(2)(a). Those factors shall be equally weighted.

(1) Beginning with the FY 2009 funding cycle, statistics for school eligibility determination and allocations shall be based on the latest available data from the Year End upload of the Data Clearinghouse consistent with the funding schedule, except for the single parent status statistic, which shall be derived from Census Bureau data sources.

(2) Schools may use funds for learning programs identified by the school, if the school provides:

(a) goals;

(b) activities; and

(c) outcomes, consistent with the proposed activities that are directly tied to the school's plan to increase student achievement.

(2) Each school selected for funding shall receive a base allocation.

D. Based on available funds, schools shall be funded on a three-year funding cycle, beginning in FY 2009.

E. In the event of closure of a school funded under this rule, the school district to which the school belongs may designate another school within the school district as highly impacted.

(1) In designating a new or different highly impacted school within the school district, the school district cannot exceed its total original number of highly impacted schools.

(2) The school district shall provide a rationale for designating the new school as highly impacted using the criteria under Section 53A-15-701(2).

(3) The at-risk factors in the newly designated school shall be comparable to the risk factors in the closed school.

(4) A school district may not divert funds from operating highly impacted schools within the school district to fund a newly designated highly impacted school.

F. The school district shall provide an application for reallocating highly impacted funds from a closed school to a different school within the school district prior to the school district distributing the funds to the newly designated school. Failure to properly apply to the USOE in a timely manner for reallocation of highly impacted funding from a closed school to a newly designated school within the school district may result in recapture of funds from the school district or the newly designated school by the USOE.

G. Schools receiving funding shall be notified by June 30.

R277-464-4. Evaluation and Reports.

Each school selected for funding shall be required to submit an annual evaluation report to the USOE consistent with Section 53A-15-701(6)(a).

KEY: students at risk

July 9, 2007	**Art X Sec 3**
Notice of Continuation July 6, 2005	**53A-17a-121(2)**
	53A-1-401(3)
	53A-15-701(3)
	53A-15-701(2)(a)

R277. Education, Administration.
R277-488. Critical Languages Pilot Program.
R277-488-1. Definitions.

A. "ACTFL OPI" means the American Council of Teachers of Foreign Language Oral Proficiency Interview which is a test, both written and verbal, offered at most Utah colleges and universities.

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

C. "Critical language" means those languages described under Section 53A-15-104(1).

D. "Critical language program" means the enhanced EDNET program and the international teacher exchange program as defined and funded under Section 53A-15-104.

E. "EDNET" means the state's two-way interactive system for video and audio, delivered and available to students in the state's public education system, as defined under Section 53A-15-104(2).

F. "Electronic High School" means the state's electronic high school program explained in Section 53A-17a-131.15 and R277-725.

G. "Foreign exchange student" means a student sponsored by an agency approved by the school district's local school board or charter school's governing board, subject to the limitations of Section 53A-2-206(2).

H. "Language facilitator" means a paraprofessional or licensed educator who is fluent in the critical language being taught by EDNET and who is designated to participate in the Critical Languages Pilot Program established under Section 53A-15-104.

I. "Credentialed international teacher" means a teacher sponsored under a separate Memoranda of Understanding between the USOE and China, Spain or Mexico. The Memoranda of Understanding are hereby incorporated by reference. Sponsored teachers shall satisfy all conditions of the Memoranda of Understanding prior to working with Utah students.

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

R277-488-2. 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-15-104 which directs the State Superintendent of Public Instruction and the Board to establish, administer, and track a Critical Languages Pilot Program and authorizes a pilot program, and by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish criteria and procedures for distributing funds to high schools participating in the Critical Languages Pilot Program. The intent of this appropriation is to increase the number of students who reach proficiency in a critical language as well as build overall foreign language capacity in the state of Utah.

R277-488-3. Critical Language Program Requirements.

A. A high school that desires to participate in the Critical Languages Pilot Program (enhanced EDNET or international teacher exchange program) shall submit an application, provided by the USOE and available each April 15 to the USOE by May 15.

B. The application shall provide:

(1) an identified, available classroom within the school district or charter school where EDNET can be accessed or an identified credentialed international teacher teaching under a USOE/foreign country Memorandum of Understanding;

(2) a plan and procedure in place to notify students and parents of the availability of at least one critical language course identified in Section 53A-15-104(1);

(3) for schools using enhanced EDNET delivery, a qualified language facilitator hired and available to students who:

(a) is fluent in the critical language being taught;

(b) has established his fluency by receiving a score of intermediate high or higher on an ACTFL OPI test or USOE-approved equivalent;

(c) is qualified as a paraprofessional under R277-524; or

(d) is a Utah licensed educator; and

(e) has completed a criminal background check including review of identified offenses by the school district or charter school.

(4) requirements for the international teacher exchange program:

(a) programs shall operate under a Memorandum of Understanding;

(b) international teacher expenses shall be paid as provided by the designated Memorandum of Understanding;

(c) all other conditions provided by individual Memoranda of Understanding shall be satisfied.

C. Schools applying for both the enhanced EDNET and the international teacher program shall provide identified materials, including texts and consumables, purchased with funds appropriated by the Legislature.

R277-488-4. USOE Responsibilities and Funds.

A. Applications shall be provided by the USOE.

B. High schools shall be selected for funding based on an evaluation of applications by a USOE-designated committee which shall include statewide experts.

C. Awards shall be made to individual high schools and funds allocated to school districts and charter schools to be fully distributed to designated high schools.

D. Each high school selected for funding shall receive a base allocation per critical language offered at the high school, designated in Section 53A-15-104(6)(a).

E. Each high school selected for funding shall receive a supplemental allocation designated in Section 53A-15-104(6)(b).

(1) School districts and charter schools approved for participation under this rule shall receive funds for students who complete a critical language course with a grade of C or better by June 15;

(2) High schools shall receive additional funding for foreign exchange students enrolled in a high school who complete a critical language course, as designated in Section 53A-15-104(6)(c) and consistent with R277-612.

F. Based on available funds, high schools shall receive six years of ongoing funding.

G. Schools eligible for funding shall be notified by the USOE by June 1, 2007.

R277-488-5. Evaluation and Reports.

Each high school selected for funding shall be required to submit an annual evaluation report to the USOE consistent with Section 53A-15-104 and, if applicable, the requirements of the international teacher exchange program covered by the Memorandum of Understanding. The USOE may request additional data from high schools that receive funding.

KEY: critical languages
July 9, 2007 **Art X Sec 3**
53A-15-104
53A-1-401(3)

R277. Education, Administration.
R277-489. Optional Extended-Day Kindergarten - Responsibilities, Timelines, and Funding.
R277-489-1. Definitions.

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

B. "Enrollment" means class enrollment of not more than the student enrollment of other kindergarten classes within the school.

C. "Kindergarten readiness assessment" means an assessment based on research and data that determines a child's readiness to begin kindergarten, as determined by the school district or charter school.

D. "Optional Extended Day Kindergarten" means a program that provides additional instruction to kindergarten age students as either an extension of the half day program or extended time before or after school, on Saturdays or during the summer.

E. "Required instructional hours" means at least the same number of instructional hours, per school year, as first grade consistent with R277-419-1, Pupil Accounting.

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

R277-489-2. 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-1a-902 which directs the Board to make rules establishing application and reporting procedures to administer the optional extended-day kindergarten program, and by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish criteria and procedures for application and reporting procedures to administer the optional extended-day kindergarten program.

R277-489-3. School District Responsibilities.

A. School districts intending to participate in the optional extended-day kindergarten program shall submit a letter of intent to the USOE by May 1, 2007 and by application every succeeding year.

B. School districts shall submit applications available from the USOE by July 2, 2007 and by August 10 for each year thereafter providing:

(1) the school(s) within the district that will participate in the optional extended-day program;

(2) the approximate number of classes of optional extended-day kindergarten that will be offered at each school in the district;

(3) the approximate number of Title I schools identified by the school district, and which Title I schools will participate in the optional extended-day kindergarten program;

(4) the approximate number of students in the school district who were eligible to receive free school lunch under USDA regulations in the previous school year; and

(5) all other assurances, information and documentation required by the USOE on the application.

R277-489-4. Charter School Responsibilities.

A. Charter schools shall be in, at least, their second year of successful operation to participate in the optional extended-day kindergarten program.

B. Charter schools that intend to participate in the optional extended-day kindergarten program shall submit a letter of intent to the USOE by July 2, 2007 and by August 10 each year thereafter providing:

(1) that the school intends to participate in the optional extended-day kindergarten program;

(2) the approximate number of classes of optional extended-day kindergarten that will be offered at the school;

(3) if the charter school is designated as a Title I school;

(4) the approximate number of students in the school who were eligible to receive free school lunch under USDA regulations in the previous school year; and

(5) all other assurances, information and documentation required by the USOE on the application.

R277-489-5. Funding.

A. Optional extended-day kindergarten program funds shall be distributed to charter schools and school districts consistent with Section 53A-1a-903(3) and (4) respectively.

B. The Board shall modify the distribution of funds to provide sufficient funding for each Title I school, including neighborhood and charter schools, to participate in the optional extended-day kindergarten program.

C. Funding modifications for Title I schools shall be made separately for school districts and charter schools.

D. $7,500,000 of the $30,000,000 appropriated for the optional extended-day kindergarten program shall be distributed annually in 2007, 2008, 2009 and 2010 to participating school districts and charter schools, consistent with Section 53A-1a-903.

R277-489-6. Assessment, Accountability and Reporting.

A. Both school districts and charter schools shall use a self-selected kindergarten readiness assessment with all kindergarten students.

(1) The days used for assessment shall be consistent with R277-419-7, Pupil Accounting.

(2) The USOE may provide a model kindergarten assessment from a list of appropriate assessments.

(3) Post assessments shall be completed by school districts and charter schools prior to the ending of the school year and reported to the Board.

(4) Post assessments results for all kindergarten students shall provide evidence of student learning matched to the program's pre-assessment used for program placement.

B. The USOE shall require and school districts and charter schools shall provide annual reports to the USOE consistent with Section 53A-1a-902(4)(d).

C. School districts and charter schools that fail to provide complete, accurate and timely reports shall not receive funding in subsequent years.

KEY: kindergarten, extended-day
July 9, 2007 **Art X Sec 3**
53A-1a-902
53A-1-401(3)

R277. Education, Administration.
R277- 603. Basic Skills Education Program.
R277-603-1. Definitions.

A. "Accredited public or private educational institution" means an institution accredited by the Northwest Association of Accredited Schools or a regional accrediting association as a high school, a K-12 school, a special purpose school, a supplementary education school, or a distance education school.

B. "Basic Skills Education Program (BSEP)" means a program created to provide students who have not passed the UBSCT, with supplemental instruction in the skills and knowledge necessary to pass the test.

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

D. "Charter schools" means schools acknowledged as charter schools by local boards of education under Section 53A-1a-515 and this rule or by the Board under Section 53A-1a-505.

E. "Disclosure to parents" means the express acknowledgments and acceptance required for parents or legal guardians under Sections 53A-1-612(10)(b)(ii) and 53A-1-612(12)(c) and this rule.

F. "Distance basic skills education provider" means a Utah-based on-line or correspondence program provided by a public school/school district, the USOE, or an institution of higher education that satisfies the requirements of R277-603-1H.

G. "Enrolled full time" means the student is registered and attending the number of courses a school or school district requires for full-time enrollment for funding purposes. Notwithstanding school district/school policies, a student shall be enrolled in a minimum of five courses for credit to be enrolled full time.

H. "Other basic skills provider" means an education program that:

(1) has a current business license;

(2) meets the requirements of Section 53A-3-410 regarding criminal background checks; and

(3) agrees not to discriminate against stipend recipients on the basis of race, color, national origin, gender, economic status, language proficiency or disability;

(4) submits evidence of expertise and capacity to provide basic skills education which may include most employees providing education services have educator licenses, employees have more than three years of teaching experience in public or private schools, evidence of specific skills or training, accreditation by Northwest or a regional accrediting association, and evidence of curriculum materials aligned to the Core and the UBSCT; and

(5) agrees, if the basic skills provider is an individual employed by a school district or charter school, to abide by all rules pertaining to conflict of interest of educators working in their own fields, consistent with Section 53A-1-402.5 and R277-107, Educational Services Outside of Educator's Regular Employment.

I. "Passing UBSCT results" means a scaled score that is in the sufficient or substantial range that is obtained by a stipend recipient student in any subsequent administration of the UBSCT.

J. "Qualified basic skills education provider" means a school district, a charter school, an accredited public or private educational program, or other entity that has met the following criteria:

(1) The program has a physical location in Utah where students and stipend recipients attend classes and have direct contact with the program's teachers;

(2) the program has applied for eligibility to and been approved by the USOE to enroll BSEP stipend recipients;

(3) the program has provided an affidavit to the USOE affirming its willingness and intention to comply with the requirements and rules of the BSEP; and

(4) satisfies all other requirements of the law and this rule.

K. "Qualifying UBSCT result" means the student's highest previous scaled score on the UBSCT when submitting the voucher that falls into one of the following ranges:

(1) below the midpoint of the partial mastery range but above the minimal mastery range;

(2) below the partial mastery range but above or at the midpoint of the minimal master range; or

(3) below the midpoint of the minimal mastery range.

L. "School district" means a Utah public school district.

M. "Stipend" means the amount that a student's parent/guardian may receive to be applied to charges for basic skills education from a qualified provider. A stipend has no value unless assigned to a basic skills education provider, and is only payable upon the submission of a voucher by a provider and Board verification of a passing UBSCT result pursuant to the provisions of Section 53A-1-612, and R277-603-4 and 5.

O. "Stipend recipient" means a student who:

(1) meets the qualifications of Section 53A-1-612(4); and

(2) has submitted a voucher to a qualified provider.

O. "Utah Basic Skills Competency Test (UBSCT)" means a test to be administered to Utah students beginning in the tenth grade to include components in English, language arts, reading and mathematics. Utah students shall satisfy the requirements of the UBSCT in addition to state and school district/charter school graduation requirements prior to receiving a high school diploma indicating a passing score on all UBSCT subtests.

P. "Voucher" means a statement signed by the student's parent/legal guardian assigning the student's stipend to a BSEP provider. The following information shall be provided on the Board-designated form:

(1) student name;

(2) student birthdate;

(3) parent/guardian name;

(4) State Student Identification Number (SSID);

(5) required parent and student acknowledgments under Section 53A-1-612 and this rule; and

(7) parent/guardian and student signatures.

R277-603-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the Board, Section 53A-1-612 which requires the Board to make rules to initiate, manage and monitor the BSEP, 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 provide necessary standards and procedures for the Basic Skills Education Program as directed by the Legislature to assist students in passing the Utah Basic Skills Competency Test.

R277-603-3. State Board of Education Responsibilities.

A. The Board shall provide school districts and charter schools with a copy of this rule, required forms, templates, and model procedures.

B. The Board shall provide applications annually to Basic Skills Education providers no later than May 1 prior to the year in which eligibility to serve BSEP stipend recipients is sought (June 1 for the 2006-2007 school year).

C. The Board shall provide a determination that an applicant meets the requirements of R277-603 and Section 53A-1-612(1)(b) to be a BSEP provider as soon as possible but no more than 30 days after the applicant submits the required application and materials. The Board may:

(1) provide reasonable timelines for satisfaction of eligibility requirements;

(2) issue letters of warning, require a provider to take corrective action within a time frame set by the Board, suspend a provider from BSEP participation or eligibility, or impose

such other penalties as the Board determines appropriate under the circumstances;

(3) make available acknowledgment forms required under Section 53A-1-612(12)(c);

(4) establish appropriate consequences or penalties for providers that:

(a) fail to provide services to eligible students;

(b) fails to act in accordance with provisions of the law and this rule.

D. The Board shall maintain a list of qualified providers updated continuously as provider applications are received and approved.

E. For vouchers submitted to the Board prior to September 30 of the student's junior or senior year, the Board shall:

(1) verify student information and qualification for the stipend; and

(2) check results of all successive administrations of the UBSCT, starting with the October administration of that year, for passing UBSCT results; and

(3) within 60 days of final posting of UBSCT results to the data warehouse stipend payments shall be sent directly to qualified providers upon verification of a passing UBSCT result for voucher recipients registered with that provider.

F. For vouchers submitted to the Board after September 30 of the student's junior or senior year but prior to January 31 of the same year, the Board shall:

(1) verify student information and qualification for the stipend; and

(2) check results of all successive administrations of the UBSCT, starting with the February administration of that year, for passing UBSCT results; and

(3) within 60 days of final posting of UBSCT results to the data warehouse stipend payments shall be sent directly to qualified providers upon verification of a passing UBSCT result for voucher recipients registered with that provider.

G. The Board shall honor only vouchers submitted with all necessary documentation received consistent with R277-603-3E and R277-603-3F.

H. If an annual appropriation is inadequate to cover all stipend payments, the Board shall pay stipends on a first submitted/first paid basis or on a proportional basis as circumstances dictate.

I. The Board shall verify student UBSCT results and other program information as necessary or warranted with reasonable notice to assure compliance by a stipend recipient/BSEP provider with the provisions of Section 53A-1-602 and this rule.

R277-603-4. School Districts and Charter School Responsibilities.

A. School districts and charter schools shall provide students who have qualifying UBSCT results with voucher applications and information about how to access a list of approved public and private providers for BSEP stipends:

(1) after the students' first UBSCT attempt;

(2) to students new to the school district; and

(3) to students who change providers under R277-603-6E.

B. School districts and charter schools that intend to be qualified providers shall notify the Board of their intention and provide the Board with the following information:

(1) a brief description of the BSEP that shall be available to stipend recipients.

(2) a description of amounts, if any, that stipend recipients will be charged in addition to the amount paid by the Board.

(3) a statement of additional charges will be accompanied by an explanation to parents/students of the school district's policies consistent with Section 53A-13-104.

(4) a statement that all those who provide BSEP instruction shall be employees of the school district or charter school.

C. School districts and charter schools may not make any charge or refund of a charge contingent upon a student's passing or failing a test. Charges relative to the BSEP are subject to the provisions of Section 53A-12-103(1)(b), and it is presumed that the student will be responsible for any fees associated with a remediation program with exceptions provided for in Section 53A-13-104.

D. School districts and charter schools shall provide to the Board a list of all school district or charter school students who are qualified for stipends.

E. School districts and charter schools shall submit vouchers for all students who have chosen to receive BSEP services from the school district/charter school consistent with R277-603-3E and R277-603-3F.

F. If a student stops receiving basic skills education from the provider, for any reason, the school district or charter school shall notify the Board within 15 days.

R277-603-5. Accredited Public and Private Providers and Other Provider Responsibilities.

A. Accredited public and private providers and other providers that intend to participate in the BSEP shall notify the Board of their intention and provide the following information/materials to the Board to be used to determine eligibility:

(1) a brief description of the BSEP services that will be provided to stipend recipients by the provider;

(2) a description of amounts (if any) that stipend recipients shall be charged in addition to amounts paid by the Board;

(3) a statement that private providers shall not make any charge or refund contingent on a student passing or failing a test; and

(4) a statement that all employees of a BSEP who will be providing remediation services to public school students have had criminal background checks and results have been reviewed and approved by the applicant BSEP.

B. Upon a stipend recipient's presentation to the provider of a voucher, the provider shall submit the voucher to the Board consistent with R277-603-3E and R277-603-3F. This voucher shall be submitted to the Board in such format as the Board may determine.

C. Accredited public and private providers and other providers shall submit vouchers only for students who are stipend recipients and who are qualified to receive basic skills education from the provider.

D. If a student stops receiving basic skills education from the provider, for any reason, the provider shall notify the Board within 15 days.

R277-603-6. Parent and Student Responsibilities.

A. Students with UBSCT results in the ranges identified in Section 53A-1-612(5) shall qualify for stipends upon a parent/guardian signing the voucher application provided by the school district or charter school and then presenting that voucher application to the chosen provider. If the chosen provider is not the student's school district or charter school, a copy of the student's UBSCT results for every UBSCT attempt made by the student shall be included with the voucher application. The voucher application and UBSCT results, if applicable, constitute a BSEP voucher.

B. A parent may not give a voucher to more than one BSEP provider. Violation of this part may result in invalidation of the voucher and disqualification from further BSEP participation.

C. Parents are entirely responsible for the choice of a BSEP provider from among those listed as qualified by the Board.

D. Parents are responsible for payment of any amounts providers may charge stipend recipients in addition to that paid

by the Board.

E. Stipend applicants may choose to change providers at the end of the student's junior year if the student's best UBSCT result on one or more subtest(s) is in the qualifying range defined in Section 53A-1-612(5). This change shall require a new voucher to be submitted to the Board.

R277-603-7. Miscellaneous Provisions.

Educators who are employed by Utah public and charter schools may qualify as BSEP providers consistent with Section 53A-1-402.5 and R277-107.

KEY: basic skills competency, stipends
July 9, 2007 **Art X Sec 3**
53A-1-612(12)
53A-1-401(3)

R307. Environmental Quality, Air Quality.
R307-105. General Requirements: Emergency Controls.
R307-105-1. Air Pollution Emergency Episodes.

(1) Determination of an episode and its extent or stage shall be made by the Executive Secretary taking into consideration the levels of pollutant concentrations contained at 40 CFR Section 51.151 and 40 CFR Section 51, Appendix L, and summarized in the table below:

TABLE

AIR POLLUTION EPISODE CRITERIA
(values in micrograms/cubic meter unless stated otherwise)

POLLUTANT	ALERT	WARNING	EMERGENCY	NEVER TO BE EXCEEDED
SULFUR DIOXIDE 24-hour average	800 (0.3 ppm)	1,600 (0.6 ppm)	2,100 (0.8 ppm)	2,620 (1.0 ppm)
PM10 24-hour average	350	420	500	600
CARBON MONOXIDE				
8-hour average	17,000 (15 ppm)	34,000 (30 ppm)	46,000 (40 ppm)	57,500 (50 ppm)
4-hour average				86,300 (75 ppm)
1-hour average				144,000 (125 ppm)
OZONE				
1-hour average	400 (0.2 ppm)	800 (0.4 ppm)	1,000 (0.5 ppm)	
2-hour average				1,200 (0.6 ppm)
NITROGEN DIOXIDE 1-hour average	1130 (0.6 ppm)	2,260 (1.2 ppm)	3,000 (1.6 ppm)	3,750 (2.0 ppm)
NITROGEN DIOXIDE 24-hour average	282 (0.15 ppm)	565 (0.3 ppm)	750 (0.4 ppm)	938 (0.5 ppm)

An air pollution alert, air pollution warning, or air pollution emergency will be declared when any one of the above pollutants reaches the specified levels at any monitoring site.

In addition to the levels listed for the above pollutants, meteorological conditions are such that pollutant concentrations can be expected to remain at the above levels for twelve (12) or more hours or increase, or in the case of ozone, the situation is likely to reoccur within the next 24-hours unless control actions are taken.

ALERT The Alert level is that concentration at which first stage control action is to begin.

WARNING The warning level indicates that air quality is continuing to degrade and that additional control actions are necessary.

EMERGENCY The emergency level indicates that air quality is continuing to degrade toward a level of significant harm to the health of persons and that the most stringent control actions are necessary.

(2) The Executive Secretary shall also take into consideration, to determine an episode and its extent, rate of change of concentration, meteorological forecasts, and the geographical area of the episode, including a consideration of point and area sources of emission, where applicable.

R307-105-2. Emergency Actions.

(1) If an episode is determined to exist, the Executive Director, with concurrence of the Governor shall:

(a) Make public announcements pertaining to the existence, extent and area of the episode.

(b) Require corrective measures as necessary to prevent a further deterioration of air quality.

(2) Episode termination shall be announced by the Executive Director, with concurrence of the Governor, once monitored pollutant concentration data and meteorological forecasts determine the crisis is over.

KEY: air pollution, emergency powers, governor*, air pollution
September 15, 1998 19-2-112
Notice of Continuation July 13, 2007

R307. Environmental Quality, Air Quality.
R307-121. General Requirements: Clean Fuel Vehicle Tax Credits.
R307-121-1. Purpose and Authorization.

This rule is authorized by 59-7-605 and 59-10-1009. These statutes establish criteria and definitions used to determine eligibility for an income tax credit. R307-121 establishes procedures to provide proof of purchase to the board for an item for which an income tax credit is allowed under 59-7-605 and 59-10-1009.

R307-121-2. Definitions.

Definitions. The following additional definitions apply to R307-121.

"Conversion Equipment" means a package which may include fuel, ignition, emissions control, and engine components that are modified, removed, or added to a motor vehicle or special mobile equipment to make that vehicle or equipment eligible.

"Eligible" means:

(i) an OEM vehicle; or

(ii) a vehicle or special mobile equipment on which conversion equipment has been installed that meets the definition of "Certified by the Board" that is found in 59-7-605 and 59-10-1009.

"OEM vehicle" is defined in 19-1-402(8).

R307-121-3. Procedures for OEM Vehicles.

To demonstrate that a vehicle is eligible, proof of purchase shall be made by submitting the following documents to the executive secretary:

(1)(a) a copy of the Manufacturer's Statement of Origin or equivalent manufacturer's documentation showing that the vehicle is an OEM vehicle, or

(b) a signed statement by an American Service Excellence (ASE) certified technician that includes the vehicle identification number and states that the vehicle is an eligible OEM vehicle; and

(2) an original or copy of the purchase order, customer invoice, or receipt including the vehicle identification number (VIN); and

(3) a copy of the vehicle registration.

R307-121-4. Procedures for Vehicles Converted to Clean Fuels.

To demonstrate that a conversion of a motor vehicle to be fueled by clean fuel is eligible, proof of purchase shall be made by submitting the following documentation to the executive secretary:

(1) VIN;

(2) fuel type before conversion;

(3) fuel type after conversion;

(4)(a) if within a county with an I/M program, a copy of the vehicle inspection report from an approved station showing that the converted alternate fuel vehicle meets all county emissions requirements for all installed fuel systems, or

(b) a signed statement by an ASE certified technician that includes the VIN and states that the conversion is functional;

(5) each of the following:

(a) conversion system manufacturer,

(b) conversion system model number,

(c) date of the conversion, and

(d) name, address, and phone number of the person that converted the vehicle;

(6) proof of certification required in 59-10-1009(1)(b) or 59-7-605(1)(b); and

(7) a copy of the vehicle registration.

R307-121-5. Procedures for Special Mobile Equipment Converted to Clean Fuels.

To demonstrate that a conversion of special mobile equipment to be fueled by clean fuel is eligible, proof of purchase shall be made by submitting the following documentation to the executive secretary:

(1) description, including serial number, of the special mobile equipment for which credit is to be claimed;

(2) fuel type before conversion;

(3) fuel type after conversion;

(4) the conversion system manufacturer and model number;

(5) the date of the conversion;

(6) the name, address and phone number of the person that converted the special mobile equipment; and

(7) proof of certification required in 59-10-1009(1)(b) or 59-7-605(1)(b).

KEY: air pollution, alternative fuels, tax credits, motor vehicles

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Notice of Continuation July 13, 2007	**19-1-402**
	59-7-605
	59-10-1009

R307. Environmental Quality, Air Quality.
R307-130. General Penalty Policy.
R307-130-1. Scope.

This policy provides guidance to the executive secretary of the Air Quality Board in negotiating with air pollution sources penalties for consent agreements to resolve non-compliance situations. It is designed to be used to determine a reasonable and appropriate penalty for the violations based on the nature and extent of the violations, consideration of the economic benefit to the sources of non-compliance, and adjustments for specific circumstances.

R307-130-2. Categories.

Violations are grouped in four general categories based on the potential for harm and the nature and extent of the violations. Penalty ranges for each category are listed.

(1) Category A. $7,000-10,000 per day:

Violations with high potential for impact on public health and the environment including:

(a) Violation of emission standards and limitations of NESHAP.

(b) Emissions contributing to nonattainment area or PSD increment exceedences.

(c) Emissions resulting in documented public health effects and/or environmental damage.

(2) Category B. $2,000-7,000 per day.

Violations of the Utah Air Conservation Act, applicable State and Federal regulations, and orders to include:

(a) Significant levels of emissions resulting from violations of emission limitations or other regulations which are not within Category A.

(b) Substantial non-compliance with monitoring requirements.

(c) Significant violations of approval orders, compliance orders, and consent agreements not within Category A.

(d) Significant and/or knowing violations of "notice of intent" and other notification requirements, including those of NESHAP.

(e) Violations of reporting requirements of NESHAP.

(3) Category C. Up to $2,000 per day.

Minor violations of the Utah Air Conservation Act, applicable State and Federal Regulations and orders having no significant public health or environmental impact to include:

(a) Reporting violations

(b) Minor violations of monitoring requirements, orders and agreements

(c) Minor violations of emission limitations or other regulatory requirements.

(4) Category D. Up to $299.00.

Violations of specific provisions of R307 which are considered minor to include:

(a) Violation of automobile emission standards and requirements

(b) Violation of wood-burning regulations by private individuals

(c) Open burning violations by private individuals.

R307-130-3. Adjustments.

The amount of the penalty within each category may be adjusted and/or suspended in part based upon the following factors:

(1) Good faith efforts to comply or lack of good faith. 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 to include accessibility to information and the amount of State effort necessary to bring the source into compliance.

(2) Degree of wilfulness and/or negligence. In assessing wilfulness 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, and whether the violator knew of the legal requirements which were violated.

(3) History of compliance or non-compliance. History of non-compliance includes consideration of previous violations and the resource costs to the State of past and current enforcement actions.

(4) Economic benefit of non-compliance. The amount of economic benefit to the source of non-compliance would be added to any penalty amount determined under this policy.

(5) Inability to pay. An adjustment downward may be made or a delayed payment schedule may be used based on a documented inability of the source to pay.

R307-130-4. Options.

Consideration may be given to suspension of monetary penalties in trade-off for expenditures resulting in additional controls and/or emissions reductions beyond those required to meet existing requirements. Consideration may be given to an increased amount of suspended penalty as a deterrent to future violations where appropriate.

KEY: air pollution, penalty
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R307. Environmental Quality, Air Quality.
R307-401. Permit: New and Modified Sources.
R307-401-1. Purpose.

This rule establishes the application and permitting requirements for new installations and modifications to existing installations throughout the State of Utah. Additional permitting requirements apply to larger installations or installations located in nonattainment or maintenance areas. These additional requirements can be found in R307-403, R307-405, R307-406, R307-420, and R307-421. Modeling requirements in R307-410 may also apply. Each of the permitting rules establishes independent requirements, and the owner or operator must comply with all of the requirements that apply to the installation. Exemptions under R307-401 do not affect applicability of the other permitting rules.

R307-401-2. Definitions.

(1) The following additional definitions apply to R307-401.

"Actual emissions" (a) means the actual rate of emissions of an air contaminant from an emissions unit, as determined in accordance with paragraphs (b) through (d) below.

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the air contaminant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The executive secretary shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The executive secretary may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each air contaminant which would be emitted from any proposed stationary source or modification which the executive secretary, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60 and 61. If the executive secretary determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any air contaminant.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Indirect source" means a building, structure, facility or installation which attracts or may attract mobile source activity that results in emission of a pollutant for which there is a national standard.

"Potential to emit" means the maximum capacity of a stationary source to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Stationary source" means any building, structure, facility, or installation which emits or may emit an air contaminant.

R307-401-3. Applicability.

(1) R307-401 applies to any person intending to:

(a) construct a new installation which will or might reasonably be expected to become a source or an indirect source of air pollution, or

(b) make modifications or relocate an existing installation which will or might reasonably be expected to increase the amount or change the effect of, or the character of, air contaminants discharged, so that such installation may be expected to become a source or indirect source of air pollution, or

(c) install a control apparatus or other equipment intended to control emissions of air contaminants.

(2) R307-403, R307-405 and R307-406 may establish additional permitting requirements for new or modified sources.

(a) Exemptions contained in R307-401 do not affect applicability or other requirements under R307-403, R307-405 or R307-406.

(b) Exemptions contained in R307-403, R307-405 or R307-406 do not affect applicability or other requirements under R307-401, unless specifically authorized in this rule.

R307-401-4. General Requirements.

The general requirements in (1) through (3) below apply to all new and modified installations, including installations that

are exempt from the requirement to obtain an approval order.

(1) Any control apparatus installed on an installation shall be adequately and properly maintained.

(2) If the executive secretary determines that an exempted installation is not meeting an approval order or State Implementation Plan limitation, is creating an adverse impact to the environment, or would be injurious to human health or welfare, then the executive secretary may require the owner or operator to submit a notice of intent and obtain an approval order in accordance with R307-401-5 through R307-401-8. The executive secretary will complete an appropriate analysis and evaluation in consultation with the owner or operator before determining that an approval order is required.

(3) Low Oxides of Nitrogen Burner Technology.

(a) Except as provided in (b) below, whenever existing fuel combustion burners are replaced, the owner or operator shall install low oxides of nitrogen burners or equivalent oxides of nitrogen controls, as determined by the executive secretary, unless such equipment is not physically practical or cost effective. The owner or operator shall submit a demonstration that the equipment is not physically practical or cost effective to the executive secretary for review and approval prior to beginning construction.

(b) The provisions of (a) above do not apply to non-commercial, residential buildings.

R307-401-5. Notice of Intent.

(1) Except as provided in R307-401-9 through R307-401-17, any person subject to R307-401 shall submit a notice of intent to the executive secretary and receive an approval order prior to initiation of construction, modification or relocation. The notice of intent shall be in a format specified by the executive secretary.

(2) The notice of intent shall include the following information:

(a) A description of the nature of the processes involved; the nature, procedures for handling and quantities of raw materials; the type and quantity of fuels employed; and the nature and quantity of finished product.

(b) Expected composition and physical characteristics of effluent stream both before and after treatment by any control apparatus, including emission rates, volume, temperature, air contaminant types, and concentration of air contaminants.

(c) Size, type and performance characteristics of any control apparatus.

(d) An analysis of best available control technology for the proposed source or modification. When determining best available control technology for a new or modified source in an ozone nonattainment or maintenance area that will emit volatile organic compounds or nitrogen oxides, the owner or operator of the source shall consider EPA Control Technique Guidance (CTG) documents and Alternative Control Technique documents that are applicable to the source. Best available control technology shall be at least as stringent as any published CTG that is applicable to the source.

(e) Location and elevation of the emission point and other factors relating to dispersion and diffusion of the air contaminant in relation to nearby structures and window openings, and other information necessary to appraise the possible effects of the effluent.

(f) The location of planned sampling points and the tests of the completed installation to be made by the owner or operator when necessary to ascertain compliance.

(g) The typical operating schedule.

(h) A schedule for construction.

(i) Any plans, specifications and related information that are in final form at the time of submission of notice of intent.

(j) Any additional information required by:

(i) R307-403, Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas;

(ii) R307-405, Permits: Major Sources in Attainment or Unclassified Areas (PSD);

(iii) R307-406, Visibility;

(iv) R307-410, Emissions Impact Analysis;

(v) R307-420, Permits: Ozone Offset Requirements in Davis and Salt Lake Counties; or

(vi) R307-421, Permits: PM10 Offset Requirements in Salt Lake County and Utah County.

(k) Any other information necessary to determine if the proposed source or modification will be in compliance with Title R307.

(3) Notwithstanding the exemption in R307-401-9 through 16, any person that is subject to R307-403, R307-405, or R307-406 shall submit a notice of intent to the executive secretary and receive an approval order prior to intiation of construction, modification, or relocation.

R307-401-6. Review Period.

(1) Completeness Determination. Within 30 days after receipt of a notice of intent, or any additional information necessary to the review, the executive secretary will advise the applicant of any deficiency in the notice of intent or the information submitted.

(2) Within 90 days of receipt of a complete application including all the information described in R307- 401-5, the executive secretary will

(a) issue an approval order for the proposed construction, installation, modification, relocation, or establishment pursuant to the requirements of R307-401-8, or

(b) issue an order prohibiting the proposed construction, installation, modification, relocation or establishment if it is deemed that any part of the proposal is inadequate to meet the applicable requirements of R307.

(3) The review period under (2) above may be extended by up to three 30-day extensions if more time is needed to review the proposal.

R307-401-7. Public Notice.

(1) Issuing the Notice. Prior to issuing an approval or disapproval order, the executive secretary will advertise intent to approve or disapprove in a newspaper of general circulation in the locality of the proposed construction, installation, modification, relocation or establishment.

(2) Opportunity for Review and Comment.

(a) At least one location will be provided where the information submitted by the owner or operator, the executive secretary's analysis of the notice of intent proposal, and the proposed approval order conditions will be available for public inspection.

(b) Public Comment.

(i) A ten-day public comment period will be established.

(ii) The public comment period in (i) above will be increased to 30 days for any source that is:

(A) subject to the requirements of R307-405, Permits: Major Sources in Attainment or Unclassified Areas,

(B) subject to the requirements of R307-406, Visibility,

(C) subject to the requirements of R307-415, Operating Permit Requirements;

(D) a synthetic minor source in accordance with R307-415-4(6);

(E) located in a nonattainment area or a maintenance area for any pollutant; or

(F) subject to any standard or requirement of 42 U.S.C. 7411 or 7412.

(iii) A request to extend the length of the comment period, up to 30 days, may be submitted to the executive secretary:

(A) within 10 days of the date the notice in (1) above is published for comment periods established under (i), or

(B) within 15 days of the date the notice in (1) above is published for comment periods established under (ii).

(iv) Public Hearing. A request for a hearing on the proposed approval or disapproval order may be submitted to the executive secretary:

(A) within 10 days of the date the notice in (1) above is published for comment periods established under (i) above, or

(B) within 15 days of the date the notice in (1above is published for comment periods established under (ii) above.

(v) The hearing will be held in the area of the proposed construction, installation, modification, relocation or establishment.

(vi) The public comment and hearing procedure shall not be required when an order is issued for the purpose of extending the time required by the executive secretary to review plans and specifications.

(3) The executive secretary will consider all comments received during the public comment period and at the public hearing and, if appropriate, will make changes to the proposal in response to comments before issuing an approval order or disapproval order.

R307-401-8. Approval Order.

(1) The executive secretary will issue an approval order if the following conditions have been met:

(a) The degree of pollution control for emissions, to include fugitive emissions and fugitive dust, is at least best available control technology. When determining best available control technology for a new or modified source in an ozone nonattainment or maintenance area that will emit volatile organic compounds or nitrogen oxides, best available control technology shall be at least as stringent as any Control Technique Guidance document that has been published by EPA that is applicable to the source.

(b) The proposed installation will meet the applicable requirements of:

(i) R307-403, Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas;

(ii) R307-405, Permits: Major Sources in Attainment or Unclassified Areas (PSD);

(iii) R307-406, Visibility;

(iv) R307-410, Emissions Impact Analysis;

(v) R307-420, Permits: Ozone Offset Requirements in Davis and Salt Lake Counties;

(vi) R307-210, National Standards of Performance for New Stationary Sources;

(vii) National Primary and Secondary Ambient Air Quality Standards;

(viii) R307-214, National Emission Standards for Hazardous Air Pollutants;

(ix) R307-110, Utah State Implementation Plan; and

(x) all other provisions of R307.

(2) The approval order will require that all pollution control equipment be adequately and properly maintained.

(3) Receipt of an approval order does not relieve any owner or operator of the responsibility to comply with the provisions of R307 or the State Implementation Plan.

(4) To accommodate staged construction of a large source, the executive secretary may issue an order authorizing construction of an initial stage prior to receipt of detailed plans for the entire proposal provided that, through a review of general plans, engineering reports and other information the proposal is determined feasible by the executive secretary under the intent of R307. Subsequent detailed plans will then be processed as prescribed in this paragraph. For staged construction projects the previous determination under R307-401-8(1) and (2) will be reviewed and modified as appropriate at the earliest reasonable time prior to commencement of construction of each independent phase of the proposed source or modification.

(5) If the executive secretary determines that a proposed stationary source, modification or relocation does not meet the conditions established in (1) above, the executive secretary will not issue an approval order.

R307-401-9. Small Source Exemption.

(1) A small stationary source is exempted from the requirement to obtain an approval order in R307-401-5 through 8 if the following conditions are met.

(a) its actual emissions are less than 5 tons per year per air contaminant of any of the following air contaminants: sulfur dioxide, carbon monoxide, nitrogen oxides, PM_{10}, ozone, or volatile organic compounds;

(b) its actual emissions are less than 500 pounds per year of any hazardous air pollutant and less than 2000 pounds per year of any combination of hazardous air pollutants;

(c) its actual emissions are less than 500 pounds per year of any air contaminant not listed in (a)(or (b) above and less than 2000 pounds per year of any combination of air contaminants not listed in (a) or (b) above.

(d) Air contaminants that are drawn from the environment through equipment in intake air and then are released back to the environment without chemical change, as well as carbon dioxide, nitrogen, oxygen, argon, neon, helium, krypton, xenon should not be included in emission calculations when determining applicability under (a) through (c) above.

(2) The owner or operator of a source that is exempted from the requirement to obtain an approval order under (1) above shall no longer be exempt if actual emissions in any subsequent year exceed the emission thresholds in (1) above. The owner or operator shall submit a notice of intent under R307-401-5 no later than 180 days after the end of the calendar year in which the source exceeded the emission threshold.

(3) Small Source Exemption - Registration. The executive secretary will maintain a registry of sources that are claiming an exemption under R307-401-9. The owner or operator of a stationary source that is claiming an exemption under R307-401-9 may submit a written registration notice to the executive secretary. The notice shall include the following minimum information:

(a) identifying information, including company name and address, location of source, telephone number, and name of plant site manager or point of contact;

(b) a description of the nature of the processes involved, equipment, anticipated quantities of materials used, the type and quantity of fuel employed and nature and quantity of the finished product;

(c) identification of expected emissions;

(d) estimated annual emission rates;

(e) any control apparatus used; and

(f) typical operating schedule.

(4) An exemption under R307-401-9 does not affect the requirements of R307-401-17, Temporary Relocation.

R307-401-10. Source Category Exemptions.

The following source categories described in (1) through (5) below are exempted from the requirement to obtain an approval order. The general provisions in R307-401-4 shall apply to these sources.

(1) Fuel-burning equipment in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure with a rated capacity of less than five million BTU per hour using no other fuel than natural gas or LPG or other mixed gas that meets the standards of gas distributed by a utility in accordance with the rules of the Public Service Commission of the State of Utah, unless there are emissions other than combustion products.

(2) Comfort heating equipment such as boilers, water

heaters, air heaters and steam generators with a rated capacity of less than one million BTU per hour if fueled only by fuel oil numbers 1 - 6,

(3) Emergency heating equipment, using coal or wood for fuel, with a rated capacity less than 50,000 BTU per hour.

(4) Exhaust systems for controlling steam and heat that do not contain combustion products.

R307-401-11. Replacement-in-Kind Equipment.

(1) Applicability. Existing process equipment or pollution control equipment that is covered by an existing approval order or State Implementation Plan requirement may be replaced using the procedures in (2) below if:

(a) the potential to emit of the process equipment is the same or lower;

(b) the number of emission points or emitting units is the same or lower;

(c) no additional types of air contaminants are emitted as a result of the replacement;

(d) the process equipment or pollution control equipment is identical to or functionally equivalent to the replaced equipment;

(e) the replacement does not change the basic design parameters of the process unit or pollution control equipment;

(f) the replaced process equipment or pollution control equipment is permanently removed from the stationary source, otherwise permanently disabled, or permanently barred from operation;

(g) the replaced process equipment or pollution control equipment does not trigger New Source Performance Standards or National Emissions Standards for Hazardous Air Pollutants under 42 U.S.C. 7411 or 7412; and

(h) the replacement of the control apparatus or process equipment does not violate any other provision of Title R307.

(2) Replacement-in-Kind Procedures.

(a) In lieu of filing a notice of intent under R307-401-5, the owner or operator of a stationary source shall submit a written notification to the executive secretary before replacing the equipment. The notification shall contain a description of the replacement-in-kind equipment, including the control capability of any control apparatus and a demonstration that the conditions of (1) above are met.

(b) If the replacement-in-kind meets the conditions of (1) above, the executive secretary will update the source's approval order and notify the owner or operator. Public review under R307-401-7 is not required for the update to the approval order.

(3) If the replaced process equipment or pollution control equipment is brought back into operation, it shall constitute a new emissions unit.

R307-401-12. Reduction in Air Contaminants.

(1) Applicability. The owner or operator of a stationary source of air contaminants that reduces or eliminates air contaminants is exempt from the approval order requirements of R307-401-5 through 8 if:

(a) the project does not increase the potential to emit of any air contaminant or cause emissions of any new air contaminant, and

(b) the executive secretary is notified of the change and the reduction of air contaminants is made enforceable through an approval order in accordance with (2) below.

(2) Notification. The owner or operator shall submit a written description of the project to the executive secretary no later than 60 days after the changes are made. The executive secretary will update the source's approval order or issue a new approval order to include the project and to make the emission reductions enforceable. Public review under R307-401-7 is not required for the update to the approval order.

R307-401-13. Plantwide Applicability Limits.

A plantwide applicability limit under R307-405-21 does not exempt a stationary source from the requirements of R307-401.

R307-401-14. Used Oil Fuel Burned for Energy Recovery.

(1) Definitions.

"Boiler" means boiler as defined in R315-1-1 that incorporates by reference the term "boiler" in 40 CFR 260.10, 2000 ed., as amended by 67 FR 2962, January 22, 2002.

"Used Oil" is defined as any oil that has been refined from crude oil, used, and, as a result of such use contaminated by physical or chemical impurities.

(2) Boilers burning used oil for energy recovery are exempted from the requirement to obtain an approval order in R307-401-5 through 8 if the following requirements are met:

(a) the heat input design is less than one million BTU/hr;

(b) contamination levels of all used oil to be burned do not exceed any of the following values:

(i) arsenic - 5 ppm by weight,

(ii) cadmium - 2 ppm by weight,

(iii) chromium - 10 ppm by weight,

(iv) lead - 100 ppm by weight,

(v) total halogens - 1,000 ppm by weight,

(vi) Sulfur - 0.50% by weight; and

(c) the flash point of all used oil to be burned is at least 100 degrees Fahrenheit.

(3) Testing. The owner or operator shall test each load of used oil received or generated as directed by the executive secretary to ensure it meets these requirements. Testing may be performed by the owner/operator or documented by test reports from the used fuel oil vendor. The flash point shall be measured using the appropriate ASTM method as required by the executive secretary. Records for used oil consumption and test reports are to be kept for all periods when fuel-burning equipment is in operation. The records shall be kept on site and made available to the executive secretary or the executive secretary's representative upon request. Records must be kept for a three-year period.

R307-401-15. Air Strippers and Soil Venting Projects.

(1) The owner or operator of an air stripper or soil venting system that is used to remediate contaminated groundwater or soil is exempt from the notice of intent and approval order requirements of R307-401-5 through 8 if the following conditions are met:

(a) the estimated total air emissions of volatile organic compounds from a given project are less than the de minimis emissions listed in R307-401-9(1)(a), and

(b) the level of any one hazardous air pollutant or any combination of hazardous air pollutants is below the levels listed in R307-410-5(1)(d).

(2) The owner or operator shall submit documentation that the project meets the exemption requirements in (1) above to the executive secretary prior to beginning the remediation project.

(3) After beginning the soil remediation project, the owner or operator shall submit emissions information to the executive secretary to verify that the emission rates of the volatile organic compounds and hazardous air pollutants in (1) above are not exceeded. Emissions estimates of volatile organic compounds and hazardous air pollutants shall be based on test data obtained in accordance with the test method in the EPA document SW-846, Test #8020 or #8021 or other test or monitoring method approved by the executive secretary. Results of the test and calculated annual quantity of emissions of volatile organic compounds and hazardous air pollutants shall be submitted to the executive secretary within one month of sampling. The test samples shall be drawn on intervals of no less than twenty-eight days and no more than thirty-one days (i.e., monthly) for the

first quarter, quarterly for the first year, and semi-annually thereafter or as determined necessary by the executive secretary.

(4) The following control devices do not require a notice of intent or approval order when used in relation to an air stripper or soil venting project exempted under R307-401-15:

(a) thermodestruction unit with a rated input capacity of less than five million BTU per hour using no other auxiliary fuel than natural gas or LPG, or

(b) carbon adsorption unit.

R307-401-16. De minimis Emissions From Soil Aeration Projects.

An owner or operator of a soil remediation project is not subject to the notice of intent and approval order requirements of R307-401-5 through 8 when soil aeration or land farming is used to conduct a soil remediation, if the owner or operator submits the following information to the executive secretary prior to beginning the remediation project:

(1) documentation that the estimated total air emissions of volatile organic compounds, using an appropriate sampling method, from the project are less than the de minimis emissions listed in R307-401-9(1)(a);

(2) documentation that the levels of any one hazardous air pollutant or any combination of hazardous air pollutants are less than the levels in R307-410-5(1)(d); and

(3) the location of the remediation and where the remediated material originated.

R307-401-17. Temporary Relocation.

The owner or operator of a stationary source previously approved under R307-401 may temporarily relocate and operate the stationary source at any site for up to 180 working days in any calendar year not to exceed 365 consecutive days, starting from the initial relocation date. The executive secretary will evaluate the expected emissions impact at the site and compliance with applicable Title R307 rules as the bases for determining if approval for temporary relocation may be granted. Records of the working days at each site, consecutive days at each site, and actual production rate shall be submitted to the executive secretary at the end of each 180 calendar days. These records shall also be kept on site by the owner or operator for the entire project, and be made available for review to the executive secretary as requested. R307-401-7, Public Notice, does not apply to temporary relocations under R307-401-17.

R307-401-18. Eighteen Month Review.

Approval orders issued by the executive secretary in accordance with the provisions of R307-401 will be reviewed eighteen months after the date of issuance to determine the status of construction, installation, modification, relocation or establishment. If a continuous program of construction, installation, modification, relocation or establishment is not proceeding, the executive secretary may revoke the approval order.

R307-401-19. Analysis of Alternatives.

The owner or operator of a major new source or major modification to be located in a nonattainment or maintenance area or which would impact a nonattainment or maintenance area must, in addition to the requirements in R307-401, submit with the notice of intent an adequate analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. The executive secretary shall review the analysis. The analysis and the executive secretary's comments shall be subject to public comment as required by R307-401-7. The preceding shall also apply in Salt Lake and Davis Counties for new major sources or modifications which are considered major for precursors of ozone, including volatile organic compounds and nitrogen oxides.

R307-401-20. Relaxation of Limitations.

At a time that a source or modification to be located in a nonattainment or maintenance area or which would impact a nonattainment or maintenance area becomes a major source or major modification because of a relaxation of any enforceable limitation which was established after August 7, 1980, on the capacity of a source or modification otherwise to emit a pollutant, such as a restriction on the hours of operation, then the preconstruction requirements shall apply to the source as though construction had not yet commenced on the source or modification.

KEY: air pollution, permits, approval orders
June 16, 2006 19-2-104(3)(q)
Notice of Continuation July 13, 2007 19-2-108

R307. Environmental Quality, Air Quality.
R307-403. Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas.
R307-403-1. Definitions.

The following additional definition applies to R307-403:

"Lowest Achievable Emission Rate (LAER)" means for any source, that rate of emissions which reflects:

(a) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

(b) The most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent.

In no event shall the application of this term permit a proposed new source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

R307-403-2. Emission Limitations.

Any source constructed in an actual area of nonattainment, or in the Salt Lake City and Ogden maintenance areas for carbon monoxide, or in an area which will impact on an actual area of nonattainment or on the Salt Lake City and Ogden maintenance areas for carbon monoxide must meet all applicable emission requirements of R307 and the State Implementation Plan incorporated by reference under R307-110. A proposed source which is not a major source may be approved without further analysis provided such source meets all such applicable emission limitations and offset requirements in R307-403-4, 5, and 6. The emission limitations shall be stated as a condition of the approval order.

R307-403-3. Review of Major Sources of Air Quality Impact.

Every major new source or major modification must be reviewed by the Executive Secretary to determine if a source will cause or contribute to a violation of the NAAQS. The determination of whether a source will cause or contribute to a violation of the NAAQS will be made by the Executive Secretary as of the new source's projected start-up date. He will make an analysis of the proposed new source's operation data using the best information and analytical techniques available.

(1) If the owner or operator of a source proposes to locate the source outside an area of nonattainment where the source will not cause an increase greater than the following increments in actual areas of nonattainment or in the Salt Lake City and Ogden maintenance areas for carbon monoxide and the source otherwise meets the requirements of these regulations, such source shall be approved.

TABLE

MAXIMUM ALLOWABLE MICROGRAM/CUBIC METER IMPACT
BY AVERAGING TIME

Pollutant	Annual	24-Hr	8-Hr	3-Hr	1-Hr
SULFUR DIOXIDE	1.0	5		25	
PM10	1.0	3			
CO			500		2000

(2) If the Executive Secretary finds that the emissions from a proposed source would cause a new violation of the NAAQS but would not contribute to an existing violation, the Executive Secretary shall approve the proposed source if and only if:

(a) the new source is required to meet a more stringent emission limitation, sufficient to avoid a new violation of the NAAQS and

(b) the new source has acquired sufficient offset to avoid a new violation of the NAAQS and

(c) the new emission limitations for the proposed source and for any affected existing sources are enforceable.

(3) If the Executive Secretary finds that the emissions from a proposed source in a nonattainment area would contribute to an existing violation of a national ambient air quality standard at the time of the source's proposed start-up date, approval shall be granted if and only if:

(a) the new source meets an emission limitation which is the Lowest Achievable Emission Rate (LAER) for such source and

(b) the applicant has certified that all existing major sources in the State, owned or controlled by the owner or operator (or by any entity controlling, controlled by or under common control with such owner or operator) of the proposed source, are in compliance with all applicable rules in R307, including the Utah Implementation Plan requirements or are in compliance with an approved schedule and timetable for compliance under the Utah Implementation Plan, R307, or an enforcement order, and that the source is complying with all requirements and limitations as expeditiously as practicable.

(c) emission offsets to the extent provided in R307-403-4, 5 and 6 are sufficient such that there will be reasonable further progress toward attainment of the applicable NAAQS.

(d) the emission offsets provide a positive net air quality benefit in the affected area of nonattainment.

(e) there is an approved implementation plan in effect for the pollutant to be emitted by the proposed source.

(4) A source which is locating outside a nonattainment area or the Salt Lake City and Ogden maintenance areas for carbon monoxide and which causes the significant increments in (1) above to be exceeded in the nonattainment or maintenance area is subject to the requirements of (3) above.

R307-403-4. Offsets: General Requirements.

(1) Emission offsets must be obtained from the same source or other sources in the same nonattainment area except that the owner or operator of a source may obtain emission offsets in another nonattainment area if:

(a) the other area has an equal or higher nonattainment classification than the area in which the source is located; and

(b) emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located or which is impacted by the source.

(2) Any emission offsets shall be enforceable by the time a new or modified source commences construction, and, by the time a new or modified source commences operation, any emission offsets shall be in effect and enforceable and shall assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area.

(3) Emission reductions otherwise required by the federal Clean Air Act or R307, including the State Implementation Plan shall not be creditable as emission reductions for purposes of any offset requirement. Incidental emission reductions which are not otherwise required by federal or state law shall be creditable as emission reductions if such emission reductions meet the requirements of (1) and (2) above.

(4) Sources shall be allowed to offset, by alternative or innovative means, emission increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source that tests rocket engines or motors under the conditions outlined in 42 U.S.C. 7503(e) (Section 173(e)(1) through Section 173(e)(4) of the federal Clean Air Act as amended in 1990).

R307-403-5. Offsets: PM10 Nonattainment Areas.

(1) New sources which have a potential to emit, or

modified sources which would produce an emission increase equal to or exceeding the tonnage total of combined PM10, sulfur dioxide, and oxides of nitrogen listed below which are located in or impact a PM10 Nonattainment Area as defined in (a) below, shall obtain an enforceable offset as defined in (b) and (c) below.

(a) For the purpose of determining whether the owner or operator which proposes to locate a source outside a nonattainment area is required to obtain offsets, the maximum allowable impact on any nonattainment area is 1.0 microgram/cubic meter for a one-year averaging period and 3.0 micrograms/cubic meter for a 24-hour averaging period for any combination of PM10, sulfur dioxide and nitrogen dioxide.

(b) For a total of 50 tons/year or greater, an offset of 1.2:1 of the emission increase is required.

(c) For a total of 25 tons/year but less than 50 tons/year, an offset of 1:1 of the emission increase is required.

(2) For the offset determinations, PM10, sulfur dioxide, and oxides of nitrogen shall be considered on an equal basis. In areas where offsets are required for both PM10 and ozone, the most stringent emission offset ratio for oxides of nitrogen required by R307-403 or R307-420 shall apply.

R307-403-6. Offsets: Ozone Nonattainment Areas.

In any ozone nonattainment area, new sources and modifications to existing sources as defined and outlined in 42 U.S.C. 7511a (Section 182 of the Clean Air Act) shall meet the offset requirements and conditions listed in that section for the applicable classified area and for the identified pollutants.

R307-403-7. Offsets: Baseline.

The baseline to be used for determination of credit for emission and air quality offsets will be the emission limitations and/or other requirements in the State Implementation Plan (SIP), revised in accordance with the Clean Air Act or subsequent revisions thereto in effect at the time the application to construct or modify a source is filed.

R307-403-8. Offsets: Banking of Emission Offset Credit.

Banking of emission offset credit will be permitted to the fullest extent allowed by applicable Federal Law as identified in EPA's document "Emissions Trading Policy Statement" published in the Federal Register on December 4, 1986, and 40 CFR 51.165(a)(3)(ii)(c) as amended on June 28, 1989, and 40 CFR 51, Appendix S. To preserve banked emission reductions, the Executive Secretary must identify them in either the Utah SIP or an order issued pursuant to R307-401 and shall provide a registry to identify the person, private entity or governmental authority that has the right to use or allocate the banked emission reductions, and to record any transfers of, or liens on these rights.

R307-403-9. Construction in Stages.

When a source is constructed or modified in stages which individually do not have the potential to emit more than 100 tons per year, the allowable emission from all such stages shall be added together in determining the applicability of R307-403.

KEY: air quality, nonattainment*, offset*
May 6, 1999 19-2-104
Notice of Continuation July 13, 2007 19-2-108

R307. Environmental Quality, Air Quality.
R307-405. Permits: Major Sources in Attainment or Unclassified Areas (PSD).
R307-405-1. Purpose.

This rule implements the federal Prevention of Significant Deterioration (PSD) permitting program for major sources and major modifications in attainment areas and maintenance areas as required by 40 CFR 51.166. This rule does not include the routine maintenance, repair and replacement provisions that were stayed by the DC Circuit Court of Appeals on December 23, 2003, pending appeal. This rule does not include the clean unit and pollution control project provisions that were vacated by the DC Circuit Court of Appeals on June 24, 2005. This rule supplements, but does not replace, the permitting requirements of R307-401.

R307-405-2. Applicability.

(1) Except as provided in (2), the provisions of 40 CFR 52.21(a)(2), effective March 3, 2003, are hereby incorporated by reference.

(2)(a) The provisions in 40 CFR 52.21(a)(2)(iv)(e) are not incorporated by reference.

(b) The last sentence in 40 CFR 52.21(a)(2)(iv)(f) is not incorporated by reference.

(c) The provisions in 40 CFR 52.21(a)(2)(vi) are not incorporated by reference.

(3) Notwithstanding the exemptions in R307-401, any source that is subject to R307-405 is subject to the requirement to obtain an approval order in R307-401-5 through 8.

R307-405-3. Definitions.

(1) Except as provided in (2)below, the definitions contained in 40 CFR 52.21(b), effective March 3, 2003, are hereby incorporated by reference.

(2) "Air Quality Related Values," as used in analyses under 40 CFR 52.21(p) that is incorporated by reference in R307-405-17, means those special attributes of a Class I area, assigned by a federal land manager, that are adversely affected by air quality.

(3)(a)(i) "Major Source Baseline Date" means:

(A) in the case of particulate matter:

(I) for Davis, Salt Lake, Utah and Weber Counties, the date that EPA approves the PM10 maintenance plan that was adopted by the Board on July 6, 2005;

(II) for all other areas of the State, January 6, 1975;

(B) in the case of sulfur dioxide:

(I) for Salt Lake County, the date that EPA approves the sulfur dioxide maintenance plan that was adopted by the Board on January 5, 2005;

(II) for all other areas of the State, January 6, 1975; and

(C) in the case of nitrogen dioxide, February 8, 1988.

(ii) "Minor Source Baseline Date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 or R307-405 submits a complete application under the relevant regulations. The trigger date is:

(A) In the case of particulate matter and sulfur dioxide, August 7, 1977, and

(B) in the case of nitrogen dioxide, February 8, 1988.

(iii) The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(A) the area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(i)(D) or (E) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 or R307-405; and

(B) in the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

(iv) Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM10 increments, except that the executive secretary shall rescind a minor source baseline date where it can be shown, to the satisfaction of the executive secretary, that the emissions increase from the major stationary source, or net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM10 emissions.

(b) In the definition of "baseline area" in 40 CFR 52.21(b)(15)(ii)(b) insert the words "or R307-405" after "Is subject to 40 CFR 52.21".

(c) "Reviewing Authority" means the executive secretary.

(d)(i) The term "Administrator" shall be changed to "executive secretary" throughout R307-405, except as provided in (ii).

(ii) The term "Administrator" shall be changed to "EPA Administrator" in the following incorporated sections:

(A) 40 CFR 52.21(b)(17),
(B) 40 CFR 52.21(b)(37)(i),
(C) 40 CFR 52.21(b)(43),
(D) 40 CFR 52.21(b)(48)(ii)(c),
(E) 40 CFR 52.21(b)(50)(i),
(F) 40 CFR 52.21(l)(2),
(G) 40 CFR 52.21(p)(2), and
(H) 40 CFR 51.166(q)(2)(iv).

(e) The definition of "emissions unit" in 40 CFR 52.21(b)(7), effective January 6, 2004, is hereby incorporated by reference.

(f) The definition of "replacement unit" in 40 CFR 52.21(b)(33), effective January 6, 2004, is hereby incorporated by reference.

(g) The following paragraphs that refer to clean units and pollution control projects are not incorporated by reference:

(i) 40 CFR 52.21(b)(2)(iii)(h),
(ii) 40 CFR 52.21(b)(3)(iii)(b),
(iii) 40 CFR 52.21(b)(3)(vi)(d),
(iv) 40 CFR 52.21(b)(32), and
(v) 40 CFR 52.21(b)(42).

(4) "Heat input" means heat input as defined in 40 CFR 52.01(g).

(5) "Title V permit" means any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to R307-415.

(6) "Title V Operating Permit Program" means R307-415.

(7) The definition of "Good Engineering Practice (GEP) Stack Height" as defined in R307-410 shall apply in this rule.

(8) The definition of "Dispersion Technique" as defined in R307-410 shall apply in this rule.

R307-405-4. Area Designations.

(1) Pursuant to section 162(a) of the federal Clean Air Act, the following areas are designated as mandatory Class I areas:

(a) Arches National Park,
(b) Bryce Canyon National Park,
(c) Canyonlands National Park,
(d) Capitol Reef National Park, and
(e) Zion National Park.

(2) Pursuant to section 162(b) of the federal Clean Air Act, all other areas in Utah are designated as Class II unless designated as nonattainment areas.

(3) No areas in Utah are designated as Class III.

R307-405-5. Area Redesignation.

Any person may petition the Board to change the classification of an area designated under R307-405-4, except

for mandatory Class I areas designated under R307-405-4(1).

(1) The petition shall contain a discussion of the reasons for the proposed redesignation, including a satisfactory description and analysis of the health, environmental, economic and social and energy effects of the proposed redesignation.

(2) The petition shall contain a demonstration that the proposed redesignation meets the criteria outlined in Section VIII of the State Implementation Plan and 40 CFR 51.166(e) and (g).

R307-405-6. Ambient Air Increments.

The provisions of 40 CFR 52.21(c), effective March 3, 2003, are hereby incorporated by reference.

R307-405-7. Ambient Air Ceilings.

The provisions of 40 CFR 52.21(d), effective March 3, 2003, are hereby incorporated by reference.

R307-405-8. Exclusions from Increment Consumption.

(1) The following concentrations shall be excluded in determining compliance with a maximum allowable increase:

(a) concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) over the emissions from such sources before the effective date of such an order;

(b) concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan;

(c) concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

(d) the increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and

(e) concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen dioxides from stationary sources which are affected by plan revisions approved by the EPA Administrator as meeting the criteria specified in 40 CFR 51.166(f)(4). The temporary increase shall not exceed 2 years in duration unless a longer time is approved by the EPA Administrator. This exclusion is not renewable.

(2) No exclusion of concentration under (1)(a) or (b) above shall apply more than five years after the effective date of the order to which paragraph (1)(a) refers or the plan to which paragraph (1)(b) refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than five years after the later of such effective dates.

(3) No exclusion under (1)(e) shall apply to an emission increase from a stationary source which would:

(a) impact a Class I area or an area where an applicable increment is known to be violated; or

(b) cause or contribute to a violation of the national ambient air quality standards.

R307-405-9. Stack Heights.

The provisions of 40 CFR 52.21(h), effective March 3, 2003, are hereby incorporated by reference.

R307-405-10. Exemptions.

(1) The provisions of 40 CFR 52.21(i)(1)(vi) through (viii), effective March 3, 2003, are hereby incorporated by reference.

(2) The provisions of 40 CFR 52.21(i)(2) through (5), effective March 3, 2003, are hereby incorporated by reference.

R307-405-11 Control Technology Review.

The provisions of 40 CFR 52.21(j), effective March 3, 2003, are hereby incorporated by reference.

R307-405-12. Source Impact Analysis.

The provisions of 40 CFR 52.21(k), effective March 3, 2003, are hereby incorporated by reference.

R307-405-13. Air Quality Models.

The provisions of 40 CFR 52.21(l), effective March 3, 2003, are hereby incorporated by reference.

R307-405-14. Air Quality Analysis.

(1) The provisions of 40 CFR 52.21(m)(1)(i) through (iv), (vi), and (viii), effective March 3, 2003, are hereby incorporated by reference.

(2) The provisions of 40 CFR 52.21(m)(2) and (3), effective March 3, 2003, are hereby incorporated by reference.

R307-405-15. Source Information.

The provisions of 40 CFR 52.21(n), effective March 3, 2003, are hereby incorporated by reference.

R307-405-16. Additional Impact Analysis.

The provisions of 40 CFR 52.21(o), effective March 3, 2003, are hereby incorporated by reference.

R307-405-17. Sources Impacting Federal Class I Areas: Additional Requirements.

(1) The provisions of 40 CFR 52.21(p), effective March 3, 2003, are hereby incorporated by reference.

(2) The executive secretary will transmit to the EPA Administrator a copy of each permit application relating to a major stationary source or major modification and provide notice to the EPA Administrator of every action related to the consideration of such permit.

R307-405-18. Public Participation.

(1) Except as provided in (2), the provisions of 40 CFR 51.166(q)(1) and (2), effective March 3, 2003, are hereby incorporated by reference.

(2) The phrase "within a specified time period" in 40 CFR 51.166(q)(1) shall be replaced with the phrase "within 30 days of receipt of the PSD permit application".

R307-405-19. Source Obligation.

(1) Except as provided in (2) below, the provisions of 40 CFR 52.21(r), effective March 3, 2003, are hereby incorporated by reference.

(2) The parenthetical phrase in the first sentence in 40 CFR 52.21(r)(6) shall be changed to read "(other than projects at a source with a PAL)."

R307-405-20. Innovative Control Technology.

(1) Except as provided in (2), the provisions of 40 CFR 52.21(v), effective March 3, 2003, are hereby incorporated by reference.

(2)(a) The reference to "40 CFR 124.10" in 40 CFR 52.21(v)(1) shall be changed to "R307-405-18".

(b) 40 CFR 52.21(v)(2) shall be changed to read "The executive secretary shall, with the consent of the governors of other affected states, determine that the source or modification may employ a system of innovative control technology, if:".

R307-405-21. Actuals PALs.

(1) Except as provided in (3), the provisions of 40 CFR

52.21(aa)(1) through (5) and (7) through (15), effective March 3, 2003, are hereby incorporated by reference.

(2) The provisions of 40 CFR 52.21(aa)(6), effective January 6, 2004, are hereby incorporated by reference.

(3)(a) The reference to "51.165(a)(3)(ii) of this chapter" in 40 CFR 52.21(aa)(4)(ii) shall be changed to "R307-403".

(b) The reference to "51.165(a)(3)(ii) of this chapter" in 40 CFR 52.21(aa)(8)(ii)(2) shall be changed to "R307-403".

(c) The references to "70.6(a)(3)(iii)(B) of this chapter" in 40 CFR 52.21(aa)(14)(ii) shall be changed to "R307-415-6a(3)(c)(ii)".

(d) The date of "March 3, 2003" in 40 CFR 52.21(aa)(15)(i) and (ii) shall be changed to "the effective date of this rule".

R307-405-22. Banking of Emission Offset Credit in PSD Areas.

Banking of emission offset credits in PSD areas will be permitted. To preserve banked emission reductions the executive secretary must identify them in either the Utah SIP or an order. The executive secretary will provide a registry to identify the person, private entity, or government authority that has the right to use or allocate the banked emission reduction and to record any transfer of or lien on these rights.

KEY: air pollution, PSD, Class I area
June 16, 2006 19-2-104
Notice of Continuation July 13, 2007

R307. Environmental Quality, Air Quality.
R307-406. Visibility.
R307-406-1. Definitions.

The following additional definition applies throughout R307-406:

"Adverse Impact on Visibility" means for purposes of R307-406, visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitors visual experience of a mandatory Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these factors correlate with times of visitor use of the mandatory Class I area, and the frequency and timing of natural conditions that reduce visibility.

R307-406-2. Source Review.

(1) The Executive Secretary shall review any new major source or major modification proposed in either an attainment area or area of nonattainment area for the impact of its emissions on visibility in any mandatory Class I area. As a condition of any approval order issued to a source under R307-401, the Executive Secretary shall require the use of air pollution control equipment, technologies, methods or work practices deemed necessary to mitigate visibility impacts in Class I areas that would occur as a result of emissions from such source. The Executive Secretary shall take into consideration as a part of the review and control requirements:

(a) the costs of compliance;

(b) the time necessary for compliance;

(c) the energy usage and conservation;

(d) the non air quality environmental impacts of compliance;

(e) the useful life of the source; and

(f) the degree of visibility improvement which will be provided as a result of control.

(2) In determining visibility impact by a major new source or major modification, the Executive Secretary shall use, the procedures identified in the EPA publication "Workbook For Estimating Visibility Impacts" (EPA 450-4-80-031) November 1980, or equivalent.

(3) The Executive Secretary shall insure that source emissions will be consistent with making reasonable progress toward the national visibility goal referred to in 40 CFR, 51.300(a).

R307-406-3. Notification of Federal Land Managers.

(1) The Executive Secretary shall notify the Federal Land Manager having jurisdiction over any mandatory Class I area of any proposed new major source or major modification that may reasonably be expected to affect visibility in that mandatory Class I area. Such notification shall be in writing and shall include a copy of all information relevant to the Notice of Intent and visibility impact analysis submitted by the source. The notification shall be made within thirty (30) days of receipt of the completed Notice of Intent and at least sixty (60) days prior to any public hearing or the commencement of any public comment period, held in accordance with R307-401-4 of these regulations, on the proposal. The Executive Secretary shall consider, as a part of the new or modified source review required by R307-406, any analysis performed by the Federal Land Manager that such proposed new major source or major modification may have an adverse impact on visibility in any mandatory Class I area, provided such analysis is submitted to the Executive Secretary within sixty (60) days of the notification to the Federal Land Manager as required by this paragraph. If the Executive Secretary determines that the major source or major modification will have an adverse impact on visibility in any mandatory Class I area, the Executive Secretary shall not issue the approval order. Where the Executive Secretary determines that such analysis does not demonstrate that adverse impact on visibility will result in a mandatory Class I area, the Executive Secretary will, in the notice of any public hearing held on the new major source or major modification proposal, explain the decision or give notice where the explanation can be obtained.

(2) Where the Executive Secretary receives advance notification or early consultation with a major new source or major modification which may affect visibility prior to the submission of a Notice of Intent to Construct for the major new source or major modification, the Executive Secretary will notify the affected Federal Land Manager within thirty (30) days of such advance notification.

R307-406-4. Adverse Impact.

If the analysis required by R307-406-2 predicts that an adverse impact on visibility may reasonably be expected to occur in a mandatory Class I area, the Executive Secretary may require a proposed new major source or major modification to perform pre-construction and/or post-construction visibility monitoring in any mandatory Class I area as deemed necessary and appropriate to assess the impact of the proposed source or modification on visibility. Such monitoring shall be conducted in accordance with a monitoring plan prepared by the owner or operator of the source or his representative and approved by the Executive Secretary.

R307-406-5. Consideration in Review.

The Executive Secretary will consider in review and permitting of a new major source or major modification to an existing source, any visibility monitoring data provided by the Federal Land Manager which may reasonably be expected to be impacted by the proposed new major source or major modification.

R307-406-6. Audits for Permitting.

The Executive Secretary may perform oversight audits of any network collecting visibility data which may be used as a part of the permitting process as determined necessary.

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September 15, 1998 19-2-104
Notice of Continuation July 13, 2007

R307. Environmental Quality, Air Quality.
R307-410. Permits: Emissions Impact Analysis.
R307-410-1. Purpose.

This rule establishes the procedures and requirements for evaluating the emissions impact of new or modified sources that require an approval order under R307-401 to ensure that the source will not interfere with the attainment or maintenance of any NAAQS. The rule also establishes the procedures and requirements for evaluating the emissions impact of hazardous air pollutants. The rule also establishes the procedures for establishing an emission rate based on the good engineering practice stack height as required by 40 CFR 51.118.

R307-410-2. Definitions.

(1) The following additional definitions apply to R307-410.

"Vertically Restricted Emissions Release" means the release of an air contaminant through a stack or opening whose flow is directed in a downward or horizontal direction due to the alignment of the opening or a physical obstruction placed beyond the opening, or at a height which is less than 1.3 times the height of an adjacent building or structure, as measured from ground level.

"Vertically Unrestricted Emissions Release" means the release of an air contaminant through a stack or opening whose flow is directed upward without any physical obstruction placed beyond the opening, and at a height which is at least 1.3 times the height of an adjacent building or structure, as measured from ground level.

(2) Except as provided in (3) below, the definitions of "stack", "stack in existence", "dispersion technique", "good engineering practice (GEP) stack height", "nearby", "excessive concentration", and "intermittent control system (ICS)" in 40 CFR 51.100(ff) through (kk) and (nn) effective July 1, 2005 are hereby incorporated by reference.

(3)(a) The terms "reviewing authority" and "authority administering the State implementation plan" shall mean the executive secretary.

(b) The reference to "40 CFR parts 51 and 52" in 40 CFR 51.100(ii)(2)(i) shall be changed to "R307-401, R307-403 and R307-405".

(c) The phrase "For sources subject to the prevention of significant deterioration program (40 CFR 51.166 and 52.21)" in 40 CFR 51.100(kk)(1) shall be replaced with the phrase "For sources subject to R307-401, R307-403, or R307-405".

R307-410-3. Use of Dispersion Models.

All estimates of ambient concentrations derived in meeting the requirements of R307 shall be based on appropriate air quality models, data bases, and other requirements specified in 40 CFR Part 51, Appendix W, (Guideline on Air Quality Models), effective July 1, 2005, which is hereby incorporated by reference. Where an air quality model specified in the Guideline on Air Quality Models or other EPA approved guidance documents is inappropriate, the executive secretary may authorize the modification of the model or substitution of another model. In meeting the requirements of federal law, any modification or substitution will be made only with the written approval of the Administrator, EPA.

R307-410-4. Modeling of Criteria Pollutant Impacts in Attainment Areas.

Prior to receiving an approval order under R307-401, a new source in an attainment area with a total controlled emission rate per pollutant greater than or equal to amounts specified in Table 1, or a modification to an existing source located in an attainment area which increases the total controlled emission rate per pollutant of the source in an amount greater than or equal to those specified in Table 1, shall conduct air quality modeling, as identified in R307-410-3, to estimate the impact of the new or modified source on air quality unless previously performed air quality modeling for the source indicates that the addition of the proposed emissions increase would not violate a National Ambient Air Quality Standard, as determined by the Executive Secretary.

TABLE 1

POLLUTANT	EMISSIONS
sulfur dioxide	40 tons per year
oxides of nitrogen	40 tons per year
PM10 - fugitive emissions and fugitive dust	5 tons per year
PM10 - non-fugitive emissions or non-fugitive dust	15 tons per year
carbon monoxide	100 tons per year
lead	0.6 tons per year

R307-410-5. Documentation of Ambient Air Impacts for Hazardous Air Pollutants.

(1) Prior to receiving an approval order under R307-401, a source shall provide documentation of increases in emissions of hazardous air pollutants as required under (c) below for all installations not exempt under (a) below.

(a) Exempted Installations.

(i) The requirements of R307-410-5 do not apply to installations which are subject to or are scheduled to be subject to an emission standard promulgated under 42 U.S.C. 7412 at the time a notice of intent is submitted, except as defined in (ii) below. This exemption does not affect requirements otherwise applicable to the source, including requirements under R307-401.

(ii) The executive secretary may, upon making a written determination that the delay in the implementation of an emission standard under R307-214-2, that incorporates 40 CFR Part 63, might reasonably be expected to pose an unacceptable risk to public health, require, on a case-by-case basis, notice of intent documentation of emissions consistent with (c) below.

(A) The executive secretary will notify the source in writing of the preliminary decision to require some or all of the documentation as listed in (c) below.

(B) The source may respond in writing within thirty days of receipt of the notice, or such longer period as the executive secretary approves.

(C) In making a final determination, the executive secretary will document objective bases for the determination, which may include public information and studies, documented public comment, the applicant's written response, the physical and chemical properties of emissions, and ambient monitoring data.

(b) Lead Compounds Exemption. The requirements of R307-410-5 do not apply to emissions of lead compounds. Lead compounds shall be evaluated pursuant to requirements of R307-410-4.

(c) Submittal Requirements.

(i) Each applicant's notice of intent shall include:

(A) the estimated maximum pounds per hour emission rate increase from each affected installation,

(B) the type of release, whether the release flow is vertically restricted or unrestricted, the maximum release duration in minutes per hour, the release height measured from the ground, the height of any adjacent building or structure, the shortest distance between the release point and any area defined as "ambient air" under 40 CFR 50.1(e), effective July 1, 2005, which is hereby incorporated by reference for each installation for which the source proposes an emissions increase,

(C) the emission threshold value, calculated to be the applicable threshold limit value - time weighted average (TLV-TWA) or the threshold limit value - ceiling (TLV-C) multiplied by the appropriate emission threshold factor listed in Table 2, except in the case of arsenic, benzene, beryllium, and ethylene

oxide which shall be calculated using chronic emission threshold factors, and formaldehyde, which shall be calculated using an acute emission threshold factor. For acute hazardous air pollutant releases having a duration period less than one hour, this maximum pounds per hour emission rate shall be consistent with an identical operating process having a continuous release for a one-hour period.

TABLE 2
EMISSION THRESHOLD FACTORS FOR HAZARDOUS AIR POLLUTANTS
(cubic meter pounds per milligram hour)

VERTICALLY-RESTRICTED AND FUGITIVE EMISSION RELEASE POINTS

DISTANCE TO PROPERTY BOUNDARY	ACUTE	CHRONIC	CARCINOGENIC
20 Meters or less	0.038	0.051	0.017
21 - 50 Meters	0.051	0.066	0.022
51 - 100 Meters	0.092	0.123	0.041
Beyond 100 Meters	0.180	0.269	0.090

VERTICALLY-UNRESTRICTED EMISSION RELEASE POINTS

DISTANCE TO PROPERTY BOUNDARY	ACUTE	CHRONIC	CARCINOGENIC
50 Meters or less	0.154	0.198	0.066
51 - 100 Meters	0.224	0.244	0.081
Beyond 100 Meters	0.310	0.368	0.123

(ii) A source with a proposed maximum pounds per hour emissions increase equal to or greater than the emissions threshold value shall include documentation of a comparison of the estimated ambient concentration of the proposed emissions with the applicable toxic screening level specified in (d) below.

(iii) A source with an estimated ambient concentration equal to or greater than the toxic screening level shall provide additional documentation regarding the impact of the proposed emissions. The executive secretary may require such documentation to include, but not be limited to:

(A) a description of symptoms and adverse health effects that can be caused by the hazardous air pollutant,

(B) the exposure conditions or dose that is sufficient to cause the adverse health effects,

(C) a description of the human population or other biological species which could be exposed to the estimated concentration,

(D) an evaluation of land use for the impacted areas,

(E) the environmental fate and persistency.

(d) Toxic Screening Levels and Averaging Periods.

(i) The toxic screening level for an acute hazardous air pollutant is 1/10th the value of the TLV-C, and the applicable averaging period shall be:

(A) one hour for emissions releases having a duration period of one hour or greater,

(B) one hour for emission releases having a duration period less than one hour if the emission rate used in the model is consistent with an identical operating process having a continuous release for a one-hour period or more, or

(C) the dispersion model's shortest averaging period when using an applicable model capable of estimating ambient concentrations for periods of less than one hour.

(ii) The toxic screening level for a chronic hazardous air pollutant is 1/30th the value of the TLV- TWA, and the applicable averaging period shall be 24 hours.

(iii) The toxic screening level for all carcinogenic hazardous air pollutants is 1/90 the value of the TLV-TWA, and the applicable averaging period shall be 24 hours, except in the case of formaldehyde which shall be evaluated consistent with (d)(i) above and arsenic, benzene, beryllium, and ethylene oxide which shall be evaluated consistent with (d)(ii) above.

R307-410-6. Stack Heights and Dispersion Techniques.

(1) The degree of emission limitation required of any source for control of any air contaminant to include determinations made under R307-401, R307-403 and R307-405, must not be affected by so much of any source's stack height that exceeds good engineering practice or by any other dispersion technique except as provided in (2) below. This does not restrict, in any manner, the actual stack height of any source.

(2) The provisions in R307-410-6 shall not apply to:

(a) stack heights in existence, or dispersion techniques implemented on or before December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources which were constructed or reconstructed, or for which major modifications were carried out after December 31, 1970; or

(b) coal-fired steam electric generating units subject to the provisions of Section 118 of the Clean Air Act, which commenced operation before July 1, 1957, and whose stacks were constructed under a construction contract awarded before February 8, 1974.

(3) The executive secretary may require the source owner or operator to provide a demonstration that the source stack height meets good engineering practice as required by R307-410-6.

KEY: air pollution, modeling, hazardous air pollutant, stack height
June 16, 2006 19-2-104
Notice of Continuation July 13, 2007

R307. Environmental Quality, Air Quality.
R307-414. Permits: Fees for Approval Orders.
R307-414-1. Applicability and Definitions.

The owner and operator of each new major source or major modification is required to pay a fee to the Department sufficient to cover the reasonable costs of reviewing and acting upon the notice of intent required pursuant to R307-401 for each new major source or major modification and implementing and enforcing requirements placed on such source by any approval order issued pursuant to such notice (not including any court costs associated with any enforcement action).

R307-414-2. Bills for Service.

(1) The Executive Secretary will provide the owner or operator of each new major source or major modification with an itemized bill for services upon issuance of an approval order. Such a bill for services shall represent the actual costs to the Department for reviewing and acting upon the notice of intent and shall be due and payable upon receipt.

(2) The Executive Secretary shall provide the owner or operator of each new major source or major modification with an itemized bill for services upon completion of an initial compliance inspection and/or source testing and/or any enforcement action brought about by the issuance of an approval order. Such bill shall represent the actual costs to the Department for the inspection, testing and/or enforcement action and shall be due and payable upon receipt.

KEY: air pollution, fee
December 7, 2000 19-2-104(3)(o)
Notice of Continuation July 13, 2007

R307. Environmental Quality, Air Quality.
R307-415. Permits: Operating Permit Requirements.
R307-415-1. Purpose.

Title V of the Clean Air Act (the Act) requires states to develop and implement a comprehensive air quality permitting program. Title V of the Act does not impose new substantive requirements. Title V does require that sources subject to R307-415 pay a fee and obtain a renewable operating permit that clarifies, in a single document, which requirements apply to a source and assures the source's compliance with those requirements. The purpose of R307-415 is to establish the procedures and elements of such a program.

R307-415-2. Authority.

R307-415 is required by Title V of the Act and 40 Code of Federal Regulations (CFR) Part 70, and is adopted under the authority of Section 19-2-104.

R307-415-3. Definitions.

(1) The definitions contained in R307-101-2 apply throughout R307-415, except as specifically provided in (2).

(2) The following additional definitions apply to R307-415.

"Act" means the Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

"Administrator" means the Administrator of EPA or his or her designee.

"Affected States" are all states:

(a) Whose air quality may be affected and that are contiguous to Utah; or

(b) That are within 50 miles of the permitted source.

"Air Pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, or radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term air pollutant is used.

"Applicable requirement" means all of the following as they apply to emissions units in a Part 70 source, including requirements that have been promulgated or approved by the Board or by the EPA through rulemaking at the time of permit issuance but have future-effective compliance dates:

(a) Any standard or other requirement provided for in the State Implementation Plan;

(b) Any term or condition of any approval order issued under R307-401;

(c) Any standard or other requirement under Section 111 of the Act, Standards of Performance for New Stationary Sources, including Section 111(d);

(d) Any standard or other requirement under Section 112 of the Act, Hazardous Air Pollutants, including any requirement concerning accident prevention under Section 112(r)(7) of the Act;

(e) Any standard or other requirement of the Acid Rain Program under Title IV of the Act or the regulations promulgated thereunder;

(f) Any requirements established pursuant to Section 504(b) of the Act, Monitoring and Analysis, or Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification;

(g) Any standard or other requirement governing solid waste incineration, under Section 129 of the Act;

(h) Any standard or other requirement for consumer and commercial products, under Section 183(e) of the Act;

(i) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in an operating permit;

(j) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the Act;

(k) Any standard or other requirement under rules adopted by the Board.

"Area source" means any stationary source that is not a major source.

"Designated representative" shall have the meaning given to it in Section 402 of the Act and in 40 CFR Section 72.2, and applies only to Title IV affected sources.

"Draft permit" means the version of a permit for which the Executive Secretary offers public participation under R307-415-7i or affected State review under R307-415-8(2).

"Emissions allowable under the permit" means a federally-enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit, including a work practice standard, or a federally-enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any hazardous air pollutant. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the Act, Acid Deposition Control.

"Final permit" means the version of an operating permit issued by the Executive Secretary that has completed all review procedures required by R307-415-7a through 7i and R307-415-8.

"General permit" means an operating permit that meets the requirements of R307-415-6d.

"Hazardous Air Pollutant" means any pollutant listed by the Administrator as a hazardous air pollutant under Section 112(b) of the Act.

"Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraphs (a), (b), or (c) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987. Emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road vehicle shall not be considered in determining whether a stationary source is a major source under this definition.

(a) A major source under Section 112 of the Act, Hazardous Air Pollutants, which is defined as: for pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of such hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well, with its associated equipment, and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

(b) A major stationary source of air pollutants, as defined in Section 302 of the Act, that directly emits or has the potential

to emit, 100 tons per year or more of any air pollutant, including any major source of fugitive emissions or fugitive dust of any such pollutant as determined by rule by the Administrator. The fugitive emissions or fugitive dust of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Act, unless the source belongs to any one of the following categories of stationary source:

(i) Coal cleaning plants with thermal dryers;
(ii) Kraft pulp mills;
(iii) Portland cement plants;
(iv) Primary zinc smelters;
(v) Iron and steel mills;
(vi) Primary aluminum ore reduction plants;
(vii) Primary copper smelters;
(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(ix) Hydrofluoric, sulfuric, or nitric acid plants;
(x) Petroleum refineries;
(xi) Lime plants;
(xii) Phosphate rock processing plants;
(xiii) Coke oven batteries;
(xiv) Sulfur recovery plants;
(xv) Carbon black plants, furnace process;
(xvi) Primary lead smelters;
(xvii) Fuel conversion plants;
(xviii) Sintering plants;
(xix) Secondary metal production plants;
(xx) Chemical process plants;
(xxi) Fossil-fuel boilers, or combination thereof, totaling more than 250 million British thermal units per hour heat input;
(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(xxiii) Taconite ore processing plants;
(xxiv) Glass fiber processing plants;
(xxv) Charcoal production plants;
(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
(xxvii) Any other stationary source category, which as of August 7, 1980 is being regulated under Section 111 or Section 112 of the Act.

(c) A major stationary source as defined in part D of Title I of the Act, Plan Requirements for Nonattainment Areas, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tons per year or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tons per year or more in areas classified as "serious," 25 tons per year or more in areas classified as "severe," and 10 tons per year or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under Section 182(f)(1) or (2) of the Act, that requirements under Section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to Section 184 of the Act, sources with the potential to emit 50 tons per year or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas that are classified as "serious" and in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tons per year or more of carbon monoxide;

(iv) For PM-10 particulate matter nonattainment areas classified as "serious," sources with the potential to emit 70 tons per year or more of PM-10 particulate matter.

"Non-Road Vehicle" means a vehicle that is powered by an internal combustion engine (including the fuel system), that is not a self-propelled vehicle designed for transporting persons or property on a street or highway or a vehicle used solely for competition, and is not subject to standards promulgated under Section 111 of the Act (New Source Performance Standards) or Section 202 of the Act (Motor Vehicle Emission Standards).

"Operating permit" or "permit," unless the context suggests otherwise, means any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to these rules.

"Part 70 Source" means any source subject to the permitting requirements of R307-415, as provided in R307-415-4.

"Permit modification" means a revision to an operating permit that meets the requirements of R307-415-7f.

"Permit revision" means any permit modification or administrative permit amendment.

"Permit shield" means the permit shield as described in R307-415-6f.

"Proposed permit" means the version of a permit that the Executive Secretary proposes to issue and forwards to EPA for review in compliance with R307-415-8.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Responsible official" means one of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) the operating facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million in second quarter 1980 dollars; or

(ii) the delegation of authority to such representative is approved in advance by the Executive Secretary;

(b) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(c) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of R307-415, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency;

(d) For Title IV affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act, Acid Deposition Control, or the regulations promulgated thereunder are concerned;

(ii) The responsible official as defined above for any other purposes under R307-415.

"Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any hazardous air pollutant.

"Title IV Affected source" means a source that contains one or more affected units as defined in Section 402 of the Act and in 40 CFR, Part 72.

R307-415-4. Applicability.

(1) Part 70 sources. All of the following sources are subject to the permitting requirements of R307-415, and unless exempted under (2) below are required to submit an application for an operating permit:

(a) Any major source;

(b) Any source, including an area source, subject to a standard, limitation, or other requirement under Section 111 of the Act, Standards of Performance for New Stationary Sources;

(c) Any source, including an area source, subject to a

standard or other requirement under Section 112 of the Act, Hazardous Air Pollutants, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under Section 112(r) of the Act, Prevention of Accidental Releases;

(d) Any Title IV affected source.

(2) Exemptions.

(a) All source categories that would be required to obtain an operating permit solely because they are subject to 40 CFR Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters, are exempted from the requirement to obtain a permit.

(b) All source categories that would be required to obtain an operating permit solely because they are subject to 40 CFR Part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145, Standard for Demolition and Renovation, are exempted from the requirement to obtain a permit. For Part 70 sources, demolition and renovation activities within the source under 40 CFR 61.145 shall be treated as a separate source for the purpose of R307-415.

(c) Certain area sources have been exempted from the requirement to obtain an operating permit under a subpart of 40 CFR Part 63. These include:

(i) 40 CFR Part 63, Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities;

(ii) 40 CFR Part 63, Subpart N, National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks;

(iii) 40 CFR Part 63, Subpart O, Ethylene Oxide Emission Standards for Sterilization Facilities;

(iv) 40 CFR Part 63, Subpart T, National Emission Standards for Halogenated Solvent Cleaning;

(v) 40 CFR Part 63, Subpart RRR, National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.

(3) Emissions units and Part 70 sources.

(a) For major sources, the Executive Secretary shall include in the permit all applicable requirements for all relevant emissions units in the major source.

(b) For any area source subject to the operating permit program under R307-415-4(1) or (2), the Executive Secretary shall include in the permit all applicable requirements applicable to emissions units that cause the source to be subject to the operating permit program.

(4) Fugitive emissions. Fugitive emissions and fugitive dust from a Part 70 source shall be included in the permit application and the operating permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of source categories contained in the definition of major source.

(5) Control requirements. R307-415 does not establish any new control requirements beyond those established by applicable requirements, but may establish new monitoring, recordkeeping, and reporting requirements.

(6) Synthetic minors. An existing source that wishes to avoid designation as a major Part 70 source under R307-415, must obtain federally-enforceable conditions which reduce the potential to emit, as defined in R307-101-2, to less than the level established for a major Part 70 source. Such federally-enforceable conditions may be obtained by applying for and receiving an approval order under R307-401. The approval order shall contain periodic monitoring, recordkeeping, and reporting requirements sufficient to verify continuing compliance with the conditions which would reduce the source's potential to emit.

R307-415-5a. Permit Applications: Duty to Apply.

For each Part 70 source, the owner or operator shall submit a timely and complete permit application. A pre-application conference may be held at the request of a Part 70 source or the Executive Secretary to assist a source in submitting a complete application.

(1) Timely application.

(a) Except as provided in the transition plan under (3) below, a timely application for a source applying for an operating permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program.

(b) Except as provided in the transition plan under (3) below, any Part 70 source required to meet the requirements under Section 112(g) of the Act, Hazardous Air Pollutant Modifications, or required to receive an approval order to construct a new source or modify an existing source under R307-401, shall file a complete application to obtain an operating permit or permit revision within 12 months after commencing operation of the newly constructed or modified source. Where an existing operating permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

(c) For purposes of permit renewal, a timely application is one that is submitted by the renewal date established in the permit. The Executive Secretary shall establish a renewal date for each permit that is at least six months and not greater than 18 months prior to the date of permit expiration. A source may submit a permit application early for any reason, including timing of other application requirements.

(2) Complete application.

(a) To be deemed complete, an application must provide all information sufficient to evaluate the subject source and its application and to determine all applicable requirements pursuant to R307-415-5c. Applications for permit revision need supply such information only if it is related to the proposed change. A responsible official shall certify the submitted information consistent with R307-415-5d.

(b) Unless the Executive Secretary notifies the source in writing within 60 days of receipt of the application that an application is not complete, such application shall be deemed to be complete. A completeness determination shall not be required for minor permit modifications. If, while processing an application that has been determined or deemed to be complete, the Executive Secretary determines that additional information is necessary to evaluate or take final action on that application, the Executive Secretary may request such information in writing and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in R307-415-7b(2), shall be in effect from the date the application is determined or deemed to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified in writing by the Executive Secretary.

(3) Transition Plan. A timely application under the transition plan is an application that is submitted according to the following schedule:

(a) All Title IV affected sources shall submit an operating permit application as well as an acid rain permit application in accordance with the date required by 40 CFR Part 72 effective April 11, 1995, Subpart C-Acid Rain Permit Applications;

(b) All major Part 70 sources operating as of July 10, 1995, except those described in (a) above, and all solid waste incineration units operating as of July 10, 1995, that are required to obtain an operating permit pursuant to 42 U.S.C. Sec. 7429(e) shall submit a permit application by October 10, 1995.

(c) Area sources.

(i) Except as provided in (c)(ii) and (c)(iii) below, each Part 70 source that is not a major source, a Title IV affected

source, or a solid waste incineration unit required to obtain a permit pursuant to section 129(e) (42 U.S.C. 7429), is deferred from the obligation to submit an application until 12 months after the Administrator completes a rulemaking to determine how the program should be structured for area sources and the appropriateness of any permanent exemptions in addition to those provided in R307-415-4(2).

(ii) General Permits.

(A) The Executive Secretary shall develop general permits and application forms for area source categories.

(B) After a general permit has been issued for a source category, the Executive Secretary shall establish a due date for permit applications from all area sources in that source category.

(C) The Executive Secretary shall provide at least six months notice that the application is due for a source category.

(iii) Regulation-specific Requirements.

(A) If a regulation promulgated under Section 111 or 112 (42 U.S.C. 7411 or 7412) requires an area source category to submit an application for a Part 70 permit, each area source covered by the requirement must submit an application in accordance with the regulation.

(d) Extensions. The owner or operator of any Part 70 source may petition the Executive Secretary for an extension of the application due date for good cause. The due date for major Part 70 sources shall not be extended beyond July 10, 1996. The due date for an area source shall not be extended beyond twelve months after the due date in (c)(i) above.

(e) Application shield. If a source submits a timely and complete application under this transition plan, the application shield under R307-415-7b(2) shall apply to the source. If a source submits a timely application and is making sufficient progress toward correcting an application determined to be incomplete, the Executive Secretary may extend the application shield under R307-415-7b(2) to the source when the application is determined complete. The application shield shall not be extended to any major source that has not submitted a complete application by July 10, 1996, or to any area source that has not submitted a complete application within twelve months after the due date in (c)(i) above.

(4) Confidential information. Claims of confidentiality on information submitted to EPA may be made pursuant to applicable federal requirements. Claims of confidentiality on information submitted to the Department shall be made and governed according to Section 19-1-306. In the case where a source has submitted information to the Department under a claim of confidentiality that also must be submitted to the EPA, the Executive Secretary shall either submit the information to the EPA under Section 19-1-306, or require the source to submit a copy of such information directly to EPA.

(5) Late applications. An application submitted after the deadlines established in R307-415-5a shall be accepted for processing, but shall not be considered a timely application. Submitting an application shall not relieve a source of any enforcement actions resulting from submitting a late application.

R307-415-5b. Permit Applications: Duty to Supplement or Correct Application.

Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

R307-415-5c. Permit Applications: Standard Requirements.

Information as described below for each emissions unit at a Part 70 source shall be included in the application except for insignificant activities and emissions levels under R307-415-5e. The operating permit application shall include the elements specified below:

(1) Identifying information, including company name, company address, plant name and address if different from the company name and address, owner's name and agent, and telephone number and names of plant site manager or contact.

(2) A description of the source's processes and products by Standard Industrial Classification Code, including any associated with each alternate scenario identified by the source.

(3) The following emissions-related information:

(a) A permit application shall describe the potential to emit of all air pollutants for which the source is major, and the potential to emit of all regulated air pollutants and hazardous air pollutants from any emissions unit, except for insignificant activities and emissions under R307-415-5e. For emissions of hazardous air pollutants under 1,000 pounds per year, the following ranges may be used in the application: 1-10 pounds per year, 11-499 pounds per year, 500-999 pounds per year. The mid-point of the range shall be used to calculate the emission fee under R307-415-9 for hazardous air pollutants reported as a range.

(b) Identification and description of all points of emissions described in (a) above in sufficient detail to establish the basis for fees and applicability of applicable requirements.

(c) Emissions rates in tons per year and in such terms as are necessary to establish compliance with applicable requirements consistent with the applicable standard reference test method.

(d) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(e) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(f) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants and hazardous air pollutants at the Part 70 source.

(g) Other information required by any applicable requirement, including information related to stack height limitations developed pursuant to Section 123 of the Act.

(h) Calculations on which the information in items (a) through (g) above is based.

(4) The following air pollution control requirements:

(a) Citation and description of all applicable requirements, and

(b) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(5) Other specific information that may be necessary to implement and enforce applicable requirements or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements.

(7) Additional information as determined to be necessary by the Executive Secretary to define alternative operating scenarios identified by the source pursuant to R307-415-6a(9) or to define permit terms and conditions implementing emission trading under R307-415-7d(1)(c) or R307-415-6a(10).

(8) A compliance plan for all Part 70 sources that contains all of the following:

(a) A description of the compliance status of the source with respect to all applicable requirements.

(b) A description as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(iii) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(c) A compliance schedule as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(iii) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(d) A schedule for submission of certified progress reports every six months, or more frequently if specified by the underlying applicable requirement or by the Executive Secretary, for sources required to have a schedule of compliance to remedy a violation.

(e) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for a Title IV affected source, except as specifically superseded by regulations promulgated under Title IV of the Act, Acid Deposition Control, with regard to the schedule and methods the source will use to achieve compliance with the acid rain emissions limitations.

(9) Requirements for compliance certification, including all of the following:

(a) A certification of compliance with all applicable requirements by a responsible official consistent with R307-415-5d and Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification.

(b) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test method.

(c) A schedule for submission of compliance certifications during the permit term, to be submitted annually, or more frequently if specified by the underlying applicable requirement or by the Executive Secretary.

(d) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(10) Nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act, Acid Deposition Control.

R307-415-5d. Permit Applications: Certification.

Any application form, report, or compliance certification submitted pursuant to R307-415 shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under R307-415 shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

R307-415-5e. Permit Applications: Insignificant Activities and Emissions.

An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under R307-415-9. The following lists apply only to operating permit applications and do not affect the applicability of R307-415 to a source, do not affect the requirement that a source receive an approval order under R307-401, and do not relieve a source of the responsibility to comply with any applicable requirement.

(1) The following insignificant activities and emission levels are not required to be included in the permit application.

(a) Exhaust systems for controlling steam and heat that do not contain combustion products, except for systems that are subject to an emission standard under any applicable requirement.

(b) Air contaminants that are present in process water or non-contact cooling water as drawn from the environment or from municipal sources, or air contaminants that are present in compressed air or in ambient air, which may contain air pollution, used for combustion.

(c) Air conditioning or ventilating systems not designed to remove air contaminants generated by or released from other processes or equipment.

(d) Disturbance of surface areas for purposes of land development, not including mining operations or the disturbance of contaminated soil.

(e) Brazing, soldering, or welding operations.

(f) Aerosol can usage.

(g) Road and parking lot paving operations, not including asphalt, sand and gravel, and cement batch plants.

(h) Fire training activities that are not conducted at permanent fire training facilities.

(i) Landscaping, janitorial, and site housekeeping activities, including fugitive emissions from landscaping activities.

(j) Architectural painting.

(k) Office emissions, including cleaning, copying, and restrooms.

(l) Wet wash aggregate operations that are solely dedicated to this process.

(m) Air pollutants that are emitted from personal use by employees or other persons at the source, such as foods, drugs, or cosmetics.

(n) Air pollutants that are emitted by a laboratory at a facility under the supervision of a technically qualified individual as defined in 40 CFR 720.3(ee); however, this exclusion does not apply to specialty chemical production, pilot plant scale operations, or activities conducted outside the laboratory.

(o) Maintenance on petroleum liquid handling equipment such as pumps, valves, flanges, and similar pipeline devices and appurtenances when purged and isolated from normal operations.

(p) Portable steam cleaning equipment.

(q) Vents on sanitary sewer lines.

(r) Vents on tanks containing no volatile air pollutants, e.g., any petroleum liquid, not containing Hazardous Air Pollutants, with a Reid Vapor Pressure less than 0.05 psia.

(2) The following insignificant activities are exempted because of size or production rate and a list of such insignificant activities must be included in the application. The Executive Secretary may require information to verify that the activity is insignificant.

(a) Emergency heating equipment, using coal, wood, kerosene, fuel oil, natural gas, or LPG for fuel, with a rated capacity less than 50,000 BTU per hour.

(b) Individual emissions units having the potential to emit less than one ton per year per pollutant of PM10 particulate

matter, nitrogen oxides, sulfur dioxide, volatile organic compounds, or carbon monoxide, unless combined emissions from similar small emission units located within the same Part 70 source are greater than five tons per year of any one pollutant. This does not include emissions units that emit air contaminants other than PM10 particulate matter, nitrogen oxides, sulfur dioxide, volatile organic compounds, or carbon monoxide.

(c) Petroleum industry flares, not associated with refineries, combusting natural gas containing no hydrogen sulfide except in amounts less than 500 parts per million by weight, and having the potential to emit less than five tons per year per air contaminant.

(d) Road sweeping.

(e) Road salting and sanding.

(f) Unpaved public and private roads, except unpaved haul roads located within the boundaries of a stationary source. A haul road means any road normally used to transport people, livestock, product or material by any type of vehicle.

(g) Non-commercial automotive (car and truck) service stations dispensing less than 6,750 gal. of gasoline/month

(h) Hazardous Air Pollutants present at less than 1% concentration, or 0.1% for a carcinogen, in a mixture used at a rate of less than 50 tons per year, provided that a National Emission Standards for Hazardous Air Pollutants standard does not specify otherwise.

(i) Fuel-burning equipment, in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure, with a rated capacity of less than five million BTU per hour using no other fuel than natural gas, or LPG or other mixed gas distributed by a public utility.

(j) Comfort heating equipment (i.e., boilers, water heaters, air heaters and steam generators) with a rated capacity of less than one million BTU per hour if fueled only by fuel oil numbers 1 - 6.

(3) Any person may petition the Board to add an activity or emission to the list of Insignificant Activities and Emissions which may be excluded from an operating permit application under (1) or (2) above upon a change in the rule and approval of the rule change by EPA. The petition shall include the following information:

(a) A complete description of the activity or emission to be added to the list.

(b) A complete description of all air contaminants that may be emitted by the activity or emission, including emission rate, air pollution control equipment, and calculations used to determine emissions.

(c) An explanation of why the activity or emission should be exempted from the application requirements for an operating permit.

(4) The executive secretary may determine on a case-by-case basis, insignificant activities and emissions for an individual Part 70 source that may be excluded from an application or that must be listed in the application, but do not require a detailed description. No activity with the potential to emit greater than two tons per year of any criteria pollutant, five tons of a combination of criteria pollutants, 500 pounds of any hazardous air pollutant or one ton of a combination of hazardous air pollutants shall be eligible to be determined an insignificant activity or emission under this subsection (4).

R307-415-6a. Permit Content: Standard Requirements.

Each permit issued under R307-415 shall include the following elements:

(1) Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance;

(a) The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

(b) The permit shall state that, where an applicable requirement is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, Acid Deposition Control, both provisions shall be incorporated into the permit.

(c) If the State Implementation Plan allows a determination of an alternative emission limit at a Part 70 source, equivalent to that contained in the State Implementation Plan, to be made in the permit issuance, renewal, or significant modification process, and the Executive Secretary elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(2) Permit duration. Except as provided by Section 19-2-109.1(3), the Executive Secretary shall issue permits for a fixed term of five years.

(3) Monitoring and related recordkeeping and reporting requirements.

(a) Each permit shall contain the following requirements with respect to monitoring:

(i) All monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including 40 CFR Part 64 and any other procedures and methods that may be promulgated pursuant to sections 114(a)(3) or 504(b) of the Act. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements that are not included in the permit as a result of such streamlining;

(ii) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, which may consist of recordkeeping designed to serve as monitoring, periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to (3)(c) below. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this paragraph;

(iii) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(b) With respect to recordkeeping, the permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(i) Records of required monitoring information that include the following:

(A) The date, place as defined in the permit, and time of sampling or measurements;

(B) The dates analyses were performed;

(C) The company or entity that performed the analyses;

(D) The analytical techniques or methods used;

(E) The results of such analyses;

(F) The operating conditions as existing at the time of sampling or measurement;

(ii) Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(c) With respect to reporting, the permit shall incorporate all applicable reporting requirements and require all of the following:

(i) Submittal of reports of any required monitoring every six months, or more frequently if specified by the underlying applicable requirement or by the Executive Secretary. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with R307-415-5d.

(ii) Prompt reporting of deviations from permit requirements including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The Executive Secretary shall define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements. Deviations from permit requirements due to unavoidable breakdowns shall be reported according to the unavoidable breakdown provisions of R307-107. The Executive Secretary may establish more stringent reporting deadlines if required by the applicable requirement.

(d) Claims of confidentiality shall be governed by Section 19-1-306.

(4) Acid Rain Allowances. For Title IV affected sources, a permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the Act or the regulations promulgated thereunder.

(a) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the Acid Rain Program, provided that such increases do not require a permit revision under any other applicable requirement.

(b) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(c) Any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act.

(5) A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

(6) Standard provisions stating the following:

(a) The permittee must comply with all conditions of the operating permit. Any permit noncompliance constitutes a violation of the Air Conservation Act and is grounds for any of the following: enforcement action; permit termination; revocation and reissuance; modification; denial of a permit renewal application.

(b) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(c) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition, except as provided under R307-415-7f(1) for minor permit modifications.

(d) The permit does not convey any property rights of any sort, or any exclusive privilege.

(e) The permittee shall furnish to the Executive Secretary, within a reasonable time, any information that the Executive Secretary may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Executive Secretary copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to EPA along with a claim of confidentiality.

(7) Emission fee. A provision to ensure that a Part 70 source pays fees to the Executive Secretary consistent with R307-415-9.

(8) Emissions trading. A provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

(9) Alternate operating scenarios. Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the Executive Secretary. Such terms and conditions:

(a) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;

(b) Shall extend the permit shield to all terms and conditions under each such operating scenario; and

(c) Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of R307-415.

(10) Emissions trading. Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

(a) Shall include all terms required under R307-415-6a and 6c to determine compliance;

(b) Shall extend the permit shield to all terms and conditions that allow such increases and decreases in emissions; and

(c) Must meet all applicable requirements and requirements of R307-415.

R307-415-6b. Permit Content: Federally-Enforceable Requirements.

(1) All terms and conditions in an operating permit, including any provisions designed to limit a source's potential to emit, are enforceable by EPA and citizens under the Act.

(2) Notwithstanding (1) above, applicable requirements that are not required by the Act or implementing federal regulations shall be included in the permit but shall be specifically designated as being not federally enforceable under the Act and shall be designated as "state requirements." Terms and conditions so designated are not subject to the requirements of R307-415-7a through 7i and R307-415-8 that apply to permit review by EPA and affected states. The Executive Secretary shall determine which conditions are "state requirements" in each operating permit.

R307-415-6c. Permit Content: Compliance Requirements.

All operating permits shall contain all of the following elements with respect to compliance:

(1) Consistent with R307-415-6a(3), compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document, including any report, required by an operating permit shall contain a certification by a responsible official that meets the requirements of R307-415-5d;

(2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the Executive Secretary or an authorized representative to perform any of the following:

(a) Enter upon the permittee's premises where a Part 70 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit;

(d) Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements;

(e) Claims of confidentiality on the information obtained during an inspection shall be made pursuant to Section 19-1-306;

(3) A schedule of compliance consistent with R307-415-5c(8);

(4) Progress reports consistent with an applicable schedule of compliance and R307-415-5c(8) to be submitted semiannually, or at a more frequent period if specified in the applicable requirement or by the Executive Secretary. Such progress reports shall contain all of the following:

(a) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved;

(b) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted;

(5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include all of the following:

(a) Annual submission of compliance certification, or more frequently if specified in the applicable requirement or by the Executive Secretary;

(b) In accordance with R307-415-6a(3), a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(c) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may reference the permit or previous reports, as applicable):

(i) The identification of each term or condition of the permit that is the basis of the certification;

(ii) The identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means shall include, at a minimum, the methods and means required under R307-415-6a(3). If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;

(iii) The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in (ii) above. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR Part 64 occurred; and

(iv) Such other facts as the executive secretary may require to determine the compliance status of the source;

(d) A requirement that all compliance certifications be submitted to the EPA as well as to the Executive Secretary;

(e) Such additional requirements as may be specified pursuant to Section 114(a)(3) of the Act, Enhanced Monitoring and Compliance Certification, and Section 504(b) of the Act, Monitoring and Analysis;

(6) Such other provisions as the Executive Secretary may require.

R307-415-6d. Permit Content: General Permits.

(1) The Executive Secretary may, after notice and opportunity for public participation provided under R307-415-7i, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other operating permits and shall identify criteria by which sources may qualify for the general permit. To sources that qualify, the Executive Secretary shall grant the conditions and terms of the general permit. Notwithstanding the permit shield, the source shall be subject to enforcement action for operation without an operating permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be issued for Title IV affected sources under the Acid Rain Program unless otherwise provided in regulations promulgated under Title IV of the Act.

(2) Part 70 sources that would qualify for a general permit must apply to the Executive Secretary for coverage under the terms of the general permit or must apply for an operating permit consistent with R307-415-5a through 5e. The Executive Secretary may, in the general permit, provide for applications which deviate from the requirements of R307-415-5a through 5e, provided that such applications meet the requirements of Title V of the Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures required under R307-415-7i, the Executive Secretary may grant a source's request for authorization to operate under a general permit, but such a grant to a qualified source shall not be a final permit action until the requirements of R307-415-5a through 5e have been met.

R307-415-6e. Permit Content: Temporary Sources.

The owner or operator of a permitted source may temporarily relocate the source for a period not to exceed that allowed by R307-401-7. A permit modification is required to relocate the source for a period longer than that allowed by R307-401-7. No Title IV affected source may be permitted as a temporary source. Permits for temporary sources shall include all of the following:

(1) Conditions that will assure compliance with all applicable requirements at all authorized locations;

(2) Requirements that the owner or operator receive approval to relocate under R307-401-7 before operating at the new location;

(3) Conditions that assure compliance with all other provisions of R307-415.

R307-415-6f. Permit Content: Permit Shield.

(1) Except as provided in R307-415, the Executive Secretary shall include in each operating permit a permit shield provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(a) Such applicable requirements are included and are specifically identified in the permit; or

(b) The Executive Secretary, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) An operating permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

(3) Nothing in this paragraph or in any operating permit

shall alter or affect any of the following:

(a) The emergency provisions of Section 19-1-202 and Section 19-2-112, and the provisions of Section 303 of the Act, Emergency Orders, including the authority of the Administrator under that Section;

(b) The liability of an owner or operator of a source for any violation of applicable requirements under Section 19-2-107(2)(g) and Section 19-2-110 prior to or at the time of permit issuance;

(c) The applicable requirements of the Acid Rain Program, consistent with Section 408(a) of the Act;

(d) The ability of the Executive Secretary to obtain information from a source under Section 19-2-120, and the ability of EPA to obtain information from a source under Section 114 of the Act, Inspection, Monitoring, and Entry.

R307-415-6g. Permit Content: Emergency Provision.

(1) Emergency. An "emergency" is any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) Effect of an emergency. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of (3) below are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) An emergency occurred and that the permittee can identify the causes of the emergency;

(b) The permitted facility was at the time being properly operated;

(c) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(d) The permittee submitted notice of the emergency to the Executive Secretary within two working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of R307-415-6a(3)(c)(ii). This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(5) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

R307-415-7a. Permit Issuance: Action on Application.

(1) A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(a) The Executive Secretary has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit;

(b) Except for modifications qualifying for minor permit modification procedures under R307-415-7f(1)and (2), the Executive Secretary has complied with the requirements for public participation under R307-415-7i;

(c) The Executive Secretary has complied with the requirements for notifying and responding to affected States under R307-415-8(2);

(d) The conditions of the permit provide for compliance with all applicable requirements and the requirements of R307-415;

(e) EPA has received a copy of the proposed permit and any notices required under R307-415-8(1) and (2), and has not objected to issuance of the permit under R307-415-8(3) within the time period specified therein.

(2) Except as provided under the initial transition plan provided for under R307-415-5a(3) or under regulations promulgated under Title IV of the Act for the permitting of Title IV affected sources under the Acid Rain Program, the Executive Secretary shall take final action on each permit application, including a request for permit modification or renewal, within 18 months after receiving a complete application.

(3) The Executive Secretary shall promptly provide notice to the applicant of whether the application is complete. Unless the Executive Secretary requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. A completeness determination shall not be required for minor permit modifications.

(4) The Executive Secretary shall provide a statement that sets forth the legal and factual basis for the draft permit conditions, including references to the applicable statutory or regulatory provisions. The Executive Secretary shall send this statement to EPA and to any other person who requests it.

(5) The submittal of a complete application shall not affect the requirement that any source have an approval order under R307-401.

R307-415-7b. Permit Issuance: Requirement for a Permit.

(1) Except as provided in R307-415-7d and R307-415-7f(1)(f)and 7f(2)(e), no Part 70 source may operate after the time that it is required to submit a timely and complete application, except in compliance with a permit issued under these rules.

(2) Application shield. If a Part 70 source submits a timely and complete application for permit issuance, including for renewal, the source's failure to have an operating permit is not a violation of R307-415 until the Executive Secretary takes final action on the permit application. This protection shall cease to apply if, subsequent to the completeness determination made pursuant to R307-415-7a(3), and as required by R307-415-5a(2), the applicant fails to submit by the deadline specified in writing by the Executive Secretary any additional information identified as being needed to process the application.

R307-415-7c. Permit Renewal and Expiration.

(1) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected State and EPA review, that apply to initial permit issuance.

(2) Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with R307-415-7b and R307-415-5a(1)(c).

(3) If a timely and complete renewal application is submitted consistent with R307-415-7b and R307-415-5a(1)(c)and the Executive Secretary fails to issue or deny the renewal permit before the end of the term of the previous permit, then all of the terms and conditions of the permit, including the permit shield, shall remain in effect until renewal or denial.

R307-415-7d. Permit Revision: Changes That Do Not Require a Revision.

(1) Operational Flexibility.

(a) A Part 70 source may make changes that contravene an express permit term if all of the following conditions have been met:

(i) The source has obtained an approval order, or has met the exemption requirements under R307-401;

(ii) The change would not violate any applicable requirements or contravene any federally enforceable permit terms and conditions for monitoring, including test methods, recordkeeping, reporting, or compliance certification requirements;

(iii) The changes are not modifications under any provision of Title I of the Act; and the changes do not exceed the emissions allowable under the permit, whether expressed therein as a rate of emissions or in terms of total emissions.

(iv) For each such change, the source shall provide written notice to the Executive Secretary and send a copy of the notice to EPA at least seven days before implementing the proposed change. The seven-day requirement may be waived by the Executive Secretary in the case of an emergency. The written notification shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change. The permit shield shall not apply to these changes. The source, the EPA, and the Executive Secretary shall attach each such notice to their copy of the relevant permit.

(b) Emission trading under the State Implementation Plan. Permitted sources may trade increases and decreases in emissions in the permitted facility, where the State Implementation Plan provides for such emissions trades, without requiring a permit revision provided the change is not a modification under any provision of Title I of the Act, the change does not exceed the emissions allowable under the permit, and the source notifies the Executive Secretary and the EPA at least seven days in advance of the trade. This provision is available in those cases where the permit does not already provide for such emissions trading.

(i) The written notification required above shall include such information as may be required by the provision in the State Implementation Plan authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each such change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of the State Implementation Plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the State Implementation Plan and that provide for the emissions trade.

(ii) The permit shield shall not extend to any change made under this paragraph. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the State Implementation Plan authorizing the emissions trade.

(c) If a permit applicant requests it, the Executive Secretary shall issue permits that contain terms and conditions, including all terms required under R307-415-6a and 6c to determine compliance, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. Such changes in emissions shall not be allowed if the change is a modification under any provision of Title I of the Act or the change would exceed the emissions allowable under the permit. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The Executive Secretary shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements, and shall require the source to notify the Executive Secretary and the EPA in writing at least seven days before making the emission trade.

(i) The written notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(ii) The permit shield shall extend to terms and conditions that allow such increases and decreases in emissions.

(2) Off-permit changes. A Part 70 source may make changes that are not addressed or prohibited by the permit without a permit revision, unless such changes are subject to any requirements under Title IV of the Act or are modifications under any provision of Title I of the Act.

(a) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.

(b) Sources must provide contemporaneous written notice to the Executive Secretary and EPA of each such change, except for changes that qualify as insignificant under R307-415-5e. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirements that would apply as a result of the change.

(c) The change shall not qualify for the permit shield.

(d) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

(e) The off-permit provisions do not affect the requirement for a source to obtain an approval order under R307-401.

R307-415-7e. Permit Revision: Administrative Amendments.

(1) An "administrative permit amendment" is a permit revision that:

(a) Corrects typographical errors;

(b) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;

(c) Requires more frequent monitoring or reporting by the permittee;

(d) Allows for a change in ownership or operational control of a source where the Executive Secretary determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Executive Secretary;

(e) Incorporates into the operating permit the requirements from an approval order issued under R307-401, provided that the procedures for issuing the approval order were substantially equivalent to the permit issuance or modification procedures of R307-415-7a through 7i and R307-415-8, and compliance requirements are substantially equivalent to those contained in R307-415-6a through 6g;

(2) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

(3) Administrative permit amendment procedures. An administrative permit amendment may be made by the Executive Secretary consistent with the following:

(a) The Executive Secretary shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected States provided that the Executive Secretary designates any such permit revisions as having been made pursuant to this paragraph. The Executive Secretary shall take

final action on a request for a change in ownership or operational control of a source under (1)(d) above within 30 days of receipt of a request.

(b) The Executive Secretary shall submit a copy of the revised permit to EPA.

(c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(4) The Executive Secretary shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield for administrative permit amendments made pursuant to (1)(e) above which meet the relevant requirements of R307-415-6a through 6g, 7 and 8 for significant permit modifications.

R307-415-7f. Permit Revision: Modification.

The permit modification procedures described in R307-415-7f shall not affect the requirement that a source obtain an approval order under R307-401 before constructing or modifying a source of air pollution. A modification not subject to the requirements of R307-401 shall not require an approval order in addition to the permit modification as described in this section. A permit modification is any revision to an operating permit that cannot be accomplished under the program's provisions for administrative permit amendments under R307-415-7e. Any permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Act.

(1) Minor permit modification procedures.

(a) Criteria. Minor permit modification procedures may be used only for those permit modifications that:

(i) Do not violate any applicable requirement or require an approval order under R307-401;

(ii) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit;

(iii) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(iv) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such term or condition would include a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I or an alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the Act, Early Reduction; and

(v) Are not modifications under any provision of Title I of the Act.

(b) Notwithstanding (1)(a)above and (2)(a) below, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the State Implementation Plan or an applicable requirement.

(c) Application. An application requesting the use of minor permit modification procedures shall meet the requirements of R307-415-5c and shall include all of the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(ii) The source's suggested draft permit;

(iii) Certification by a responsible official, consistent with R307-415-5d, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used;

(iv) Completed forms for the Executive Secretary to use to notify EPA and affected States as required under R307-415-8.

(d) EPA and affected State notification. Within five working days of receipt of a complete permit modification application, the Executive Secretary shall notify EPA and affected States of the requested permit modification. The Executive Secretary promptly shall send any notice required under R307-415-8(2)(b) to EPA.

(e) Timetable for issuance. The Executive Secretary may not issue a final permit modification until after EPA's 45-day review period or until EPA has notified the Executive Secretary that EPA will not object to issuance of the permit modification, whichever is first. Within 90 days of the Executive Secretary's receipt of an application under minor permit modification procedures or 15 days after the end of EPA's 45-day review period under R307-415-8(3), whichever is later, the Executive Secretary shall:

(i) Issue the permit modification as proposed;

(ii) Deny the permit modification application;

(iii) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

(iv) Revise the draft permit modification and transmit to EPA the new proposed permit modification as required by R307-415-8(1).

(f) Source's ability to make change. A Part 70 source may make the change proposed in its minor permit modification application immediately after it files such application if the source has received an approval order under R307-401 or has met the approval order exemption requirements under R307-413-1 through 6. After the source makes the change allowed by the preceding sentence, and until the Executive Secretary takes any of the actions specified in (1)(e)(i) through (iii) above, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(g) Permit shield. The permit shield under R307-415-6f shall not extend to minor permit modifications.

(2) Group processing of minor permit modifications. Consistent with this paragraph, the Executive Secretary may modify the procedure outlined in (1) above to process groups of a source's applications for certain modifications eligible for minor permit modification processing.

(a) Criteria. Group processing of modifications may be used only for those permit modifications:

(i) That meet the criteria for minor permit modification procedures under (1)(a) above; and

(ii) That collectively are below the following threshold level: 10 percent of the emissions allowed by the permit for the emissions unit for which the change is requested, 20 percent of the applicable definition of major source in R307-415-3, or five tons per year, whichever is least.

(b) Application. An application requesting the use of group processing procedures shall meet the requirements of R307-415-5c and shall include the following:

(i) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

(ii) The source's suggested draft permit.

(iii) Certification by a responsible official, consistent with R307-415-5d, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

(iv) A list of the source's other pending applications awaiting group processing, and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under R307-415-7e(2)(a)(ii).

(v) Certification, consistent with R307-415-5d, that the source has notified EPA of the proposed modification. Such notification need only contain a brief description of the requested modification.

(vi) Completed forms for the Executive Secretary to use to notify EPA and affected States as required under R307-415-8.

(c) EPA and affected State notification. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the threshold level set under (2)(a)(ii) above, whichever is earlier, the Executive Secretary shall notify EPA and affected States of the requested permit modifications. The Executive Secretary shall send any notice required under R307-415-8(2)(b)to EPA.

(d) Timetable for issuance. The provisions of (1)(e) above shall apply to modifications eligible for group processing, except that the Executive Secretary shall take one of the actions specified in (1)(e)(i) through (iv) above within 180 days of receipt of the application or 15 days after the end of EPA's 45-day review period under R307-415-8(3), whichever is later.

(e) Source's ability to make change. The provisions of (1)(f) above shall apply to modifications eligible for group processing.

(f) Permit shield. The provisions of (1)(g) above shall also apply to modifications eligible for group processing.

(3) Significant modification procedures.

(a) Criteria. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative amendments. Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall be considered significant. Nothing herein shall be construed to preclude the permittee from making changes consistent with R307-415 that would render existing permit compliance terms and conditions irrelevant.

(b) Significant permit modifications shall meet all requirements of R307-415, including those for applications, public participation, review by affected States, and review by EPA, as they apply to permit issuance and permit renewal. The Executive Secretary shall complete review on the majority of significant permit modifications within nine months after receipt of a complete application.

R307-415-7g. Permit Revision: Reopening for Cause.

(1) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

(a) New applicable requirements become applicable to a major Part 70 source with a remaining permit term of three or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the terms and conditions of the permit have been extended pursuant to R307-415-7c(3).

(b) Additional requirements, including excess emissions requirements, become applicable to an Title IV affected source under the Acid Rain Program. Upon approval by EPA, excess emissions offset plans shall be deemed to be incorporated into the permit.

(c) The Executive Secretary or EPA determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(d) EPA or the Executive Secretary determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(e) Additional applicable requirements are to become effective before the renewal date of the permit and are in conflict with existing permit conditions.

(2) Proceedings to reopen and issue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

(3) Reopenings under (1) above shall not be initiated before a notice of such intent is provided to the Part 70 source by the Executive Secretary at least 30 days in advance of the date that the permit is to be reopened, except that the Executive Secretary may provide a shorter time period in the case of an emergency.

R307-415-7h. Permit Revision: Reopenings for Cause by EPA.

The Executive Secretary shall, within 90 days after receipt of notification that EPA finds that cause exists to terminate, modify or revoke and reissue a permit, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Executive Secretary may request a 90-day extension if a new or revised permit application is necessary or if the Executive Secretary determines that the permittee must submit additional information.

R307-415-7i. Public Participation.

The Executive Secretary shall provide for public notice, comment and an opportunity for a hearing on initial permit issuance, significant modifications, reopenings for cause, and renewals, including the following procedures:

(1) Notice shall be given: by publication in a newspaper of general circulation in the area where the source is located; to persons on a mailing list developed by the Executive Secretary, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public.

(2) The notice shall identify the Part 70 source; the name and address of the permittee; the name and address of the Executive Secretary; the activity or activities involved in the permit action; the emissions change involved in any permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan or compliance and monitoring certification, and all other materials available to the Executive Secretary that are relevant to the permit decision; a brief description of the comment procedures; and the time and place of any hearing that may be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled.

(3) The Executive Secretary shall provide such notice and opportunity for participation by affected States as is provided for by R307-415-8.

(4) Timing. The Executive Secretary shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing.

(5) The Executive Secretary shall keep a record of the commenters and also of the issues raised during the public participation process, and such records shall be available to the public and to EPA.

R307-415-8. Permit Review by EPA and Affected States.

(1) Transmission of information to EPA.

(a) The Executive Secretary shall provide to EPA a copy of each permit application, including any application for permit modification, each proposed permit, and each final operating permit, unless the Administrator has waived this requirement for a category of sources, including any class, type, or size within such category. The applicant may be required by the Executive Secretary to provide a copy of the permit application, including the compliance plan, directly to EPA. Upon agreement with EPA, the Executive Secretary may submit to EPA a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete permit application and compliance plan. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with EPA's national database management system.

(b) The Executive Secretary shall keep for five years such records and submit to EPA such information as EPA may reasonably require to ascertain whether the Operating Permit Program complies with the requirements of the Act or of 40 CFR Part 70.

(2) Review by affected States.

(a) The Executive Secretary shall give notice of each draft permit to any affected State on or before the time that the Executive Secretary provides this notice to the public under R307-415-7i, except to the extent R307-415-7f(1) or (2) requires the timing to be different, unless the Administrator has waived this requirement for a category of sources, including any class, type, or size within such category.

(b) The Executive Secretary, as part of the submittal of the proposed permit to EPA, or as soon as possible after the submittal for minor permit modification procedures allowed under R307-415-7f(1) or (2), shall notify EPA and any affected State in writing of any refusal by the Executive Secretary to accept all recommendations for the proposed permit that the affected State submitted during the public or affected State review period. The notice shall include the Executive Secretary's reasons for not accepting any such recommendation. The Executive Secretary is not required to accept recommendations that are not based on applicable requirements or the requirements of R307-415.

(3) EPA objection. If EPA objects to the issuance of a permit in writing within 45 days of receipt of the proposed permit and all necessary supporting information, then the Executive Secretary shall not issue the permit. If the Executive Secretary fails, within 90 days after the date of an objection by EPA, to revise and submit a proposed permit in response to the objection, EPA may issue or deny the permit in accordance with the requirements of the Federal program promulgated under Title V of the Act.

(4) Public petitions to EPA. If EPA does not object in writing under R307-415-8(3), any person may petition EPA under the provisions of 40 CFR 70.8(d) within 60 days after the expiration of EPA's 45-day review period to make such objection. If EPA objects to the permit as a result of a petition, the Executive Secretary shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the Executive Secretary has issued a permit prior to receipt of an EPA objection under this paragraph, EPA may modify, terminate, or revoke such permit, consistent with the procedures in 40 CFR 70.7(g) except in unusual circumstances, and the Executive Secretary may thereafter issue only a revised permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

(5) Prohibition on default issuance. The Executive Secretary shall not issue an operating permit, including a permit renewal or modification, until affected States and EPA have had an opportunity to review the proposed permit as required under this Section.

R307-415-9. Fees for Operating Permits.

(1) Definitions. The following definition applies only to R307-415-9: "Allowable emissions" are emissions based on the potential to emit stated by the Executive Secretary in an approval order, the State Implementation Plan or an operating permit.

(2) Applicability. As authorized by Section 19-2-109.1, all Part 70 sources must pay an annual fee, based on annual emissions of all chargeable pollutants.

(a) Any Title IV affected source that has been designated as a "Phase I Unit" in a substitution plan approved by the Administrator under 40 CFR Section 72.41 shall be exempted from the requirement to pay an emission fee from January 1, 1995 to December 31, 1999.

(3) Calculation of Annual Emission Fee for a Part 70 Source.

(a) The emission fee shall be calculated for all chargeable pollutants emitted from a Part 70 source, even if only one unit or one chargeable pollutant triggers the applicability of R307-415 to the source.

(i) Fugitive emissions and fugitive dust shall be counted when determining the emission fee for a Part 70 source.

(ii) An emission fee shall not be charged for emissions of any amount of a chargeable pollutant if the emissions are already accounted for within the emissions of another chargeable pollutant.

(iii) An emission fee shall not be charged for emissions of any one chargeable pollutant from any one Part 70 source in excess of 4,000 tons per year.

(iv) Emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road vehicle shall not be counted when calculating chargeable emissions for a Part 70 source.

(b) The emission fee for an existing source prior to the issuance of an operating permit, shall be based on the most recent emission inventory available unless a Part 70 source elected, prior to July 1, 1992, to base the fee for one or more pollutants on allowable emissions established in an approval order or the State Implementation Plan.

(c) The emission fee after the issuance or renewal of an operating permit shall be based on the most recent emission inventory available unless a Part 70 source elects, prior to the issuance or renewal of the permit, to base the fee for one or more chargeable pollutants on allowable emissions for the entire term of the permit.

(d) When a new Part 70 source begins operating, it shall pay an emission fee for that fiscal year, prorated from the date the source begins operating. The emission fee for a new Part 70 source shall be based on allowable emissions until that source has been in operation for a full calendar year, and has submitted an inventory of actual emissions. If a new Part 70 source is not billed in the first billing cycle of its operation, the emission fee shall be calculated using the emissions that would have been used had the source been billed at that time. This fee shall be in addition to any subsequent emission fees.

(e) When a Part 70 source is no longer subject to Part 70, the emission fee shall be prorated to the date that the source ceased to be subject to Part 70. If the Part 70 source has already paid an emission fee that is greater than the prorated fee, the balance will be refunded.

(i) If that Part 70 source again becomes subject to the emission fee requirements, it shall pay an emission fee for that fiscal year prorated from the date the source again became subject to the emission fee requirements. The fee shall be based

on the emission inventory during the last full year of operation. The emission fee shall continue to be based on actual emissions reported for the last full calendar year of operation until that source has been in operation for a full calendar year and has submitted an updated inventory of actual emissions.

(ii) If a Part 70 source has chosen to base the emission fee on allowable emissions, then the prorated fee shall be calculated using allowable emissions.

(f) Modifications. The method for calculating the emission fee for a source shall not be affected by modifications at that source, unless the source demonstrates to the Executive Secretary that another method for calculating chargeable emissions is more representative of operations after the modification has been made.

(g) The Executive Secretary may presume that potential emissions of any chargeable pollutant for the source are equivalent to the actual emissions for the source if recent inventory data are not available.

(4) Collection of Fees.

(a) The emission fee is due on October 1 of each calendar year or 45 days after the source has received notice of the amount of the fee, whichever is later.

(b) The Executive Secretary may require any person who fails to pay the annual emission fee by the due date to pay interest on the fee and a penalty under 19-2-109.1(7)(a).

(c) A person may contest an emission fee assessment, or associated penalty, under 19-2-109.1(8).

KEY: air pollution, environmental protection, operating permit, emission fee
September 7, 2006 19-2-109.1
Notice of Continuation July 13, 2007 19-2-104

R307. Environmental Quality, Air Quality.
R307-417. Permits: Acid Rain Sources.
R307-417-1. Part 72 Requirements.

The provisions of 40 CFR Part 72, as in effect on July 1, 1998, for purposes of implementing an acid rain program that meets the requirements of Title IV of the Clean Air Act, are incorporated into these rules by reference. The term "permitting authority" shall mean the Executive Secretary of the Air Quality Board, and the term "Administrator" shall mean the Administrator of the Environmental Protection Agency. If the provisions or requirements of 40 CFR Part 72 conflict with or are not included in R307-415, Permits: Operating Permit Requirements, provisions and requirements of 40 CFR Part 72 shall apply and take precedence.

KEY: acid rain, air quality, permitting authority*, operating permit*
March 5, 1999 19-2-101
Notice of Continuation July 13, 2007 19-2-104(3)(q)

R307. Environmental Quality, Air Quality.
R307-420. Permits: Ozone Offset Requirements in Davis and Salt Lake Counties.
R307-420-1. Purpose.

The purpose of R307-420 is to maintain the offset provisions of the nonattainment area new source review permitting program in Salt Lake and Davis Counties after the area is redesignated to attainment for ozone. R307-420 also establishes more stringent offset requirements for nitrogen oxides that may be triggered as a contingency measure under the ozone maintenance plan.

R307-420-2. Definitions.

The following additional definitions apply to R307-420:

"Major Source" means:

(1)(a) any stationary source of air pollutants which emits, or has the potential to emit, fifty tons per year or more of volatile organic compounds; or

(b) any stationary source of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of nitrogen oxides; or

(c) any physical change that would occur at a source not qualifying under (1)(a) or (b) as a major source, if the change would constitute a major source by itself.

(2) The fugitive emissions of a stationary source shall not be included in determining whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(a) Coal cleaning plants (with thermal dryers);
(b) Kraft pulp mills;
(c) Portland cement plants;
(d) Primary zinc smelters;
(e) Iron and steel mills;
(f) Primary aluminum ore reduction plants;
(g) Primary copper smelters;
(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(i) Hydrofluoric, sulfuric, or nitric acid plants;
(j) Petroleum refineries;
(k) Lime plants;
(l) Phosphate rock processing plants;
(m) Coke oven batteries;
(n) Sulfur recovery plants;
(o) Carbon black plants (furnace process);
(p) Primary lead smelters;
(q) Fuel conversion plants;
(r) Sintering plants;
(s) Secondary metal production plants;
(t) Chemical process plants;
(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British Thermal Units per hour heat input;
(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(w) Taconite ore processing plants;
(x) Glass fiber processing plants;
(y) Charcoal production plants;
(z) Fossil fuel-fired steam electric plants of more than 250 million British Thermal Units per hour heat input;
(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under 42 U.S.C. 7411 or 7412 (section 111 or 112 of the federal Clean Air Act).

"Significant" means, for the purposes of determining what is a significant net emission increase and therefore a major modification, a rate of emissions that would equal or exceed any of the following rates:

(1) for volatile organic compounds, 25 tons per year,
(2) for nitrogen oxides, 40 tons per year.

R307-420-3. Applicability.

(1) Nitrogen Oxides. Effective August 18, 1997, any new major source or major modification of nitrogen oxides in Davis County or Salt Lake County shall offset the proposed increase in nitrogen oxide emissions by a ratio of 1.15:1 before the executive secretary may issue an approval order to construct, modify, or relocate under R307-401.

(2) Volatile Organic Compounds. Effective December 2, 1998 any new major source or major modification of volatile organic compounds in Davis County or Salt Lake County shall offset the proposed increase in volatile organic compound emissions by a ratio of 1.2:1 before the executive secretary may issue an approval order to construct, modify, or relocate under R307-401.

R307-420-4. General Requirements.

(1) All emission offsets shall meet the general requirements for calculating and banking emission offsets that are established in R307-403-4, R307-403-7 and R307-403-8.

(2) Emission offset credits generated in Davis County or Salt Lake County may be used in either county.

(3) Offsets may not be traded between volatile organic compounds and nitrogen oxides.

R307-420-5. Contingency Measure: Offsets for Oxides of Nitrogen.

If the nitrogen oxide offset contingency measure described in Section IX, Part D.2.h(3) of the state implementation plan is triggered, the following conditions shall apply in Davis County and Salt Lake County.

(1) Paragraph (1)(b) in the term "major source," which is defined in R307-420-2, shall be changed to read: any stationary source of air pollutants which emits, or has the potential to emit, fifty tons per year or more of nitrogen oxides.

(2) The nitrogen dioxide level that is included in the term "significant", which is defined in R307-420-2, shall be changed from 40 tons per year to 25 tons per year.

(3) The emission offset ratio shall be 1.2:1 for nitrogen oxides.

KEY: air pollution, ozone, offset*
May 6, 1999 **19-2-104**
Notice of Continuation July 13, 2007 **19-2-108**

R307. Environmental Quality, Air Quality.
R307-421. Permits: PM10 Offset Requirements in Salt Lake County and Utah County.
R307-421-1. Purpose.

The purpose of R307-421 is to require emission reductions from existing sources to offset emission increases from new or modified sources of PM10 precursors in Salt Lake and Utah Counties. The emission offset will minimize growth of PM10 precursors to ensure that these areas will continue to maintain the PM10 and PM2.5 national ambient air quality standards.

R307-421-2. Applicability.

(1) This rule applies to new or modified sources of sulfur dioxide or oxides of nitrogen that are located in or impact Salt Lake County or Utah County.

(2) A new or modified source shall be considered to impact an area if the modeled impact is greater than 1.0 microgram/cubic meter for a one-year averaging period or 3.0 micrograms/cubic meter for a 24-hour averaging period for sulfur dioxide or nitrogen dioxide.

R307-421-3. Offset Requirements.

(1) The owner or operator of any new source that has the potential to emit, or any modified source that would increase sulfur dioxide or oxides of nitrogen in an amount equal to or greater than the levels in (a) and (b) below shall obtain an enforceable emission offset as defined in (a) and (b) below.

(a) For a total of 50 tons/year or greater, an emission offset of 1.2:1 of the emission increase is required.

(b) For a total of 25 tons/year or greater but less than 50 tons/year, an emission offset of 1:1 of the emission increase is required.

R307-421-4. General Requirements.

(1) All emission offsets shall meet the general requirements for calculating and banking emission offsets that are established in R307-403-4, R307-403-7 and R307-403-8.

(2) Emission offsets shall be used only in the county where the credits are generated. In the case of sources located outside of Salt Lake or Utah Counties, the offsets shall be generated in the county where the modeled impact in R307-421-2(2) occurs.

(3) Emission offsets shall not be traded between pollutants.

R307-421-5. Transition Provision.

This rule will become effective in each county on the day that the EPA redesignates the county to attainment for PM10. The PM10 nonattainment area offset provisions in R307-403 will continue to apply until the EPA redesignates each county to attainment for PM10.

KEY: air pollution, offset, PM10, PM2.5

July 7, 2005	**19-2-101(1)(a)**
Notice of Continuation July 13, 2007	**19-2-104**
	19-2-108

R311. Environmental Quality, Environmental Response and Remediation.
R311-401. Utah Hazardous Substances Priority List.
R311-401-1. Definitions.

The definitions in Section 19-6-302 are adopted and incorporated by reference as part of this rule.

R311-401-2. Hazardous Substances Priority List.

Pursuant to Section 19-6-311 of the Utah Hazardous Substances Mitigation Fund Act the hazardous substances priority list is hereby established as presented below. The listed sites are eligible to be addressed under the authority of Section 19-6-311 et seq. U.C.A. 1953 as amended.

(a) National Priority List Sites. The Federal Register publication dates are indicated below.

TABLE

SITE NUMBER	SITE NAME	FEDERAL REGISTER PUBLICATION DATE
1	Hill Air Force Base	July 22, 1987
2	Monticello Vicinity Properties	June 10, 1986
3	Ogden Defense Depot	July 22, 1987
4	Portland Cement Sites 2 and 3	June 10, 1986
5	Rose Park Sludge Pit	September 8, 1983
6	Utah Power and Light, American Barrel	October 4, 1989
7	Sharon Steel	August 30, 1990
8	Tooele Army Depot, North	August 30, 1990
9	Monticello Mill Site	November 21, 1989
10	Midvale Slag	February 11, 1991
11	Wasatch Chemical, Lot 6	February 11, 1991
12	Petrochem Recycling Corp./ Ekotek Plant	October 14, 1992
13	Jacobs Smelter	February 4, 2000
14	Intermountain Waste Oil Refinery	May 11,2000
15	International Smelting and Refining	July 27, 2000
16	Bountiful/Woods Cross 5th South PCE Plume	September 13, 2001

(b) Proposed National Priority List Sites. The Federal Register publication dates are indicated below.

TABLE

SITE NUMBER	SITE NAME	FEDERAL REGISTER PUBLICATION DATE
1	Richardson Flat Tailings	February 7, 1992
2	Murray Smelter	January 18, 1994
3	Davenport and Flagstaff Smelters	December 1, 2000
4	Eureka Mills	February 7, 2001

(c) Scored Sites
Reserved.

KEY: hazardous substances, hazardous substances priority list
October 1, 2002 19-6-311
Notice of Continuation July 19, 2007

R315. Environmental Quality, Solid and Hazardous Waste.
R315-301. Solid Waste Authority, Definitions, and General Requirements.
R315-301-1. Authority and Purpose.

The Solid Waste Permitting and Management Rules are promulgated under the authority of the Solid and Hazardous Waste Act, Chapter 6 of Title 19, to protect human health, to prevent land, air and water pollution, and to conserve the state's natural, economic and energy resources by setting minimum performance standards for the proper management of solid wastes originating from residences, commercial, agricultural, and other sources.

R315-301-2. Definitions.

Terms used in Rules R315-301 through R315-320 are defined in Sections 19-1-103, 19-6-102, and 19-6-803. In addition, for the purpose of Rules R315-301 through 320, the following definitions apply.

(1) "Active area" means that portion of a facility where solid waste recycling, reuse, treatment, storage, or disposal operations are being conducted.

(2) "Airport" means a public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(3) "Aquifer" means a geological formation, group of formations, or portion of a formation that contains sufficiently saturated permeable material to yield useable quantities of ground water to wells or springs.

(4) "Areas susceptible to mass movement" means those areas of influence, characterized as having an active or substantial possibility of mass movement, where the movement of earth material at, beneath, or adjacent to the landfill unit, because of natural or human-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock falls.

(5) "Asbestos waste " means friable asbestos, which is any material containing more than 1% asbestos as determined using the method specified in Appendix A, 40 CFR Part 763.1, 2001 ed., which is adopted and incorporated by reference, that when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

(6) "Background concentration" means the concentration of a contaminant in ground water upgradient or a lateral hydraulically equivalent point from a facility, practice, or activity, and which has not been affected by that facility, practice, or activity.

(7) "Class I Landfill" means a non-commercial landfill or a landfill that meets the definition found in Subsection 19-6-102(3)(a)(iii) and is permitted by the Executive Secretary

(a) to receive for disposal:

(i) municipal solid waste;

(ii) any other nonhazardous solid waste, not otherwise limited by rule or solid waste permit; or

(iii) in conjunction with municipal solid waste or other nonhazardous solid waste, waste from a conditionally exempt small quantity generator of hazardous waste, as defined by Section R315-2-5; and

(b) does not meet the standards of Subsection R315-303-3(3)(e)(v).

(8) "Class II Landfill" means a non-commercial landfill or a landfill that is permitted by the Executive Secretary

(a) to receive for disposal:

(i) municipal solid waste;

(ii) any other nonhazardous solid waste, not otherwise limited by rule or solid waste permit; or

(iii) in conjunction with municipal solid waste or other nonhazardous solid waste, waste from a conditionally exempt small quantity generator of hazardous waste, as defined by Section R315-2-5.

(b) meets the standards of Subsection R315-303-3(3)(e)(v).

(9) "Class III Landfill" means a non-commercial landfill that is permitted by the Executive Secretary to receive for disposal only industrial solid waste.

(10) "Class IV Landfill" means a non-commercial landfill that is permitted by the Executive Secretary to receive for disposal only:

(a) construction/demolition waste;

(b) yard waste;

(c) inert waste;

(d) dead animals, as approved by the Executive Secretary and upon meeting the requirements of Section R315-315-6;

(e) waste tires and materials derived from waste tires, upon meeting the requirements of Section 19-6-804 and Section R315-320-3; and

(f) petroleum-contaminated soils, upon meeting the requirements of Subsection R315-315-8(3).

(11) "Class V Landfill" means a commercial nonhazardous solid waste disposal facility, as defined by Subsection 19-6-102(3), that is permitted by the Executive Secretary to receive for disposal:

(a) municipal solid waste;

(b) any other nonhazardous solid waste, not otherwise limited by rule or solid waste permit; and

(c) in conjunction with municipal solid waste or other nonhazardous solid waste, waste from a conditionally exempt small quantity generator of hazardous waste, as defined by Section R315-2-5.

(12) "Class VI Landfill" means a commercial nonhazardous solid waste landfill that is permitted by the Executive Secretary to receive for disposal only:

(a) construction/demolition waste, excluding waste from a conditionally exempt small quantity generator of hazardous waste, as defined by Section R315-2-5;

(b) yard waste;

(c) inert waste;

(d) dead animals, as approved by the Executive Secretary and upon meeting the requirements of Section R315-315-6;

(e) waste tires and materials derived from waste tires, upon meeting the requirements of Section 19-6-804 and Subsection R315-320-3(1) or (2); and

(f) petroleum-contaminated soils, upon meeting the requirements of Subsection R315-315-8(3).

(g) A Class VI Landfill may not receive for disposal:

(i) hazardous waste;

(ii) construction/demolition waste containing PCBs, except as allowed by Section R315-315-7;

(iii) garbage;

(iv) municipal solid waste; or

(v) industrial solid waste.

(h) The wastes received at a Class VI Landfill may be further limited by a solid waste permit.

(i) A Class VI Landfill may not change to a Class V Landfill except by meeting all requirements for a Class V Landfill including obtaining a new Class V Landfill permit and completing the requirements specified in Subsection R315-310-3(2).

(13) "Closed facility" means any facility that no longer receives solid waste and has completed an approved closure plan, and any landfill on which an approved final cover has been installed.

(14) "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding household waste and industrial wastes.

(15) "Composite liner" means a liner system consisting of

two components: the upper component consisting of a synthetic flexible membrane liner, and the lower component consisting of a layer of compacted soil. The composite liner must have the synthetic flexible membrane liner installed in direct and uniform contact with the compacted soil component and be constructed of specified materials and compaction to meet specified permeabilities.

(16) "Composting" means a method of solid waste management whereby the organic component of the waste stream is biologically decomposed under controlled aerobic conditions, at a temperature of 140 degrees Fahrenheit (60 degrees Celsius), or higher, for at least some part of each day of a consecutive seven day period, to a state in which the end product or compost can be handled, stored, or applied to the land without adversely affecting human health or the environment.

(17) "Construction/demolition waste" means solid waste from building materials, packaging, and rubble resulting from construction, remodeling, repair, abatement, rehabilitation, renovation, and demolition operations on pavements, houses, commercial buildings, and other structures, including waste from a conditionally exempt small quantity generator of hazardous waste, as defined by Section R315-2-5, that may be generated by these operations.

(a) Such waste may include:

(i) concrete, bricks, and other masonry materials;

(ii) soil and rock;

(iii) waste asphalt;

(iv) rebar contained in concrete; and

(v) untreated wood, and tree stumps.

(b) Construction/demolition waste does not include:

(i) friable asbestos;

(ii) treated wood; or

(iii) contaminated soils or tanks resulting from remediation or clean-up at any release or spill.

(18) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water or soil that is a result of human activity.

(19) "Displaced" or "displacement" means the relative movement of any two sides of a fault measured in any direction.

(20) "Drop box facility" means a facility used for the placement of a large detachable container or drop box for the collection of solid waste for transport to a solid waste disposal facility. The facility includes the area adjacent to the containers for necessary entrance, exit, unloading, and turn-around areas. Drop box facilities normally serve the general public with uncompacted loads and receive waste from off site. Drop box facilities do not include residential or commercial waste containers on the site of waste generation.

(21) "Energy recovery" means the recovery of energy in a useable form from incineration, burning, or any other means of using the heat of combustion of solid waste that involves high temperature (above 1200 degrees Fahrenheit) processing.

(22) "Existing facility" means any facility that has:

(a) a current valid solid waste permit or other valid approval issued under Rules R315-301 through 320 by the Executive Secretary; and

(b) received final approval to accept waste as required by Subsection R315-301-5(1).

(23) "Expansion of a solid waste disposal facility" means any lateral expansion beyond the property boundaries outlined in the permit application for the current permit under which the facility is operating.

(24) "Facility" means all contiguous land, structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal operational units, e.g., one or more incinerators, landfills, container storage areas, or combinations of these.

(25) "Floodplain" means the land that has been or may be hereafter covered by flood water which has a 1% chance of occurring any given year. The flood is also referred to as the base flood or 100-year flood.

(26) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure or as determined by EPA test method 9095 (Paint Filter Liquids Test) as provided in EPA Report SW-846 "Test Methods for Evaluating Solid Waste" as revised December (1996) which is adopted and incorporated by reference.

(27) "Garbage" means discarded animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food, and of such a character and proportion as to be capable of attracting or providing food for vectors. Garbage does not include sewage and sewage sludge.

(28) "Ground water" means subsurface water that is in the zone of saturation including perched ground water.

(29) "Ground water quality standard" means a standard for maximum allowable contamination in ground water as set by Section R315-308-4.

(30) "Hazardous waste" means hazardous waste as defined by Subsection 19-6-102(9) and Section R315-2-3.

(31) "Holocene fault" means a fracture or zone of fractures along which rocks on one side of the fracture have been displaced with respect to those on the other side, which has occurred in the most recent epoch of the Quaternary period extending from the end of the Pleistocene, approximately 11,000 years ago, to the present.

(32) "Household size" means a container for a material or product that is normally and reasonably associated with households or household activities. The containers are of a size and design to hold materials or products generally for immediate use and not for storage, five gallons or less in size.

(33) "Household waste" means any solid waste, including garbage, trash, and sanitary waste in septic tanks, derived from households including single and multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas.

(34) "Incineration" means a controlled thermal process by which solid wastes are physically or chemically altered to gas, liquid, or solid residues that are also regulated solid wastes. Incineration includes the thermal destruction of solid waste for energy recovery. Incineration does not include smelting operations where metals are reprocessed or the refining, processing, or burning of used oil for energy recovery as described in Rule R315-15.

(35) "Industrial solid waste" means any solid waste generated at a manufacturing or other industrial facility that is not a hazardous waste or that is a hazardous waste from a conditionally exempt small quantity generator of hazardous waste, as defined by Section R315-2-5, generated by an industrial facility. Industrial solid waste includes waste from the following industries or resulting from the following manufacturing processes and associated activities: electric power generation; fertilizer or agricultural chemical industries; food and related products or by-products industries; inorganic chemical industries; iron and steel manufacturing; leather and leather product industries; nonferrous metals manufacturing or foundry industries; organic chemical industries; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic product industries; stone, glass, clay, and concrete product industries; textile manufacturing; transportation equipment manufacturing; and water treatment industries. This term does not include mining waste; oil and gas waste; or other waste excluded by Subsection 19-6-102(18)(b).

(36) "Industrial solid waste facility" means a facility that receives only industrial solid waste from on-site or off-site sources for disposal.

(37) "Inert waste" means noncombustible, nonhazardous

solid wastes that retain their physical and chemical structure under expected conditions of disposal, including wastes that exhibit resistance to biological or chemical change.

(38) "Landfill" means a disposal facility where solid waste is or has been placed in or on the land and that is not a landtreatment facility or surface impoundment.

(39) "Land treatment, landfarming, or landspreading facility" means a facility or unit within a facility where solid waste is applied onto or incorporated into the soil surface for the purpose of biodegradation.

(40) "Lateral expansion of the solid waste disposal area" means:

(a) any horizontal expansion of the waste boundaries of an existing landfill cell, module, or unit;

(b) the construction of a new cell, module, or unit within the boundaries outlined in the permit application of the current permit under which the facility is operating; or

(c) any horizontal expansion not consistent with past normal operating practices.

(41) "Lateral hydraulically equivalent point" means a point located hydraulically equal to a facility and in the same ground water with similar geochemistry such that the ground water, at that point, has not been affected by the facility.

(42) "Leachate" means a liquid that has passed through or emerged from solid waste and that may contain soluble, suspended, miscible, or immiscible materials removed from such waste.

(43) "Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include human-made materials, such as fill, concrete and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

(44) "Lower explosive limit" means the lowest percentage by volume of a mixture of explosive gases that will propagate a flame in air at 25 degrees Celsius (77 degrees Fahrenheit) and atmospheric pressure.

(45) "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90% or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on site specific seismic risk assessment.

(46) "Municipal solid waste landfill" means a permitted nonhazardous solid waste landfill that may receive municipal solid waste for disposal.

(47) "Municipal solid waste" means household waste, nonhazardous commercial solid waste, and non-hazardous sludge.

(48) "New facility" means any facility that:

(a) has applied for a permit or other valid approval issued under Rules R315-301 through 320 by the Executive Secretary;

(b) did not have a permit or other valid approval issued under Rules R315-301 through 320 at the time of the application; and

(c) has not received final approval to accept waste as required by Subsection R315-301-5(1).

(49) "Off site" means any site which is not on site.

(50) "On site" means the same or geographically contiguous property that may be divided by public or private right-of-way, provided that the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along the right-of-way. Property separated by a private right-of-way, which the site owner or operator controls, and to which the public does not have access, is also considered on-site property.

(51) "Operator" means the person, as defined by Subsection 19-1-103(4), responsible for the overall operation of a facility.

(52) "Owner" means the person, as defined by Subsection 19-1-103(4), who has an ownership interest in a facility or part of a facility.

(53) "PCB" or "PCBs" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of materials which contain such substances.

(54) "Permeability" means the ease with which a porous material allows water and the solutes contained therein to flow through it. This is usually expressed in units of centimeters per second (cm/sec) and termed hydraulic conductivity. Soils and synthetic liners with a permeability for water of 1×10^{-7} cm/sec or less may be considered impermeable.

(55) "Permit" means the plan approval as required by Subsection 19-6-108(3)(a), or equivalent control document issued by the Executive Secretary to implement the requirements of the Utah Solid and Hazardous Waste Act.

(56) "Pile" means any noncontainerized accumulation of solid waste that is used for treatment or storage.

(57) "Poor foundation conditions" means those areas where features exist which indicate that a natural or human-induced event may result in inadequate foundation support for the structural components of a landfill unit.

(58) "Putrescible waste" means solid waste which contains organic matter capable of being decomposed by microorganisms and of such a character and proportion as to be capable of attracting or providing food for vectors including birds and mammals.

(59) "Qualified ground water scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by state registration, professional certification, or completion of accredited university programs that enable that individual to make sound professional judgements regarding ground water monitoring, contaminant fate and transport, and corrective action.

(60) "Recycling" means extracting valuable materials from the waste stream and transforming or remanufacturing them into usable materials that have a demonstrated or potential market.

(a) Recycling does not include processes that generate such volumes of material that no market exists for the material.

(b) Any part of the waste stream entering a recycling facility and subsequently returning to a waste stream or being otherwise disposed has the same regulatory designation as the original waste.

(c) Recycling includes the substitution of nonhazardous solid waste fuels for conventional fuels (such as coal, natural gas, and petroleum products) for the purpose of generating the heat necessary to manufacture a product.

(61) "Recyclable materials" means those solid wastes that can be recovered from or otherwise diverted from the waste stream for the purpose of recycling, such as metals, paper, glass, and plastics.

(62) "Run-off" means any rainwater, leachate, or other liquid that has contacted solid waste and drains over land from any part of a facility.

(63) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto the active area of a facility.

(64) "Scavenging" means the unauthorized removal of solid waste from a facility.

(65) "Seismic impact zone" means an area with a 10% or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull, will exceed 0.10g in 250 years.

(66) "Septage" means a semisolid consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from septic tank systems.

(67) "Sharps" means any discarded or contaminated article or instrument from a health facility that may cause puncture or cuts. Such waste may include needles, syringes, blades, needles with attached tubing, pipettes, pasteurs, broken glass, and blood vials.

(68) "Sludge" means any solid, semisolid, or liquid waste, including grit and screenings generated from a:

(a) municipal, commercial, or industrial waste water treatment plant;

(b) water supply treatment plant;

(c) car wash facility;

(d) air pollution control facility; or

(e) any other such waste having similar characteristics.

(69) "Solid waste disposal facility" means a landfill, incinerator, or land treatment area.

(70) "Solid waste incinerator facility" means a facility at which solid waste is received from on-site or off-site sources and is subjected to the incineration process. An incinerator facility that incinerates solid waste for any reason, including energy recovery, volume reduction, or to render it non-infectious, is a solid waste incinerator facility and is subject to Rules R315-301 through 320.

(71) "Special waste" means discarded solid waste that may require special handling or other solid waste that may pose a threat to public safety, human health, or the environment.

(a) Special waste may include:

(i) ash;

(ii) automobile bodies;

(iii) furniture and appliances;

(iv) infectious waste;

(v) waste tires;

(vi) dead animals;

(vii) asbestos;

(viii) waste exempt from the hazardous waste regulations under Section R315-2-4;

(ix) conditionally exempt small quantity generator hazardous waste as defined by Section R315-2-5;

(x) waste containing PCBs;

(xi) petroleum contaminated soils;

(xii) waste asphalt; and

(xiii) sludge.

(b) Special waste must be handled and disposed according to the requirements of Rule R315-315.

(72) "State" means the State of Utah.

(73) "Structural components" means liners, leachate collection systems, final covers, run-on or run-off systems, and any other component used in the construction and operation of a landfill that is necessary for the protection of human health and the environment.

(74) "Surface impoundment or impoundment" means a facility or part of a facility which is a natural topographic depression, human-made excavation, or diked area formed primarily of earthen materials, although it may be lined with synthetic materials, which is designed to hold an accumulation of liquid waste or waste containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(75) "Transfer station" means a permanent, fixed, supplemental collection and transportation facility that is staffed by a minimum of one employee of the owner or operator during hours of operation and is used by persons and route collection vehicles to deposit collected solid waste from off-site into a transfer vehicle for transport to a solid waste handling or disposal facility.

(76) "Transport vehicle" means a vehicle capable of hauling solid waste such as a truck, packer, or trailer that may be used by refuse haulers to transport solid waste from the point of generation to a transfer station or a disposal facility.

(77) "Treated wood" means any wood item that has been treated with the following or compounds containing the following:

(a) creosote or related compounds;

(b) Arsenic;

(c) Chromium; or

(d) Copper.

(78) "Twenty-five year storm" means a 24-hour storm of such intensity that it has a 4% probability of being equaled or exceeded any given year. The storm could result in what is referred to as a 25-year flood.

(79) "Unit" or "Solid Waste Management Unit" means a distinct operational storage, treatment, or disposal area at a solid waste management facility that contains all features to render it capable of performing its intended function and of being closed as a separate entity.

(80) "Unit boundary" means a vertical surface located at the hydraulically downgradient limit of a landfill unit or other solid waste disposal facility unit which is required to monitor ground water. This vertical surface extends down into the ground water.

(81) "Unstable area" means a location that is susceptible to natural or human induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a facility. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains.

(82) "Vadose zone" means the zone of aeration including soil and capillary water. The zone is bound above by the land surface and below by the water table.

(83) "Vector" means a living animal including insect or other arthropod which is capable of transmitting an infectious disease from one organism to another.

(84) "Washout" means the carrying away of solid waste by waters of a base or 100-year flood.

(85) "Waste tire storage facility" or "waste tire pile" means any site where more than 1,000 waste tires or 1,000 passenger tire equivalents are stored on the ground.

(a) A waste tire storage facility includes:

(i) whole waste tires used as a fence;

(ii) whole waste tires used as a windbreak; and

(iii) waste tire generators where more than 1,000 waste tires are held.

(b) A waste tire storage facility does not include:

(i) a site where waste tires are stored exclusively in buildings or in trailers;

(ii) if whole waste tires are stored for five or fewer days, the site of a registered tire recycler or a processor for a registered tire recycler;

(iii) a permitted solid waste disposal facility that stores whole tires in piles for not longer than one year;

(iv) a staging area where tires are temporarily placed on the ground, not stored, to accommodate activities such as sorting, assembling, or loading or unloading of trucks; or

(v) a site where waste tires or material derived from waste tires are stored for five or fewer days and are used for ballast to maintain covers on agricultural materials or to maintain covers at a construction site or are to be recycled or applied to a beneficial use.

(c) Tires attached to a vehicle are not considered waste tires until they are removed from the vehicle.

(86) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

(87) "Yard waste" means vegetative matter resulting from landscaping, land maintenance, and land clearing operations including grass clippings, prunings, and other discarded material

generated from yards, gardens, parks, and similar types of facilities. Yard waste does not include garbage, paper, plastic, processed wood, sludge, septage, or manure.

R315-301-3. Owner Responsibilities for Solid Waste.

The owner, operator or occupant of any premises or business establishment shall be responsible for the management and disposal of all solid waste generated or accumulated by the owner, operator, or occupant of the property in compliance with the Utah Solid Waste Permitting and Management Rules and the Utah Solid and Hazardous Waste Act.

R315-301-4. Prohibition of Illegal Disposal or Incineration of Solid Waste.

(1) No person shall incinerate, burn, or otherwise dispose of any solid waste in any place except at a facility which is in compliance with the requirements of Rules R315-301 through 320 and other applicable rules.

(2) When any solid waste is disposed in a manner not in compliance with the requirements of Rules R315-301 through 320, or other applicable rules, the property owner of the disposal site or the person responsible for the illegal disposal or both:

(a) shall remove the solid waste from the illegal disposal site to a permitted solid waste disposal facility and, if necessary, shall remediate the site; or

(b) shall apply for a permit form the Executive Secretary and shall meet all of the following;

(i) submit the required permit application in the time frame specified by the Executive Secretary and respond promptly to all requests for information from the Executive Secretary related to the permit application;

(ii) shall immediately meet all of the operational monitoring and waste handling criteria of Rules R315-301 through 320; and

(iii) shall follow the requirements of Rule R315-301-4(2)(a) if a permit is not granted.

(3) Any person disposing of solid waste in a manner not in compliance with the requirements of Rules R315-301 through 320, or other applicable rules, may be subject to enforcement action in addition to meeting the requirements of Rule R315-301-4(2).

(4) When deposition or disposal of the following materials does not cause a hazard to human health or the environment or cause a public nuisance, the requirements of Rules R315-301 through 320 do not apply to:

(a) inert waste used as fill material;

(b) the disposal of mine tailings and overburden;

(c) the disposal of vegetative material generated as a result of land clearing; or

(d) the disposal of vegetative agricultural waste.

R315-301-5. Permit Required.

(1) No solid waste disposal facility shall be established, operated, maintained, or expanded until the owner or operator of such facility has obtained a permit from the Executive Secretary and has received a letter of approval from the Executive Secretary to accept waste.

(2) The owner or operator of a solid waste disposal facility shall operate the facility in accordance with the conditions of the permit and otherwise follow the permit.

(3) In areas where no public or duly licensed disposal service is available, the on-site disposal, by burial, of on-site generated nonhazardous solid waste from a single family farm or a single family ranch does not require a permit.

R315-301-6. Protection of Human Health and the Environment.

(1) The management of solid waste shall not present a threat to human health or the environment.

(2) Any contamination of the ground water, surface water, air, or soil that results from the management of solid waste which presents a threat to human health or the environment shall be remediated through appropriate corrective action.

KEY: solid waste management, waste disposal

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R331. Financial Institutions, Administration.
R331-5. Rule Governing Sale of Securities by Persons Issuing Securities, Who Are Under the Jurisdiction of the Department of Financial Institutions.
R331-5-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Sections 7-1-301(13) and 7-1-503.

(2) This rule governs the issuance, offer, offer to sell, offer for sale or sale of any security issued by a person or institution under the jurisdiction of the Department of Financial Institutions.

(3) The rule establishes uniform rules for securities offerings applicable to all persons and institutions subject to the jurisdiction of the department and minimum standards of disclosure to protect the public interest.

R331-5-2. Definitions.

(1) "Issuer" means any person under the jurisdiction of the department who issues or proposes to issue any security.

(2) "Offer, offer to sell, offer for sale or sale" means:

(a) every attempt or offer to dispose of, or solicitation of an offer to buy;

(b) every contract of sale of, contract to sell, or disposition of a security or interest in a security for value;

(c) every sale or offer of a warrant or right to purchase or subscribe to another security of the same issuer or an affiliate of the issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same issuer or an affiliate of the issuer.

(3) "Restricted Securities" means:

(a) securities that are acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or chain of transactions not involving any public offering;

(b) securities acquired from the issuer that are subject to the resale limitations of SEC Regulation D, Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act of 1933, 17 CFR 230.501-508 (1993), or securities issued pursuant to Utah Division of Securities Rule R164-14-2n, Uniform Limited Offering Exemption (1994);

(c) securities that are subject to the resale limitations of SEC Regulation D, Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act of 1933, 17 CFR 230.501-508 (1993) or Utah Division of Securities Rule R164-14-2n (1994) and are acquired in a transaction or chain of transactions not involving any public offering.

(4) "SEC" means the United States Securities and Exchange Commission.

(5) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; pre-organization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. The word "security" does not include:

(a) Certificates of deposit or similar instruments issued by a bank, savings and loan association, credit union, or industrial loan corporation authorized or approved by the commissioner;

(b) A loan participation, letter of credit, or other form of indebtedness incurred in the ordinary course of business by a bank, savings and loan association, credit union, or industrial loan corporation; or

(c) Promissory notes or other evidences of indebtedness, and the security therefor, leases of personal property, contracts to sell real or personal property, or other loans or investments sold by a depository institution in the secondary market.

R331-5-3. Registration with the Department.

(1) Any person under the jurisdiction of the department who issues, offers, offers to sell, offers for sale or sells any security, the issuer of which is also a person under the jurisdiction of the department, after the effective date of this rule, shall register with the department on forms as the department may require.

(2) No person may issue, offer, offer to sell, offer for sale or sell any security of which the issuer is also a person under the jurisdiction of the department, unless and until the department has provided notice to the issuer that the securities have been registered with the department and an offering circular containing, at a minimum, the information required in Rule R331-5-4, has been approved by the department.

R331-5-4. Offering Circular Requirements.

(1) General

No person subject to the jurisdiction of the department shall issue, offer, offer to sell, offer for sale or sell, directly or indirectly, any security issued by it unless the offer or sale is made through the use of an offering circular which has been filed and declared effective pursuant to this rule.

(2) Communications not deemed an offer

The following communications shall not be deemed an offer:

(a) Prior to filing an offering circular, any notice of a proposed offering which satisfies the requirements of SEC Rule 135, Notice of Certain Proposed Offerings , 17 CFR 230.135 (1993); and

(b) Subsequent to filing an offering circular, any notice, circular, advertisement, letter, or other communication published or transmitted to any person which satisfies the requirements of SEC Rule 134, Communications Not Deemed a Prospectus , 17 CFR 230.134 (1993).

(3) Preliminary offering circular

A preliminary offering circular may be used prior to the effective date of the offering circular if:

(a) The preliminary offering circular has been filed pursuant to this rule;

(b) The preliminary offering circular includes the information required by this rule, except for the information relating to offering price, discounts or commissions, amount of proceeds, conversion rates, call prices, or other matters dependent on the offering price; and

(c) The offering circular declared effective by the department is furnished to the purchaser prior to any sale.

(4) Form and Content

Any offering circular or amendment filed pursuant to this rule shall comply with the information requirements of Section (b) of the Securities and Exchange Commission Rule 502, General Conditions to be Met, 17 CFR 230.502 (1993).

(5) Number of Copies

Any filing shall include three copies of each document to be filed with the department. After the effective date of an offering circular, an offering circular which varies from the form previously filed shall not be used, unless it includes only non-material supplemental or additional information and until three copies have been filed with the department.

(6) Effective Date

An offering circular filed with the department is effective on the tenth day after filing. Upon request, the commissioner may declare an earlier effective date if he is satisfied that the offering circular is adequate and that the earlier effective date does not materially prejudice any party in interest. Exceptions include:

(a) If any amendment is filed prior to the effective date, the offering circular shall be deemed to have been filed when such

amendment was filed;

(b) If a duly authorized amendment, telegram confirmed in writing, or letter states that the effective date is delayed until a further amendment is filed stating specifically that the offering circular will become effective in accordance with this paragraph; or

(c) If it appears to the department at any time that the offering circular is incomplete or inaccurate in any material respect, the department may determine to declare the offering circular not effective until a materially complete and accurate amendment is filed.

(7) Use of the offering circular

(a) An offering circular or amendment declared effective by the department shall not be used more than nine months after the effective date, unless the information contained therein is as of a date not more than sixteen months prior to such use.

(b) An offering circular filed under this rule shall not extend the period for which an effective offering circular or amendment may be used under Subsection (c).

(c) No offering circular shall be used and no offer or sale of securities subject to the offering circular requirements of this department shall be made subsequent to any material change in an issuer's business operations or financial condition, until the offering circular has been amended to include information as to the material changes and the amended offering circular has been filed with and declared effective by the department.

(8) Withdrawal or abandonment

(a) Any offering circular, amendment, or exhibit may be withdrawn prior to the effective date. A withdrawal shall be signed and state fully the grounds upon which it is made. Any documents withdrawn will not be removed from the files of the department, but will be marked "Withdrawn upon the request of the issuer on (date)."

(b) When an offering circular or amendment has been on file with the department for a period of nine months and has not become effective the department may, in its discretion, determine whether the filing has been abandoned, after notifying the issuer that the filing is out of date and must either be amended to comply with the applicable requirements of this rule or be withdrawn within 30 days after the date of such notice. Where a filing is abandoned, the documents will not be removed from the files of the department, but will be marked "Declared abandoned by the department on (date)."

R331-5-5. Securities Sale Report.

Within ten days after the termination of an offering pursuant to this rule, the issuer shall file a report with the department describing the sale of its securities which shall include:

(1) The name and address of the issuer;

(2) The title, number, aggregate and per-unit offering price of the securities sold;

(3) The aggregate and per-unit dollar amounts of actual itemized expenses, discounts or commissions, and other fees;

(4) The aggregate and per-share dollar amounts of the net proceeds raised; and

(5) The number of purchasers of each class of securities sold and the number of beneficial owners of each class of the issuer's equity securities at the termination of the offering.

R331-5-6. Limitations on Resale of "Restricted Securities".

(1) "Restricted Securities" acquired in a transaction pursuant to this rule, shall not be resold or otherwise disposed of for a period of two years without the prior written consent of the department. The issuer shall exercise reasonable care to ensure that the purchasers of the securities are not purchasing for resale or distribution.

(2) Reasonable care shall include the following:

(a) Reasonable inquiry to determine if the purchaser is acquiring the securities for himself or for other persons;

(b) Written disclosure to each purchaser prior to sale that the securities cannot be resold or otherwise disposed of for a period of two years without the prior written consent of the department;

(c) Placement of a legend on the certificate or other document that evidences the securities which states that: "The securities evidenced by this certificate are restricted as to transfer for a period of two years from the date of this certificate pursuant to the rules of the Utah Department of Financial Institutions and may not be sold or otherwise disposed of without the prior written consent of the department";

(d) The determination of the period securities have been held after acquisition for the purposes of this Section shall be made as would be determined under the provisions of the SEC Rule 144(d), Holding Period for Restricted Securities, 17 CFR 230.144(d); and

(e) Where securities of the issuer are exchanged for other securities in any business combination, securities of the issuer which are restricted under this Section may be exchanged for other securities which are similarly restricted and have the legend required by Subsection (c), and the holding periods may run concurrently.

R331-5-7. Remuneration Paid for Solicitation or for Sales.

No commission or similar remuneration shall be paid or given directly or indirectly for soliciting any prospective investor or in connection with the offer or sale of the securities in reliance on this rule unless such commission or similar transaction-related remuneration is paid or given to a broker-dealer licensed pursuant to Section 61-1-4 or an issuer's agent licensed to sell as an agent of this issuer pursuant to Section 61-1-4.

R331-5-8. Manipulative and Deceptive Devices.

(1) In any offer, purchase, or sale in connection with an issuer's offering of its securities, under this rule, no person, directly or indirectly, shall:

(a) Employ any device, scheme, or artifice to defraud;

(b) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, or make any misleading statement; or

(c) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) All documents used in connection with an issuer's offering of securities including, but not necessarily limited to, written promotional materials, offering circulars, and reports of financial condition furnished to prospective purchasers must be accurate and contain no material misstatements or omit to state facts necessary in order to make the statement not misleading.

(3) No person is authorized to make any statement not contained in the disclosure statement.

R331-5-9. Waiver.

The department may waive any or all of the requirements of this rule or the filing of any required information if:

(1) the department determines the requirements or information is unnecessary; or

(2) the issuer is subject to supervisory actions of the commissioner.

R331-5-10. Penalties for Violation.

Penalties for the violation of this rule shall be the same as those imposed by the provisions of Sections 61-1-21 and 61-1-22.

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Notice of Continuation July 25, 2007	**7-1-503** **61-1-21** **61-1-22**

R331. Financial Institutions, Administration.
R331-7. Rule Governing Leasing Transactions by Depository Institutions Subject to the Jurisdiction of the Department of Financial Institutions.
R331-7-1. Authority, Scope and Purpose.

(1) This rule is issued pursuant to Sections 7-1-301(15), and 7-1-501.

(2) This rule applies to all depository institutions and their subsidiaries subject to the jurisdiction of the Department of Financial Institutions.

(3) The purpose of this rule is to clarify acceptable employment of deposits and other funds involved in leasing or leasing related transactions.

R331-7-2. Definitions.

(1) "Affiliate" means any company under common control with the depository institution excluding any subsidiary.

(2) "Assigned lease" means a lease having all of the following characteristics:

(a) Residual dependence greater than 5% of original equipment cost;

(b) Originated by a lessor - assignor who subsequently assigned its rights or sold a participation in the lease, payments, or ownership rights to the depository institution - assignee;

(c) The assigned lease is either a tax or non-tax lease;

(d) The depository institution may or may not have recourse to the assignor in addition to lessee recourse;

(e) The assigned lease is accounted for in accordance with R331-7-9.

(3) "Bargain call purchase option" means a written call purchase option which is a lessee option to purchase the asset as contrasted with a put purchase option which is a lessor right to force the lessee to purchase the asset. An option is considered a bargain if at the inception of the lease the purchase option exercise price is considered to be significantly less than the expected future fair market value of the property at the time the option becomes exercisable.

(4) "Capital lease vs. operating lease" means if at its inception a lease meets one or more of the (a) through (d) criteria and both of the (e) and (f) criteria, the lease shall be classified as a sales-type capital lease or a direct-financing capital lease, whichever is appropriate, by the lessor. Otherwise, it shall be classified as an operating lease.

(a) The lease automatically transfers ownership of the property to the lessee during or by the end of the lease term.

(b) The lease contains a bargain call purchase option.

(c) The lease term is equal to 75% or more of the estimated economic life of the leased property. However, if the beginning of the lease term falls within the last 25% of the total estimated economic life of the leased property, including earlier years of use, this criterion shall not be used for purposes of classifying the lease.

(d) The present value at the beginning of the lease term of the minimum lease payments, excluding that portion of the payments representing executory costs to be paid by the lessor, including any profit thereon, equals or exceeds 90% of the excess of the fair value of the leased property to the lessor at the inception of the lease over any related investment tax credit retained by the lessor and expected to be realized by him.

(i) However, if the beginning of the lease terms falls within the last 25% of the total estimated economic life of the leased property, including earlier years of use, this criterion shall not be used to classify the lease.

(ii) A lessor shall compute the present value of the minimum lease payments using the interest rate implicit in the lease.

(e) The collectability of the minimum lease payments shall be reasonably predictable. A lessor shall not be precluded from classifying a lease as a sales-type lease or as a direct financing lease simply because the receivable is subject to an estimate of uncollectability based on experience with groups of similar receivables.

(f) No important uncertainties surround the amount of unreimbursable costs yet to be incurred by the lessor under the lease. Important uncertainties might include commitments by the lessor to guarantee performance of the leased property in a manner more extensive than the typical product warranty or to effectively protect the lessee from obsolescence of the leased property. However, the necessity of estimating executory costs to be paid by the lessor shall not by itself constitute an important uncertainty as referred to herein.

(5) "Company" means a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization or any form of business entity.

(6) "Control" means control as defined in Section 7-1-103.

(7) "Department" means the Department of Financial Institutions.

(8) "Depository institution" means depository institution as defined in Section 7-1-103, and any subsidiary.

(9) "Direct financing lease" means a capital lease other than a leveraged lease that does not give rise to a dealer's profit or loss to the lessor but that meets one or more of the first four criteria and both criteria (e) and (f) in Subsection (4) above. In a direct financing lease, the cost and fair market value of the leased property is the same at the inception of the lease.

(10) "FASB 13" means the Financial Accounting Standards Board (FASB) Statement of Financial Accounting Standards No. 13, Accounting for Leases, as amended, which outlines the required accounting procedures for accounting for leases by a lessor and is incorporated by reference. Other statements by the FASB, which are incorporated by reference, concerning leasing shall similarly be referred to by number such as "FASB 17" which defines initial direct costs of a lessor.

(11) "Gross investment in the lease" means the aggregate of the total minimum lease payments receivable and the unguaranteed residual in the lease.

(12) "Implicit interest rate" means the discount interest rate in a lease which when applied to the minimum lease payments, excluding that portion of the payments representing executory costs to be paid by the lessor, together with any profit thereon, and the unguaranteed residual value accruing to the benefit of the lessor, causes the aggregate present value at the beginning of the lease term to be equal to the fair value of the leased property to the lessor at the inception of the lease, minus any investment tax credit retained by the lessor and expected to be realized by him. This definition does not necessarily purport to include all factors that a lessor might recognize in determining his rate of return.

(13) "Leveraged lease" means a lease having all of the following characteristics:

(a) The lease involves at least three parties: a lessee, a long-term non-recourse creditor, and a lessor, commonly called the equity participant. A depository institution could be either the long-term non-recourse creditor or the equity participant;

(b) The financing provided by the long-term non-recourse creditor is non-recourse as to the general credit of the lessor although the creditor may have recourse to the specific property leased and the unremitted rentals relating to it. The amount of the non-recourse financing is sufficient to provide the lessor with substantial "leverage" in the transaction;

(c) Except for the exclusion of leveraged leases from the definition of a direct financing lease as set forth in R331-7-2(9), the lease otherwise meets the direct financing lease definition. A participation in a net, limited residual dependent lease purchased by a depository institution and a lease that meets the definition of a sales-type lease set forth in R331-7-2(4) shall not be considered a leveraged lease.

(14) "Limited residual dependent" means a lease from

which the lessor can reasonably expect to realize a return of its investment in the leased property, plus the estimated cost of financing the property over the term of the lease, plus a reasonable profit, all of which are derived from:

(a) Lease rental payments;

(b) Estimated tax benefits; and

(c) The limited in amount estimated residual value of the property at the expiration of the initial non-cancelable term of the lease. The degree to which a depository institution may depend upon residual value to derive a profit from a lease transaction is subject to certain residual dependence restrictions set forth at Rule R331-7-4(1).

(15) "Minimum lease payments" means the minimum payments received on a lease which include any or all of the following:

(a) Guaranteed residual value by lessee or related party whether or not title transfers;

(b) Basic rentals during the non-cancelable lease term;

(c) Renewal rentals preceding a bargain call purchase option;

(d) Bargain call purchase options;

(e) Purchase option puts whether bargain or not;

(f) Third party residual guarantee, excluded by lessee as a criterion;

(g) Non-renewal penalties; and

(h) Unguaranteed residuals, including non-bargain purchase options, are excluded from minimum lease payments.

(16) "Net investment in the lease" means the gross investment less the unearned income.

(17) "Net lease" means a lease under which the depository institution will not directly provide or be obligated to provide for:

(a) The servicing, repair, or maintenance of the leased property during the lease term; however, the depository institution shall not be precluded from offering these same "full-service" benefits indirectly by subcontracting such service, repair, or maintenance to independent sub-contracting firms provided that such firms have the resources to meet the terms of the service contract;

(b) The purchasing of parts and accessories for the leased property, provided however, that improvements and additions to the leased property may be leased to the lessee upon its request in accordance with the net, limited residual dependence requirements;

(c) The loan of replacement or substitute property while the leased property is being serviced or repaired unless such loan or substitution of property is provided by an independent firm whose loan or replacement services have been subcontracted;

(d) The purchasing of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance;

(e) The renewal of any license or registration for the property unless such action by the depository institution is necessary to protect its interest as an owner or financier of the property.

(18) "Non-tax lease" means a lease wherein the depository institution as a lessor does not receive the tax benefits of ownership of the leased property, and the residual dependence of the lessor is greater than 5% of the cost of the property.

(19) "Purchase option put" means a lessor right to force the lessee to purchase the asset.

(20) "Residual" means a residual payment or residual value in a lease which is represented by any of the following:

(a) A fixed purchase option fixed either as a dollar amount or as a percentage of cost of the leased property;

(b) A guaranteed residual where the residual value is guaranteed by the lessee, a third party, or the manufacturer or vendor;

(c) A fair market value purchase option where the option price is determined at the end of the lease based on the prevailing appraised market value;

(d) An unguaranteed residual such as in a closed end lease where the property reverts back to the lessor at the end of the lease term at which time the lessor has no guarantee as to the value of the property upon resale or release of the property. Fixed call purchase options that are not considered "bargain" will also be referred to as unguaranteed residuals.

(21) "Residual dependence" means depending upon residual value, including rentals and tax benefits, in a lease transaction in order to earn a required profit, recoup original capital investment, and cover financing costs. Full payout leases do not depend upon residual for profit whereas residual dependent leases do.

(22) "Sales-type lease" means a capital lease that gives rise to dealer's profit or loss to the lessor, in other words, the fair value of the leased property at the inception of the lease is greater or less than its cost, and that meets one or more of the criteria (a) through (d) and both criteria (e) and (f) in R331-7-2(4).

(a) Normally, a sales-type lease will arise when the depository institution acts as a dealer using leasing as a means of improving profit margins. Leases involving lessors that are primarily engaged in financing operations normally will not be sales-type leases if they qualify under R331-7-2(4), but will most often be direct financing leases, as described in R331-7-2(9).

(b) However, a lessor need not be a dealer to realize dealer's profit or loss on a transaction. For example, if a lessor, who is not a dealer, leases an asset that at the inception of the lease has a fair value that is greater or less than its cost or carrying amount, if different, such a transaction is a sales-type lease, assuming the criteria referred to are met.

(23) "Subsidiary" means subsidiary as defined in Section 7-1-103.

(24) "Tax lease" means a lease where the depository institution as a lessor is construed to be the tax owner of the property for income tax purposes and thereby receives the tax benefits of ownership including tax credits and depreciation, and the residual dependence of the lessor is greater than 5% of the cost of the property.

(25) "Total Capital" means the sum of capital stock, surplus, undivided profits, reserve for contingencies, reserves for loan losses, and subordinated notes and debentures with more than one year maturity.

(26) "Unearned income" means the difference between the gross investment in the lease and the cost or carrying amount, if different, of the leased property. Unearned income shall be increased by any deferral of the investment tax credit or any other tax credits and decreased by any initial direct costs incurred on direct financing leases.

(27) "Unguaranteed residual value" means the estimated residual value of the leased property exclusive of a portion guaranteed by the lessee, by any party related to the lessee or by a third party unrelated to the lessor. If the guarantor is related to the lessor, the residual value shall be considered as unguaranteed.

(28) "Used property" means property which has been in use for 90 days or more.

R331-7-3. Acceptable Leases and Leasing Transactions for Depository Institutions.

(1) A depository institution may enter into or purchase a participation in net, limited residual dependent leases wherein the depository institution:

(a) Becomes the legal or beneficial owner and lessor of specific real or personal property or otherwise acquires such property at the request of a lessee who wishes to lease it from

the depository institution; or

(b) Becomes the owner and lessor of real or personal property by purchasing the property from another lessor in connection with its purchase of the related lease; and

(c) Incurs obligations incidental to its position as the legal or beneficial owner and lessor of the leased property, if the lease is a net, limited residual dependent lease representing a non-cancelable obligation of the lessee, notwithstanding the possible early termination of that lease; or

(d) Becomes the assignee of the lease payments from another lessor where the depository institution is not the legal owner or tax owner of such property.

(2) This rule shall apply to any tax lease, non-tax lease, or assigned lease irrespective of whether the depository institution funded such lease or assignment with deposits or private funds, debt or equity.

(3) The classification of whether this rule applies to any lease and the related terminology should not be confused with other accounting or tax terminology; but should be applied only for the purposes of this rule. Any depository institution and especially any savings and loan association should consult its tax accountant before entering into any lease transaction.

(4) A depository institution, when acting as a lessor of property, may assign leases to a third party funding source. A depository institution shall be considered an assignor of lease payments, residual of assigned leases, or both, if after entering into a lease as a lessor of property, it then borrows against the lease payments, residual, or both, by assigning them to another funding source. A depository institution shall be considered an assignee of lease payments, residual of assigned leases, or both, if another lessor assigns the lease payments, residual, or both, of its own lease to the depository institution in order to fund the lease.

R331-7-4. Residual Dependence Restrictions for Depository Institutions.

(1) The residual dependence by a depository institution as a lessor of property on leases other than leases with terms of 24 months or less or automobiles and small trucks of one ton or less shall not exceed 30% of the acquisition cost of the property to the lessor unless the estimated residual value is guaranteed by a manufacturer of such property, or by a third party which is not an affiliate of the depository institution and the depository institution makes the determination that the guarantor has the resources to meet the guarantee.

(a) Any such guarantee of residual value by a third party is to be considered in addition to the requirement that the unguaranteed residual value estimate shall not exceed 30% of the acquisition cost of the property.

(b) However, the combined total of the 30% unguaranteed residual value and the guaranteed residual value may not exceed 50% of the leased property's acquisition cost.

(2) In all cases, however, both the estimated residual value of the property and that portion of the guaranteed residual value relied upon by the lessor to satisfy the requirements of a limited residual dependent lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property primarily depends on the credit worthiness of the lessee and any guarantor of the residual value, and only secondarily on the residual market value of the leased property.

R331-7-5. Salvage Powers for Depository Institutions.

(1) If, in good faith, a depository institution believes that there has been an unanticipated change in conditions which threatens its financial position by significantly increasing its exposure to loss, the provisions of this rule shall not prevent the depository institution:

(a) As the owner, lessor, or both, under a net, limited residual dependent lease from taking reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease;

(b) As the assignee of a lessor's interest in a lease, from becoming the owner and lessor of the leased property pursuant to its contractual right, or from taking any reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease;

(c) Upon return of the leased property by the lessee to the depository institution at the expiration of the lease term or at any other time that the depository institution has possession of the property upon default by the lessee; the depository institution in order to avoid the cost and inherent liability of maintaining the property and to recoup its investment in the lease plus financing costs shall:

(i) Sell the property;

(ii) Release the property by entering into a new and separate net, limited residual dependent lease with a lessee;

(iii) Rent the property in which case the depository institution may be required to maintain the property in suitable condition to be used by another party on a rental basis. Such maintenance must be performed by an independent firm on a sub-contract basis only;

(iv) Transfer the property to a separately identified holding or repossessed property account within the depository institution.

(2) The provisions of this section do not prohibit a depository institution from including any provisions in a lease, or from making any additional agreements to protect its financial position or investment in the circumstances.

R331-7-6. Sales-Type Capital Lease Restrictions for Depository Institutions.

(1) Within the limitations of this rule, a depository institution, as lessor, shall be permitted to enter into a sales-type capital lease. Although a depository institution shall be allowed to earn a gross profit in a lease transaction in addition to interest income from the rentals and residual, it shall be precluded from inventorying property except for sample or display purposes.

(2) Although many equipment manufacturers and vendors require their dealers to inventory products prior to sale in order for the depository institution to be allowed to receive a wholesale price or comparable discount, the inventory of equipment prior to leasing the equipment is not permitted.

(3) A depository institution may purchase or acquire property in a direct lease situation only in response to a lessee's request for that specific property and any gross profit derived from volume discounts shall be accounted for separately from the lease.

R331-7-7. Sale-Leaseback Restrictions for Depository Institutions.

A depository institution acting as a lessor may lease used property in a sale-leaseback transaction provided that:

(1) The aggregate of the total net investment in such sale-leaseback transactions, at any point, in time does not exceed 50% of the depository institution's total capital; and

(2) The sale-leaseback transactions are separately identified.

R331-7-8. Leveraged Lease Restrictions for Depository Institutions.

(1) Due to increased risk inherent in leveraged leasing, a depository institution may invest as a lessor in a leveraged lease provided that:

(a) The aggregate of such leveraged leases does not exceed 30% of the depository institution's total capital at any point in time; and

(b) The leveraged leases are separately identified.

(2) A depository institution shall not enter into a leveraged lease as a lessor, equity-participant unless the inherent tax benefits are useable by the depository institution.

(3) This rule does not preclude a depository institution from purchasing non-recourse interests in leveraged lease pools or joint ventures, provided that:

(a) The aggregate of such participations or interests does not exceed 30% of the depository institution's total capital; and

(b) The participations or interests are separately identified.

R331-7-9. Accounting Requirements for Depository Institutions.

(1) The following restrictions and procedures shall be adhered to by a depository institution in accounting and reporting for acceptable leases and leasing transactions whether the depository institution is the assignor or the assignee. All other accounting and reporting procedures concerning leasing not covered by this rule shall be in accordance with generally accepted accounting principles as promulgated by the FASB, as amended.

(a) As lease payment revenue is received by the depository institution under a direct financing or sales-type capital lease, the lease payments shall be amortized or allocated between principal and interest income actuarially using the effective interest method over the lease term. A depository institution shall be precluded from using other approximations to the effective interest method such as the "Rule of 78's" method of amortizing lease payments.

(b) In accounting for a capital lease whether a sales-type or direct financing lease, a depository institution shall record the gross investment in the lease on the balance sheet allocated into its two components:

(i) Total minimum lease payments receivable; and

(ii) Unguaranteed residuals.

(c) The difference between the gross investment in the lease and the cost or carrying amount, if different, of the leased property shall be recorded as unearned income. Such unearned income shall be increased by any deferral of the investment tax credit or any other tax credits if the lessor elects deferral or if deferral is required by generally accepted accounting principles and decreased by any initial direct costs incurred on direct financing leases.

(d) Initial direct costs are limited to those costs incurred by the lessor that are directly associated with negotiating and consummating completed leasing transactions. Those costs include commissions, legal fees, cost of credit investigations, and costs of preparing and processing documents for new leases acquired.

(i) In addition, that portion of salespersons' compensation, other than commissions, and the compensation of other employees that is applicable to the time spent in the activities described above with respect to completed leasing transactions shall also be included in initial direct costs. That portion of salespersons' compensation and the compensation of other employees that is applicable to the time spent in negotiating leases that are not consummated shall not be included in initial direct costs.

(ii) No portion of supervisory and administrative expenses or other indirect expenses, such as rent and facilities cost, shall be included in initial direct costs.

(iii) In order to prevent initial overstatement by a depository institution of reported earnings and subsequent understatement of reported earnings throughout the remainder of the lease term, the depository institution shall not recognize initial direct costs in excess of 8% of the unearned income for leases which cost less than $10,000 at their inception; or initial direct costs in excess of 6% of the unearned income for leases which cost $10,000 or more at the inception of the lease. Initial direct costs shall include all costs directly attributable to consummating a lease as defined above.

(e) In accounting for the amount of initial direct costs associated with consummated direct financing capital leases, a depository institution is not required to treat as an initial direct cost the estimate of bad debt expense pertaining to a lease subject to the limitations of R331-7-9(d)(iii) which limits the maximum amount of initial direct costs.

(f) At any time during the lease term when it has been determined by a depository institution that there has been an impairment of the estimated residual value as initially recorded then such impairment of value shall be recognized in the period that the impairment of value has been determined.

(i) Any such impairment of guaranteed or unguaranteed residual value shall be recognized by a debit charge to income and a corresponding credit reduction to the unearned residual component of the gross investment in the lease.

(ii) A new implicit rate is to be computed for the lease using the reduced residual value and any remaining unearned income is to be recognized actuarially over the remaining lease term using the newly computed implicit rate.

(g) Differences between reported accounting net income for book purposes of a depository institution and its taxable income for the same period caused by the application of different accounting principles such as depreciation methods; or differences in how revenue is recognized; or because of any other timing differences, shall be shown in the depository institution's financial statements as a deferred tax credit or charge as required by interperiod tax allocation procedures explained in Accounting Principles Board Opinion No. 11, Accounting for Income Taxes, as amended, which is incorporated by reference.

(2) The following restrictions and procedures shall be adhered to by a depository institution in accounting and reporting for assigned leases whether the depository institution is the assignor or the assignee.

(a) A depository institution, after having entered into a lease as a lessor, may assign the lease payment stream to a third party in order to fund the lease. To such an assignment, the depository institution becomes the assignor.

(i) If the assignment is non-recourse to the depository institution any profits or loss on the assignment shall be recognized at the time of the transaction except when the assignment is between related parties. The profit or loss is the difference between the net investment in the assigned lease and the loan funds received from the lender.

(ii) If the assignment is recourse to the depository institution or if it is non-recourse but between related parties, both the lease and the related loan should be shown separately in the financial statements of the depository institution.

(iii) The lease shall be shown on the balance sheet by recording the gross investment in the lease receivable and the unearned income account relating to the lease. The net of these two accounts represents the net investment in the lease. The gross investment in the lease receivable shall be further allocated and shown in the financial statements in its two separate components:

(A) Minimum lease payments, and

(B) Residual.

(b) A depository institution which has funded a lease originated by another lessor and taken an assignment of the lease may have funded the lease on either a recourse or a non-recourse basis to the lessor. In either case, the assignment shall be regulated by this rule only if the residual dependence is greater than 5% of the cost of the leased property, in which case the assignment shall be accounted for as described in R331-7-9(2)(a) above. If the residual dependence is equal to or less than 5% of the cost of the leased property then such assignment shall not be regulated by this rule and shall be accounted for as

a loan.

(3) The following restrictions and procedures shall be adhered to by a depository institution in accounting and reporting for operating leases:

(a) Leases other than sales-type, direct financing, or leveraged capital leases are classified as operating leases.

(b) Revenue in an operating lease shall be recognized in conformity with FASB 13 paragraph 19.b.

(4) Accounting for leveraged leases, sale-leasebacks, and real estate sales shall be in conformity with FASB 13 procedures:

(a) Leveraged leases, FASB 13 paragraphs 41-47;

(b) Sale-leasebacks, FASB 13 paragraphs 32-34;

(c) Real estate leases, FASB 13 paragraphs 24-28.

KEY: financial institutions, leases
October 3, 1997 7-1-301(4)
Notice of Continuation July 25, 2007 7-1-301(8)(a)
7-1-501

R331. Financial Institutions, Administration.
R331-9. Rule Prescribing Rules of Procedure for Hearings Before the Commissioner of Financial Institutions of the State of Utah.
R331-9-1. Authority, Scope, and Purpose.

(1) This rule is adopted pursuant to Sections 7-1-301 and 7-1-309.

(2) This rule will apply to administrative hearings conducted before the Commissioner or his designee.

R331-9-2. Definitions.

(1) "Commissioner" means the Commissioner of Financial Institutions.

(2) "Department" means the Department of Financial Institutions.

(3) "Interested party" means a party who may be affected by the outcome of any proceeding but who, in the case of a dispute or adjudicative hearing, is not named as a party or does not seek to participate as a named party.

(4) "Party" shall mean the same as a "person" as defined in Section 7-1-103, and shall also include any governmental subdivision or agency.

(5) "Proceeding" shall mean any hearing, whether formal or informal, before the Commissioner or his designee and any and all required and permitted actions precedent thereto.

(6) "U.R.C.P." means the Utah Rules of Civil Procedure.

R331-9-3. Commissioner's Discretion to Commence Hearings.

(1) Except when required by statute, the commissioner shall have sole and complete discretion as to whether any kind of hearing procedure shall be employed in connection with any matter pending before the department.

(2) Nothing in this rule shall be construed as creating any right to a hearing on any matter apart from those rights separately conferred by statute or required by due process of law.

R331-9-4. Types of Hearing.

All hearings conducted before the commissioner or his designee shall be classified in one of the following categories:

(1) Comment Hearing.

This type of hearing is generally characterized as one where:

(a) The primary purpose for the hearing is to receive information and comments from interested parties concerning a particular subject pending in the department.

(b) Witness statements are unsworn, voluntary and normally delivered in a narrative manner subject to no restriction on the content of the statement except that it be relevant to the matter being heard.

(c) There is no proof to be made and so no burden on any party.

(d) The presentation of evidence may be subject to time restrictions both as to the length of individual statements and the number of statements that can be made.

(e) The hearing is always public.

(2) Dispute Hearing.

This type of hearing is generally characterized as one where:

(a) The primary purpose is to receive and examine evidence concerning a disputed application or other discretionary matter pending before the department.

(b) The burden of proof is upon the party requesting the approval of the matter at issue.

(c) All testimony is taken under oath and subject to cross-examination but the evidence itself is generally not restricted except as to relevancy.

(d) The hearing is usually public, but may be closed when special circumstances warrant.

(3) Adjudicative Hearing.

This type of hearing is generally characterized as one where:

(a) The primary purpose is to adjudicate specific charges directed against an individual party or parties.

(b) Evidence is received generally in accordance with rules patterned on those applicable to the admission of evidence and the conduct of trials in the judicial courts of this state.

(c) No time restriction is imposed which would deprive any party of an opportunity to present all proper evidence in the case.

(d) The hearing may be closed to the public and the record treated confidentially.

(4) The commissioner shall have complete discretion to designate a particular hearing as being for comment, dispute, or adjudicative purposes, and shall so indicate in the first notice of the hearing. Any party to the hearing or, in the case of a comment hearing, any interested party who disagrees with the commissioner's classification may file a motion to change the designation of the hearing from one type to the other within ten days after public notice of a comment hearing is first published, or notice of a dispute or adjudicative proceeding is first mailed to a party to the proceeding who objects to its designation, whichever applies.

R331-9-5. Commencement of Proceedings.

(1) Comment Hearing.

Proceedings incident to a comment hearing shall be commenced by the department issuing public notice of the hearing. The notice shall specify:

(a) The subject matter of the hearing,

(b) That it is to be a comment hearing,

(c) The date, time and place of the hearing,

(d) The person or persons who will preside at the hearing, and

(e) Any special provisions or requirements concerning the hearing such as advance notice by any party wishing to speak at the hearing or limits on speaking time.

(2) Dispute Hearing.

(a) A dispute hearing shall be commenced by issuing Notice to the party which filed the application or request at issue and to any party or parties that may have protested or otherwise objected to the same prior to issuance of the Notice.

(b) The Notice shall specify the matters relating to the application or request which are in dispute and advise the party who filed the application or request that it will have the initial burden at the hearing of showing that the application or request should be granted.

(3) Adjudicative Hearing.

(a) An adjudicative hearing shall be commenced when the department issues Notice to the parties named in the proceeding.

(b) If a party to a hearing refuses to sign an acknowledgment of having received a copy of a Notice then such Notice shall be served upon the party in the manner prescribed for service of process in Rule 4 of the U.R.C.P. If personal service is not possible then the commissioner upon motion may authorize alternative forms of service similar to those specified in Rule 4 of the U.R.C.P. If a party resides out of state and cannot be served in this state, a copy of the Notice may be mailed to the party at the party's last known address by certified mail without having to obtain an order from the commissioner.

(c) The Notice of the adjudicative proceeding shall contain at a minimum the following information:

(i) The names of all individual parties to the proceeding.

(ii) A reasonably specific description of the department's allegations against each of the named parties.

(iii) A reasonably specific description of any and all

actions the department intends to take against each named party with respect to the matters alleged.

(iv) A statement that within 30 days following service of the department's Notice each party must file an Answer specifically admitting or denying the department's allegations and separately describing in reasonable detail any affirmative defenses the party may claim with respect to the department's allegations.

(v) An express warning that failure to file an Answer within 30 days following service of the Notice will entitle the commissioner to accept the department's allegations as true in their entirety and immediately enter a final order with respect to the matters alleged in the Notice.

(d) If any party named in an adjudicative hearing files a timely and proper Answer then a hearing shall be scheduled before an independent hearing examiner and notice thereof stating the time, date, place of the hearing and identifying the hearing examiner shall be mailed to the answering party. Named parties to a proceeding who do not file a timely and proper Answer shall not be entitled to participate in any subsequent hearing as a party except by leave of the hearing examiner and the commissioner may immediately enter a final order as to such party with respect to the matters alleged in the department's Notice without further adjudicative proceedings.

(e) Proceeding Involving Temporary Cease and Desist Order.

(i) In a proceeding involving a Temporary Cease and Desist Order issued pursuant to Section 7-1-307, the Notice to be served on a party to the proceeding shall include notice that the party is entitled to a show cause hearing concerning the Temporary Cease and Desist Order but must request the same within ten days following service of receipt of the Temporary Cease and Desist Order, in which event the show cause hearing shall be scheduled within ten days after the party's request is received by the department unless the party and the department mutually agree on another time for the hearing.

(ii) In a proceeding involving a Temporary Cease and Desist Order issued pursuant to Section 7-1-307(2), the Order shall state a date, time and place for a hearing before the commissioner, or, if he is unable to preside, before, within ten days after the date the Temporary Cease and Desist Order is signed. The notice shall also advise any interested party that it shall be its burden at the hearing to show cause why the Temporary Cease and Desist Order should not remain in full force and effect for 30 days after it was signed, should not be extended for no more than two successive 15-day periods thereafter, or both.

(f) Upon motion and notice to all other parties to the proceeding, the commissioner or his designee may, for good cause shown, shorten or enlarge any time limits specified herein, including that for scheduling a show cause hearing on a Temporary Cease and Desist Order but excepting the time limits set forth in the foregoing subsection (e)(ii), permit amendments to the department's Notice or any Answer, reschedule a hearing, bifurcate a hearing, permit the joinder of a party, or enter such other preliminary or procedural Order as the commissioner or his designee considers proper and equitable to protect the rights and interests of the parties to the proceeding, expedite the hearing procedure, or both.

R331-9-6. Confidential Proceedings.

(1) If the commissioner deems a proceeding confidential then all pleadings and documents filed in the matter, including the department's initial Notice of the proceedings, shall be conspicuously so designated, and thereafter all such documents shall be made available only to the parties to the proceeding, their legal representatives, and such other parties as may be specifically authorized to examine the documents by the commissioner or his designee.

(2) The only persons who may be present during a confidential hearing are named parties, parties determined by the commissioner or his designee to have a direct interest equivalent to judicial standing in the subject matter of the hearing, the legal representatives of the parties or persons, persons employed by or acting on behalf of the department, the commissioner or his designee, persons necessary to transcribe the proceedings, and any witness then testifying.

R331-9-7. Form of Pleadings.

(1) All pleadings filed with the department shall comply with the requirements of Rule 10 of the U.R.C.P. except for the caption specified in subparagraph (a) thereof. The caption for all pleadings filed with the department shall indicate that the matter is before the Department of Financial Institutions of the State of Utah. In the case of a comment hearing, the documents shall identify the subject matter of the hearing and the subject matter of the particular pleading. In the case of a dispute or adjudicative hearing, the pleadings shall identify all parties to the proceeding, shall separately state that the proceeding is dispute or adjudicative, that it is confidential or not confidential, the subject matter of the pleading, and any case number which may have been assigned to that proceeding by the department. A document that substantially complies with Rule 10 of the U.R.C.P. will be acceptable.

(2) The provisions of Rule 11 of the U.R.C.P. shall apply to all pleadings filed with the department by any attorney representing a party.

R331-9-8. Discovery.

(1) Discovery rights and procedures as specified below shall only be available to parties in a dispute or adjudicative proceeding.

(2) Parties may obtain discovery in any manner authorized by Rules 27, 28, 29, 30, 31, 33, 34, and 36 of the U.R.C.P. Depositions may be used in a hearing before the commissioner or his designee in the same manner as specified for judicial proceedings in Rule 32 of the U.R.C.P.

(3) The commissioner or his designee may impose sanctions for failure to comply with a proper discovery request similar to those specified in Rule 37 of the U.R.C.P.

R331-9-9. Subpoenas.

The commissioner or his designee shall issue subpoenas as authorized by Section 7-1-310 for the purpose of facilitating a proper discovery request or to compel the attendance of a witness at a dispute or adjudicative hearing. Each subpoena shall be obtained by filing a written request with the commissioner or his designee describing the purpose for which the subpoena is sought. If the commissioner or his designee determines that any specific request is objectionable or possibly so then he may either deny the request without further proceedings or schedule a hearing to receive evidence concerning the objection prior to making a final decision on the request.

R331-9-10. Hearings.

(1) Comment Hearings.

Comment hearings shall be held before the commissioner or his designee. A recording shall be made of such hearings capable of being transcribed verbatim. Persons entering statements into the record shall not be sworn on oath and the content of the statements made shall not be restricted except as to irrelevant, scandalous or inappropriate matters. The commissioner or his designee may limit the number of speakers or prescribe time limits for each speaker, or both. After each speaker has made his statement, the commissioner may ask questions of the speaker and permit other participants of the hearing to ask questions of the speaker.

(2) Dispute Hearings.

(a) Dispute hearings shall be heard before the commissioner or his designee.

(b) At the hearing it shall be the burden of the party named in the proceeding to show, by a preponderance of the evidence, that matters in dispute should be resolved in the named party's favor and the application or request at issue should be granted. Similarly, it shall be the burden of any interested party to support each claim made by it concerning the matter at issue by a preponderance of the evidence.

(c) The commissioner or his designee may receive any evidence he deems relevant and of probative value in understanding and deciding the matters at issue. However, all testimony shall be given under oath subject to cross-examination, and whenever possible the rules of evidence and trial procedure applicable to the courts of this state shall be generally complied with.

(d) No findings, conclusions, order or other decision shall be prepared concerning the hearing itself. If a designee of the commissioner presides then he shall prepare a report to the commissioner summarizing the evidence presented for the purpose of assisting the commissioner in reaching a final decision on the matter to which the hearing pertained.

(3) Adjudicative Hearings.

(a) Except for a show cause hearing concerning a Temporary Order or a Temporary Cease and Desist Order, all adjudicative hearings shall be held before an independent hearing officer selected by the commissioner.

(b) At the hearing it shall be the department's responsibility to establish by a preponderance of the evidence the allegations it has made against each party named in the proceeding. Similarly, any named party shall prove any affirmative defense it has claimed by a preponderance of the evidence. All evidence shall be presented, rebutted and received or excluded in accordance with the Rules of Evidence and the U.R.C.P. except the hearing officer may receive other evidence when, in the examiner's discretion, taking into account its lesser probative value, such other evidence would be of use in supplementing or tending to confirm any admitted evidence or proffered evidence subject to its admission.

(c) After the hearing has been concluded, the hearing officer shall prepare Findings, Conclusions and Recommendations for the commissioner. At the same time as the original is delivered to the commissioner, copies of the Findings, Conclusions and Recommendations shall be mailed to all attorneys and named parties who participated in the proceedings.

(d) After receiving the Findings, Conclusions and Recommendations, the commissioner shall enter an Order, or remand the matter back to the hearing officer to conduct further proceedings on the subjects as may be specified by the commissioner, or dismiss the proceedings in whole or in part.

(e)(i) Within 15 days after the hearing officer's Findings, Conclusions and Recommendations are mailed to a party, that party shall file a notice of any objections the party may have specifying each Finding, Conclusion or Recommendation objected to and describing in reasonable detail the basis for each objection.

(ii) A party may request reconsideration of any Order resulting from an adjudicative proceeding within 30 days after a copy of the Order is mailed to the party by the department. Each request shall specify in reasonable detail the party's reasons supporting the request and may, with leave from the commissioner, be accompanied by a memo of points and authorities to which all other parties may respond, all within deadlines to be specified in the commissioner's grant of leave.

(iii) The commissioner may enter an Order whether or not the deadline for filing objections to Findings, Conclusions and Recommendations has elapsed. The timely filing of objections shall not affect the implementation of any Order already entered, or bar the entry of an Order based in any degree on any Finding, Conclusion or Recommendation objected to before ruling on the objection, except the Order shall not be deemed final until the objections have been ruled on by the commissioner. The 30 days allowed for requesting reconsideration of any Order shall not be tolled by the filing of objections to precedent Findings, Conclusions and Recommendations.

(f) The commissioner may require the parties to the proceeding to pay any costs and expenses incident to the hearing as he deems proper including reporter or other transcription expenses, fees of the hearing officer, witness costs, fees for examiner time based on the normal rate charged for examinations, and attorney's fees.

(g) A show cause hearing on a Temporary Order or a Temporary Cease and Desist Order shall be held before the commissioner or his designee. If neither the commissioner nor the commissioner's designee is available to preside at the hearing within the required period then the Temporary Order shall be dissolved, without prejudice.

KEY: financial institutions, government hearings
1995 7-1-301
Notice of Continuation July 25, 2007 7-1-309

R331. Financial Institutions, Administration.
R331-10. Schedule for Retention or Destruction of Records of Financial Institutions Under the Jurisdiction of the Department of Financial Institutions.
R331-10-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Section 7-1-301(7).

(2) This rule establishes a schedule for the retention of records of financial institutions under the jurisdiction of the Department of Financial Institutions. Each financial institution may deem it prudent from a business, legal, or other regulatory reason to retain records not identified in this rule.

(3) It is the purpose of this rule to require the maintenance of appropriate types of records where such records have a high degree of usefulness and prescribe the period for which records of each class are retained.

(4) This rule does not prescribe the method of retention other than that the method selected by each financial institution must ensure the records be readily retrieved in an unaltered state.

R331-10-2. Definitions.

Key to Abbreviations:
Figures - Years

R331-10-3. Retention of Records.

(1) CORPORATE AND LEGAL

TABLE 1

Regulation S (domestic and international funds transfer	5
Annual Disclosures Statements/Annual Reports	2
Minute books of directors, executive committee an other records reflecting corporate governance documentation, (e.g., minutes, articles, bylaws, stock records)	10
Superceded policies and procedures	2
Business licenses	1
Service agreements with vendors	2
Litigation documents (after resolution)	2
Affidavits	2
Attachments, garnishments	6

(2) DEPOSITORY PRODUCTS

TABLE 2

Records of checks, drafts and other instruments presented for payment or deposit	6
Deposit records showing relationship of insurance claimants to insurance funds	1
Deposit records disclosing a relationship which might provide the basis for additional insurance	1
Records evidencing compliance with Truth in Savings Act	2
Records of purchases and purchasers of bank checks, drafts, cashier's checks, money orders, and traveler's checks	5
Tax identification numbers of deposit/share/ transaction accounts	5
Deposit account trial balance records	5
Each check, deposit, money order issued or payable by bank in excess of $100	5
Records of debits to customers' account in excess of $100	5
Records of purchaser of certificate of deposit	5
Records of tax identification number of any person presenting certificate of deposit for payment	5
Deposit slips and credit tickets in excess of $100	5
Records of receipts of currency in excess of $10,000 received from persons outside United States	5
Cash letters	1
Account documentation, (e.g., signature card, resolutions, power of attorney, guardianship)	6
Stop payment orders (after release)	1

(3) FIDUCIARY

TABLE 3

Safe deposit documentation, (e.g., access records, contracts)	5
Records relating to municipal securities dealing: copies of filings to any associated person following termination of association	3
Record of all brokers/dealers selected by bank to effect transactions and amount of commission paid or allocated each year	3
Tax identification number of customers having securities	5
Records of securities authority from customer	5
Records of amounts expended and adjustments made to property acquired and held for investment or to verify exercise of qualified stock option, debts written off, amount of loans outstanding with regard to reserves for losses on bad debts of financial institutions for last five taxable years	6
Fiduciary authority documentation, (e.g., trust agreements, court orders, powers of attorney, directives, authorizations)	6
Fiduciary account documentation, (e.g., cash and asset records, tax returns)	6
Fiduciary management committee meeting records	5
Escrow records (after closing)	6
Safekeeping records and receipts	2
Fiduciary account documentation, (e.g., chronological logs of itemized daily records, account records for each customer, order ticket of each buy/sell, record of all brokers used	3

(4) LENDING/LEASING

TABLE 4

Lending and leasing documents after closed, (e.g., credit application, appraisal, credit report, signatory)	6
Card applications, documentation from date of application	2
Open or closed-end credit document files excluding card application documentation	6

(5) REGULATORY

TABLE 5

Credit record of transfers of credit more than $10,000 to outside the United States	5
Credit record of transfers of funds more than $10,000 to outside the United States	5
Checks or records of drafts in excess of $10,000 drawn on foreign banks	5
Checks, drafts in excess of $10,000 from bank, broker or exchange dealer outside United States	5

(6) FINANCIAL

TABLE 6

Escheatment documentation (abandoned deposit accounts, unpaid cashier's checks, unpaid expense checks)	7
Internal audit reports	5
Investment confirmations, statements, buy and sell orders	6
Financial records, (e.g., journals, ledgers, statements, source documents)	7
Reconcilements, (e.g., General ledger account and supporting documentation)	2
Notes on contracts payable documentation (after closing)	2

R331-10-4. Exemptions.

The Commissioner of Financial Institutions may make exemptions from any requirement otherwise imposed under this rule and as are consistent with the purposes of this rule.

R331-10-5. Reproduction of Records.

Any institution subject to this rule may cause records in its custody to be reproduced by the micro-photographic or other equivalent process. Any reproduction shall have the same force and effect as the original and shall be admissible into evidence

as if it were the original.

R331-10-6. Relationship to other Laws.

This rule will not pre-empt any other retention requirement longer than that specified herein imposed by any other state or federal statute or rule.

KEY: financial institutions
October 17, 2000 7-1-301(7)
Notice of Continuation July 25, 2007

R331. Financial Institutions, Administration.
R331-12. Guidelines Governing the Purchase and Sale of Loans and Participations in Loans by all State Chartered Financial Institutions.
R331-12-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Section 7-1-301.

(2) This rule applies to all state chartered financial institutions.

(3) The purpose of this rule is to establish guidelines for the purchase and sale of loans and participations in loans by state chartered financial institutions.

R331-12-2. Definitions.

(1) "Participation" means the purchase or sale by a lender of a loan or part of a loan under circumstances in which the acquiring institution

(a) has no formal or direct role in establishing the terms and conditions binding the borrower, or

(b) is not a signatory of the loan agreement binding the borrower.

(2) "Participation agreement" means an agreement between the lead financial institution and the participant financial institution spelling out in detail the terms, conditions, and understandings between the parties to a loan participation.

(3) "Recourse" means an oral or written agreement whereby a selling institution of a loan or participation in a loan agrees to repurchase in whole or in part upon request of the purchaser or the seller.

R331-12-3. General Rule.

(1) A written participation agreement covering multiple or individual participations will be on record at each participating institution, and shall include, at a minimum, the following:

(a) The party to the agreement to be paid first from the loan repayment proceeds;

(b) Party responsible for collection of the note in the event of default;

(c) How collection or other expenses related to the participation will be divided among the participants;

(d) Recourse arrangements in writing outlining the rights and obligations of each party. Generally, loans will not be sold on a recourse basis except in cases where the sale is made for the purpose of obtaining temporary funds for operations.

(2) In addition, a financial institution which buys and sells loans or participations in loans shall establish written policies setting forth satisfactory controls over such sales and purchases. At a minimum, the following conditions shall be met:

(a) The loan must comply with applicable state and federal laws;

(b) The purchased loan must conform to the financial institution's lending and loan approval standards;

(c) Complete and current credit information must be maintained during the term of the loan;

(d) The financial institution must maintain evidence of sufficient overall loan documentation including an analysis of the value and lien status of collateral;

(e) The status of principal and interest payments including accrual status must be available.

KEY: financial institutions
1987 7-1-301
Notice of Continuation July 25, 2007

R331. Financial Institutions, Administration.
R331-14. Rule Governing Parties Who Engage in the Business of Issuing and Selling Money Orders, Traveler's Checks, and Other Instruments for the Purpose of Effecting Third-Party Payments.
R331-14-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Section 7-1-301, 7-1-501(8)(c) and 7-1-505.

(2) This rule applies to any individual or other party who issues, sells or offers to sell within the state any instrument for the purpose of effecting payments to third parties, including, but not limited to, money orders, traveler's checks, and the wire transmission of money. Excluded from this rule are:

(a) any party chartered and regulated by the United States or the state as a depository institution which is currently operating as a depository institution, and

(b) the U.S. Post Office.

(3) The purpose of this rule is to require licensing and prescribe standards with regard to the financial condition and capability of all parties who issue instruments payable to third parties, such as money orders and traveler's checks, for the benefit and protection of the purchasers of such instruments.

R331-14-2. Definitions.

(1) "Department" means the Department of Financial Institutions.

(2) "Payment instrument" means a check, money order, traveler's check, draft, or other instrument for the transmission or payment of money to third parties.

(3) "Party" means an individual, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any form of business entity.

R331-14-3. License Required.

No party subject to this rule shall issue any kind of payment instrument to be offered for sale or sold in the state unless the issuer first obtains a license to do so from the department. No party subject to this rule may offer for sale or sell payment instruments of any kind in the state which are issued by any party not holding a current license to issue payment instruments in accordance with this rule, unless the issuer is exempt from the requirement to hold such a license.

R331-14-4. Requirements for a License.

To qualify for a license to issue payment instruments for sale in Utah, an applicant shall provide or pay to the department:

(1)(a) Proof satisfactory to the department that the applicant is a depository institution chartered and regulated by a state in the United States other than Utah and is currently operating as a depository institution; or

(b) A certified financial statement satisfactory to the department for the most recent fiscal year showing the applicant has a net worth of at least one million dollars ($1,000,000).

(B) A surety bond satisfactory to the department in the minimum sum of $50,000 to reimburse the state for any expenses of any kind or nature that it may incur in connection with any administrative or judicial proceedings against a licensee, former licensee or seller relating to the issuance and/or sale of payment instruments in Utah.

(3) Additional information as may be specified by the department.

(4) A non-refundable filing fee in the sum of $100.00.

R331-14-5. Renewal.

Unless previously revoked by the department, each license shall expire on July 31 of each year if before that date the licensee fails to deliver or pay to the department:

(1) Proof that the party continues to operate as a regulated depository institution or a certified financial statement for the licensee's last fiscal year showing that it continues to have a net worth of at least $1,000,000, proof of renewal of the surety bond described in part 4B hereof, and any other information the department may request, all in a form acceptable to the department.

(2) A non-refundable renewal fee in the sum of $100.00.

R331-14-6. Revocation of License.

The department, with or without a hearing, may for cause revoke or suspend a license to issue payment instruments at any time. If the department revokes a license, it shall not be obligated to refund any portion of the licensee's filing or renewal fee for the remainder of the period for which the fee was paid.

R331-14-7. Required Deposits.

If the department finds any reasonable cause to believe that a licensee is in an unsafe or unsound condition or is unwilling or unable to pay its payment instruments when they come due, it may require the licensee to deposit funds in a financial institution(s) acceptable to the department in such amounts, for such period, and upon such conditions as the department may specify, and may prohibit the licensee from issuing payment instruments for sale in Utah in an aggregate unpaid amount exceeding the amount of any such required deposit or the amount actually deposited pursuant to such a requirement, whichever is less.

R331-14-8. Instruments to Bear Name of Licensee.

Every payment instrument issued by a licensee for sale in Utah, or which is sold in Utah, shall state on its face the name of the licensee issuer.

KEY: financial institutions

October 3, 1997	**7-1-301**
Notice of Continuation July 25, 2007	**7-1-501(8)(c)**
	7-1-505

R388. Health, Epidemiology and Laboratory Services; HIV/AIDS, Tuberculosis Control/Refugee Health.
R388-801. AIDS Testing and Reporting for Emergency Medical Services Providers Rule.
R388-801-1. Authority and Purpose.

1. Authority - The AIDS Testing and Reporting for Emergency Medical Services Providers Rule is established under authority of Section 26-6a-9.

2. Purpose - To establish procedures for patient testing and reporting following a significant exposure of an emergency medical services provider.

R388-801-2. Definitions.

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

2. "Designated agent" means a person or persons designated by an agency employing or utilizing emergency medical services providers as employees or volunteers to receive and distribute test results in accordance with this rule.

3. "Disease" means Acquired Immunodeficiency Syndrome, Human Immunodeficiency Virus (HIV) infection, or Hepatitis B antigen positivity.

4. "Emergency medical services (EMS) agency" means an agency, entity or organization that employs or utilizes emergency medical services providers as employees or volunteers.

5. "Emergency medical services provider" means Emergency Medical personnel as defined in Section 26-8a-102, a peace officer as defined in Section 53-13-101, local fire department personnel, or officials or personnel employed by the Department of Corrections or by a county jail, who provide prehospital emergency medical care for an emergency medical services agency either as an employee or as a volunteer.

6. "Patient" means any individual cared for by an emergency medical services provider, including but not limited to victims of accidents or injury, deceased persons, and prisoners or persons in the custody of the Department of Corrections.

7. "Receiving facility" means a hospital, health care or other facility where the patient is delivered by the emergency medical services provider for care.

8. "Significant exposure" means:

8.1. Contact of an emergency medical services provider's broken skin or mucous membrane with a patient's blood or bodily fluids other than tears or perspiration, or;

8.2. That a needle stick, or scalpel or instrument wound has occurred to the emergency medical services provider in the process of caring for a patient.

R388-801-3. Emergency Medical Services Provider Responsibility.

1. The EMS provider shall document and report all significant exposures to the receiving facility, the designated agent, and the department. The reporting process is as follows:

1.1. The exposed EMS provider shall complete the department Exposure Report Form (ERF) at the time the patient is delivered and provide a copy to a person at the receiving facility authorized by the facility to receive that form. In the event that the exposed EMS provider does not accompany the patient to the receiving facility, he may report the exposure incident, with information requested on the ERF, by telephone to a person authorized by the facility to receive that form. In this event, the exposed EMS provider shall nevertheless submit a written copy of the ERF within three days to an authorized person of the receiving facility.

1.2. The exposed EMS provider shall, within three days of the incident, also submit copies of the ERF to the designated agent and, by registered mail or in person, to the department.

1.3. The exposed EMS provider should retain a copy of the ERF for his own records, in the event that it is subsequently necessary to file a workers' compensation claim under Sections 26-6a-10 through 26-6a-14.

R388-801-4. Receiving Facility Responsibility.

1. The receiving facility shall establish a system to receive ERFs as well as telephoned reports from exposed EMS providers on a 24-hour per day basis. The facility shall also have available, within the receiving facility or on call, trained pre-test counselors for the purpose of obtaining consent and counseling of patients when HIV testing has been requested by EMS providers. The counselor shall contact the patient prior to release from the facility, or if the patient remains in the facility, contact shall be made within 24 hours.

2. Upon notification of exposure, the receiving facility shall request permission from the patient to draw a blood sample for HIV testing. In conjunction with this request, the patient must be advised of his right to refuse testing and be advised that if he refuses to be tested that fact will be forwarded to the department and the designated agent. Testing is authorized only when the patient, his next of kin or legal guardian consents to testing, with the exception that consent is not required from an individual who has been convicted of a crime and is in the custody or under the jurisdiction of the Department of Corrections, or if the patient is dead. If consent is denied, the receiving facility shall complete the ERF and send it to the department. If consent is received, the receiving facility shall draw a sample of the patient's blood and send it, along with the ERF, to the Utah Department of Health, Division of Laboratory Services for testing.

3. The receiving facility shall arrange for Hepatitis B testing according to standard procedures and report the result to the designated agent at the EMS agency.

R388-801-5. EMS Agency Responsibility.

The EMS agency shall appoint a representative as designated agent to fulfill the responsibilities specified in these rules.

R388-801-6. Designated Agent Responsibility.

1. The designated agent, upon receipt of an ERF from the EMS provider, shall review the details regarding the significant exposure and recommend appropriate measures, if any, considering the most recent Centers for Disease Control guidelines, to EMS agency management.

2. The designated agent, upon receipt of the HIV test result from the department, shall immediately report the result, by case number, not name, to the exposed EMS provider.

3. The designated agent, upon receipt of the Hepatitis B test result from the receiving facility, shall immediately report the result to the exposed EMS provider.

4. The designated agent, upon receipt of refusal of testing, shall report that refusal to the EMS provider.

5. The designated agent shall maintain confidential records in conformance with Section 26-6a-7.

R388-801-7. Department Responsibility.

1. The department shall designate a representative or representatives in the Utah Department of Health, Division of Laboratory Services who shall receive the HIV blood sample with a copy of the ERF, conduct the test and report the test result to the Bureau of HIV/AIDS Prevention and Control, and return the copy of the ERF to the Bureau of HIV/AIDS Prevention and Control.

2. The department shall designate a representative(s) in the Bureau of HIV/AIDS Prevention and Control who shall:

2.1. Receive and process copies of all ERF's submitted by the EMS provider or receiving facility to the department;

2.2. Report refusals to test or the results of HIV testing, by case number, not name, to the designated agent; and

2.3. Report HIV test results to the patient and complete all post test counseling required by Chapter 6a, Title 26.

3. The department shall assess to the EMS agency with which the EMS provider is affiliated the actual cost of testing and post test counseling of the patient.

4. The department shall develop and make available a pre-test counseling protocol to all receiving facilities.

R388-801-8. Confidentiality Responsibility.

1. Information concerning test results obtained under these rules that identify the patient shall be maintained strictly confidential by the hospital, health care or other facility that received or tested the patient, designated agent, EMS provider, EMS agency, and the department, except as provided by these rules. That information may not be made public upon subpoena, search warrant, discovery proceedings, or otherwise, except as provided by this chapter.

2. The information described in R388-801-8.1 may be released with the written consent of the patient, or if the patient is deceased or incapable of giving informed consent, with the written consent of his next-of-kin, legal guardian, or executor of his estate.

3. Information concerning test results obtained under the authority of these rules may be released in a way that no patient is identifiable.

R388-801-9. Penalties.

Penalties for violation of R388-801 are prescribed under Sections 26-6a-7 and 26-23-6.

KEY: communicable diseases, AIDS
September 1, 1996 26-6a
Notice of Continuation July 19, 2007

R388. Health, Epidemiology and Laboratory Services; HIV/AIDS, Tuberculosis Control/Refugee Health.
R388-802. HIV Positive Student or School Employee Rule.
R388-802-1. Authority and Purpose.

1. The HIV Positive Student or School Employee Rule is established under authority of Section 26-1-30.

2. The purpose of R388-802 is to establish standards relating to HIV infection in the schools in order to (a) reduce the risk to susceptible individuals and (b) protect infected individuals against both unreasonable health risks and unnecessary restrictions in activities and associations.

R388-802-2. Definitions.

1. "Director" means the executive director of the Utah Department of Health.

2. "Employee" means anyone employed by a school or serving as a volunteer with the permission of a school.

3. "HIV" means human immunodeficiency virus.

4. "HIV Infection" is defined as an indication of the presence of human immunodeficiency virus (HIV) as detected by any of the following:

4.1. Presence of antibodies to HIV, verified by appropriate confirmatory tests.

4.2. Presence of HIV antigen.

4.3. Isolation of HIV.

4.4. Demonstration of HIV proviral DNA.

5. "Review committee" or "committee" means a group consisting of a school administrator, a representative from the local health department, the subject's physician, the subject or, in the case of a minor, the subject's parents or guardian. The committee is appointed and chaired by the school administrator.

6. "School" means a licensed or unlicensed public or private nursery school, preschool, elementary or secondary school, day-care center, child-care facility, family-care facility, or head-start program.

7. "School administrator" means the person designated by the superintendent to implement this rule.

8. "School board" means the board of education of an affected public school district or the governing body of an affected facility or program which is not part of a public school district.

9. "Student" means anyone enrolled in a school.

10. "Subject" means a person who is the focus of deliberations by a review committee.

11. "Superintendent" means the superintendent of an affected school district or the chief administrative officer of an affected school which is not part of a public school district.

R388-802-3. Confidentiality.

1. The identities or other case details of HIV-infected subjects shall not be disclosed to any person other than the members of the review committee and the pertinent superintendent.

2. Penalties for violation of confidentiality are prescribed under Section 26-6-29.

R388-802-4. Anti-discrimination.

1. In the school setting, no person shall be discriminated against, or denied activities or associations, based solely upon a diagnosis of HIV infection except as permitted under this rule.

R388-802-5. Requirements for Determining if a Student or Employee Infected with HIV Should Remain in the Regular Classroom or Job Assignment.

1. Upon notification that a student or employee has been diagnosed with HIV infection, the school administrator shall convene a review committee.

2. A student or employee infected with HIV shall continue in his regular classroom or job assignment until a review committee can meet and formulate recommendations.

3. The committee shall review all pertinent information including current findings and recommendations of the United States Public Health Service, the American Academy of Pediatrics, and the Utah Department of Health; apply that information to the subject and the nature of activities and associations in which the subject is involved with the school; and establish written findings of fact and recommendations based upon reasonable medical judgments and other information concerning the following:

3.1. The nature of the risk of transmission of HIV relevant to the activities of the subject in the school setting;

3.2. The probability of the risk, particularly the reasonable likelihood that HIV could be transmitted to other persons by the subject in the school setting;

3.3. The nature and the probability of any health related risks to the subject;

3.4. If restrictions are determined to be necessary, what accommodations could be made by the school to avoid excessive limitations on activities and associations of the subject.

4. The review committee shall forward its findings and recommendations to the superintendent.

5. The school administrator will implement the recommendations without delay.

6. The school administrator shall immediately advise the subject or, in the case of a minor, the subject's parents or guardian, in writing, of the decision of the review committee and that continued participation in the school setting may result in exposure to other communicable diseases.

7. The school administrator shall review the committee's decision on a regular basis and may reconvene the committee if, in his opinion, the facts of the case have changed.

R388-802-6. Liability.

Responsibility for continued participation in the classroom or job assignment, despite potential personal risk, shall be left to the discretion of the subject or, in case of a minor, the subject's parents or guardian.

R388-802-7. Appeal Process.

1. The superintendent or any member of the review committee may appeal the recommendation of the committee by submitting a written appeal within ten school days for students or ten working days for employees, after receiving notice of the committee's recommendations. If the appellant's concerns relate to medical issues, the appeal shall be submitted to the director, and the director, or designee, may order restrictions on the school-related activities or associations of the subject or may stay implementation of the committee's recommendations. If the concerns relate to the school's ability to provide an accommodation, the appeal shall be directed to the school board.

2. The appellant shall submit copies of any appeal to the director, the superintendent, and all other members of the review committee.

3. The director or the school board shall review the findings and recommendations of the committee and any additional information that the director or board finds to be pertinent to the question raised in the appeal, and shall render a final decision in writing within ten school days for students or ten working days for employees.

4. Copies of the decision shall be sent to the appellant, members of the review committee, and the superintendent.

5. The superintendent shall implement the decision without delay.

6. Judicial review of any decision rendered under this section by the director or the school board may be secured by persons adversely affected thereby by filing an action for review

in the appropriate court of law.

R388-802-8. Special Procedures.

1. A superintendent may suspend a subject from school or school employment for a period not to exceed ten school days for students or ten working days for employees, prior to receiving the recommendation of a review committee if the superintendent determines that there are emergency conditions which present a reasonable likelihood that suspension is medically necessary to protect the subject or other persons.

2. If the subject is unable to obtain the services of a physician to serve on the review committee, the local health officer may appoint a licensed physician to provide consultation.

R388-802-9. Procedures for Handling Blood or Body Fluids.

1. Each school shall adopt routine procedures for handling blood or body fluids, including sanitary napkins, regardless of whether students or employees with HIV infections are known to be present. The procedures should be consistent with recommendations of the United States Public Health Service, the American Academy of Pediatrics, and the Utah Department of Health.

R388-802-10. Penalties.

1. Enforcement provisions and penalties for the violation or for the enforcement of public health rules, including R388-802, are prescribed under Section 26-23-6.

KEY: communicable diseases, AIDS, HIV
1989 26-1-30
Notice of Continuation July 19, 2007

R388. Health, Epidemiology and Laboratory Services; HIV/AIDS, Tuberculosis Control/Refugee Health.
R388-804. Special Measures for the Control of Tuberculosis.
R388-804-1. Authority and Purpose.

(1) This rule establishes standards for the control and prevention of tuberculosis as required by Section 26-6-4, Section 26-6-6, Section 26-6-7, Section 26-6-8, and Section 26-6-9 of the Utah Communicable Disease Control Act and Title 26, Chapter 6b, Communicable Diseases-Treatment, Isolation and Quarantine Procedures.

(2) The purpose of this rule is to focus the efforts of tuberculosis control on disease elimination. The standards outlined in this rule constitute the minimum expectations in the care and treatment of individuals diagnosed with, suspected to have, or exposed to tuberculosis.

R388-804-2. Definitions.

(1) The definitions described in Section 26-6b apply to this rule, and in addition:

(a) Tuberculosis. A disease caused by Mycobacterium tuberculosis complex, i.e., Mycobacterium tuberculosis, Mycobacterium bovis, or Mycobacterium africanum.

(b) Acid-fast bacilli (AFB). Denotes bacteria that are not decolorized by acid-alcohol after having been stained with dyes such as basic fuschsin; e.g., the mycobacteria and nocardiae.

(c) Case of tuberculosis. An episode of tuberculosis disease meeting the clinical or laboratory criteria for tuberculosis as defined in the document entitled "Case Definitions for Infectious Conditions Under Public Health Surveillance." The Department incorporates by reference the Centers for Disease Control and Prevention "Case Definitions for Infectious Conditions under Public Health Surveillance," MMWR; 46 (no. RR-10): 40-41, 1997.

(d) Tuberculosis infection. The presence of M. tuberculosis in the body but the absence of clinical or radiographic evidence of active disease as documented by a significant tuberculin skin test, a negative chest radiograph and the absence of clinical signs and symptoms.

(e) Tuberculosis disease. A state of infectious or communicable tuberculosis, pulmonary or extra-pulmonary, as determined by a chest radiograph, the bacteriologic examination of body tissues or secretions, other diagnostic procedures or physician diagnosis.

(f) Directly observed therapy. A method of treatment in which health-care providers or other designated individuals physically observe the individual ingesting anti-tuberculosis medications.

(g)Drug resistant tuberculosis. Tuberculosis bacteria which is resistant to one or more anti-tuberculosis drug.

(h) Multi-drug resistant tuberculosis. Tuberculosis bacteria which is resistant to at least isoniazid and rifampin.

(i) Suspect case. An individual who is suspected to have tuberculosis disease, e.g., a known contact to an active tuberculosis case or a person with signs and symptoms consistent with tuberculosis.

(j) Program. Utah Department of Health: Bureau of HIV/AIDS, Tuberculosis Control and Refugee Health: Tuberculosis Control/Refugee Health Program.

(k) Department. Utah Department of Health.

R388-804-3. Required Reporting.

(1) Tuberculosis is a reportable disease. Individuals shall immediately notify the Department by telephone of all suspect and confirmed cases of pulmonary and extra-pulmonary tuberculosis as required by R386-702-2, R386-702-3.

(2) The report may also be made to the local health department, who shall notify the Department of all suspect and confirmed cases within 72 hours of report.

R388-804-4. Screening Priorities and Procedures.

(1) Private physicians and local health departments shall screen individuals considered to be at high risk for tuberculosis disease and infection before screening is conducted in the general population. Priorities shall be established based on those at greatest risk for disease and in consideration of the resources available.

(2) Individuals considered at high risk for tuberculosis include the following:

(a) Close contacts of those with infectious tuberculosis;

(b) Persons infected with human immunodeficiency virus;

(c) Individuals who inject illicit drugs;

(d) Inmates of adult and youth correctional facilities;

(e) Residents of nursing homes, mental institutions, other long term residential facilities and homeless shelters;

(f) Recently arrived foreign-born individuals, within five years, from countries that have a high tuberculosis incidence or prevalence;

(g) Low income or traditionally under-served groups with poor access to health care, e.g., migrant farm workers and homeless persons;

(h) Individuals who are substance abusers and members of traditionally under-served groups;

(i) Individuals with certain medical conditions that may predispose them to tuberculosis infection and disease, e.g., diabetes, cancer, silicosis, and immune-suppressive disorders;

(j) Individuals who have traveled for extended periods of time in countries that have a high tuberculosis incidence or prevalence;

(k) Other groups may be identified by order of the Department, as needed to protect public health.

(3) Employers who are required to follow Occupational Safety and Health Administration guidelines for the prevention of tuberculosis transmission disease shall develop and implement an employee screening program.

(4) Tuberculosis screening shall be completed using either the Mantoux tuberculin skin test method or an FDA approved in-vitro serologic test.

(a) Screening for tuberculosis with chest radiographs or sputum smears to identify individuals with tuberculosis disease is acceptable in places where the risk of transmission is high and the time required to give the skin test makes the method impractical.

(b) If the skin test yields results indicating tuberculosis exposure, the individual shall be referred for further medical evaluation.

R388-804-5. Diagnostic Criteria.

(1) The Department incorporates by reference the American Thoracic Society (ATS/CDC) diagnostic and classification standards as described in the segment entitled "Diagnostic Standards and Classification of Tuberculosis in Adults and Children," published in the American Journal of Respiratory and Critical Care Medicine, Vol 161, pp. 1376-1395, 2000. In diagnosing tuberculosis, health care providers shall be expected to adhere to the standards listed in this document.

R388-804-6. Treatment and Control.

(1) The Department incorporates by reference the ATS/CDC treatment standards as described in the segment entitled "Centers for Disease Control and Prevention. Treatment of Tuberculosis, American Thoracic Society, CDC, and Infectious Diseases Society of America. MMWR 2003;52 (No. RR-11), Centers for Disease Control and Prevention. Controlling Tuberculosis in the United States: Recommendations from the American Thoracic Society; CDC, and the Infectious Diseases Society of America. MMWR 2005; 54 (No. RR-12)" and "Centers for Disease Control and

Prevention. Targeted Tuberculin Testing and Treatment of Latent Tuberculosis Infection. MMWR 2000; 49 (No. RR-6)." In treating tuberculosis, health care providers must adhere to the standards listed in this document.

(2) A health-care provider who treats an individual with tuberculosis disease shall use the ATS/CDC treatment standards as a reference for the development of a comprehensive treatment and follow-up plan for each individual. The plan shall be developed in cooperation with the individual and approved by the local health department or the Program. Health-care providers shall routinely document an individuals' adherence to prescribed therapy for tuberculosis infection and disease. If isolation is indicated, the plan for isolation shall be approved by the local health department or the Program.

(3) A health-care provider who treats an individual with tuberculosis disease shall provide for directly observed therapy for individuals diagnosed with active tuberculosis disease.

(4) Individuals with infectious tuberculosis disease shall wear a mask approved by the local health department or the Program when outside the isolation area.

R388-804-7. Epidemiologic Investigations.

(1) The local health department shall conduct a contact investigation immediately upon report of an AFB smear positive suspected or confirmed case of tuberculosis disease.

(2) The contact investigation shall include interviewing, counseling, educating, examining and obtaining comprehensive information about those who have been in contact with individuals who have infectious tuberculosis.

(a) The investigation shall begin within three days of notification of an AFB smear positive suspected or confirmed case and the initial evaluation shall be completed within fourteen days of notification.

(b) Investigations of contacts to persons with active TB disease shall include the evaluation of contacts and the treatment of infected contacts.

(c) The local health department shall submit demographic data to the Department at 30 days and at 120 days after initiation of the contact investigation, and following the completion of prophylactic.

R388-804-8. Payment for Isolation and Quarantine.

(1) Individuals who are isolated or quarantined at the expense of the Department shall provide the Department with information to determine if any other payment source for the costs associated with isolation or quarantine is available.

R388-804-9. Penalty for Violation.

(1) Any person who violates any provision of this rule may be assessed a civil money penalty not to exceed the sum of $5000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

KEY: tuberculosis, screening, communicable disease

July 16, 2007 **26-6-4**

Notice of Continuation May 29, 2007 **26-6-6**

26-6-7

26-6-8

26-6-9

26-6b

R392. Health, Epidemiology and Laboratory Services, Environmental Services.
R392-502. Hotel, Motel and Resort Sanitation.
R392-502-1. Definitions.

Director - shall mean the Executive Director of the Utah Department of Health.

Hotel, Motel or Resort - shall include tourist court, motor hotel, resort camps, hostels, lodges, dormitories and similar facilities, and shall mean every building, or structure with all buildings and facilities in connection, kept, used, maintained as, advertised as, or held out to the public to be, a place where living accommodations are furnished to transient guests or to groups normally occupying such facilities on a seasonal or short-term basis.

Hotel, Motel or Resort Units - shall mean accommodations to serve two or more people.

Wastewater - shall mean discharges from all plumbing facilities such as rest rooms, kitchen, and laundry fixtures, either separately or in combination.

R392-502-2. General.

2.1 It shall be the duty of each person operating a hotel, motel or resort in the State of Utah to carry out the provisions of these rules. Such person should also have the duty of controlling the conduct of occupants to this end, and shall make at least one daily inspection of the area for these purposes.

2.2 Severability - If any provision of this code, or its application to any person or circumstance is declared invalid, the application of such provisions to other person or circumstances, and the remainder of this rule, shall not be affected thereby.

2.3 Hotel, motel and resort sites shall be constructed to provide adequate surface drainage and shall be isolated from any existing or potential health hazard or nuisance.

2.4 All applicable local and state building, zoning, electrical, health, fire codes, and all local ordinances shall be complied with.

R392-502-3. Water Supplies.

3.1 Potable water supply systems for use by hotel, motel or resort occupants shall meet the requirements of the State of Utah rules relating to public drinking water supplies.

3.2 In addition to the rules and regulations relating to public drinking water supplies, the design of water system facilities shall be based on the suppliers engineer's estimate of water demands, but shall in no case be less than the following:

Source Capacity - 150 gallons per day per hotel, motel or resort unit.

Storage Volume - 75 gallons per hotel, motel or resort unit.

Distribution System Capacity - Shall maintain a water system pressure in excess of 20 psi at all points in the distribution system during peak hourly flow conditions. Non-community systems in remote areas can be exempted from this requirement, on a case-by-case basis, if flow from the system is always unregulated and free-flowing. The peak hourly flow should be calculated for the number of fixture units as presented in the Utah Plumbing Code.

Other exceptions to the above requirements may be made as permitted by the State of Utah public drinking water rules.

3.2.1 The source and storage requirements as indicated above do not include water demands for outside use or fire protection. However, if the culinary system is intended to provide water for such purposes, the water requirements indicated above must be appropriately increased. Specific information on watering requirements (e.g., area of land to be irrigated) must be provided for Department of Health review.

3.3 Construction of a public drinking water supply system intended to serve occupants of any hotel, motel or resort shall not commence until plans prepared by a licensed professional registered engineer (in accordance with Title 58, Chapter 22, Professional Engineers, and Land Surveyors Licensing Act) have been submitted to and approved in writing by the Utah Department of Environmental Quality. Following construction, the system may not be placed in service until a final inspection is made by a representative of the Utah Department of Environmental Quality or local health department having jurisdiction.

3.3.1 All systems must be monitored in accordance with the State of Utah public drinking water rules, and in cooperation with the local health department having jurisdiction.

3.4 Any culinary system or portion thereof that is drained seasonally must be cleaned, flushed and disinfected prior to use. Furthermore, a water sample of satisfactory bacteriologic quality, i.e., a sample showing not more than one coliform bacteria per 100 ml. sample, must be obtained before being placed into service.

3.4.1 Systems operated on a seasonal basis may be required to sample for bacteriologic analysis at an accelerated frequency as determined by the Director or director of the local health department having jurisdiction.

R392-502-4. Wastewater Disposal.

4.1 All wastewater shall be discharged to a public sewer system where accessible and within 300 feet of the hotel, motel or resort property line.

4.2 Where connection to a public sewer is not available, wastewater shall be discharged into a wastewater disposal system meeting requirements of the State of Utah rules for waste disposal. Unless water usage rates are available, design shall be based on not less than 125 gallons per day per hotel, motel or resort unit.

4.3 All plans for the construction or alteration of a wastewater disposal system shall initially be submitted to the local health department having jurisdiction. Where plan approval is required by law to be provided by the State Department of Environmental Quality, such plans will be forwarded by the local authority along with any appropriate comments. Construction alteration of the disposal system shall not commence until the plans have been approved in writing by the appropriate health agency.

R392-502-5. Plumbing.

5.1 All plumbing in any hotel, motel or resort shall comply with the provisions of the Utah Plumbing Code, and applicable local plumbing codes.

5.2 When adequate plumbing fixtures are not included in each guest room, such facilities shall be made available to hotel, motel and resort occupants as required in the following Table I.

TABLE I
Required Plumbing Fixtures For Overnight Occupants

Plumbing Fixtures	Ratio of Plumbing Fixtures For Overnight Hotel, Motel and Resort(1) Occupants	
	Males	Females
Water Closets	1:10	1:8
Urinals	1:25	--
Lavatories	1:12	1:12
Shower/Bath	1:8	1:8

(1)The number of required plumbing fixtures at resorts may be reduced up to one-half of the above.

5.3 If rest rooms for public use are provided, they shall include adequate plumbing fixtures as required in Table II:

TABLE II
Required Plumbing Fixtures For Public Rest Rooms
In Hotels, Motels and Resorts (a)

Plumbing Fixtures	Number of Persons (b)	Number of Fixtures Males	Females
Water Closets	1-100	1	2
	101-200	2	3
	201-400	3	5
	Over 400, add 1 fixture for each additional 500 men and 1 for each 300 women.		
Urinals (c)	1-200	1	--
	201-400	2	--
	401-600	3	--
	Over 600, add 1 fixture for each 300 persons.		
Lavatories	1-200	1	1
	201-400	2	2
	401-750	3	3
	Over 750, add 1 fixture for each 500 persons.		
Drinking Fountains	1 for each 300 persons		
Other Fixtures	1 service sink		

(a) In remote areas providing other than water flush type toilets, only the requirements for water closets and drinking fountains need apply.

(b) Total number of persons for maximum occupancy for auditoriums, banquet rooms, conference rooms, etc. shall be based on 15 square feet per person.

(c) Where urinals are provided for women, the number shall be the same as those required for men.

5.4 All rest rooms shall be conveniently located. Plumbing fixtures which normally require water for their operation shall be supplied with an adequate potable water supply under pressure and facilities should be provided with hot water as required.

5.5 Wherever toilet facilities for males and females are located in the same building, and adjacent to each other, they shall be separated by sound resistant wall. Direct line of sight to each rest room shall be obstructed.

5.6 Soap and toilet tissue in suitable dispensers and individual towels or other approved hand drying facilities and suitable waste receptacles with lids shall be provided in each rest room.

R392-502-6. Operation and Maintenance.

6.1 Each structure made available for occupancy shall comply with the requirements of the Uniform Building Code.

6.2 Comfort of occupants shall be provided for by adequate heating, lighting, and ventilation. Total window area in any room should be equal to at least 10 percent and in no case less than 5 percent of the floor area. For adequate ventilation, windows shall be openable or mechanical ventilation must be provided. Adequate means shall be employed to minimize odors in all rooms intended for overnight use.

6.3 In dormitory type accommodations, beds shall be separated by a horizontal distance of at least 5 feet, reducible to 3 feet, if beds are alternated head to foot, except in case of double deck bunks, which shall have a minimum horizontal separation of 6 feet under all circumstances. If suitable permanent partitions are installed between beds, spacing requirements may be modified upon approval of the Director or director of the local health department having jurisdiction.

6.4 Floors, walls and ceilings shall be so constructed as to be easily cleanable and they shall be kept clean and in good repair.

6.5 Each bed, bunk, cot or sleeping facility for use by occupants shall afford reasonable comfort and be maintained in a sanitary condition. Mattresses, mattress covers, quilts, blankets, pillows, pillow slips, sheets, comforters, and other bedding shall be kept clean and in good repair. Bedding shall be made available to each occupant not furnishing his own. Pillows shall have pillow slips and sheets shall be large enough to completely cover mattresses. Bedding shall be changed daily or in between occupant use.

6.6 All eating and drinking utensils for use by guests in rooms, shall be either single service, or washed and sanitized in a manner prescribed in R392-100 and protected from subsequent contamination.

6.7 All food, food service employees, ice, vending machines, food storage, and preparation and serving facilities shall comply with R392-100.

6.8 The dispensing of ice from storage bins where the general public has free access is prohibited.

6.9 Where occupants are permitted to cook in a hotel, motel, or resort unit, a space for kitchen facilities shall be provided, and shall be equipped with at least a minimum of a kitchen sink installed in accordance with requirements of the Utah Plumbing Code.

6.10 Guest rooms used for sleeping purposes shall be supplied with a lavatory, hand soap, and clean individual towels for each guest. Clean individual towels shall be supplied daily or in between occupant use.

6.11 All buildings, rooms and equipment and ground surrounding them shall be maintained in a clean and operable condition.

6.12 All necessary means shall be employed to eliminate and control infestations of insects and rodents on the premises of any hotel, motel, or resort unit. This shall include approved screening or other approved control of outside openings in structures intended for occupancy or food service facilities.

6.13 No pets, other than Seeing Eye dogs, shall be allowed in hotel, motel, or resort rooms.

R392-502-7. Swimming Pools.

7.1 Any swimming pool, wading or therapy pool made available to occupants of any hotel, motel or resort shall comply with R392-302 and all applicable local regulations.

R392-502-8. Solid Waste.

8.1 Solid wastes originating in any hotel, motel or resort shall be stored in a sanitary manner in watertight containers with lids, or the equivalent, approved by the local health department. The containers shall be conveniently located, and the contents shall be disposed of in a manner approved by the state or local health department having jurisdiction.

KEY: public health, hotels, motels, resorts
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Notice of Continuation July 18, 2007

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-10A. Transplant Services Standards.
R414-10A-1. Introduction and Authority.

(1) This rule establishes standards and criteria for tissue and organ transplantation services.

(2) Section 9507 of the federal Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), codified as section 1903(i)(1) of the Social Security Act, requires states, as part of the Medicaid program, to establish standards for coverage of transplantation services.

(3) Under the ruling issued by the Federal District Court for the District of Utah, Central Division, Civil No. 96405, the Department of Health has absolute discretion to fund transplantation services under Title XIX of the Social Security Act and if transplantation services are covered, there must be no discrimination on the basis of age.

R414-10A-2. Definitions.

For purposes of Rule R414-10A:

(1) "Abstinence" means the documented non-use of any abusable psychoactive substance by the client with random monthly drug screen tests.

(2) "Active infection" means current presumptive evidence of invasion of tissue or body fluids by bacteria, viruses, fungi, rickettsiae, or parasites which is not demonstrated to be effectively controlled by the host, antibiotic or antimicrobial agents.

(3) "Age group" means patients documented in the medical literature with an age at the time of transplantation related to the current age of the client as listed below:

(a) Birth through 12 months;
(b) One through 12 years;
(c) 13 through 20 years;
(d) 21 through 30 years;
(e) 31 through 40 years; or
(f) 41 through 54 years.
(g) Department medical consultants may consider other age groups, documented by the medical literature and the transplant center to have conclusive relevance to the client's survival.

(4) "Active substance abuse" means the current use of any abusable psychoactive substance which is not appropriately prescribed and taken under the direction of a physician or is not medically indicated.

(5) "Allogenic" means having a different genetic constitution but belonging to the same species.

(6) "Autologous" means the products or components of the same individual person.

(7) "Bone marrow transplantation" means transplantation of cells from the bone marrow stem cells, peripheral blood stem cells, or cord blood stem cells to supplant the client bone marrow.

(8) "Client" means an individual eligible to receive covered Medicaid services from an enrolled Medicaid provider.

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

(10) "Donor lymphocyte infusion" means infusion of allogenic lymphocytes into the client.

(11) "Drug screen" means random testing for tobacco, marijuana, alcohol, benzodiazepines, narcotics, methadone, cocaine, amphetamines, and barbiturates.

(12) "Emergency transplantation" means any transplantation which for reasons of medical necessity requires that a transplant be performed less than five days after determination of the need for the procedure.

(13) "Intestine transplantation" means transplantation of both the small bowel and colon.

(14) "Medical literature" means articles and medical information which have been peer reviewed and accepted for publication or published.

(15) "Medically necessary" means a client's medical condition which meets all the criteria and none of the contraindications for the type of transplantation requested.

(16) "Multiple transplantations" means, except for corneas, the transplantation of more than one tissue or organ during the same or different operative procedure.

(17) "Multivisceral transplantation" means the transplantation of liver, pancreas, omentum, stomach, small intestine and colon.

(18) "Patient" means a person who is receiving covered professional services provided or directed by a licensed practitioner of the healing arts enrolled as a Medicaid provider.

(19) "Remission" means the lack of any evidence of the leukemia on physical examination and hematological evaluation, including normocellular bone marrow with less than five percent blast cells, and peripheral blood counts within normal values, except for clients who are receiving maintenance chemotherapy.

(20) "Services" means the type of medical assistance specified in sections 1905(a)(1) through (24) of the Social Security Act and interpreted in the 42 CFR Section 440, Subpart A, October 1992 edition, which is adopted and incorporated by reference.

(21) "Substance abuse rehabilitation program" means a rehabilitation program developed and conducted by an inpatient facility that, at a minimum, meets the standards of organization and staff of a chemical dependency/substance abuse specialty hospital specified in Sections R432-102-4 and 5.

(22) "Syngeneic" means possessing identical genotypes, as monozygotic or identical twins.

(23) "Transplantation" means the transfer of a human organ or tissue from one person to another or from one site to another in the same individual, except for skin, tendon, and bone.

(24) "Vital end-organs" means organs of the body essential to life, e.g., the heart, the liver, the lungs, and the brain.

R414-10A-3. Client Eligibility Requirements for Coverage for Transplantation Services.

Transplantation services are available to categorically eligible and medically needy individuals who are Title XIX eligible and meet criteria listed in Sections R414-10A-6 through 22 at the time the transplantation service is provided.

R414-10A-4. Program Access Requirements.

(1) Transplantation services may be provided only for those eligible clients who meet the criteria listed in Sections R414-10A-6 through 22 for services covered under the Utah Medicaid program.

(2) Transplantation services for the organ needed by the client may be provided only in a transplant center approved by the United States Department of Health and Human Services as a Medicare designated center or by the Department in accordance with criteria in Section R414-10A-7.

(3) Transplantation services may be provided out-of-state only when the authorized service is not available in an approved facility in the state of Utah.

(4) Criteria listed in Rule R414-10A applicable to transplantation services and transplant centers in the state of Utah also apply to out-of-state transplant services and facilities.

(5) Post transplant authorization for transplantation services provided under emergency circumstances may be given only when:

(a) all Utah Medicaid criteria listed in Sections R414-10A-6 through 22 are met; and

(b) both the transplant center and the board-certified or board-eligible specialist evaluation required by Subsection R414-10A-6(3) are submitted with the recommendation that the

tissue or organ transplantation be authorized.

R414-10A-5. Service Coverage.

(1) Transplantation services are covered by the Utah Medicaid program only when criteria listed in Sections R414-10A-6 through 22 are met.

(2) Transplantations which are experimental or investigational or which are performed on an experimental or investigational basis are not covered.

(3) Multiple transplantation services may be provided only when the criteria for the specific multiple transplantations are met.

(4) Staff shall not consider criteria for single tissue or organ transplantation in reviewing requests for multiple transplantations.

(5) Transplantation of additional tissues or organs, different from prior transplantations, may be provided only when the criteria for multiple transplantations of all provided or scheduled multiple tissue or organ transplantations are met.

(6) The Utah Medicaid program covers repeat transplantations of the same tissues or organs only when the Department approves a new prior authorization under criteria found in Sections R414-10A-6 through 22.

(7) Payment for emergency transplantations may be provided only when the service is provided for a transplantation with criteria approved in Sections R414-10A-6 through 22. Payment will not be made until Department staff has reviewed all of the information required by Sections R414-10A-6 through 22 and determined that the patient and the transplant center met criteria for approval and provision of the service at the time of the transplantation.

(8) The Utah Medicaid program does not cover the following transplantation services:

(a) Beta cells or other pancreas cells not part of a pancreatic organ transplantation.

(b) Cells or tissues transplanted into the coronary arteries, myocardium, central nervous system, or spinal cord.

(c) Stem cells other than hematological stem cells.

(d) Donor lymphocyte infusions for clients who have not had a prior bone marrow transplantation.

(9) The Utah Medicaid program does not cover the following procedures:

(a) Temporary or implanted ventricular assist devices with the exception of intra-aortic balloon assist devices.

(b) Temporary or implanted biventricular assist devices.

(c) Temporary or implanted mechanical heart.

R414-10A-6. Prior Authorization.

(1) Prior authorization is required for all transplantation services except for the following transplants:

(a) cornea transplantation.

(b) kidney, heart and liver transplantation performed in a Utah transplant center, which has been Medicare-approved for the last five or more years.

(2) The prior authorization request for transplantation services must be initiated by the client's referring physician. Failure to submit all required information with the prior authorization request will delay processing of the request for transplantation.

(3) The initial request for prior authorization of any transplantation, except heart, liver, cornea, or kidney, must contain all of the following:

(a) A description of the medical condition which necessitates a transplantation.

(b) Transplantation treatment alternatives utilized previous to the transplantation request.

(c) Transplantation treatment alternatives considered and discarded, including discussion of why the alternatives have been discarded.

(d) Comprehensive examination, evaluation and recommendations completed by a board-certified or board-eligible specialist in a field directly related to the client's condition which necessitates the transplantation, such as a nephrologist, gastroenterologist, cardiologist, or hematologist.

(e) Comprehensive psycho-social evaluation of the client must include a comprehensive history regarding substance abuse and compliance with medical treatment.

(f) Psycho-social evaluation of parent(s) or guardian(s) of the client, if the client is less than 18 years of age. The psycho-social evaluation must include a comprehensive history regarding substance abuse, and past and present compliance with medical treatment.

(g) Comprehensive psychiatric evaluation of the client, if the client has a history of mental illness.

(h) Comprehensive psychological or developmental testing, as requested by the Department.

(i) Comprehensive infectious disease evaluation for a client with a recent or current suspected infectious episode.

(j) Documentation by the client's referring physician that a client with a history of substance abuse has successfully completed a substance abuse program or has documented abstinence for a period of at least six months before any transplantation service can be authorized.

(k) At least two negative drug screens within three months of the request date for prior authorization. The Utah Medicaid program requires monthly drug screens until the transplant date or until the transplant is denied if either of the two random drug screens are positive for drug use, past drug screens have been positive for drug use, or the Department requests the monthly screens. If the client has a history of substance abuse that does not include the drugs listed in Subsection R414-10A-2(11), then the drug screens must include the other substance(s) upon drug testing availability.

(l) Hospital and outpatient records for at least the last two years, unless the patient is less than two years of age, in which case all records.

(m) Pretransplant evaluation for a client diagnosed with cancer that includes staging of the cancer, laboratory tests, and imaging studies. A letter documenting that the transplant evaluation has been completed and that all medical records documentation from the evaluation have been transmitted to the Department.

(n) Any other medical evidence needed to evaluate possible contraindications for the type of transplantation being considered. Contraindications are listed in this rule under each organ or transplant type.

(o) The transplant center must document, by a current medical literature review, a one-year survival rate from patients having received transplantation for the age group, specific diagnosis(es), condition and type of transplantation proposed for the client. Survival rate must be calculated by the Kaplan-Meier product-limit method or the actuarial life table method: "Kaplan, G., Meier, P. Non-Parametric estimation from incomplete observations. Journal of American Statistical Association 53:457-481, 1958. Cox, D.R., Oakes, D. Analysis of survival data. Chapman and Hill, 1984." adopted and incorporated by reference. At least ten patients in the appropriate age group must be alive at the end of the one or three year period to document adequate confidence intervals. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(p) The transplant center must document by a current medical literature review, a one year graft function rate for patients having received pancreas, kidney or small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. Graft function rate must be calculated by the Kaplan-Meier product-limit method or the actuarial life table method: "Kaplan,

G., Meier, P. Non-Parametric estimation from incomplete observations. Journal of American Statistical Association 53:457-481, 1958. Cox, D.R., Oakes, D. Analysis of survival data. Chapman and Hill, 1984." adopted and incorporated by reference. The time to graft failure will be determined by the use of insulin post-pancreas transplantation, by the use of dialysis post-renal transplantation, and the use of total parenteral nutrition post-small bowel transplantation. At least ten patients in the appropriate age group must have documented graft function at the end of the one year period to document adequate confidence intervals. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(q) Bone marrow transplantation centers must document, by a current medical literature review, a one-year and a three-year survival rate from patients having received transplantation for the age group, specific diagnosis(es), condition and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(r) The transplant center must provide written recommendations for each client which support the need for the transplant. The recommendations must reflect use of both the transplant center's own patient selection criteria and the Utah Medicaid program criteria as noted in Sections R414-10A-8 through 22. Agreement of the transplant center to provide the required service must also be established.

(s) The physician must provide, for review by the Department, any additional medical information which could affect the outcome of the specific transplant being requested.

(t) The completed request for authorization, along with all required information and documentation, must be delivered to:

Utah Department of Health
Bureau of Coverage and Reimbursement Policy
Utilization Management Unit
Transplant Coordinator
288 North 1460 West
P.O. Box 143103
Salt Lake City, Utah 84114-3103

(u) If incomplete documentation is received by the Department, the client's case is pended until the requested documentation has been received.

(4) Prior authorization for each donor lymphocyte infusion must contain all of the following:

(a) A description of the medical condition that necessitates a donor lymphocyte infusion.

(b) Comprehensive examination, evaluation and recommendations completed by a board-certified or board-eligible specialist in a field directly related to the client's condition that necessitates the transplantation, such as a nephrologist, gastroenterologist, cardiologist, or hematologist. The evaluation must document that the proposed donor lymphocyte infusion for the client is a medically necessary service as defined in Subsections R414-1-2(18)(a) and (b).

(c) Hospital and outpatient records for at least the last six months. If the patient is less than six months of age, the Department requires all case records.

(d) The transplant center must document by a current medical literature review that the donor lymphocyte infusion is a medically necessary service as defined in Subsections R414-1-2(18)(a) and (b) for the age group, specific diagnosis(es), condition, and type of transplantation the client has previously received.

R414-10A-7. Criteria for Transplantation Centers or Facilities.

Transplantation services are covered only in a transplant center or facility which demonstrates the following qualifications to the Department:

(1) Compliance with criteria listed in Sections R414-10A-6 through 22.

(2) The transplant center must document cost effectiveness and quality of service. The transplant center must complete, and submit to the Department for evaluation, documentation specific to the surgical experience of the requesting transplant center, showing applicable one and three year survival rates for all patients receiving transplantation in the last three years. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) Out-of-state transplant centers must meet all of the criteria and requirements listed by the Department in Sections R414-10A-6 through 22.

(4) Transplantation services are covered in out-of-state transplant centers only when the service is not available in an approved facility in Utah, and agreement is reached between the Department and the requesting physician that service out-of-state is essential to the individual case.

(5) Reimbursement to out-of-state transplant centers is provided only when the transplant center and the Department can agree upon arrangements which conform to the Department payment methodology.

(6) Corneal transplant facilities must document:

(a) certification or licensure by the Department as an ambulatory surgical center or an acute care general hospital; and

(b) that the surgeon is board-certified or board-eligible in ophthalmology.

(7) Heart, heart lung, intestine, lung, pancreas, kidney, and liver transplant centers must document all of the following:

(a) Current approval by the U.S. Department of Health and Human Services as a Medicare-approved center for transplantation of the organ(s) requested for the client.

(b) Current full membership in the United Network for Organ Sharing for the specific organ transplantation requested for the client.

(8) Bone marrow transplant centers must document approval by the National Marrow Donor Program as a bone marrow transplantation center.

R414-10A-8. Criteria and Contraindications for Cornea Transplantation.

(1) Cornea transplantation services may be provided to a client of any age.

(2) The following are contraindications for cornea transplantation or penetrating keratoplasty:

(a) Active infection.

(b) The presence of an associated disease, such as macular degeneration or diabetic retinopathy severe enough to prevent visual improvement with a successful corneal transplantation.

R414-10A-9. Criteria and Contraindications for Bone Marrow Transplantation.

(1) Bone marrow transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for bone marrow transplantation must meet requirements of Subsections R414-10A-9(2)(a) or (b).

(a) Allogenic and syngeneic bone marrow transplantations may be approved for payment only when the client has an HLA-matched donor. The donor must be compatible for all or a five-out-of-six match of World Health Organization recognized HLA-A, -B, and -DR antigens as determined by appropriate serologic typing methodology.

(i) The Department authorizes payment for a search of related family members, unrelated persons or both to find a suitable donor.

(ii) The transplant center staff must complete, and submit to the Department for evaluation, a current medical literature

review, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate, or by having a greater than or equal to 55 percent three-year survival rate or by meeting the one-year and three-year survival rates for patients receiving bone marrow transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) Autologous bone marrow transplantation performed in conjunction with total body radiation or high dose chemotherapy, may be approved for payment only if a current medical literature review, completed by the transplant center staff and sent to the Department for staff review and evaluation, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate, or by having a greater than or equal to 55 percent three-year survival rate or by meeting the one-year and three-year survival rates for patients receiving bone marrow transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) Clients for autologous bone marrow transplantations must have adequate marrow function and no evidence of marrow involvement by the primary malignancy at the time the marrow is harvested.

(3) The client for bone marrow transplantation must meet all of the following requirements:

(a) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(b) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(c) Psycho-social assessment that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(d) The client must have a strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(e) If the client has a history of substance abuse, then the client must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(f) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original bone marrow disease will not recur and limit survival to less than 75% one-year survival rate, or to less than 55% three-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(4) Any single contraindication listed below precludes approval for Medicaid payment for bone marrow transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation if accompanied by significant compromise of one or more vital end-organs.

(c) Active substance abuse.

(d) Presence of systemic dysfunction or malignant disease which could limit successful clinical outcome or interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(e) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(f) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).

(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent or unresolved pulmonary infarction.

(g) Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 75% one-year survival rate, or a greater than or equal to 55 percent three-year survival rate, or by meeting the one-year and three-year survival rates after transplantation for the age group, specific cancer, diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(h) Cardiovascular diseases:

(i) Intractable cardiac arrhythmias.

(ii) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(iii) Severe generalized arteriosclerosis.

(i) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(j) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(5) Prior to the approval of transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s) of a client who is under 18 years of age, to assure compliance to medication and follow-up care, if an indication of non-compliance documented by any of the behaviors listed in Subsections R414-10A-9(4)(j)(i) through (iv) is demonstrated by the parent(s) or guardian(s) of the client.

(6) The client for donor lymphocyte infusion must produce documentation by current medical literature review and the client's referring physician that the donor lymphocyte infusion is a medically necessary service as defined in Subsections R414-1-2(18)(a) and (b).

R414-10A-10. Criteria and Contraindications for Heart Transplantation.

(1) Heart transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for heart transplantation must meet all of the following requirements:

(a) The client must have irreversible, progressive heart disease with a life expectancy of one year or less without transplantation, or documented evidence of progressive pulmonary hypertension and no other reasonable medical or surgical alternative to transplantation available.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to

75 percent one-year survival rate for patients receiving heart transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) Severe cardiac dysfunction.

(d) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(e) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(f) Psycho-social assessment that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(g) The client must have strong motivation to undergo the procedure, as documented by the medical and psycho-social assessment.

(h) If the client has a history of substance abuse, then the client must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(i) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original heart disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) Any single contraindication listed below precludes approval for Medicaid payment for heart transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation if accompanied by significant compromise of one or more non-cardiac vital end-organs.

(c) Active substance abuse.

(d) Presence of systemic dysfunction or malignant disease which could limit successful clinical outcome, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(e) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(f) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).

(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent or unresolved pulmonary infarction.

(g) Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 75% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(h) Cardiovascular diseases:

(i) Severe pulmonary hypertension documented in patients 18 years of age and older by a pulmonary vascular resistance greater than eight Wood units, or pulmonary vascular resistance of six or seven Wood units in which a nitroprusside infusion is unable to reduce the pulmonary vascular resistance to less than three Wood units or is unable to reduce the pulmonary artery systolic pressure to below 50 mmHg.

(ii) Severe pulmonary hypertension documented in patients less than 18 years of age and more than six months of age by a pulmonary vascular resistance greater than six pulmonary vascular resistance index units (PVRI), or in which a nitroprusside infusion is unable to reduce the pulmonary vascular resistance to less than six PVRI.

(iii) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(iv) Severe generalized arteriosclerosis.

(i) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(j) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(4) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. Non-compliance is demonstrated by documentation of any of the behaviors listed in Subsections R414-10A-10(3)(j)(i) through (iv).

R414-10A-11. Criteria and Contraindications for Intestine Transplantation.

(1) Intestine transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for intestine transplantation must meet all of the following requirements:

(a) The client must have short bowel syndrome or irreversible, progressive small bowel disease that requires daily hyperalimentation with no other reasonable medical or surgical alternative to transplantation available.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year small bowel graft function rate for patients receiving intestine transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 85 percent one-year survival rate for patients receiving intestine transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(e) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social

stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long term follow up and the immunosuppressive program which is required.

(f) Psycho-social assessment that the client has sufficient mental, emotional, and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(g) The client must have a strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(h) If the client has a history of substance abuse, then he must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(i) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original intestinal disease will not recur and limit graft function survival to less than 75% one-year survival rate.

(j) The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) Any single contraindication listed below precludes approval for Medicaid payment for small bowel transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation, if accompanied by significant compromise of one or more vital end-organs.

(c) Active substance abuse.

(d) Presence of systemic dysfunction or malignant disease which could limit survival, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(e) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(f) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).

(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent or unresolved pulmonary infarction.

(g) Cancer, unless treated and eradicated for two or more years, or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 85% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(h) Cardiovascular diseases:

(i) Myocardial infarction within six months.

(ii) Intractable cardiac arrhythmias.

(iii) Class III or IV cardiac dysfunction by New York Heart Association criteria.

(iv) Prior congestive heart failure, unless a cardiovascular consultant determines adequate cardiac reserve.

(v) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(vi) Severe generalized arteriosclerosis.

(i) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(j) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(4) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. An indication of non-compliance by the parent(s) or guardian(s) is documented by any of the behaviors listed in Subsections R414-10A-11(3)(j)(i) through (iv).

R414-10A-12. Criteria and Contraindications for Kidney Transplantation.

(1) Kidney transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) All indications for kidney transplantation listed below must be met by each client.

(a) The client must have irreversible, progressive end-stage renal disease.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year successful renal graft function rate for patients receiving renal transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 90 percent one-year survival rate for patients receiving renal transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(e) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(f) Psycho-social assessment that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(g) The client must have strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(h) If the client has a history of substance abuse, then the client must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(i) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original

renal disease will not recur and limit graft function to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) Any single contraindication listed below shall preclude approval for Medicaid payment for kidney transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation if accompanied by significant compromise of one or more non-renal end-organs.

(c) Active substance abuse.

(d) Presence of systemic dysfunction or malignant disease which could limit successful clinical outcome, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(e) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(f) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).

(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent pulmonary infarction.

(g) Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 90% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(h) Cardiovascular diseases:

(i) Myocardial infarction within six months.

(ii) Intractable cardiac arrhythmias.

(iii) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(iv) Severe generalized arteriosclerosis.

(i) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(j) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(4) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. An indication of non-compliance by the parent(s) or guardian(s) is documented by any of the behaviors listed in Subsections R414-10A-12(3)(j)(i) through (iv).

R414-10A-13. Criteria and Contraindications for Liver Transplantation.

(1) Liver transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) A client for liver transplantation must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving liver transplantation for the age group, specific diagnosis(es), condition, and type of liver transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(c) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long term follow up and the immunosuppressive program which is required.

(d) Psycho-social assessment that the client has sufficient mental, emotional, and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(e) The client must have a strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(f) If the client has a history of substance abuse, then the client must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(g) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original liver disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) Any single contraindication listed below precludes approval for Medicaid payment for liver transplantation:

(a) Active infection outside the hepatobiliary system.

(b) Acute severe hemodynamic compromise at the time of transplantation, if accompanied by significant compromise of one or more non-hepatic vital end-organs.

(c) Hepatitis B surface antigen positive, except for cases of fulminant hepatitis B.

(d) Stage IV hepatic coma.

(e) Active substance abuse.

(f) Presence of systemic dysfunction or malignant disease which could limit successful clinical outcome, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(g) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(h) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).

(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent or unresolved pulmonary infarction.

(i) Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 75% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall

use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(j) Cardiovascular diseases:

(i) Myocardial infarction within six months.

(ii) Intractable cardiac arrhythmias.

(iii) Class III or IV cardiac dysfunction by New York Heart Association criteria: "Goldman, L. et al. Comparative reproducibility and validity of systems assessing cardiovascular functional class: Advantages of a new specific activity scale. American Heart Association Circulation 64: 1227, 1981.", adopted and incorporated by reference.

(iv) Prior congestive heart failure, unless a cardiovascular consultant determines adequate cardiac reserve.

(v) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(vi) Severe generalized arteriosclerosis.

(k) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(l) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(4) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s) of a client who is under 18 years of age, to assure compliance with medications and follow-up care, if an indication of non-compliance documented by any of the behaviors listed in Subsections R414-10A-13(3)(l)(i) through (iv) is demonstrated by the parent(s) or guardian(s) of the client.

R414-10A-14. Criteria and Contraindications for Lung Transplantation.

(1) Lung transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for lung transplantation must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving lung transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(c) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long term follow up and the immunosuppressive program which is required.

(d) Psycho-social assessment that the client has sufficient mental, emotional, and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(e) The client must have a strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(f) The client with a history of substance abuse must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(g) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original lung disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) Any single contraindication listed below shall preclude approval for payment for lung transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation, if accompanied by significant compromise of one or more non-pulmonary vital end-organs.

(c) Active substance abuse.

(d) Presence of systemic dysfunction or malignant disease which could limit survival, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(e) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation for the patient.

(f) Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 75% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(g) Cardiovascular diseases:

(i) Myocardial infarction within six months;

(ii) Intractable cardiac arrhythmias;

(iii) Class III or IV cardiac dysfunction by New York Heart Association criteria.

(iv) Prior congestive heart failure, unless a cardiovascular consultant determines adequate cardiac reserve.

(v) Symptomatic or occlusive peripheral vascular or cerebrovascular disease;

(vi) Severe generalized arteriosclerosis.

(h) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(i) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(4) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. An indication of non-compliance by the parent(s) or guardian(s) is documented by any of the behaviors listed in Subsections R414-10A-14(3)(i)(i) through (iv).

R414-10A-15. Criteria and Contraindications for Pancreas Transplantation.

(1) Pancreas transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) All indications for pancreas transplantation listed

below must be met by each client.

(a) The client must have type I diabetes mellitus.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a pancreas graft function rate greater than or equal to 75 percent at one-year for patients receiving pancreas transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 90 percent one-year survival rate for patients receiving pancreas transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(e) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that he and his parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required

(f) Psycho-social assessment that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(g) The client must have strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(h) If the client has a history of substance abuse, then he must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(i) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original pancreas disease will not recur and limit graft function rate to less than 75% at one-year. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) Any single contraindication listed below precludes approval for Medicaid payment for pancreas transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation if accompanied by significant compromise of one or more end-organs.

(c) Active peptic ulcer.

(d) Active substance abuse.

(e) Presence of systemic dysfunction or malignant disease which could limit successful clinical outcome, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(f) Irreversible musculoskeletal disease resulting in progressive weakness or in confinement to bed.

(g) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(h) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predictable).

(iii) Restrictive pulmonary disease (FVC less than 50% of predictable).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent pulmonary infarction.

(i) Cancer, unless treated and eradicated for two or more years or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 90% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(j) Cardiovascular diseases:

(i) Myocardial infarction within six months.

(ii) Intractable cardiac arrhythmias.

(iii) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(iv) Severe general arteriosclerosis.

(k) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(l) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(4) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. An indication of non-compliance by the parent(s) or guardian(s) is documented by any of the behaviors listed in Subsections R414-10A-15(3)(l)(i) through (iv).

R414-10A-16. Criteria and Contraindications for Small Bowel Transplantation.

(1) Small bowel transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for small bowel transplantation must meet all of the following requirements:

(a) The client must have short bowel syndrome or irreversible, progressive small bowel disease that requires daily hyperalimentation with no other reasonable medical or surgical alternative to transplantation available.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year small bowel function rate for patients receiving small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability for successful clinical outcome by having a greater than or equal to 85 percent one-year survival rate for patients receiving small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client.

The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) Medical assessment that the client is a reasonable risk for surgery with a likelihood of tolerance for immunosuppressive therapy.

(e) Medical assessment by the client's referring physician that the client has sufficient mental, emotional and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long term follow up and the immunosuppressive program which is required.

(f) Psycho-social assessment that the client has sufficient mental, emotional, and social stability and support to ensure that the client and parent(s) or guardian(s) will strictly adhere to the long-term follow-up and the immunosuppressive program which is required.

(g) The client must have a strong motivation to undergo the procedure as documented by the medical and psycho-social assessment.

(h) If the client has a history of substance abuse, then he must successfully complete a substance abuse rehabilitation program or must have documented abstinence for a period of at least six months before the Department reviews a request for transplantation services.

(i) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original small bowel disease will not recur and limit small bowel function survival to less than 85% one-year survival rate.

(j) The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(3) Any single contraindication listed below shall preclude approval for Medicaid payment for small bowel transplantation:

(a) Active infection.

(b) Acute severe hemodynamic compromise at the time of transplantation, if accompanied by significant compromise of one or more vital end-organs.

(c) Active substance abuse.

(d) Presence of systemic dysfunction or malignant disease which could limit survival, interfere with compliance with a disciplined medical regimen or rehabilitation after transplantation.

(e) Neuropsychiatric disorder which could lead to non-compliance or inhibit rehabilitation of the patient.

(f) Pulmonary diseases:

(i) Cystic fibrosis.

(ii) Obstructive pulmonary disease (FEV1 less than 50% of predicted).

(iii) Restrictive pulmonary disease (FVC less than 50% of predicted).

(iv) Unresolved pulmonary roentgenographic abnormalities of unclear etiology.

(v) Recent or unresolved pulmonary infarction.

(g) Cancer, unless treated and eradicated for two or more years, or unless a current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents a greater than or equal to 75% one-year survival rate after transplantation for the age group, specific cancer, diagnosis(es), condition and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(h) Cardiovascular diseases:

(i) Myocardial infarction within six months.

(ii) Intractable cardiac arrhythmias.

(iii) Class III or IV cardiac dysfunction by New York Heart Association criteria.

(iv) Prior congestive heart failure, unless a cardiovascular consultant determines adequate cardiac reserve.

(v) Symptomatic or occlusive peripheral vascular or cerebrovascular disease.

(vi) Severe generalized arteriosclerosis.

(i) Evidence of other major organ system disease or anomaly which could decrease the probability of successful clinical outcome or decrease the potential for rehabilitation.

(j) Behavior pattern documented in the client's medical or psycho-social assessment which could interfere with a disciplined medical regimen. An indication of non-compliance by the client is documented by any of the following:

(i) Non-compliance with medications or therapy.

(ii) Failure to keep scheduled appointments.

(iii) Leaving the hospital against medical advice.

(iv) Active substance abuse.

(4) Prior to approval of the transplantation, the transplantation team must document a plan of care, agreed to by the parent(s) or guardian(s), if an indication of non-compliance is demonstrated by the parent(s) or guardian(s) of a client who is under 18 years of age. An indication of non-compliance by the parent(s) or guardian(s) is documented by any of the behaviors listed in Subsections R414-10A-16(3)(j)(i) through (iv).

R414-10A-17. Criteria and Contraindications for Heart and Lung Transplantation.

(1) Heart-lung transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for heart-lung transplantation must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving heart-lung transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) The requirements listed in:

(i) Subsections R414-10A-10(2)(c) through (i).

(ii) Subsections R414-10A-10(3)(a) through (g), and (i) through (j).

(iii) Subsection R414-10A-10().

R414-10A-18. Criteria and Contraindications for Intestine and Liver Transplantation.

(1) Intestine-liver transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for intestine-liver transplantation must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year small bowel function rate for patients receiving small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research

by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving intestine-liver transplantation for the age group, specific diagnosis(es), and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents that the underlying original disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) The requirements listed in:

(i) Subsections R414-10A-13(2)(b) through (g).

(ii) Subsections R414-10A-13(3)(a) through (l).

(iii) Subsection R414-10A-13(4).

R414-10A-19. Criteria and Contraindications for Kidney-Pancreas Transplantation.

(1) Kidney-pancreas transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for kidney-pancreas transplantation must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year kidney and pancreas function rates for patients receiving kidney-pancreas transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 90 percent one-year survival rate for patients receiving kidney-pancreas transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents that the underlying original disease will not recur and limit survival to less than 90% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) The requirements listed in:

(i) Subsections R414-10A-12(2)(d) through (i).

(ii) Subsections R414-10A-12(3)(a) through (j).

(iii) Subsection R414-10A-12(4).

R414-10A-20. Criteria and Contraindications for Combined Liver-Kidney Transplantation.

(1) Liver-kidney transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for liver-kidney transplantation must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review, documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving liver-kidney transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting a renal graft function rate greater than or equal to 75 percent at one year for patients receiving liver-kidney transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documenting that the underlying original disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) The requirements listed in:

(i) Subsections R414-10A-13(2)(b) through (g).

(ii) Subsections R414-10A-13(3)(a) through (l).

(iii) Subsection R414-10A-13(4).

R414-10A-21. Criteria and Contraindications for Multivisceral Transplantation.

(1) Multivisceral transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for multivisceral transplantation must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year pancreas and small bowel function rates for patients receiving multivisceral transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving multivisceral transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents that the underlying original disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) The requirements listed in:

(i) Subsections R414-10A-13(2)(b) through (g).

(ii) Subsections R414-10A-13(3)(a) through (l).

(iii) Subsection R414-10A-13(4).

R414-10A-22. Criteria and Contraindications for Liver and Small Bowel Transplantation.

(1) Liver-small bowel transplantation services may be provided for a Medicaid eligible client of any age who meets the following criteria.

(2) The client for liver-small bowel transplantation must meet all of the following requirements:

(a) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year small bowel function rate for patients receiving small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(b) The transplant center staff must complete, and submit to the Department for staff review and evaluation, a current medical literature review documenting a probability of successful clinical outcome by having a greater than or equal to 75 percent one-year survival rate for patients receiving liver-small bowel transplantation for the age group, specific diagnosis(es), condition, and type of transplantation proposed for the client. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(c) A current medical literature review, completed by the transplant center staff and submitted to the Department for staff review and evaluation, documents that the underlying original disease will not recur and limit survival to less than 75% one-year survival rate. The Department shall use independent research by staff medical consultants to evaluate the documentation submitted by the transplant center.

(d) The requirements listed in:

(i) Subsections R414-10A-13(2)(b) through (g).

(ii) Subsections R414-10A-13(3)(a) through (l).

(iii) Subsection R414-10A-13(4).

KEY: Medicaid
July 23, 2007 26-1-5
Notice of Continuation February 2, 2007 26-18-1

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-60A. Drug Utilization Review Board.
R414-60A-1. Introduction and Authority.

(1) The Drug Utilization Review (DUR) Board aids in pharmacy policy oversight and drug utilization.

(2) The DUR Board is authorized under 42 CFR 456.716 and Sections 26-18-2, 3, and 102.

R414-60A-2. DUR Board Composition and Membership Requirements.

(1) The Director of the Division of Health Care Financing (DHCF) shall act on behalf of the Executive Director of the Utah Department of Health regarding all DUR Board issues, and shall appoint the following groups of individuals to four-year terms on the DUR Board:

(a) Four physicians from recommendations received from the Utah Medical Association.

(b) One physician engaged in Academic Medicine.

(c) Three pharmacists from recommendations received from the Utah Pharmacy Association.

(d) One pharmacist engaged in Academic Pharmacy.

(e) One dentist from recommendations received from the Utah Dental Association.

(f) One individual from recommendations received from the Pharmaceutical Manufacturers Association (PhRMA).

(g) One consumer representative.

(2) Membership Requirements.

(a) An appointee may not serve more than two consecutive terms in one of the 12 board positions listed in Subsection R414-60A-2(1). Terms separated by more than an interruption of two months are not consecutive.

(b) If the Division does not receive recommendations to fill a vacant position within 30 days of a request, the Division may submit for consideration a list of potential candidates to an organization listed in Subsection R414-60A-2(1).

(c) If there are no willing nominees for appointment when an appointed term has expired, the DHCF Director may reappoint:

(i) physician members on the board to additional non-consecutive terms as needed;

(ii) pharmacist members on the board to additional non-consecutive terms as needed; and

(iii) a dentist, PhRMA member, or consumer member to additional non-consecutive one-year terms as needed.

(3) Notwithstanding the requirements in Subsection R414-60A-2(1), the Director shall adjust the length of terms upon appointment so that one-half of the DUR Board is appointed every two years.

(4) The DUR Board shall elect a chairperson to a one-year term from among its members. The chairperson may serve consecutive terms if reelected by the board.

(5) When a vacancy occurs on the board, the Director shall appoint a replacement for the unexpired term of the vacating member.

(6) The DUR Board shall be managed by a non-voting board manager appointed from the pharmacy group within DHCF.

(7) Other individuals of the DHCF pharmacy group are non-voting ex-officio advisory members of the DUR Board.

R414-60A-3. Responsibilities and Functions.

(1) The DUR Board shall meet monthly in a public forum, except when meeting in executive session or in petitions subcommittee.

(2) The board may elect to not meet in a given month if circumstances do not require a meeting. The board shall meet at least ten times per year.

(3) The DUR Board chairperson shall conduct all meetings. The DUR Board manager shall conduct meetings if the chairperson is not present.

(4) In accordance with Section 26-18-105, notice shall be given for a DUR Board meeting in which prior authorization criteria is considered.

(5) The DUR Board manager shall schedule meetings, set agendas, provide meeting materials, keep minutes, record DUR Board business, notify DHCF when vacancies occur, provide meeting notices, and coordinate functions between the DUR Board and DHCF.

(6) DHCF shall rely upon the DUR Board to carry out the Division's federal and state responsibilities for the Medicaid drug program to address the following issues:

(a) Adverse reactions to drugs.
(b) Therapeutic appropriateness.
(c) Overutilization and underutilization.
(d) Appropriate use of generic drugs.
(e) Therapeutic duplication.
(f) Drug-disease contraindications.
(g) Drug-drug interactions.
(h) Incorrect drug dosage and duration of treatment.
(i) Drug allergy interactions.
(j) Clinical abuse and misuse.
(k) Identification and reduction of the frequency of patterns of fraud, abuse, and gross overuse.
(l) Inappropriate or medically unnecessary care among physicians, pharmacists, and recipients.
(m) Prior Authorization criteria.

(7) The DUR Board shall consider recommendations, criteria, and standards produced by the Pharmacy and Therapeutics (P&T) Committee in matters regarding a preferred drug list. The P&T Committee is established in Rule R414-60B.

KEY: Medicaid
July 19, 2007 **26-18-3**
26-1-5

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-200. Non-Traditional Medicaid Health Plan Services.
R414-200-1. Introduction and Authority.

This rule lists the services under the Non-Traditional Medicaid Health Plan (NTHP). This plan is authorized by a waiver of federal Medicaid requirements approved by the federal Center for Medicare and Medicaid Services and allowed under Section 1115 of the Social Security Act effective January 1, 1999. This rule is authorized by Title 26, Chapter 18, UCA.

R414-200-2. Definitions.

(1) "Emergency" means the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

(a) placing the enrollee's health in serious jeopardy;

(b) serious impairment to bodily functions;

(c) serious dysfunction of any bodily organ or part; or

(d) death.

(2) "Enrollee" means an eligible individual including Section 1931 Temporary Assistance for Needy Families Adults, the Section 1931 related medically needy and those eligible for Transitional Medicaid.

R414-200-3. Services Available.

(1) To meet the requirements of 42 CFR 431.107, the Department contracts with each provider who furnishes services under the NTHP.

(a) 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.

(b) By signing an application for Medicaid coverage, the applicant agrees that the Department's obligation to reimburse for services is governed by contract between the Department and the provider.

(2) Medical or hospital services for which providers are reimbursed under the Non-Traditional Medicaid Health Plan are 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).

(3) The following services, as more fully described and limited in provider contracts and provider manuals; are available to Non-Traditional Medicaid Health Plan enrollees:

(a) inpatient hospital services, provided by bed occupancy for 24 hours or more in an approved acute care general hospital under the care of a physician if the admission meets the established criteria for severity of illness and intensity of service;

(b) outpatient hospital services which are medically necessary diagnostic, therapeutic, preventive, or palliative care provided for less than 24 hours in outpatient departments located in or physically connected to an acute care general hospital;

(c) emergency services in dedicated hospital emergency departments;

(d) physician services provided directly by licensed physicians or osteopaths, or by licensed certified nurse practitioners, licensed certified nurse midwives, or physician assistants under appropriate supervision of the physician or osteopath.

(e) services associated with surgery or administration of anesthesia provided by physicians or licensed certified nurse anesthetists;

(f) vision care services by licensed ophthalmologists or licensed optometrists, within their scope of practice; limited to one annual eye examination or refraction and no eyeglasses.

(g) laboratory and radiology services provided by licensed and certified providers;

(h) physical therapy services provided by a licensed physical therapist if authorized by a physician, limited to ten aggregated physical or occupational therapy visits per calendar year;

(i) dialysis to treat end-stage renal failure provided at a Medicare-certified dialysis facility;

(j) home health services defined as intermittent nursing care or skilled nursing care provided by a Medicare-certified home health agency;

(k) hospice services provided by a Medicare-certified hospice to terminally ill enrollees (six month or less life expectancy) who elect palliative versus aggressive care;

(l) abortion and sterilization services to the extent permitted by federal and state law and meeting the documentation requirement of 42 CFR 440, Subparts E and F;

(m) certain organ transplants;

(n) services provided in freestanding emergency centers, surgical centers and birthing centers;

(o) transportation services, limited to ambulance (ground and air) service for medical emergencies;

(p) preventive services, immunizations and health education activities and materials to promote wellness, prevent disease, and manage illness;

(q) family planning services provided by or authorized by a physician, certified nurse midwife, or nurse practitioner to the extent permitted by federal and state law;

(r) pharmacy services provided by a licensed pharmacy;

(s) inpatient mental health services, limited to 30 days per enrollee per calendar year;

(t) outpatient mental health services, limited to 30 visits per enrollee per calendar year;

(u) outpatient substance abuse services;

(v) dental services are not covered.

(w) interpretive services if they are provided by entities under contract with the Department of Health to provide medical translation services for people with limited English proficiency and interpretive services for the deaf;

(x) occupational therapy, limited to that provided for fine motor development and limited to ten aggregated physical or occupational therapy visits per calendar year; and

(y) chiropractic services, limited to six visits per calendar year.

(4) Emergency services are:

(a) limited to attention provided within 24 hours of the onset of symptoms or within 24 hours of diagnosis;

(b) for a condition that requires acute care and is not chronic;

(c) reimbursed only until the condition is stabilized sufficient that the patient can leave the hospital emergency department; and

(d) not related to an organ transplant procedure.

(5) The vision care benefit is limited to $30 per year.

R414-200-4. Cost Sharing.

(1) An enrollee is responsible to pay to the:

(a) hospital a $220 co-insurance payment for each inpatient hospital admission;

(b) hospital a $6 copayment for each non-emergency use of hospital emergency services;

(c) provider a $3 copayment for outpatient office visits for physician, physician-related, mental health, and physical therapy services; except, no copayment is due for preventive services, immunizations and health education; and

(d) pharmacy a $3 copayment per prescription for prescription drugs.

(2) The out-of-pocket maximum payment for copayments

or co-insurance is limited to $500 per enrollee per calendar year.

KEY: Medicaid, non-traditional, cost sharing
July 23, 2007 **26-18**
Notice of Continuation May 24, 2007

R426. Health, Health Systems Improvement, Emergency Medical Services.
R426-5. Statewide Trauma System Standards.
R426-5-1. Authority and Purpose.

(1) Authority - This rule is established under Title 26, Chapter 8a, Part 2A, Statewide Trauma System, which authorizes the Department to:

(a) establish and actively supervise a statewide trauma system;

(b) establish, by rule, trauma center designation requirements and model state guidelines for triage, treatment, transport and transfer of trauma patients to the most appropriate health care facility; and

(c) designate trauma care facilities consistent with the the trauma center designation requirements and verification process.

(2) This rule provides standards for the categorization of all hospitals and the voluntary designation of Trauma Centers to assist physicians in selecting the most appropriate physician and facility based upon the nature of the patient's critical care problem and the capabilities of the facility.

(3) It is intended that the categorization process be dynamic and updated periodically to reflect changes in national standards, medical facility capabilities, and treatment processes. Also, as suggested by the Utah Medical Association, the standards are in no way to be construed as mandating the transfer of any patient contrary to the wishes of his attending physician, rather the standards serve as an expression of the type of facilities and care available in the respective hospitals for the use of physicians requesting transfer of patients requiring skills and facilities not available in their own hospitals.

R426-5-2. Trauma System Advisory Committee.

(1) The trauma system advisory committee, created pursuant to 26-8a-251, shall:

(a) be a broad and balanced representation of healthcare providers and health care delivery systems; and

(b) conduct meetings in accordance with committee procedures established by the Department and applicable statutes.

(2) The Department shall appoint committee members to serve terms from one to four years.

(3) The Department may re-appoint committee members for one additional term in the position initially appointed by the Department.

(4) Causes for removal of a committee member include the following:

(a) more than two unexcused absences from meetings within 12 calendar months;

(b) more than three excused absences from meetings within 12 calendar months;

(c) conviction of a felony; or

(d) change in organizational affiliation or employment which may affect the appropriate representation of a position on the committee for which the member was appointed.

R426-5-3. Trauma Center Categorization Guidelines.

(1) To establish a basis for trauma center categorization and designation, the Department shall utilize trauma center criteria established in the 1995 Utah Trauma System Plan. The criteria takes into consideration current national standards for trauma center categorization.

R426-5-4. Trauma Review Committee.

(1) The Department shall appoint a Trauma Review Committee. The committee shall annually evaluate trauma centers and applicants for compliance to standards set in R426-5-2 for verification. The committee shall report results to the Department. The committee shall be composed of the following persons:

(a) one surgeon, knowledgeable in trauma;

(b) one emergency physician;

(c) one nurse;

(d) one hospital administrator; and

(e) one Department representative.

(2) With the exception of the Department representative, tenure shall be three years. Initial appointments for the physicians, nurse and hospital administrator shall be for three, two and one year(s), respectively. Committee members may be reappointed. A physician representative shall serve as committee chair.

(3) Trauma Review Committee members shall not review their own hospitals. When this situation arises, the Department shall appoint a temporary alternate member.

R426-5-5. Trauma Center Categorization Process.

The Department shall:

(1) Develop a survey document based upon the Trauma Center Criteria described in R426-5.

(2) Periodically survey all Utah hospitals which provide emergency trauma care to determine the maximum level of trauma care which each is capable of providing.

(3) Disseminate survey results to all Utah hospitals, and as appropriate, to state EMS agencies.

R426-5-6. Trauma Center Designation Process.

(1) Hospitals wishing designation recognition shall complete a Department application as outlined in R426-5-7.

(2) The Department shall, upon receipt of the completed application and appropriate fees, verify compliance to the designation level sought in accordance with protocols established by the department.

(3) Trauma centers shall be designated for a period of three years unless the designation is rescinded by the Department for non-compliance to standards set forth in R426-5-7.

(4) The Department shall disseminate a list of designated trauma centers to all Utah hospitals, and state EMS agencies, and as appropriate, to hospitals in nearby states which refer patients to Utah hospitals.

R426-5-7. Trauma Center Verification Process.

(1) All designated Trauma Centers desiring to remain designated, shall apply for verification by submitting the following information to the Department at least six months prior to the anniversary date of initial designation:

(a) A completed and signed application and appropriate fees for trauma center verification;

(b) A letter from the hospital administrator of continued commitment to comply with current trauma center designation standards as applicable to the applicant's designation level;

(c) The data specified under R426-5-8;

(d) The minutes of pertinent hospital committee meetings for the previous year as specified by the Trauma Review Subcommittee, for example, trauma conferences, surgical morbidity and mortality meetings, emergency department or trauma death audits.

(e) A brief narrative report of trauma outreach education activities for the previous year;

(f) A brief narrative report of trauma research activities for the previous year including protocols and publications.

(2) All trauma centers desiring to apply for verification shall submit the required application and appropriate fees to the Department no later than January 1.

(3) Upon receipt of a verification application from the Department, accompanied by the information specified under R426-5-7(1)(a) through (f), the Trauma Review Committee shall conduct a review and report the results to the Department.

(4) Every three years, the Level I and II Trauma Centers

must submit written documentation detailing the results of an American College of Surgeons site visit.

(5) Every three years from the date of initial designation or from a date specified by the Department, the Trauma Review Subcommittee shall conduct a formal site visit for each designated Level III, IV, or V trauma center and report the results to the Department.

(6) The Department and the Trauma Review Committee may conduct activities with any designated trauma center to verify compliance with designation requirements which may include:

(a) Site visits to observe, unannounced, an actual trauma resuscitation, including the care and treatment of a trauma patient.

(b) Interview or survey prehospital care providers who frequent the trauma center, to ascertain that the pledged level of trauma care commitment is being maintained by the trauma center.

R426-5-8. Data Requirements for an Inclusive Trauma System.

(1) All hospitals shall collect, and quarterly submit to the Department, Trauma Registry information necessary to maintain an inclusive trauma system. The Department shall provide funds to hospitals, excluding designated trauma centers, for the data collection process. The inclusion criteria for a trauma patient is as follows:

(a) ICD9 Diagnostic Codes between 800 and 959.9 (trauma); or

760.5 (fetus or newborn affected by trauma); or

641.8 (antepartum history due to trauma); or

518.5 (pulmonary embolism due to trauma); and

(b) Any of the following patient conditions:

admitted to the hospital for 48 hours or longer; transferred in or out of your hospital; died; all air ambulance transports (including death in transport and patients flown in but not admitted to the hospital).

The information shall be in a standardized electronic format specified by the Department which includes:

(i) Demographics:
Database Record Number
Institution ID number
Medical Record Number
Social Security Number
Patient Home Zip Code
Sex
Date of Birth
Age Number and Units
(ii) Injury:
Date of Injury
Time of Injury
City of Injury
State of Injury
Zip Code of Injury
Blunt, Penetrating, or Burn Injury
Cause of Injury Description
Cause of Injury Code
Cause of Injury E-code
Site/Location of Injury
Work Related Injury (y/n)
(iii) Prehospital:
Name of EMS Service
Transport Origin Scene or Referring Facility
Trip Form Obtained (y/n)
Arrival Time at (First) Hospital
Arrival Date at Hospital
(iv) Referring Hospital:
Transfer from Another Hospital (y/n)
Name or Code
Arrival Date
Arrival Time
Discharge Date
Discharge time
Transfer Mode
Admitted or ER
Procedures
Pulse
Capillary Refill
Respiratory Rate
Respiratory Effort
Blood Pressure
Eye Movement
Verbal Response
Motor Response
Glascow Coma Score Total
Revised Trauma Score Total
(v) Emergency Department Information:
Mode of Transport
Arrival Date
Arrival Time
Discharge Time
Discharge Date
Pulse
Capillary Refill
Respiratory Rate
Respiratory Effort
Blood Pressure
Eye Movement
Verbal Response
Motor Response
Arrival Glascow Coma Score Total
Revised Trauma Score Total
(vi) Emergency Department Treatment:
Procedures Done (pick list)
Paralytics used prior to GCS (y/n)
Disposition
(vii) Admission Information:
Admit from ER or Direct Admit
Admitted from what Source
Time of Hospital Admission
Date of Hospital Admission
(viii) Hospital Diagnosis:
ICD9 Diagnosis Codes
AIS 90 or 95 Used?
AIS Score for Diagnosis (calculated)
Injury Severity Score
(ix) Operations/Procedures:
ICD9 Codes
(x) Quality Assurance Indicators:
None
(xi) Complications:
None
(xii) Outcome:
Discharge Time
Discharge Date
Total Days Length of Stay
Disposition from Hospital
Destination Facility
GCS Outcome Score
(xiii) Charges:
Payment Sources

R426-5-9. Noncompliance to Standards.

(1) The Department may warn, reduce, deny, suspend, revoke, or place on probation a facility designation , if the Department finds evidence that the facility has not been or will not be operated in compliance to standards adopted under R426-5.

(2) A hospital, clinic, health care provider, or health care delivery system may not profess or advertise to be designated as a trauma center if the Department has not designated it as such pursuant to this rule.

R426-5-10. Statutory Penalties.

A person who violates this rule is subject to the provisions of Title 26, Chapter 23, which provides for a civil money penalty of up to $5,000 per violation or a Class B misdemeanor on the first offense and a Class A misdemeanor on a subsequent offense.

KEY: emergency medical services, trauma, reporting
August 30, 2006 26-8a
Notice of Continuation July 18, 2007

R430. Health, Health Systems Improvement, Child Care Licensing.
R430-2. General Licensing Provisions, Child Care Facilities.
R430-2-1. Authority and Purpose.

This rule is adopted pursuant to Title 26, Chapter 39. It defines the standards that a person must follow to obtain a license for a child care facility.

R430-2-2. Informal Discussions.

Independent of any administrative proceeding, an applicant may request, within 30 days, to discuss a Department decision with Department staff.

R430-2-3. Initial Application.

(1) An applicant for a license shall submit to the Utah Department of Health a completed license application on a form furnished by the Department.

(2) Each applicant shall comply with all regulations, ordinances, and codes, zoning, fire, safety, sanitation, building and licensing laws of the city and county in which the facility is located. The applicant shall obtain the following clearances and submit them to the Department as part of the application:

(a) a certificate of fire clearance from the State Fire Marshal or designated local fire authority certifying compliance with local and state fire codes;

(b) beginning July 1, 2006, a satisfactory report by the local health department for facilities providing food service; and

(c) a current local business license if required.

(3) The applicant shall:

(a) list all officers, members of the boards of directors, trustees, stockholders, partners, or other persons who have a greater than 25 percent interest in the facility;

(b) provide the name, address, percentage of stock, shares, partnership, or other equity interest of each person; and

(c) list, for all owners, all child care facilities in the state or other states in which they are officers, directors, trustees, stockholders, partners, or in which they hold any interest.

(4) The applicant shall provide the following written assurances on all individuals listed in R430-2-3(3):

(a) none of the persons has been convicted of a felony;

(b) none of the persons has been found in violation of any local, state, or federal law which arises from or is otherwise related to the individual's relationship to a child care facility;

(c) none of the persons within the five years prior to the date of application had an interest in a licensed child care facility that has been closed as a result of a settlement agreement resulting from a license revocation; and

(d) none of the persons has been convicted of child abuse, neglect, or exploitation.

(5) The applicant shall submit background clearance documents as required in R430-6.

(6) The applicant shall submit with the completed application a non-refundable license fee as established in accordance with Subsection 26-39-104(1)(c).

R430-2-4. Initial License Issuance or Denial.

(1) The Department shall render a decision on an initial license application within 60 days of receipt of a complete application.

(2) The applicant must pay fees and reapply for a license if the applicant does not complete the application including all necessary submissions within six months of first submitting any portion of an application.

(3) Upon verification of compliance with licensing rules, the Department shall issue a license.

(4) The licensed capacity shall be limited by the square footage of usable space throughout the center. There shall be at least 35 square feet per child.

(a) Bathrooms, closets, lockers, staff desks, stationary storage units, hallways, corridors, alcoves, vestibules, kitchens, offices, and napping rooms shall not be included in calculating indoor play space. However furniture, fixtures, or equipment used by children, for the care of children, and to store classroom materials shall be included in calculating indoor play space.

(b) Licensed capacities shall not exceed those set forth by local ordinances.

(c) The number of children in care at any given time shall not exceed the capacity identified on the license.

(5) The Department shall issue a written decision denying a license if the applicant and the facility are not in compliance with the rules.

(6) Pursuant to R501-12-4(8)(h), a provider may not be licensed to provide foster care and child care at the same time.

R430-2-5. License Extension.

A licensee that fails to renew its license by the license expiration date may have an additional 30 days to complete the renewal if the licensee pays a late fee.

R430-2-6. Expiration and Renewal.

(1) Each license expires at midnight on the day designated on the license as the expiration date, unless previously revoked by the Department.

(2) At least 30 days prior to the expiration of the current license, the licensee shall submit a completed license application, applicable fees and, beginning July 1, 2006 for facilities providing food service, a satisfactory report by the local health department.

(3) The Department shall not renew a license for a child care facility that discontinues child care services.

R430-2-8. Change of Ownership.

(1) A licensee whose ownership or controlling interest has changed must submit a completed license application, applicable clearances, and fees to the Department 30 days prior to the proposed change. The licensee shall obtain the following clearances and submit them to the Department as part of the application:

(a) a certificate of fire clearance from the State Fire Marshal or designated local fire authority certifying compliance with local and state fire codes;

(b) a satisfactory report by a local health department for facilities providing food service; and

(c) a current local business license if required.

(2) A change in ownership that requires action under subsection (1) includes any change that:

(a) transfers the business enterprise to another person or firm;

(b) is a merger with another business entity if the directors or principals in the merged entity differs by 49 percent or more from the directors or principals of the original licensee; or

(d) creates a separate corporation, including a wholly owned subsidiary, if the board of directors of the separate corporation differs by 49 percent or more from the board of the original licensee.

(3) A transfer between departments of government agencies for management of a government-owned childcare facility is not a change of ownership.

(4) Before the Department may issue a new license for a change of ownership, the prospective licensee shall document that:

(a) all documents required by rules applicable to the prior licensee remain in the facility and have been transferred to the custody of the new licensee; and

(b) the prospective licensee has adopted the existing policies and procedures manual or a new manual has been approved by the Department and adopted by the facility governing body before the change of ownership occurs;

(5) The Department shall not issue a new license until the prospective licensee corrects all previously cited and not yet corrected violations. The prospective licensee may request a new correction date before the change of ownership becomes effective.

(6) When the Department verifies that the facility is in compliance with all licensing rules, the Department shall issue a new license effective the date that the Department determines compliance.

R430-2-9. Change in License.

(1) The licensee shall submit a completed license application to amend or modify an existing license at least 30 days before any of the following proposed or anticipated changes:

(a) increase or decrease of licensed capacity;

(b) change in name of facility;

(c) change in license category;

(d) change of license classification;

(e) change in center director;

(f) change in name of licensee; and

(g) change in area where child care is provided or a change in interior usable play space.

(2) An increase of licensed capacity may require payment of an additional license fee. This fee is the difference in the license fee for the existing and proposed capacities.

(3) The Department may issue an amended license when the Department verifies that the licensee and facility are in compliance with all licensing rules. The expiration date of the amended license remains the same as the prior license.

R430-2-10. License Transferability, Posting.

(1) A license is not assignable or transferable.

(2) The licensee shall post the license on the facility premises in a place readily visible and accessible to the public.

R430-2-11. Voluntary Closure.

A licensee that voluntarily ceases operation shall:

(1) notify the Department and the children's families at least 30 days before the effective date of closure; and

(2) make provision for the safe keeping of records.

KEY: child care facilities

May 25, 2006	**26-39**
Notice of Continuation July 27, 2007	**26-21-12**
	26-21-13

R549. Human Services, Office of Public Guardian.
R549-1. Eligibility and Services Priority.
R549-1-1. Purpose.

(1) The purpose of this rule is to provide:

(a) Procedures and standards for the determination of eligibility and establish services as required by Title 62A, Chapter 14, Part-1, Utah Code.

R549-1-2. Authority.

(1) This rule is authorized pursuant to UCA 62A-14-105(2).

R549-1-3. Definitions.

(1) Terms used in this rule are defined in Section 62A-14-102.

R549-1-4. Eligibility.

(1) Individuals who have been found or are likely to be found legally incapacitated and in need of guardianship and/or conservatorship, and who have no other responsible, willing and able person to serve as their guardian, may be eligible for the services provided by Human Services, Office of Public Guardian "Office".

R549-1-5. Priority.

(1) The Office will give priority to incapacitated individuals whose need for guardianship and/or conservatorship is more critical than other incapacitated individuals, as follows and in the following order:

(a) Individuals who are in life-threatening situations, where immediate guardianship assistance or intervention is necessary for the preservation of life or the prevention of serious harm or injury.

(b) Individuals who are experiencing abuse, neglect or self-neglect or financial exploitation.

(c) Individuals who are at significant risk of experiencing abuse, neglect or self-neglect or financial exploitation.

KEY: eligibility and priority, incapacitated, guardianship
July 9, 2007 62A-14-101 et seq.

R590. Insurance, Administration.
R590-126. Accident and Health Insurance Standards.
R590-126-1. Authority.

This rule is issued by the insurance commissioner pursuant to the following provisions of the Utah Insurance Code:

(1) Subsection 31A-2-201(3)(a) authorizes rules to implement the Insurance Code;

(2) Sections 31A-2-202 and 31A-23a-412 authorize the commissioner to request reports, conduct examinations, and inspect records of any licensee;

(3) Subsection 31A-22-605(4) requires the commissioner to adopt rules to establish standards for disclosure in the sale of, and benefits to be provided by individual and franchise accident and health polices;

(4) Section 31A-22-623 authorizes the commissioner to establish by rule minimum standards of coverage for dietary products for inborn metabolic errors;

(5) Section 31A-22-626 authorizes the commissioner to establish by rule minimum standards of coverage for diabetes for accident and health insurance;

(6) Subsection 31A-23a-402(8) authorizes the commissioner to define by rule acts and practices that are unfair and unreasonable; and

(7) Subsection 31A-26-301(1) authorizes the commissioner to set standards for timely payment of claims.

R590-126-2. Purpose and Scope.

(1) Purpose. The purpose of this rule is to provide reasonable standardization and simplification of terms and coverages of insurance policies in order to facilitate public understanding and comparison and to prohibit provisions which may be misleading or confusing in connection either with the purchase of such coverages or with the settlement of claims, and to provide for full disclosure in the sale of such insurance.

(2) Scope.

(a) This regulation applies to:

(i) all individual accident and health insurance policies and group supplemental health policies and certificates, delivered or issued for delivery in this state on and after January 1, 2006, that are not specifically exempted from this regulation, regardless of:

(A) whether the policy is issued to an association; a trust; a discretionary group; or other similar grouping; or

(B) the situs of delivery of the policy or contract; and

(ii) all dental plans and vision plans.

(b) This rule shall not apply to:

(i) employer accident and health insurance, as defined in Section 31A-22-502;

(ii) policies issued to employees or members as additions to franchise plans in existence on the effective date of this regulation;

(iii) Medicare supplement policies subject to Section 31A-22-620; or

(iv) civilian Health and Medical Program of the Uniformed Services, Chapter 55, title 10 of the United States Code, CHAMPUS supplement insurance policies.

(3) The requirements contained in this regulation shall be in addition to any other applicable regulations previously adopted.

R590-126-3. Definitions.

In addition to the definitions of Section 31A-1-301 and Subsection 31A-22-605(2), the following definitions shall apply for the purpose of this rule.

(1) "Accident," "accidental injury," and "accidental means" shall be defined to employ result language and shall not include words that establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.

(a) The definition shall not be more restrictive than the following: "injury" or "injuries" means accidental bodily injury sustained by the insured person that is the direct cause of the condition for which benefits are provided, independent of disease or bodily infirmity or any other cause and that occurs while the insurance is in force.

(b) Unless otherwise prohibited by law, the definition may exclude injuries for which benefits are paid under worker's compensation, any employer's liability or similar law, or a motor vehicle no-fault plan.

(2) "Adult Day Care" shall mean a facility duly licensed and operating within the scope of such license. Adult Day Care facility may not be defined more restrictively than providing continuous care and supervision for three or more adults 18 years of age and over for at least four but less than 24 hours a day, that meets the needs of functionally impaired adults through a comprehensive program that provides a variety of health, social, recreational, and related support services in a protective setting.

(3) "Certificate of Completion" shall mean a document issued by the Utah Board of Education to a person who completes an approved course of study not leading to a diploma, or to one who passes a challenge for that same course of study, or to one whose out-of-state credentials and certificate are acceptable to the Board.

(4) "Complications of Pregnancy" shall mean diseases or conditions the diagnoses of which are distinct from pregnancy but are adversely affected or caused by pregnancy and not associated with a normal pregnancy.

(a) "Complications of Pregnancy" include acute nephritis, nephrosis, cardiac decompensation, ectopic pregnancy which is terminated, a spontaneous termination of pregnancy when a viable birth is not possible, puerperal infection, eclampsia, pre-eclampsia and toxemia.

(b) This definition does not include false labor, occasional spotting, doctor prescribed rest during the period of pregnancy, morning sickness, and conditions of comparable severity associated with management of a difficult pregnancy.

(5) "Conditionally Renewable" means renewal can be declined by class, by geographic area or for stated reasons other than deterioration of health.

(6) "Convalescent Nursing Home," "extended care facility," or "skilled nursing facility" shall mean a facility duly licensed and operating within the scope of such license.

(7) "Cosmetic Surgery" or "Reconstructive Surgery" shall mean any surgical procedure performed primarily to improve physical appearance.

(a) This definition does not include surgery, which is necessary:

(i) to correct damage caused by injury or sickness;

(ii) for reconstructive treatment following medically necessary surgery;

(iii) to provide or restore normal bodily function; or

(iv) to correct a congenital disorder that has resulted in a functional defect.

(b) This provision does not require coverage for preexisting conditions otherwise excluded.

(8) "Custodial Care" shall mean a Plan of Care, which does not provide treatment for sickness or injury, but is only for the purpose of meeting personal needs and maintaining physical condition when there is no prospect of effecting remission or restoration of the patient to a condition in which care would not be required. Such care may be provided by persons without nursing skills or qualifications. If a nursing care facility is only providing custodial or residential care, the level of care may be so characterized.

(9) "Disability Income" shall mean income replacement as defined in Section 31A-1-301.

(10) "Elimination Period" or "Waiting Period" means the length of time an insured shall wait before benefits are paid

under the policy.

(11) "Enrollment Form" shall mean application as defined in Section 31A-1-301.

(12) "Experimental Treatment" is defined as medical treatment, services, supplies, medications, drugs, or other methods of therapy or medical practices, which are not accepted as a valid course of treatment by the Utah Medical Association, the U.S. Food and Drug Administration, the American Medical Association, or the Surgeon General.

(13) "Group Supplemental Health Insurance" means group accident and health insurance policies and certificates providing hospital confinement indemnity, accident only, specified disease, specified accident or limited benefit health coverage.

(14) "Guaranteed Renewable" means renewal cannot be declined by the insurance company for any reasons, but the insurance company can revise rates on a class basis.

(15) "Home Health Agency" shall mean a public agency or private organization, or subdivision of a health care facility, licensed and operating within the scope of such license.

(16) "Home Health Aide" shall mean a person who obtains a Certificate of Completion, as required by law, which allows performance of health care and other related services under the supervision of a registered nurse from the home health agency, or performance of simple procedures as an extension of physical, speech, or occupational therapy under the supervision of licensed therapists.

(17) "Home Health Care" shall mean services provided by a home health agency.

(18) "Homemaker" shall mean a person who cares for the environment in the home through performance of duties such as housekeeping, meal planning and preparation, laundry, shopping and errands.

(19) "Homemaker/Home Health Aide" shall mean a person who has obtained a Certificate of Completion, as required by law, which allows performance of both homemaker and home health aide services, and who provides health care and other related services under the supervision of a registered nurse from the home health agency or under the supervision of licensed therapists.

(20) "Hospice" shall mean a program of care for the terminally ill and their families which occurs in a home or in a health care facility and which provides medical, palliative, psychological, spiritual, or supportive care and treatment and is licensed and operating within the scope of such license.

(21) "Hospital" means a facility that is licensed and operating within the scope of such license. This definition may not preclude the requirement of medical necessity of hospital confinement or other treatment.

(22) "Intermediate Nursing Care" shall mean nursing services provided by, or under the supervision of, a registered nurse. Such care shall be for the purpose of treating the condition for which confinement is required.

(23) "Medical Necessity" means:

(a) health care services or products that a prudent health care professional would provide to a patient for the purpose of preventing, diagnosing or treating an illness, injury, disease or its symptoms in a manner that is:

(i) in accordance with generally accepted standards of medical practice in the United States;

(ii) clinically appropriate in terms of type, frequency, extent, site, and duration;

(iii) not primarily for the convenience of the patient, physician, or other health care provider; and

(iv) covered under the contract;

(b) when a medical question-of-fact exists medical necessity shall include the most appropriate available supply or level of service for the individual in question, considering potential benefits and harms to the individual, and known to be effective.

(i) For interventions not yet in widespread use, the effectiveness shall be based on scientific evidence.

(ii) For established interventions, the effectiveness shall be based on:

(A) scientific evidence;

(B) professional standards; and

(C) expert opinion.

(24) "Medicare" means the "Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended."

(25) "Medicare Supplement Policy" shall mean an individual, franchise, or group policy of accident and health insurance, other than a policy issued pursuant to a contract under section 1876 of the federal Social Security Act, 42 U.S.C. section 1395 et seq., or an issued policy under a demonstration project specified in 41 U.S.C. Section 1395ss(g)(1), that is advertised, marketed, or primarily designed as a supplement to reimbursements under Medicare for hospital, medical, or surgical expenses of persons eligible for Medicare.

(26) "Mental or Nervous Disorders" may not be defined more restrictively than a definition including neurosis, psychoneurosis, psychosis, or any other mental or emotional disease or disorder which does not have a demonstrable organic cause.

(27) "Non-Cancelable" means renewal cannot be declined nor can rates be revised by the insurance company.

(28) "Nurse" may be defined so that the description of nurse is restricted to a type of nurse, such as registered nurse, or licensed practical nurse. If the words "nurse" or "registered nurse" are used without specific instruction, then the use of such terms requires the insurer to recognize the services of any individual who qualifies under such terminology in accordance with applicable statutes or administrative rules.

(29) "Nurse, Licensed Practical" shall mean a person who is registered and licensed to practice as a practical nurse.

(30) "Nurse, Registered" shall mean any person who is registered and licensed to practice as a registered nurse.

(31) "Nursing Care" shall mean assistance provided for the health care needs of sick or disabled individuals, by or under the direction of licensed nursing personnel.

(32) "One Period of Confinement" shall mean consecutive days of in-hospital service received as an inpatient, or successive confinements when discharge from and readmission to the hospital occurs within a period of time of not more than 90 days or three times the maximum number of days of in-hospital coverage provided by the policy up to a maximum of 180 days.

(33) "Optionally Renewable" means renewal is at the option of the insurance company.

(34) "Partial Disability" shall be defined in relation to the individual's inability to perform one or more, but not all, of; the major, important, or essential duties of employment or occupation; customary duties of a homemaker or dependent; or may be related to a percentage of time worked or to a specified number of hours or to compensation.

(35) "Personal Care" shall mean assistance, under a plan of care by a home health agency, provided to persons in activities of daily living.

(36) "Personal Care Aide" shall mean a person who obtains a Certificate of Completion, as required by law, which allows that person to assist in the activities of daily living and emergency first aid, and who must be supervised by a registered nurse from the home health agency.

(37) "Physician" may be defined by including words such as qualified physician or licensed physician. The use of such terms requires an insurer to recognize and to accept, to the extent of its obligation under the contract, all providers of medical care and treatment when such services are within the scope of the provider's licensed authority and are provided

pursuant to applicable laws.

(38) "Preexisting Condition."

(a) Except as provided in Section (b), a preexisting condition shall not be defined more restrictively than the existence of symptoms which would cause an ordinarily prudent person to seek diagnosis, care or treatment within a two year period preceding the effective date of the coverage of the insured person or a condition for which medical advice or treatment was recommended by a physician or received from a physician within a two year period preceding the effective date of the coverage of the insured person.

(b) A specified disease insurance policy shall not define preexisting condition more restrictively than a condition which first manifested itself within six months prior to the effective date of coverage or which was diagnosed by a physician at any time prior to the effective date of coverage.

(39) "Probationary Period" shall mean the period of time following the date of issuance or effective date of the policy before coverage begins for all or certain conditions.

(40) "Residential Health Care Facility" shall mean a publicly or privately operated and maintained facility providing personal care to residents who require protected living arrangements which is licensed and operating within the scope of such license.

(41) "Residual Disability" shall be defined in relation to the individual's reduction in earnings and may be related either to the inability to perform some part of the major, important, or essential duties of employment or occupation, or to the inability to perform all usual duties for as long as is usually required.

(42) "Respite Care" shall mean provision of temporary support to the primary caregiver of the aged, disabled, or handicapped individual insured, by taking over the tasks of that person for a limited period of time. The insured may receive care in the home, or other appropriate community location, or in an appropriate institutional setting.

(43)(a) "Scientific evidence" means:

(i) scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff; or

(ii) findings, studies or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes.

(b) Scientific evidence shall not include published peer-reviewed literature sponsored to a significant extent by a pharmaceutical manufacturing company or medical device manufacturer or a single study without other supportable studies.

(44) "Sickness" means illness, disease, or disorder of an insured person.

(45) "Skilled Nursing Care" shall mean nursing services provided by, or under the supervision of, a registered nurse. Such care shall be for the purpose of treating the condition for which the confinement is required and not for the purpose of providing intermediate or custodial care.

(46) "Therapist" may be defined as a professionally trained or duly licensed or registered person, such as a physical therapist, occupational therapist, or speech therapist, who is skilled in applying treatment techniques and procedures under the general direction of a physician.

(47)(a) "Total Disability" shall mean an individual who:

(i) is not engaged in employment or occupation for which he is or becomes qualified by reason of education, training or experience; and

(ii) is unable to perform all of the substantial and material duties of his or her regular occupation or words of similar import.

(b) An insurer may require care by a physician other than the insured or a member of the insured's immediate family.

(c) The definition may not exclude benefits based on the individual's:

(i) ability to engage in any employment or occupation for wage or profit;

(ii) inability to perform any occupation whatsoever, any occupational duty, or any and every duty of his occupation; or

(iii) inability to engage in any training or rehabilitation program.

(48)(a) "Usual and Customary" shall mean the most common charge for similar services, medicines or supplies within the area in which the charge is incurred.

(b) In determining whether a charge is usual and customary, insurers shall consider one or more of the following factors:

(i) the level of skill, extent of training, and experience required to perform the procedure or service;

(ii) the length of time required to perform the procedure or services as compared to the length of time required to perform other similar services;

(iii) the severity or nature of the illness or injury being treated;

(iv) the amount charged for the same or comparable services, medicines or supplies in the locality; the amount charged for the same or comparable services, medicines or supplies in other parts of the country;

(v) the cost to the provider of providing the service, medicine or supply; and

(vi) other factors determined by the insurer to be appropriate.

(49) "Waiting Period" shall mean "Elimination Period."

R590-126-4. Prohibited Policy Provisions.

(1) Probationary periods.

(a) A policy shall not contain provisions establishing a probationary period during which no coverage is provided under the policy, subject to the further exception that a policy may specify a probationary period not to exceed six months for specified diseases or conditions and losses resulting from disease or condition related to:

(i) adenoids;

(ii) appendix;

(iii) disorder of reproductive organs;

(iv) hernia;

(v) tonsils; and

(vi) varicose veins.

(b) The six-month period in Subsection (1)(a) may not be applicable where such specified diseases or conditions are treated on an emergency basis.

(c) Accident policies may not contain probationary or waiting periods.

(d) A probationary or waiting period for a specified disease policy shall not exceed 30 days.

(2) Preexisting conditions.

(a) Except as provided in Subsections (b) and (c), a policy shall not exclude coverage for a loss due to a preexisting condition for a period greater than 12 months following the issuance of the policy or certificate where the application or enrollment form for the insurance does not seek disclosure of prior illness, disease or physical conditions or prior medical care and treatment and the preexisting condition is not specifically excluded by the terms of the policy or certificate.

(b) A specified disease policy shall not exclude coverage for a loss due to a preexisting condition for a period greater than six months following the issuance of the policy or certificate, unless the preexisting condition is specifically excluded.

(c) A hospital confinement indemnity policy shall not exclude a preexisting condition for a period greater than 12 months following the effective date of coverage of an insured

person unless the preexisting condition is specifically and expressly excluded.

(d) Any preexisting condition elimination period must be reduced by any applicable creditable coverage.

(3) Hospital indemnity. Policies providing hospital confinement indemnity coverage shall not contain provisions excluding coverage because of confinement in a hospital operated by the federal government.

(4) Limitations or exclusions. A policy shall not limit or exclude coverage or benefits by type of illness, accident, treatment or medical condition, except as follows:

(a) abortion;

(b) acupuncture and acupressure services;

(c) administrative charges for completing insurance forms, duplication services, interest, finance charges, or other administrative charges, unless otherwise required by law;

(d) administrative exams and services;

(e) alcoholism and drug addictions;

(f) allergy tests and treatments;

(g) aviation;

(h) axillary hyperhidrosis;

(i) benefits provided under:

(i) Medicare or other governmental program, except Medicaid;

(ii) state or federal worker's compensation; or

(iii) employer's liability or occupational disease law.

(j) cardiopulmonary fitness training, exercise equipment, and membership fees to a spa or health club;

(k) charges for appointments scheduled and not kept;

(l) chiropractic;

(m) complementary and alternative medicine;

(n) corrective lenses, and examination for the prescription or fitting thereof, but policies may not exclude required lens implants following cataract surgery;

(o) cosmetic surgery; reversal, revision, repair, complications, or treatment related to a non-covered cosmetic surgery. This exclusion does not apply to reconstructive surgery when the service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part; or reconstructive surgery because of congenital disease or anomaly of a covered dependent child that has resulted in a functional defect;

(p) custodial care;

(q) dental care or treatment, except dental plans;

(r) dietary products, except as required by R590-194;

(s) educational and nutritional training, except as required by R590-200;

(t) experimental and/or investigational services;

(u) felony, riot or insurrection, when the insured is a voluntary participant;

(v) foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain or symptomatic complaints of the feet, including orthotics. The exclusion of routine foot care does not apply to cutting or removal of corns, calluses, or nails when provided to a person who has a systemic disease, such as diabetes with peripheral neuropathy or circulatory insufficiency, of such severity that unskilled performance of the procedure would be hazardous;

(w) gastric or intestinal bypass services including lap banding, gastric stapling, and other similar procedures to facilitate weight loss; the reversal, or revision of such procedures; or services required for the treatment of complications from such procedures;

(x) gene therapy;

(y) genetic testing;

(z) hearing aids, and examination for the prescription or fitting thereof;

(aa) illegal activities, limited to losses related directly to the insured's voluntary participation;

(bb) incarceration, with respect to disability income policies;

(cc) infertility services, except as required by R590-76;

(dd) interscholastic sports, with respect to short-term nonrenewable policies;

(ee) mental or emotional disorders;

(ff) motor vehicle no-fault law, except when the covered person is required by law to have no-fault coverage, the exclusion applies to charges up to the minimum coverage required by law whether or not such coverage is in effect;

(gg) nuclear release;

(hh) preexisting conditions or diseases as allowed under Subsection R590-126-4(2), except for coverage of congenital anomalies as required by Section 31A-22-610;

(ii) pregnancy, except for complications of pregnancy;

(jj) refractive eye surgery;

(kk) rehabilitation therapy services (physical, speech, and occupational), unless required to correct an impairment caused by a covered accident or illness;

(ll) respite care;

(mm) rest cures;

(nn) routine physical examinations;

(oo) service in the armed forces or units auxiliary to it;

(pp) services rendered by employees of hospitals, laboratories or other institutions;

(qq) services performed by a member of the covered person's immediate family;

(rr) services for which no charge is normally made in the absence of insurance;

(ss) sexual dysfunction;

(tt) shipping and handling, unless otherwise required by law;

(uu) suicide, sane or insane, attempted suicide, or intentionally self-inflicted injury;

(vv) telephone/electronic consultations;

(ww) territorial limitations outside the United States;

(xx) terrorism, including acts of terrorism;

(yy) transplants;

(zz) transportation;

(aaa) treatment provided in a government hospital, except for hospital indemnity policies;

(bbb) war or act of war, whether declared or undeclared; or

(ccc) others as may be approved by the commissioner.

(5) Waivers. This rule shall not impair or limit the use of waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases, physical condition or extra hazardous activity. Where waivers are required as a condition of issuance, renewal or reinstatement, signed acceptance by the insured is required.

(6) Commissioner authority. Policy provisions precluded in this section shall not be construed as a limitation on the authority of the commissioner to prohibit other policy provisions that in the opinion of the commissioner are unjust, unfair or unfairly discriminatory to the policyholder, beneficiary or a person insured under the policy.

R590-126-5. General Requirements.

(1) Policy definitions. No policy subject to this rule may contain definitions respecting the matters defined in Section R590-126-3 unless such definitions comply with the requirements of that section.

(2) Rights of spouse. The following provisions apply to policies that provide coverage to a spouse of the insured:

(a) A policy may not provide for termination of coverage of the spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than for nonpayment of premium.

(b) A policy shall provide that in the event of the insured's

death the spouse of the insured shall become the insured.

(c) The age of the younger spouse shall be used as the basis for meeting the age and durational requirements of the noncancellation or renewal provisions of the policy. However, this requirement may not prevent termination of coverage of the older spouse upon attainment of stated age limit in the policy, so long as the policy may be continued in force as to the younger spouse to the age or for durational period as specified in said definition.

(3) Cancellation, Renewability, and Termination.

The terms "conditionally renewable," "guaranteed renewable," "noncancellable," or "optionally renewable" shall not be used without further explanatory language in accordance with the disclosure requirements of Subsection R590-126-6(2).

(a) Conditionally renewable. The term "conditionally renewable" may be used only in a policy which the insured may have the right to continue in force by the timely payment of premiums at least to age 65, during which period the insurer has no right to make any unilateral change to the detriment of the insured while the policy is in force. However, the insurer, at its option, and by timely notice, may decline renewal for reasons stated in the policy, or may make changes in premium rates by classes.

(b) Guaranteed renewable. The term "guaranteed renewable" may be used only in a policy which the insured has the right to continue in force by the timely payment of premiums at least to age 65, during which period the insurer has no right to make any unilateral change to the detriment of the insured while the policy is in force, except that the insurer may make changes in premium rates by classes.

(c) Noncancellable. The term "noncancellable" may be used only in a policy that the insured has the right to continue in force by the timely payment of premiums until the age of 65, during which period the insurer has no right to make unilaterally any change in any provision of the policy to the detriment of the insured.

(d) Optionally renewable. The term "optionally renewable" may be used only in a policy which the insured may have the right to continue in force by the timely payment of premiums at least to age 65, during which period the insurer has no right to make any unilateral change in any provision of the policy while the policy is in force. However, the insurer, at its option, and by timely notice, may decline renewal of the policy or may make changes in premium rates by classes.

(e) Notice of nonrenewal shall be given 90 days prior to nonrenewal.

(f) A policy may not be cancelled or nonrenewed solely on the grounds of deterioration of health.

(g) Termination of the policy shall be without prejudice to a continuous loss that commenced while the policy or certificate was in force. The continuous total disability of the insured may be a condition for the extension of benefits beyond the period the policy was in force, limited to the duration of the benefit period, if any, or payment of the maximum benefits.

(4) Optional insureds. When accidental death and dismemberment coverage is part of the accident and health insurance coverage offered under the contract, the insured shall have the option to include all insureds under the coverage and not just the principal insured.

(5) Military service. If a policy contains a status-type military service exclusion or a provision that suspends coverage during military service, the policy shall provide, upon receipt of written request, for refund of premiums as applicable to the person on a pro rata basis.

(6) Pregnancy benefit extension. In the event the insurer cancels or refuses to renew a policy providing pregnancy benefits, the policy shall provide an extension of benefits for a pregnancy commencing while the policy is in force and for which benefits would have been payable had the policy remained in force. This requirement does not apply to a policy that is canceled for the following reasons:

(a) the insured fails to pay the required premiums in accordance with the terms of the plan; or

(b) the insured person performs an act or practice that constitutes fraud in connection with the coverage or makes an intentional misrepresentation of material fact under the terms of the coverage.

(7) Post hospital admission requirement. A policy providing convalescent or extended care benefits following hospitalization shall not condition the benefits upon admission to the convalescent or extended care facility within a period of less than 14 days after discharge from the hospital.

(8) Transplant donor coverage. A policy providing coverage for the recipient in a transplant operation shall also provide reimbursement of any medical expenses of a live donor to the extent that benefits remain and are available under the recipient's policy or certificate, after benefits for the recipient's own expenses have been paid.

(9) Recurrent disability. A policy may contain a provision relating to recurrent disabilities, but a provision relating to recurrent disabilities shall not specify that a recurrent disability be separated by a period greater than 6 months.

(10) Time limit for occurrence of loss.

(a) Accidental death and dismemberment benefits shall be payable if the loss occurs within 180 days from the date of the accident, irrespective of total disability.

(b) Disability income benefits, if provided, shall not require the loss to commence less than 30 days after the date of accident, nor shall any policy that the insurer cancels or refuses to renew require that it be in force at the time disability commences if the accident occurred while the coverage was in force.

(11) Specific dismemberment benefits shall not be in lieu of other benefits unless the specific benefit equals or exceeds the other benefits.

(12) A policy providing coverage for fractures or dislocations may not provide benefits only for "full or complete" fractures or dislocations.

(13) Specified disease, also known as critical illness, dread disease, etc., insurance sold in conjunction with another insurance product, including but not limited to life insurance or annuities, shall be in the form of a separate endorsement complying with all provisions of this rule. Specified Disease insurance shall not be incorporated into a life insurance policy or annuity contract.

(14) Notice of premium change. A notice of change in premium shall be given no fewer than 45 days before the renewal date.

R590-126-6. Required Provisions.

(1) Applications.

(a) Questions used to elicit health condition information may not be vague and must reference a reasonable time frame in relation to the health condition.

(b) Completed applications shall be made part of the policy. A copy of the completed application shall be provided to the applicant prior to or upon delivery of the policy.

(c) All applications shall contain a prominent statement by type, stamp or other appropriate means in either contrasting color or in boldface type at least equal to the size type used for the headings or captions of sections of the application and in close conjunction with the applicant's signature block on the application as follows:

"The (policy) (certificate) provides limited benefits. Review your (policy)(certificate) carefully."

(d) Application forms shall provide a statement regarding the pre-existing waiting period and the requirements to receive any applicable credit for previous coverage.

(e) An application form shall include a question designed to elicit information as to whether the insurance to be issued is intended to replace any other accident and health insurance presently in force. A supplementary application or other form to be signed by the applicant containing the question may be used.

(f) All applications for dental and vision plans shall contain a prominent statement by type, stamp or other appropriate means in either contrasting color or in boldface type at least equal to the size type used for the headings or captions of sections of the application and in close conjunction with the applicant's signature block on the application as follows:

"The (policy) (certificate) provides (dental) (vision) benefits only. Review your (policy) (certificate) carefully."

(2) Renewal and nonrenewal provisions. Accident and health insurance shall include a renewal, continuation or nonrenewal provision. The language or specification of the provision shall be consistent with the type of contract to be issued. The provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed.

(3) Endorsement acceptance.

(a) Except for endorsements by which the insurer effectuates a request made in writing by the policyholder or exercises a specifically reserved right under the policy, all endorsements added to a policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the policyholder.

(b) After the date of policy issue, any endorsement that increases benefits or coverage with a concurrent increase in premium during the policy term, must be agreed to in writing signed by the policyholder, except if the increased benefits or coverage is required by law.

(4) Additional premium. Where a separate additional premium is charged for benefits provided in connection with endorsements, the premium charge shall be set forth in the policy or certificate.

(5) Benefit payment standard. A policy or certificate that provides for the payment of benefits based on standards described as usual and customary, reasonable and customary, or words of similar import shall include a definition of the terms and an explanation of the terms in its accompanying outline of coverage.

(6) Preexisting conditions. If a policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and be labeled as "Preexisting Condition Limitations."

(7) Accident Only Policies.

(a) An accident only policy or certificate shall contain a prominent statement on the first page of the policy or certificate, in either contrasting color or in boldface type at least equal to the size of type used for headings or captions of sections in the policy or certificate, as follows:

Notice to Buyer: This is an accident only (policy)(certificate) and it does not pay benefits for loss from sickness. Review your (policy)(certificate) carefully.

(b) Accident only policies or certificates that provide coverage for hospital or medical care shall contain the following statement in addition to the notice above:

This (policy)(certificate) provides limited benefits. Benefits provided are supplemental and are not intended to cover all medical expenses.

(c) An accident-only policy providing benefits that vary according to the type of accidental cause shall prominently set forth in the outline of coverage the circumstances under which benefits are payable that are lesser than the maximum amount payable under the policy.

(8) Age limitation. If age is to be used as a determining factor for reducing the maximum aggregate benefits made available in the policy or certificate as originally issued, that fact shall be prominently set forth in the outline of coverage and schedule page.

(9) Disappearance. If a policy or certificate includes a disappearance benefit, payment must be made within the time limits provided by R590-192-9 when proof of loss, satisfactory to the company, is filed and it is reasonable to assume death occurred, but a body cannot be found.

(10) Conversion privilege. If a policy or certificate contains a conversion privilege, it shall comply, in substance, with the following: The caption of the provision shall read "Conversion Privilege" or words of similar import. The provision shall indicate the persons eligible for conversion, the circumstances applicable to the conversion privilege, including any limitations on the conversion, and the person by whom the conversion privilege may be exercised. The provision shall specify the benefits to be provided on conversion or may state that the converted coverage will be as provided on a policy form then being used by the insurer for that purpose.

(11) Specified Disease Insurance Buyers Guide. An insurer, except a direct response insurer, shall give a person applying for specified disease insurance, a buyer's guide filed with the commissioner at the time of enrollment and shall obtain recipient's written acknowledgement of the guide's delivery. A direct response insurer shall provide the buyer's guide upon request, but not later than the time that the policy or certificate is delivered.

(12) Specified disease policies or certificates shall contain on the first page or attached to it in either contrasting color or in boldface type, at least equal to the size type used for headings or captions of sections in the policy or certificate, a prominent statement as follows:

Notice to Buyer: This is a specified disease (policy) (certificate). This (policy) (certificate) provides limited benefits. Benefits provided are supplemental and are not intended to cover all medical expenses. Read your (policy) (certificate) carefully with the outline of coverage and the buyer's guide.

(13) Hospital confinement indemnity and limited benefit health policies or certificates shall display prominently by type, stamp or other appropriate means on the first page of the policy or certificate, or attached to it, in either contrasting color or in boldface type at least equal to the size type used for headings or captions of sections in the policy or certificate the following:

Notice to Buyer: This is a (hospital confinement indemnity) (limited benefit health) (policy)(certificate). This (policy)(certificate) provides limited benefits. Benefits provided are supplemental and are not intended to cover all medical expenses.

(14) Basic hospital, basic medical-surgical, and basic hospital-medical surgical expense policies and certificates shall display prominently by type, stamp or other appropriate means on the first page of the policy or certificate, or attached to it, in either contrasting color or in boldface type at least equal to the size type used for headings or captions of sections in the policy or certificate the following:

Notice to Buyer: This is a (basic hospital) (basic medical-surgical) (basic hospital/medical-surgical) expense (policy)(certificate). This (policy)(certificate) provides limited benefits and should not be considered a substitute for comprehensive health insurance coverage.

(15) Dental and vision coverage policies and certificates shall display prominently by type or stamp on the first page of the policy or certificate, or attached to it, in either contrasting color or in boldface type at least equal to the size type used for headings or captions of sections in the policy or certificate the

following:

Notice to Buyer: This (policy) (certificate) provides (dental) (vision) coverage only.

R590-126-7. Accident and Health Standards for Benefits.

The following standards for benefits are prescribed for the categories of coverage noted in the following subsections. An accident and health insurance policy or certificate subject to this rule shall not be delivered or issued for delivery unless it meets the required standards for the specified categories. This section shall not preclude the issuance of any policy or contract combining two or more categories set forth in Subsection 31A-22-605(5).

Benefits for coverages listed in this section shall include coverage of inborn metabolic errors as required by Section 31A-22-623 and Rule R590-194, and benefits for diabetes as required by Section 31A-22-626 and Rule R590-200, if applicable.

(1) Basic Hospital Expense Coverage.

Basic hospital expense coverage is a policy of accident and health insurance that provides coverage for a period of not less than 31 days during a continuous hospital confinement for each person insured under the policy, for expense incurred for necessary treatment and services rendered as a result of accident or sickness, and shall include at least the following:

(a) daily hospital room and board in an amount not less than:

(i) 80% of the charges for semiprivate room accommodations; or

(ii) $100 per day;

(b) miscellaneous hospital services for expenses incurred for the charges made by the hospital for services and supplies that are customarily rendered by the hospital and provided for use only during any one period of confinement in an amount not less than either:

(i) 80% of the charges incurred up to at least $3000; or

(ii) ten times the daily hospital room and board benefits; and

(c) hospital outpatient services consisting of:

(i) hospital services on the day surgery is performed;

(ii) hospital services rendered within 72 hours after injury, in an amount not less than $250 per accident; and

(iii) x-ray and laboratory tests to the extent that benefits for the services would have been provided if rendered to an in-patient of the hospital to an extent not less than $200;

(d) benefits provided under Subsections (a) and (b) may be provided subject to a combined deductible amount not in excess of $200.

(2) Basic Medical-Surgical Expense Coverage.

Basic medical-surgical expense coverage is a policy of accident and health insurance that provides coverage for each person insured under the policy for the expenses incurred for the necessary services rendered by a physician for treatment of an injury or sickness for and shall include at least the following:

(a) surgical services:

(i) in amounts not less than those provided on a current procedure terminology based relative value fee schedule, up to at least $1000 for one procedure; or

(ii) 80% of the reasonable charges.

(b) anesthesia services, consisting of administration of necessary general anesthesia and related procedures in connection with covered surgical service rendered by a physician other than the physician, or the physician assistant, performing the surgical services:

(i) in an amount not less than 80% of the reasonable charges; or

(ii) 15% of the surgical service benefit; and

(c) in-hospital medical services, consisting of physician services rendered to a person who is a bed patient in a hospital for treatment of sickness or injury other than that for which surgical care is required, in an amount not less than:

(i) 80% of the reasonable charges; or

(ii) $100 per day.

(3) Basic Hospital/Medical-Surgical Expense Coverage.

Basic hospital/medical-surgical expense coverage is a policy of accident and health which combines coverage and must meet the requirements of both Subsections R590-126-7(1) and (2).

(4) Hospital Confinement Indemnity Coverage.

(a) Hospital confinement indemnity coverage is a policy of accident and health insurance that provides daily benefits for hospital confinement on an indemnity basis.

(b) Coverage includes an indemnity amount of not less than $50 per day and not less than 31 days during each period of confinement for each person insured under the policy.

(c) Benefits shall be paid regardless of other coverage.

(5) Income Replacement Coverage.

Income replacement coverage is a policy of accident and health insurance that provides for periodic payments, weekly or monthly, for a specified period during the continuance of disability resulting from either sickness or injury or a combination of both that:

(a) contains an elimination period no greater than:

(i) 90-days in the case of a coverage providing a benefit of one year or less;

(ii) 180 days in the case of coverage providing a benefit of more than one year but not greater than two years; or

(iii) 365 days in all other cases during the continuance of disability resulting from sickness or injury;

(b) has a maximum period of time for which it is payable during disability of at least six months except in the case of a policy covering disability arising out of pregnancy, childbirth or miscarriage in which case the period for the disability may be one month. No reduction in benefits shall be put into effect because of an increase in Social Security or similar benefits during a benefit period;

(c) where a policy provides total disability benefits and partial disability benefits, only one elimination period may be required;

(d) a policy which provides for residual disability benefits may require a qualification period, during which the insured shall be continuously totally disabled before residual disability benefits are payable. The qualification period for residual benefits may be longer than the elimination period for total disability;

(e) the provisions of this subsection do not apply to policies providing business buyout coverage.

(6) Accident Only Coverage.

Accident only coverage is a policy of accident and health insurance that provides coverage, singly or in combination, for death, dismemberment, disability or hospital and medical care caused by accident. Accidental death and double dismemberment amounts under the policy shall be at least $1,000 and a single dismemberment amount shall be at least $500.

(7) Specified Accident Coverage.

Specified accident coverage is a policy of accident and health insurance that provides coverage for a specifically identified kind of accident, or accidents, for each person insured under the policy for accidental death or accidental death and dismemberment, combined with a benefit amount not less than $1,000 for accidental death, $1,000 for double dismemberment and $500 for single dismemberment.

(8) Specified Disease Coverage.

Specified disease coverage is a policy of accident and health insurance that provides coverage for the diagnosis and treatment of a specifically named disease or diseases, and includes critical illness coverages. Any such policy shall meet

these general provisions. The policy shall also meet the standards set forth in the applicable Subsections R590-126-7(8)(b), (c) or (d).

(a) General Provisions.

(i) Policy designation. Policies covering a single specified disease or combination of specified diseases may not be sold or offered for sale other than as specified disease coverage under this Subsection (8).

(ii) Medical diagnosis. Any policy issued pursuant to this section which conditions payment upon pathological diagnosis of a covered disease, shall also provide that if a pathological diagnosis is medically inappropriate, a clinical diagnosis will be accepted instead.

(iii) Related conditions. Notwithstanding any other provision of this rule, specified disease policies shall provide benefits to any covered person, not only for the specified disease, but also for any other condition or disease directly caused or aggravated by the specified disease or the treatment of the specified disease.

(iv) Renewability. Specified disease coverage shall be at least guaranteed renewable.

(v) Probationary period. No policy issued pursuant to this section may contain a probationary period greater than 30 days.

(vi) Medicaid disclaimer. Any application for specified disease coverage shall contain a statement above the signature of the applicant that no person to be covered for specified disease is also covered by any Title XIX program, designated as Medicaid or any similar name. Such statement may be combined with any other statement for which the insurer may require the applicant's signature.

(vii) Medical Care. Payments may be conditioned upon an insured person's receiving medically necessary care, given in a medically appropriate location, under a medically accepted course of diagnosis or treatment.

(viii) Other insurance. Benefits for specified disease coverage shall be paid regardless of other coverage.

(ix) Retroactive application of coverage. After the effective date of the coverage, or the conclusion of an applicable probationary period, if any, benefits shall begin with the first day of care or confinement, if such care or confinement is for a covered disease, even though the diagnosis is made at some later date.

(x) Hospice. Hospice care is an optional benefit, but if offered it shall meet the following minimum standards:

(A) eligibility for payment of benefits when the attending physician of the insured provides a written statement that the insured person has a life expectance of six months or less;

(B) fixed-sum payment of at least $50 per day; and

(C) lifetime maximum benefit of at least $10,000.

(b) Expense Incurred Benefits. The following benefit standards apply to specified disease coverage on an expense-incurred basis.

(i) Policy limits. A deductible amount not to exceed $250, an aggregate benefit limit of not less than $25,000 and a benefit period of not fewer than three years.

(ii) Copayment. Covered services provided on an outpatient basis may be subject to a copayment, which may not exceed 20%.

(iii) Covered Services. Covered services shall include the following:

(A) hospital room and board and any other hospital-furnished medical services or supplies;

(B) treatment by, or under the direction of, a legally qualified physician or surgeon;

(C) private duty nursing services of a registered nurse, or licensed practical nurse;

(D) x-ray, radium, chemotherapy and other therapy procedures used in diagnosis and treatment;

(E) blood transfusions, and the administration thereof, including expense incurred for blood donors;

(F) drugs and medicines prescribed by a physician;

(G) professional ambulance for local service to or from a local hospital;

(H) the rental of any respiratory or other mechanical apparatuses;

(I) braces, crutches and wheelchairs as are deemed necessary by the attending physician for the treatment of the disease;

(J) emergency transportation if, in the opinion of the attending physician, it is necessary to transport the insured to another locality for treatment of the disease;

(K) home health care with a written prescribed plan of care;

(L) physical, speech, hearing and occupational therapy;

(M) special equipment including hospital bed, toilette, pulleys, wheelchairs, aspirator, chux, oxygen, surgical dressings, rubber shields, colostomy and eleostomy appliances;

(N) prosthetic devices including wigs and artificial breasts;

(O) nursing home care for non-custodial services; and

(P) reconstructive surgery when deemed necessary by the attending physician.

(c) Per Diem Benefits. The following benefit standards apply to specified disease coverage on a per diem basis.

(i) Covered services shall include the following:

(A) hospital confinement benefit with a fixed-sum payment of at least $200 for each day of hospital confinement for at least 365 days, with no deductible amount permitted;

(B) outpatient benefit with a fixed-sum payment equal to one half the hospital inpatient benefits for each day of hospital or non-hospital outpatient surgery, radiation therapy and chemotherapy, for at least 365 days of treatment; and

(C) blood and plasma benefit with a fixed-sum benefit of at least $50 per day for blood and plasma, which includes their administration whether received as an inpatient or outpatient for at least 365 days of treatment.

(ii) Benefits tied to confinement in a skilled nursing home or home health care are optional. If a policy offers these benefits, they must equal the following:

(A) fixed-sum payment equal to one-half the hospital inpatient benefit for each day of skilled nursing home confinement for at least 180 days; and

(B) fixed-sum payment equal to one-fourth the hospital inpatient benefit for each day of home health care for at least 180 days.

(C) Any restriction or limitation applied to the benefits may not be more restrictive than those under Medicare.

(d) Lump Sum Benefits. The following benefit standards apply to specified disease coverage on a lump sum basis.

(i) Benefits shall be payable as a fixed, one-time payment, made within 30 days of submission to the insurer, of proof of diagnosis of the specified disease. Dollar benefits shall be offered for sale only in even increments of $1,000.

(ii) Where coverage is advertised or otherwise represented to offer generic coverage of a disease or diseases, e.g., "cancer insurance," "heart disease insurance," the same dollar amounts shall be payable regardless of the particular subtype of the disease, e.g., lung or bone cancer, with one exception. In the case of clearly identifiable subtypes with significantly lower treatment costs, e.g., skin cancer, lesser amounts may be payable so long as the policy clearly differentiates that subtype and its benefits.

(9) Limited Benefit Health Coverage.

Limited benefit health coverage is a policy of accident and health insurance, other than a policy covering only a specified disease or diseases, that provides benefits that are less than the standards for benefits required under this Section. These policies or contracts may be delivered or issued for delivery with the outline of coverage required by Section R590-126-8.

R590-126-8. Outline of Coverage Requirements.

(1) Basic Hospital Expense Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(1). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE I

(COMPANY NAME)

BASIC HOSPITAL EXPENSE COVERAGE

THIS (POLICY) (CERTIFICATE) PROVIDES LIMITED BENEFITS AND SHOULD NOT BE CONSIDERED A SUBSTITUTE FOR COMPREHENSIVE HEALTH INSURANCE COVERAGE

OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY)(CERTIFICATE) CAREFULLY!
Basic hospital expense coverage is designed to provide, to persons insured, coverage for hospital expenses incurred as a result of a covered accident or sickness. Coverage is provided for daily hospital room and board, miscellaneous hospital services and hospital outpatient services, subject to any limitations, deductibles and copayment requirements set forth in the policy. Coverage is not provided for physicians or surgeons fees or unlimited hospital expenses.
A brief specific description of the benefits, including dollar amounts and number of days duration where applicable, contained in this policy, in the following order: daily hospital room and board; miscellaneous hospital services; hospital out-patient services; and other benefits, if any.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay or in any other manner operate to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

(2) Basic Medical-Surgical Expense Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(2). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE II

(COMPANY NAME)

BASIC MEDICAL-SURGICAL EXPENSE COVERAGE

THIS (POLICY)(CERTIFICATE) PROVIDES LIMITED BENEFITS AND SHOULD NOT BE CONSIDERED A SUBSTITUTE FOR COMPREHENSIVE HEALTH INSURANCE COVERAGE

OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!
Basic medical-surgical expense coverage is designed to provide, to persons insured, coverage for medical-surgical expenses incurred as a result of a covered accident or sickness. Coverage is provided for surgical services, anesthesia services, and in-hospital medical services, subject to any limitations, deductibles and copayment requirements set forth in the policy. Coverage is not provided for hospital expenses or unlimited medical-surgical expenses.
A brief specific description of the benefits, including dollar amounts and number of days duration where applicable, contained in this policy, in the following order:
surgical services;
anesthesia services;
in-hospital medical services; and
other benefits, if any.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

(3) Basic Hospital/Medical-Surgical Expense Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsections R590-126-7(3). The items included in the outline of coverage must appear in the sequence prescribed.

TABLE III

(COMPANY NAME)

BASIC HOSPITAL/MEDICAL-SURGICAL EXPENSE COVERAGE

THIS (POLICY)(CERTIFICATE) PROVIDES LIMITED BENEFITS AND SHOULD NOT BE CONSIDERED A SUBSTITUTE FOR COMPREHENSIVE HEALTH INSURANCE COVERAGE

OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!
Basic hospital/medical-surgical expense coverage is designed to provide, to persons insured, coverage for hospital and medical-surgical expenses incurred as a result of a covered accident or sickness. Coverage is provided for daily hospital room and board, miscellaneous hospital services, hospital outpatient services, surgical services, anesthesia services, and in-hospital medical services, subject to any limitations, deductibles and copayment requirements set forth in the policy. Coverage is not provided for unlimited hospital or medical surgical expenses.
A brief specific description of the benefits, including dollar amounts and number of days duration where applicable, contained in this policy, in the following order:
daily hospital room and board;
miscellaneous hospital services;
hospital outpatient services;
surgical services;
anesthesia services;
in-hospital medical services; and
other benefits, if any.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

(4) Hospital Confinement Indemnity Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(4). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE IV

(COMPANY NAME)

HOSPITAL CONFINEMENT INDEMNITY COVERAGE

THIS (POLICY)(CERTIFICATE) PROVIDES LIMITED BENEFITS
BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT
INTENDED TO COVER ALL MEDICAL EXPENSES

OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of coverage. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!
Hospital confinement indemnity coverage is designed to provide, to persons insured, coverage in the form of a fixed daily

benefit during periods of hospitalization resulting from a covered accident or sickness, subject to any limitations set forth in the policy. Coverage is not provided for any benefits other than the fixed daily indemnity for hospital confinement and any additional benefit described below.
A brief specific description of the benefits in the following order:
daily benefit payable during hospital confinement; and
duration of benefit.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay or in any other manner operate to qualify payment of the benefit.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.
Any benefits provided in addition to the daily hospital benefit.

(5) Income Replacement Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-126-7(5). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE V

(COMPANY NAME)

INCOME REPLACEMENT COVERAGE

THIS (POLICY) (CERTIFICATE) PROVIDES LIMITED BENEFITS
BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED
TO COVER ALL EXPENSES

OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY)(CERTIFICATE) CAREFULLY!
Income replacement coverage is designed to provide, to persons insured, coverage for disabilities resulting from a covered accident or sickness, subject to any limitations set forth in the policy. Coverage is not provided for basic hospital, basic medical-surgical, or major medical expenses.
A brief specific description of the benefits contained in the policy.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay or in any other manner operate to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

(6) Accident Only Coverage.

An outline of coverage in the form prescribed below shall be issued in connection with policies meeting the standards of Subsection R590-126-7(6). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE VI

(COMPANY NAME)

ACCIDENT ONLY COVERAGE

THIS (POLICY)(CERTIFICATE) PROVIDES LIMITED BENEFITS
BENEFITS PROVIDED ARE SUPPLEMENTAL AND NOT INTENDED
TO COVER ALL MEDICAL EXPENSES

OUTLINE OF COVERAGE
Read Your (Policy) (Certificate) Carefully-This outline of coverage provides a very brief description of the important features of the coverage. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY)(CERTIFICATE) CAREFULLY!
Accident only coverage is designed to provide, to persons insured, coverage for certain losses resulting from a covered accident ONLY, subject to any limitations contained in the policy. Coverage is not provided for basic hospital, basic medical-surgical, or major medical expenses.
A brief specific description of the benefits.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.

(7) Specified Accident Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies or certificates meeting the standards of R590-126-7(7). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE VII

(COMPANY NAME)

SPECIFIED ACCIDENT COVERAGE

THIS (POLICY) (CERTIFICATE) PROVIDES LIMITED BENEFITS
BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED
TO COVER ALL MEDICAL EXPENSES

OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of coverage. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!
Specified accident coverage is designed to provide, to persons insured, restricted coverage paying benefits ONLY when certain losses occur as a result of specified accidents. Coverage is not provided for basic hospital, basic medical-surgical, or major medical expenses.
A brief specific description of the benefits, including dollar amounts.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.

(8) Specified Disease Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies or certificates meeting the standards of Subsection R590-126-7(8). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE VIII

(COMPANY NAME)

SPECIFIED DISEASE COVERAGE

THIS (POLICY) (CERTIFICATE) PROVIDES LIMITED BENEFITS
BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED
TO COVER ALL MEDICAL EXPENSES

OUTLINE OF COVERAGE
Specified disease coverage is designed only as a supplement to a comprehensive health insurance policy and should not be purchased unless you have this underlying coverage. Persons covered under Medicaid should not purchase it. Read the Buyer's Guide to Specified Disease Insurance to review the possible limits on benefits in this type of coverage.
Read Your (Policy) (Certificate) Carefully--This outline of coverage provides a very brief description of the important features of coverage. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company.
It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!
Specified disease coverages designed to provide, to persons insured, restricted coverage paying benefits ONLY when certain losses occur as a result of specified diseases. Coverage is not provided for basic hospital, basic medical-surgical, or major medical expenses.
A brief specific description of the benefits, including dollar amounts.
A description of any policy provisions that exclude, eliminate,

restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.

(9) Limited Benefit Health Coverage.

Except for dental or vision plans, an outline of coverage, in the form prescribed below, shall be issued in connection with policies or certificates which do not meet the standards of Subsections R590-126-7(1) through (8). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE IX

(COMPANY NAME)

LIMITED BENEFIT HEALTH COVERAGE

BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED TO COVER ALL MEDICAL EXPENSES

OUTLINE OF COVERAGE

Read Your (Policy) (Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!
Limited benefit health coverage is designed to provide, to persons insured, limited or supplemental coverage.
A brief specific description of the benefits, including amounts.
A description of any provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.
A description of provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.

(10) Dental Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with dental plan policies and certificates. The items included in the outline of coverage must appear in the sequence prescribed:

TABLE X

(COMPANY NAME)

DENTAL COVERAGE

BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED TO COVER ALL DENTAL EXPENSES
OUTLINE OF COVERAGE

Read Your (Policy) (Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!
A brief specific description of the benefits.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.

(11) Vision Coverage.

An outline of coverage in the form prescribed below shall be issued in connection with vision plan policies and certificates. The items included in the outline of coverage must appear in the sequence prescribed:

TABLE XI

(COMPANY NAME)

VISION COVERAGE

BENEFITS PROVIDED ARE SUPPLEMENTAL AND ARE NOT INTENDED TO COVER ALL VISION EXPENSES

OUTLINE OF COVERAGE

Read Your (Policy) (Certificate) Carefully--This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!
A brief specific description of the benefits.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay or in any other manner operate to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservations of right to change premiums.

(12) An insurer shall deliver an outline of coverage to an applicant or enrollee prior to or upon the sale of an individual accident and health insurance policy as required in this rule.

(13) If an outline of coverage was delivered at the time of application or enrollment and the policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate must accompany the policy or certificate when it is delivered and contain the following statement in no less than 12 point type, immediately above the company name:

NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application, and the coverage originally applied for has not been issued.

(14) Outlines of coverage for hospital confinement indemnity, specified disease, or limited benefit policies, which are to be delivered to persons eligible for Medicare by reason of age shall contain the following language, which shall be printed on or attached to the first page of the outline of coverage:

THIS IS NOT A MEDICARE SUPPLEMENT POLICY. If you are eligible for Medicare, review the Guide to Health Insurance for People With Medicare available from the company.

(15) Where the prescribed outline of coverage is inappropriate for the coverage provided by the policy or certificate, an alternate outline of coverage shall be submitted to the commissioner for prior approval.

(16) Advertisements may fulfill the requirements for outlines of coverage if they satisfy the standards specified for outlines of coverage in this rule.

R590-126-9. Replacement of Accident and Health Insurance Requirements.

(1) Upon determining that a sale will involve replacement, an insurer, other than a direct response insurer, or its producer, shall furnish the applicant, prior to issuance or delivery of the policy, the notice described in Subsection (2). The insurer shall retain a copy of the notice. A direct response insurer shall deliver to the applicant, upon issuance of the policy, the notice described in Subsection (3). In no event, however, will the notices be required in the solicitation of the following types of policies: accident-only and single-premium nonrenewable policies.

(2) The notice required by Subsection (1) for an insurer, other than a direct response insurer, shall provide, in substantially the following form:

TABLE XII

NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND HEALTH INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and health insurance and replace it with a

policy to be issued by (insert company name) Insurance Company.
For your own information and protection, you should be aware of and seriously consider certain factors that may affect the insurance protection available to you under the new policy.
Health conditions which you may presently have, (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.
You may wish to secure the advice of your present insurer or its producer regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.
If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical/health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.
The above "Notice to Applicant" was delivered to me on:
.....
(Date)
.....
(Applicant's Signature)

(3) The notice required by Subsection (1) for a direct response insurer shall be as follows:

TABLE XIII

NOTICE TO APPLICANT REGARDING REPLACEMENT
OF ACCIDENT AND HEALTH INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and health insurance and replace it with the policy delivered herewith issued by (insert company name) Insurance Company. Your new policy provides 30 days within which you may decide without cost whether you desire to keep the policy.
For your own information and protection, you should be aware of and seriously consider certain factors that may affect the insurance protection available to you under the new policy.
Health conditions that you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.
You may wish to secure the advice of your present insurer or its producer regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.
(To be included only if the application is attached to the policy). If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (insert company name and address) within ten days if any information is not correct and complete, or if any past medical history has been left out of the application.
COMPANY NAME

R590-126-10. Enforcement Date.

The commissioner will begin enforcing the revised provision of this rule January 1, 2006.

R590-126-11. Severability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.

KEY: health insurance

July 30, 2007	**31A-2-201**
Notice of Continuation January 11, 2007	**31A-2-202**
	31A-21-201
	31A-22-605

R590. Insurance, Administration.
R590-148. Long-Term Care Insurance Rule.
R590-148-1. Authority.

This rule is issued pursuant to the authority vested in the commissioner under Sections 31A-2-201 and 31A-22-1404.

R590-148-2. Purpose.

The purpose of this rule is to implement standards for full and fair disclosure of the manner, content, and required disclosures for long-term care insurance to promote the public interest, to promote the availability of long-term care insurance coverage, to protect applicants for long-term care insurance, as defined, from unfair or deceptive sales enrollment practices, to facilitate public understanding and comparison of long-term care insurance coverages, and to facilitate flexibility and innovation in the development of long-term care insurance.

R590-148-3. Applicability and Scope.

Except as otherwise specifically provided, this rule applies to all long-term care insurance, as defined in 31A-1-301, delivered or issued for delivery in this state on or after January 1, 1993, by insurers; fraternal benefit societies; nonprofit health, hospital and medical service corporations; prepaid health plans; health maintenance organizations and all similar organizations.

Additionally, this rule is intended to apply to policies having indemnity benefits that are triggered by activities of daily living and sold as disability income insurance, if:

(1) The benefits of the disability income policy are dependent upon or vary in amount based on the receipt of long-term care services;

(2) The disability income policy is advertised, marketed or offered as insurance for long-term care services; or

(3) Benefits under the policy may commence after the policyholder has reached Social Security's normal retirement age unless benefits are designed to replace lost income or pay for specific expenses other than long-term care services.

R590-148-4. Incorporation by Reference.

The following tables and appendices are hereby incorporated by reference within this rule and are available for public inspection at the Insurance Department during normal business hours or at http://www.insurance.utah.gov/ruleindex.html. These tables and appendices were adopted by the National Association of Insurance Commissioners' Long-Term Care Insurance Model Regulation #641, as approved April 2000.

(1) Table I, Notice to Applicant Regarding Replacement of Individual Accident and Sickness or Long-Term Care Insurance.

(2) Table II, Notice to Applicant Regarding Replacement of Accident and Sickness or Long-Term Care Insurance.

(3) Table III, Triggers for a Substantial Premium Increase.

(4) Table IV, Long-Term Care Insurance Outline of Coverage.

(5) Appendix A, Rescission Reporting Form.

(6) Appendix B, Long-Term Care Insurance Personal Worksheet.

(7) Appendix C, Things You Should Know Before You Buy Long-Term Care Insurance.

(8) Appendix D, Long-Term Care Insurance Suitability Letter.

(9) Appendix E, Claims Denial Reporting Form Long-Term Care Insurance.

(10) Appendix F, Worksheet Potential Rate Increase Disclosure Form.

(11) Appendix G, Replacement and Lapse Reporting Form.

R590-148-5. Definitions.

(1) For the purpose of this rule, the terms "applicant," "long-term care insurance," "certificate," "commissioner," and "policy" shall have the meanings set forth in Sections 31A-1-301 and 31A-22-1402.

(2) In addition, the following definitions apply:

(a) "Activities of daily living" means at least bathing, continence, dressing, eating, toileting and transferring.

(b) "Acute condition" means that the individual is medically unstable. Such an individual requires frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain the individual's health status.

(c) "Adult day care" means a program for three or more individuals, of social and health-related services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or disabled adults who can benefit from care in a group setting outside the home.

(d) "Bathing" means washing oneself by sponge bath; or in either a tub or shower, including the task of getting into or out of the tub or shower.

(e) "Cognitive impairment" means a deficiency in a person's short or long-term memory, orientation as to person, place and time, deductive or abstract reasoning, or judgment as it relates to safety awareness.

(f) "Continence" means the ability to maintain control of bowel and bladder function; or, when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene, including caring for catheter or colostomy bag.

(g)(i) "Chronically ill individual" has the meaning prescribed for this term by section 7702B(c)(2) of the Internal Revenue Code of 1986, as amended. Under this provision, a chronically ill individual means any individual who has been certified by a licensed health care practitioner as:

(A) Being unable to perform, without substantial assistance from another individual, at least two activities of daily living for a period of at least 90 days due to a loss of functional capacity; or

(B) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

(ii) The term "chronically ill individual" shall not include an individual otherwise meeting these requirements unless within the preceding 12-month period a licensed health care practitioner has certified that the individual meets these requirements.

(h) "Dressing" means putting on and taking off all items of clothing and any necessary braces, fasteners or artificial limbs.

(i) "Eating" means feeding oneself by getting food into the body from a receptacle, such as a plate, cup or table, or by a feeding tube or intravenously.

(j)(i) "Exceptional increase" means only those increases filed by an insurer as exceptional for which the Commissioner determines the need for the premium rate increase is justified:

(A) due to changes in laws and rules applicable to long-term care coverage in this state; or

(B) due to increased and unexpected utilization that affects the majority of insurers of similar products.

(ii) Except as provided in Section R590-148-24, exceptional increases are subject to the same requirements as other premium rate schedule increases.

(iii) The commissioner may request review by an independent actuary or a professional actuarial body of the basis for a request that an increase be considered an exceptional increase.

(iv) The commissioner, in determining that the necessary basis for an exceptional increase exists, shall also determine any potential offsets to higher claims costs.

(k) "Hands-on assistance" means physical assistance, minimal, moderate or maximal, without which the individual would not be able to perform the activity of daily living.

(l) "Home health care services" means medical and nonmedical services, provided to ill, disabled or infirm persons in their residences. Such services may include homemaker services, assistance with activities of daily living and respite care services.

(m) "Incidental" means that the value of the long-term care benefits provided is less than 10% of the total value of the benefits provided over the life of the policy. These values shall be measured as of the date of issue.

(n) "Licensed health care practitioner" means a physician, as defined in Section 1861(r)(1) of the Social Security Act, a registered professional nurse, licensed social worker or other individual who meets requirements prescribed by the Secretary of the Treasury.

(o) "Maintenance or personal care services" means any care the primary purpose of which is the provision of needed assistance with any of the disabilities as a result of which the individual is a chronically ill individual, including the protection from threats to health and safety due to severe cognitive impairment.

(p) "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

(q) "Mental or nervous disorder" may not be defined more restrictively than a definition including neurosis, psychoneurosis, psychopathy, psychosis, or any other mental or emotional disease or disorder which does not have a demonstrable organic cause.

(r) "Personal care" means the provision of hands-on services to assist an individual with activities of daily living, for example bathing, eating, dressing, transferring and toileting.

(s) "Qualified actuary" means a member in good standing of the American Academy of Actuaries.

(t) "Qualified long-term care services" means services that meet the requirements of Section 7702(c)(1) of the Internal Revenue Code of 1986, as amended, as follows: necessary diagnostic, preventive, therapeutic, curative, treatment, mitigation and rehabilitative services, and maintenance or personal care services which are required by a chronically ill individual, and are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

(u) "Similar policy forms" means all of the long-term care insurance policies and certificates issued by an insurer in the same long-term care benefit classification as the policy form being considered. Certificates of groups are not considered similar to certificates or policies otherwise issued as long-term care insurance, but are similar to other comparable certificates with the same long-term care benefit classifications. For purposes of determining similar policy forms, long-term care benefit classifications are defined as follows:

(i) institutional long-term care benefits only;

(ii) non-institutional long-term care benefits only; or

(iii) comprehensive long-term care benefits.

(v) "Skilled nursing care," "intermediate care," "personal care," "home care," and other services shall be defined in relation to the level of skill required, the nature of the care and the setting in which care must be delivered.

(w) "Toileting" means getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.

(x) "Transferring" means moving into or out of a bed, chair or wheelchair.

(3) All providers of services, including but not limited to "skilled nursing facility," "extended care facility," "intermediate care facility," "convalescent nursing home," "personal care facility," and "home care agency" shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified.

R590-148-6. Required Provisions and Practices.

(1) Renewability.

The terms "guaranteed renewable" and "noncancellable" may not be used in any individual long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of Subsection R590-148-6(1)(b).

(a) No policy issued to an individual may contain renewal provisions other than "guaranteed renewable" or "noncancellable."

(i) The term "guaranteed renewable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

(ii) The term "noncancellable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.

(b) Individual long-term care insurance policies shall contain a renewability provision. This provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed. This provision may not apply to policies which do not contain a renewability provision, and under which the right to non-renew is reserved solely to the policyholder.

(c) In addition to the other requirements of this subsection, a qualified long-term care insurance contract shall be guaranteed renewable, within the meaning of Section 7702B(b)(1)(C) of the Internal Revenue Code of 1986, as amended.

(2) Limitations and Exclusions.

(a) No policy may be delivered or issued for delivery in this state as long-term care insurance if the policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except as follows:

(i) preexisting conditions or diseases;

(ii) mental or nervous disorders; however, this may not permit exclusion or limitation of benefits on the basis of Alzheimer's Disease, or any other mental or nervous disorder of organic origin;

(iii) alcoholism and drug addiction;

(iv) illness, treatment or medical condition arising out of:

(A) war or act of war, whether declared or undeclared;

(B) participation in a felony, riot or insurrection;

(C) service in the armed forces or auxiliary units;

(D) suicide, sane or insane, attempted suicide or intentionally self-inflicted injury; or

(E) aviation for non-fare-paying passengers;

(v) treatment provided in a government facility, unless otherwise required by law,

(vi) services for which benefits are paid under:

(A) Medicare or other governmental program, except Medicaid;

(B) any state or federal workers' compensation;

(C) employer's liability or occupational disease law; or

(D) any motor vehicle no-fault law;

(vii) services provided by a member of the covered person's immediate family;

(viii) services for which no charge is normally made in the absence of insurance;

(ix) benefits provided for a level of care cannot be conditioned on a requirement that the care be in a facility licensed for higher levels of care.

(b) Subsection R590-148-6(2)(a) is not intended to prohibit exclusions and limitations by type of provider or territorial limitations outside the United States.

(3) Preexisting Condition Limitation. If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations."

(4) Benefit Triggers. Activities of daily living and cognitive impairment may be used to measure an insured's need for long-term care and shall be described in the policy or certificate in a separate paragraph and shall be labeled "Eligibility for the Payment of Benefits." Any additional benefit triggers shall also be explained in this paragraph. If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too shall be specified.

(5) Extension of Benefits. Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization if the institutionalization began while the long-term care insurance was in force and continues without interruption after termination. The extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy.

(6) Discontinuance and Replacement. If a group long-term care policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy:

(a) may not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced; and

(b) may not vary or otherwise depend on the individual's health or disability status, claim experience or use of long-term care services.

(7) Premiums.

(a) The term "level premium" may only be used when the insurer does not have the right to change the premium.

(b) A long-term care insurance policy or certificate, other than one where the insurer does not have the right to change the premium, shall include a statement that premium rates may change.

(c) The purchase of additional coverage shall not be considered a premium rate increase, but for purposes of the calculation required under Section R590-148-14, the portion of the premium attributable to the additional coverage shall be added to and considered part of the initial annual premium.

(d) A reduction in benefits shall not be considered a premium change, but for purpose of the calculation required under Section R590-148-14, the initial annual premium shall be based on the reduced benefits.

(8) Riders and Endorsements. Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, all riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, this premium charge shall be set forth in the policy, rider or endorsement.

(9) Payment of Benefits. A long-term care insurance policy or certificate that provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import shall include a definition of these terms and an explanation of the terms in its accompanying outline of coverage.

(10) Eligibility for Benefits Limitations and Conditions. A long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in Section 31A-22-1407 shall set forth a description of these limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label the paragraph "Limitations or Conditions on Eligibility for Benefits."

(11) Disclosure of Tax Consequences. With regard to life insurance policies which provide for long-term care, a disclosure statement is required at the time of application for the policy or rider and at the time the benefit payment request is submitted that receipt of these benefits may be taxable, and that assistance should be sought from a personal tax advisor. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents. This subsection shall not apply to qualified long-term care insurance contracts.

(12) Qualified Contracts. A qualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage that the policy is intended to be a qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986, as amended.

(13) Nonqualified Contracts. A nonqualified long-term care insurance contract shall include a disclosure statement in the policy and in the outline of coverage that the policy is not intended to be a qualified long-term care insurance contract.

(14) Long-term care insurance sold in conjunction with another insurance product, including but not limited to life insurance or annuities shall be in the form of a separate rider complying with all provisions of this Rule. Long-term care insurance shall not be incorporated into a life insurance policy or annuity contract.

R590-148-7. Minimum Standards for Home Health and Community Care Benefits in Long-Term Care Insurance Policies.

(1) A long-term care insurance policy or certificate shall not, if it provides benefits for home health care services, limit or exclude benefits:

(a) by requiring that the insured would need care in a skilled nursing facility if home health care services were not provided;

(b) by requiring that the insured first or simultaneously receive nursing or therapeutic services, or both, in a home, community or institutional setting before home health care services are covered;

(c) by limiting eligible services to services provided by registered nurses or licensed practical nurses;

(d) by requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide, or other licensed or certified home care worker acting within the scope of the aid or worker's licensure or certification;

(e) by excluding coverage for personal care services provided by a home health aide;

(f) by requiring that the provision of home health care services be at a level of certification or licensure greater than that required for the eligible service;

(g) by requiring that the insured have an acute condition before home health care services are covered;

(h) by limiting benefits to services provided by Medicare-certified agencies or providers; or

(i) by excluding coverage for adult day care services.

(2) Home health care coverage may be applied to the non-home health care benefits provided in the policy or certificate when determining maximum coverage under the terms of the policy or certificate.

(3) A long-term care insurance policy or certificate, if it provides for home health or community care services, shall provide total home health or community care coverage that is a dollar amount equivalent to at least one-half of one year's coverage available for nursing home benefits under the policy or certificate, at the time covered home health or community care services are being received. This requirement may not apply to policies or certificates issued to residents of continuing care retirement communities.

R590-148-8. Standards for Benefit Triggers.

(1) A long-term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. Eligibility for the payment of benefits shall not be more restrictive than requiring either a deficiency in the ability to perform not more than 3 of the activities of daily living or the presence of cognitive impairment.

(2) Insurers may use activities of daily living to trigger covered benefits in addition to those contained in Subsection R590-148-5(2)(a) as long as they are defined in the policy.

(3) An insurer may use additional provisions for the determination of when benefits are payable under a policy or certificate; however the provisions shall not restrict, and are not in lieu of, the requirements contained in Subsections R590-148-8(1) and (2).

(4) For purposes of this section the determination of a deficiency shall not be more restrictive than:

(a) requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or

(b) if the deficiency is due to the presence of a cognitive impairment, supervision or verbal cuing by another person is needed in order to protect the insured or others.

(5) Assessments of activities of daily living and cognitive impairment shall be performed by licensed or certified professionals, such as physicians, nurses or social workers.

(6) Long-term care insurance policies shall include a clear description of the process for appealing and resolving benefit determinations.

(7) The requirements set forth in this section shall be effective January 1, 2003 and shall apply as follows:

(a) Except as provided in Subsection R590-148-8(7)(b), the provisions of this section apply to a long-term care policy issued in this state on or after July 1, 2002.

(b) For certificates issued on or after July 1, 2002, under a group long-term care insurance policy that was in force at the time this rule became effective, the provisions of this section shall not apply.

R590-148-9. Additional Standards for Benefit Triggers for Qualified Long-Term Care Insurance Contracts.

(1) A qualified long-term care insurance contract shall pay only for qualified long-term care services received by a chronically ill individual provided pursuant to a plan of care prescribed by a licensed health care practitioner.

(2) A qualified long-term care insurance contract shall condition the payment of benefits on a determination of the insured's inability to perform activities of daily living for an expected period of at least 90 days due to a loss of functional capacity or to severe cognitive impairment.

(3) Certifications regarding activities of daily living and cognitive impairment required pursuant to Subsection R590-148-9(2) shall be performed by the following licensed or certified professionals: physicians, registered professional nurses, licensed social workers, or other individuals who meet requirements prescribed by the Secretary of the Treasury.

(4) Certifications required pursuant to Subsection R590-148-9(2) may be performed by a licensed health care professional at the direction of the carrier as is reasonably necessary with respect to a specific claim, except that when a licensed health care practitioner has certified that an insured is unable to perform activities of daily living for an expected period of at least 90 days due to a loss of functional capacity and the insured is in claim status, the certification may not be rescinded and additional certifications may not be performed until after the expiration of the 90-day period.

(5) Qualified long-term care insurance contracts shall include a clear description of the process for appealing and resolving disputes with respect to benefit determinations.

R590-148-10. Continuation and Conversion.

(1) Group long-term care insurance issued in this state on or after July 1, 2002 shall provide covered individuals with a basis for continuation or conversion of coverage.

(2) For the purposes of this section:

(a) "a basis for continuation of coverage" means a policy provision which maintains coverage under the existing group policy when the coverage would otherwise terminate and which is subject only to the continued timely payment of premium when due. Group policies which restrict provision of benefits and services to, or contain incentives to use certain providers, facilities, or both, may provide continuation benefits which are substantially equivalent to the benefits of the existing group policy. The commissioner shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.

(b) "a basis for conversion of coverage" means a policy provision that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy, and any group policy which it replaced, for at least six months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy the individual is covered, without evidence of insurability.

(c) "converted policy" means an individual policy of long-term care insurance providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers, facilities, or both, the commissioner, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans, including provider system arrangements, service availability, benefit levels and administrative complexity.

(d) a "Managed-Care Plan" is a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management or use of specific provider networks.

(3) Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than 60 days after termination of coverage under the group policy. The converted policy shall be

issued effective on the day following the termination of coverage under the group policy, and shall be renewable annually.

(4) Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.

(5) The premium for the individual converted policy shall not exceed the insurer's customary rate at the time of the termination, which is applicable to the form and amount of the individual policy, and to the class of risk to which the person belonged when terminated from the group policy.

(6) Continuation of coverage or issuance of a converted policy shall be mandatory, except where:

(a) termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

(b) the terminating coverage is replaced not later than 31 days after termination, by group coverage effective on the day following the termination of coverage:

(i) providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided by the terminating coverage; and

(ii) the premium for which is calculated in a manner consistent with the requirements of Subsection R590-148-10(4).

(7) Notwithstanding any other provision of this section, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy which provides benefits on the basis of incurred expenses, may contain a provision which results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100% of incurred expenses. This provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

(8) The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, may not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

(9) Notwithstanding any other provision of this section, any insured individual whose eligibility for group long-term care coverage is based upon the individual's relationship to another person, shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

R590-148-11. Unintentional Lapse and Reinstatement.

Each insurer offering long-term care insurance shall, as a protection against unintentional lapse, comply with the following:

(1)(a) Notice before lapse or termination. No individual long-term care policy or certificate shall be issued until the insurer has received from the applicant either a written designation of at least one person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium, or a written waiver dated and signed by the applicant electing not to designate additional persons to receive notice. The applicant has the right to designate at least one person who is to receive the notice of termination, in addition to the insured. Designation shall not constitute acceptance of any liability on the third party for services provided to the insured. The form used for the written designation must provide space clearly designated for listing at least one person. The designation shall include each person's full name and home address. In the case of an applicant who elects not to designate an additional person, the waiver shall state: "Protection against unintended lapse. I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this long-term care insurance policy for nonpayment of premium. I understand that notice will not be given until 30 days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice."

(b) The insurer shall notify the insured of the right to change this written designation, no less often than once every two years.

(c) When the policyholder or certificateholder pays premium for a long-term care insurance policy or certificate through a payroll or pension deduction plan the requirements contained in Subsection R590-148-11(1)(a) need not be met until 60 days after the policyholder or certificateholder is no longer on a payroll or pension deduction plan.

(d) Lapse or termination for nonpayment of premium. No individual long-term care policy or certificate shall lapse or be terminated for nonpayment of premium unless the insurer, at least 30 days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated pursuant to Subsection R590-148-11(1)(a), at the address provided by the insured for purposes of receiving notice of lapse or termination. Notice shall be given by first class United States mail, postage prepaid; and notice may not be given until 30 days after a premium is due and unpaid. Notice shall be deemed to have been given as of five days after the date of mailing.

(2) Reinstatement. In addition to the requirement in Subsection R590-148-11(1)(a), a long-term care insurance policy or certificate shall include a provision that provides for reinstatement of coverage in the event of lapse if the insurer is provided proof that the policyholder or certificateholder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired. This option shall be available to the insured if requested within five months after termination and shall allow for the collection of past due premium, where appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy and certificate.

R590-148-12. Applications, Enrollment and Replacement of Coverage.

(1) All applications for long-term care insurance policies or certificates except those which are guaranteed issue shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

(2)(a) If an application for long-term care insurance contains a question which asks whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list the medication that has been prescribed.

(b) If the medications listed in the application were known by the insurer, or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate may not be rescinded for that condition.

(3) All applications shall clearly indicate the payment plan selected by the applicant.

(4) Except for policies or certificates which are guaranteed issue:

(a) the following language shall be set out conspicuously

and in close conjunction with the applicant's signature block on an application for a long-term care insurance policy or certificate:

Caution: If your answers on this application are incorrect or untrue, (company) has the right to deny benefits or rescind your policy.

(b) the following language, or language substantially similar to the following, shall be set out conspicuously on the long-term care insurance policy or certificate at the time of delivery:

Caution: The issuance of this long-term care insurance (policy) (certificate) was based upon your responses to the questions on your application. A copy of your (application) (enrollment form) (is enclosed) (was retained by you when you applied). If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: (insert address)

(5) Prior to issuance of a long-term care policy or certificate to an applicant age 80 or older, the insurer shall obtain one of the following:

(a) a report of a physical examination;

(b) an assessment of functional capacity;

(c) an attending physician's statement; or

(d) copies of medical records.

(6) A copy of the completed application or enrollment form, whichever is applicable, shall be delivered to the insured no later than at the time of delivery of the policy or certificate unless it was retained by the applicant at the time of application.

(7) Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other accident and sickness or long-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent, except where the coverage is sold without an agent, containing these questions may be used. With regard to a replacement policy issued to a group, other than employee and labor union groups, the following questions may be modified only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced; provided, however, that the certificateholder has been notified of the replacement.

(a) Do you have another long-term care insurance policy or certificate in force, including health care service contract, health maintenance organization contract?

(b) Did you have another long-term care insurance policy or certificate in force during the last 12 months?

(i) If so, with which company?

(ii) If that policy lapsed, when did it lapse?

(c) Are you covered by Medicaid?

(d) Do you intend to replace any of your medical or health insurance coverage with this policy/certificate?

(8) Agents shall list any other health insurance policies they have sold to the applicant.

(a) List policies sold which are still in force.

(b) List policies sold in the past five years which are no longer in force.

(9) Solicitations Other than Direct Response. Upon determining that a sale will involve replacement, an insurer; other than an insurer using direct response solicitation methods, or its agent; shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage. One copy of this notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the manner detailed in Table I, Notice to Applicant Regarding Replacement of Individual Accident and Sickness or Long-Term Care Insurance.

(10) Direct Response Solicitations. Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be provided in the manner detailed in Table II, Notice to Applicant Regarding Replacement of Accident and Sickness or Long-Term Care Insurance.

(11) Where replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the insurer, name of the insured and policy number or address including zip code. The notice shall be made within five working days from the date the application is received by the insurer or the date the policy is issued, whichever is sooner.

(12) Life insurance policies and certificates that provide benefits for long-term care shall comply with this section if the policy being replaced is a long-term care insurance policy. If the policy being replaced is a life insurance policy, the insurer shall comply with the replacement requirements of R590-93, Replacement of Life Insurance and Annuities. If a life insurance policy that provide benefits for long-term care is replaced by another such policy, the replacing insurer shall comply with both the long-term care and the life insurance replacement requirements.

(13) Electronic Enrollment for Group Policies:

(a) In the case of a group policy, any requirement that a signature of an insured be obtained by an agent or insurer shall be deemed satisfied if:

(i) the consent is obtained by telephonic or electronic enrollment by the group policyholder or insurer. A verification of enrollment information shall be provided to the enrollee;

(ii) the telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the accuracy, retention and prompt retrieval of records; and

(iii) the telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the confidentiality of individually identifiable information and "privileged information" as defined by the Utah Government Records Access and Management Act, Section 63-2-101, is maintained.

(b) The insurer shall make available, upon request of the commissioner, records that will demonstrate the insurer's ability to confirm enrollment and coverage amounts.

R590-148-13. Requirement to Offer Inflation Protection.

(1) No insurer may offer a long-term care insurance policy unless the insurer also offers to the policyholder in addition to any other inflation protection the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations which are meaningful to account for reasonably anticipated increases in the costs of long-term care services covered by the policy. Insurers must offer to each policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one of the following:

(a) increases benefit levels annually in a manner so that the increases are compounded annually at a rate not less than 5%;

(b) guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status so long as the option for the previous period has not been declined. The premium rate for the additional benefit shall not exceed the insurer's customary rate at the time the offer is made, which is applicable to the form and amount of the policy, the class of risk to which the person belonged at the time of issue of the policy, and to the age attained on the effective date of the increase. The amount of the

additional benefit may be no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least 5% for the period beginning with the purchase of the existing benefit and extending until the year in which the offer is made; or

(c) covers a specified percentage of actual or reasonable charges and does not include a maximum specified indemnity amount or limit.

(2) Where the policy is issued to a group, except a continuing care retirement community center, the required offer in Subsection R590-148-13(1) shall be made to the group policyholder and to each proposed certificateholder.

(3) Insurers shall include the following information in or with the outline of coverage:

(a) a graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a 20 year period; and

(b) any expected premium increases or additional premiums to pay for automatic or optional benefit increases. An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure.

(4) Inflation protection benefit increases under a policy which contains this benefit shall continue without regard to an insured's age, claim status or claim history, or the length of time the person has been insured under the policy.

(5) An offer of inflation protection which provides for automatic benefit increases shall include an offer of a premium which the insurer expects to remain constant. The offer shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.

(6)(a) Inflation protection as provided in Subsection R590-148-13(1)(a) shall be included in a long-term care insurance policy unless an insurer obtains a rejection of inflation protection signed by the policyholder as required in this subsection. The rejection may be either in the application or on a separate form.

(b) The rejection shall be considered a part of the application and shall state:

I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed Plans (indicate), and I reject inflation protection.

R590-148-14. Nonforfeiture and Contingent Benefit Requirements.

(1) To comply with the requirement to offer a nonforfeiture benefit pursuant to the provisions of Section 31A-22-1412:

(a) a policy or certificate offered with nonforfeiture benefits shall have coverage elements, eligibility, benefit triggers and benefit length that are the same as coverage to be issued without nonforfeiture benefits. The nonforfeiture benefit included in the offer shall be the benefit described in Subsection R590-148-14(4); and

(b) the offer shall be in writing if the nonforfeiture benefit is not otherwise described in the Outline of Coverage or other materials given to the prospective policyholder.

(2) If the offer required to be made under Section 31A-22-1412 is rejected, the insurer shall provide the contingent benefit upon lapse described in this section.

(3)(a) After rejection of the offer required under Section 31A-22-1412, for individual and group policies without nonforfeiture benefits issued after July 1, 2002, the insurer shall provide a contingent benefit upon lapse.

(b) In the event a group policyholder elects to make the nonforfeiture benefit an option to the certificateholder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

(c) The contingent benefit on lapse shall be triggered every time an insurer increases the premium rates to a level which results in a cumulative increase of the annual premium equal to or exceeding the percentage of the insured's initial annual premium set forth in Table III, Triggers for a Substantial Premium Increase, based on the insured's issue age, and the policy or certificate lapses within 120 days of the due date of the premium so increased. Unless otherwise required, policyholders shall be notified at least 30 days prior to the due date of the premium reflecting the rate increase.

(d) On or before the effective date of a substantial premium increase as defined in Subsection R590-148-14(3)(c), the insurer shall:

(i) offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;

(ii) offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of Subsection R590-148-14(4). This option may be elected at any time during the 120-day period referenced in Subsection R590-148-14(3)(c); and

(iii) notify the policyholder or certificateholder that a default or lapse at any time during the 120-day period referenced in Subsection R590-148-14(3)(c) shall be deemed to be the election of the offer to convert in Subsection R590-148-14(3)(d)(ii).

(4) Benefits continued as nonforfeiture benefits, including contingent benefits upon lapse, are described in this subsection:

(a) For purposes of this subsection, attained age rating is defined as a schedule of premiums starting from the issue date which increases with age at least 1% per year prior to age 50, and at least 3% per year beyond age 50.

(b) For purposes of this subsection, the nonforfeiture benefit shall be of a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits, amounts and frequency in effect at the time of lapse but not increased thereafter, will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefits shall be determined as specified in Subsection R590-148-14(4)(c).

(c) The standard nonforfeiture credit will be equal to 100% of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. However, the minimum nonforfeiture credit shall not be less than 30 times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of Subsection R590-148-14(5).

(d)(i) The nonforfeiture benefit shall begin not later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three years as well as thereafter.

(ii) Notwithstanding Subsection R590-148-14(4)(d)(i), for a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of:

(A) the end of the tenth year following the policy or certificate issue date; or

(B) the end of the second year following the date the policy or certificate is no longer subject to attained age rating.

(e) Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

(5) All benefits paid by the insurer while the policy or certificate is in premium paying status and in the paid up status will not exceed the maximum benefits, which would be payable if the policy or certificate had remained in premium paying status.

(6) There shall be no difference in the minimum

nonforfeiture benefits as required under this section for group and individual policies.

(7) The requirements set forth in this section shall become effective January 1, 2003 and shall apply as follows:

(a) Except as provided in Subsection R590-148-14(7)(b), the provisions of this section apply to any long-term care policy issued in this state on or after July 1, 2002.

(b) For certificates issued on or after July 1, 2002, under a group long-term care insurance policy, which policy was in force at the time this rule became effective, the provisions of this section shall not apply.

(8) Premiums charged for a policy or certificate containing nonforfeiture benefits or a contingent benefit on lapse shall be subject to the loss ratio requirements of Section R590-148-22 treating the policy as a whole.

(9) To determine whether contingent nonforfeiture upon lapse provisions are triggered under Subsection R590-148-14(3)(c), a replacing insurer that purchased or otherwise assumed a block or blocks of long-term care insurance policies from another insurer shall calculate the percentage increase based on the initial annual premium paid by the insured when the policy was first purchased from the original insurer.

(10) A nonforfeiture benefit for qualified long-term care insurance contracts that are level premium contracts shall be offered that meets the following requirements:

(a) the nonforfeiture provision shall be appropriately captioned;

(b) the nonforfeiture provision shall provide a benefit available in the event of a default in the payment of any premiums and shall state that the amount of the benefit may be adjusted subsequent to being initially granted only as necessary to reflect changes in claims, persistency and interest as reflected in changes in rates for premium paying contracts approved by the commissioner for the same contract form; and

(c) the nonforfeiture provision shall provide at least one of the following:

(i) reduced paid-up insurance;

(ii) extended term insurance;

(iii) shortened benefit period; or

(iv) other similar offerings approved by the commissioner.

R590-148-15. Standard Format Outline of Coverage.

This section of the rule implements, interprets and prescribes a standard format of an outline of coverage for the provisions in Subsection 31A-22-1409(2).

(1) The outline of coverage shall be a free-standing document, using no smaller than ten point type.

(2) The outline of coverage may contain no material of an advertising nature.

(3) Text which is capitalized or underscored in the standard format outline of coverage may be emphasized by other means which provide prominence equivalent to capitalization or underscoring.

(4) Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.

(5) The format for outline of coverage can be found in Table IV, Long-Term Care Insurance Outline of Coverage.

R590-148-16. Requirement to Deliver Shopper's Guide.

(1) A long-term care insurance shopper's guide in the format developed by the National Association of Insurance Commissioners, or a guide developed or approved by the commissioner, shall be provided to all prospective applicants of a long-term care insurance policy or certificate.

(a) In the case of agent solicitations, an agent must deliver the shopper's guide prior to the presentation of an application or enrollment form.

(b) In the case of direct response solicitations, the shopper's guide must be presented in conjunction with any application or enrollment form.

(2) Life insurance policies or riders that provide long-term care benefits are not required to furnish the above-referenced guide if the long term care benefits are incidental, but shall furnish the policy summary required under Subsection 31A-22-1409(8).

R590-148-17. Suitability.

(1) Every insurer shall:

(a) develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;

(b) train its agents in the use of its suitability standards; and

(c) maintain a copy of its suitability standards and make them available for inspection upon request by the commissioner.

(2)(a) To determine whether the applicant meets the standards developed by the insurer, the agent and insurer shall develop procedures that take the following into consideration:

(i) the ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;

(ii) the applicant's goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and

(iii) the values, benefits and costs of the applicant's existing insurance, if any, when compared to the values, benefits and costs of the recommended purchase or replacement.

(b) The insurer, and where an agent is involved, the agent shall make reasonable efforts to obtain the information set out in Subsection R590-148-17(2)(a). The efforts shall include presentation to the applicant, at or prior to application, the "Long-Term Care Insurance Personal Worksheet." The personal worksheet used by the insurer shall contain, at a minimum, the information in the format contained in Appendix B, in not less than 12 point type. The insurer may request the applicant to provide additional information to comply with its suitability standards. A copy of the insurer's personal worksheet shall be filed with the commissioner.

(c) A completed personal worksheet shall be returned to the insurer prior to the insurer's consideration of the applicant for coverage, except the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses.

(d) The sale or dissemination outside the company or agency by the insurer or agent of information obtained through the personal worksheet in Appendix B is prohibited.

(3) The insurer shall use the suitability standards it has developed pursuant to this section in determining whether issuing long-term care insurance coverage to an applicant is appropriate.

(4) Agents shall use the suitability standards developed by the insurer in marketing long-term care insurance.

(5) At the same time as the personal worksheet is provided to the applicant, the disclosure form entitled "Things You Should Know Before You Buy Long-Term Care Insurance" shall be provided. The form shall be in the format contained in Appendix C in not less than 12 point type.

(6) If the insurer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the insurer may reject the application. In the alternative, the insurer shall send the applicant a letter similar to Appendix D, Long-Term Care Insurance Suitability Letter. However, if the applicant has declined to provide financial information, the insurer may use some other method to verify the applicant's intent. Either the applicant's returned letter or a record of the alternative method of verification shall be made part of the applicant's file.

(7) If a long-term care insurance policy or certificate

replaces another long-term care policy or certificate, the replacing insurer shall waive any time periods applicable to preexisting conditions and probationary periods in the new long-term care policy for similar benefits to the extent that similar exclusions have been satisfied under the original policy.

R590-148-18. Marketing Standards.

(1) Every insurer shall:

(a) Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate.

(b) Establish marketing procedures to assure excessive insurance is not sold or issued.

(c) Display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy the following:

"Notice to buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."

(d) Provide copies of the disclosure forms required in Subsection R590-148-19(2) to the applicant. See Appendix B, Long-Term Care Insurance Personal Worksheet, and Appendix F, Potential Rate Increase Disclosure Form.

(e) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance and the types and amounts of this insurance, except that in the case of qualified long-term care insurance contracts, an inquiry into whether a prospective applicant or enrollee for long-term care insurance has accident and sickness insurance is not required.

(f) Every insurer or entity marketing long-term care insurance shall establish audit able procedures for verifying compliance with this Subsection R590-148-18(1).

(g) If the state in which the policy or certificate is to be delivered or issued for delivery has a senior insurance counseling program approved by the commissioner, the insurer shall, at solicitation, provide written notice to the prospective policyholder and certificateholder that the program is available and the name, address and telephone number of the program.

(h) For long-term care health insurance policies and certificates, use the terms "noncancellable" or "level premium" only when the policy or certificate conforms to Subsections R590-148-6(1)(a)(ii) and R590-148-6(6)(a).

(i) Provide an explanation of contingent benefit upon lapse provided for in Subsection R590-148-14(3)(c).

(2) In addition to the practices prohibited in Part 3, Chapter 23 of Title 31A, the following acts and practices are prohibited:

(a) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on or convert any insurance policy or to take out a policy of insurance with another insurer.

(b) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(c) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

(d) Misrepresentation. Misrepresenting a material fact in selling or offering to sell a long-term care insurance policy.

R590-148-19. Required Disclosure of Rating Practices to Consumer.

(1) This section shall apply as follows:

(a) Except as provided in Subsection R590-148-19(1)(b), this section applies to any long-term care policy or certificate issued in this state on or after January 1, 2003.

(b) For certificates issued on or after July 1, 2002, under a group long-term care insurance policy, which policy was in force at the time this rule became effective, the provisions of this section shall apply on the policy anniversary following January 1, 2003.

(2) Other than policies for which no applicable premium rate or rate schedule increases can be made, insurers shall provide all of the information listed in this subsection to the applicant at the time of application or enrollment, unless the method of application does not allow for delivery at that time. In such a case, an insurer shall provide all of the information listed in this section to the applicant no later than at the time of delivery of the policy or certificate.

(a) A statement that the policy may be subject to rate increases in the future;

(b) an explanation of potential future premium rate revisions, and the policyholder's or certificateholder's option in the event of a premium rate revision;

(c) the premium rate or rate schedules applicable to the applicant that will be in effect until a request is made for an increase;

(d) a general explanation for applying premium rate or rate schedule adjustments that shall include:

(i) a description of when premium rate or rate schedule adjustments will be effective, e.g., next anniversary date, next billing date, etc.; and

(ii) the right to a revised premium rate or rate schedule as provided in Subsection R590-148-19(2)(b) if the premium rate or rate schedule is changed.

(e)(i) Information regarding each premium rate increase on this policy form or similar policy forms over the past ten years for this state or any other state that, at a minimum, identifies:

(A) the policy forms for which premium rates have been increased;

(B) the calendar years when the form was available for purchase; and

(C) the amount, percent, and date of implementation for each increase. The percentage may be expressed as a percentage of the premium rate prior to the increase, and may also be expressed as minimum and maximum percentages if the rate increase is variable by rating characteristics.

(ii) The insurer may, in a fair manner, provide additional explanatory information related to the rate increases.

(iii) An insurer shall have the right to exclude from the disclosure premium rate increases that only apply to blocks of business acquired from other nonaffiliated insurers or the long-term care policies acquired from other nonaffiliated insurers when those increases occurred prior to the acquisition.

(iv) If an acquiring insurer files for a rate increase on a long-term care policy form acquired from nonaffiliated insurers or a block of policy forms acquired from nonaffiliated insurers on or before the effective date of this section, or the end of a 24-month period following the acquisition of the block or policies, the acquiring insurer may exclude that rate increase from the disclosure. However, the nonaffiliated selling company shall include the disclosure of that rate increase in accordance with Subsection R590-148-19(2)(e)(i).

(v) If the acquiring insurer in Subsection R590-148-19(2)(e)(iv) files for a subsequent rate increase, even within the 24-month period, on the same policy form acquired from nonaffiliated insurers or block of policy forms acquired from nonaffiliated insurers referenced in Subsection R590-148-19(2)(e)(iv), the acquiring insurer shall make all disclosures

required by Subsection R590-148-19(2)(e), including disclosure of the earlier rate increase referenced in Subsection R590-148-19(2)(e)(iv).

(3) An applicant shall sign an acknowledgment at the time of application, unless the method of application does not allow for signature at that time, that the insurer made the disclosure required under Subsections R590-148-19(2)(a) and (e). If due to the method of application the applicant cannot sign an acknowledgment at the time of application, the applicant shall sign no later than at the time of delivery of the policy or certificate.

(4) An insurer shall use the forms in Appendix B, Personal Worksheet, and Appendix F, Potential Rate Increase Disclosure Form, to comply with the requirements of Subsections R590-148-19(1) and (2).

(5) An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificateholders, if applicable, at least 45 days prior to the implementation of the premium rate schedule increase by the insurer. The notice shall include the information required by Subsection R590-148-19(2) when the rate increase is implemented.

R590-148-20. Filing Requirements.

(1) Prior to an insurer or similar organization offering group long-term care insurance to a resident of this state pursuant to Section 31A-22-1403, it shall file with the commissioner evidence that the group policy or certificate thereunder has been approved by a state having statutory or regulatory long-term care insurance requirements substantially similar to those adopted in this state.

(2)(a) Every insurer shall provide a copy of any long-term care insurance advertisement intended for use in Utah whether through written, radio or television medium to the insurance commissioner of this state upon request.

(b) All advertisements shall be retained by the insurer, health care service plan or other entity for at least three years from the date the advertisement was first used.

(c) The commissioner may exempt from these requirements any advertising form or material when, in the commissioner's opinion, this requirement may not be reasonably applied.

R590-148-21. Initial Filing Requirements.

(1) This section shall apply to any long-term care policy issued in this state on or after January 1, 2003.

(2) An insurer shall file the information listed in this subsection to the commissioner prior to making a long-term care insurance form available for sale:

(a) a copy of the disclosure documents required in Section R590-148-19; and

(b) an actuarial certification consisting of at least the following:

(i) a statement that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;

(ii) a statement that the policy design and coverage provided have been reviewed and taken into consideration;

(iii) a statement that the underwriting and claims adjudication processes have been reviewed and taken into consideration;

(iv) a complete description of the basis for contract reserves that are anticipated to be held under the form, to include:

(A) sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held;

(B) a statement that the assumptions used for reserves contain reasonable margins for adverse experience;

(C) a statement that the net valuation premium for renewal years does not increase, except for attained-age rating where permitted; and

(D) a statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if such a statement cannot be made, a complete description of the situations where this does not occur;

(I) an aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship; and

(II) if the gross premiums for certain age groups appear to be inconsistent with this requirement, the commissioner may request a demonstration under Subsection R590-148-21(3) based on a standard age distribution;

(v)(A) A statement that the premium rate schedule is not less than the premium rate schedule for existing similar policy forms also available from the insurer except for reasonable differences attributable to benefits; or

(B) A comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences.

(3) The commissioner may request an actuarial demonstration that benefits are reasonable in relation to premiums. The actuarial demonstration shall include either premium and claim experience on similar policy forms, adjusted for any premium or benefit differences, relevant and credible data from other studies, or both.

(4) The premiums charged to an insured for long-term care insurance may not increase due to either:

(a) the increasing age of the insured at ages beyond 65; or

(b) the duration the insured has been covered under the policy.

R590-148-22. Loss Ratio.

(1) This section shall apply to all individual long-term care insurance except those covered in Sections R590-148-22 and R590-148-24.

(2) Benefits under individual long-term care insurance policies shall be deemed reasonable in relation to premiums provided the expected loss ratio is at least 60%, calculated in a manner which provides for adequate reserving of the long-term care insurance risk.

(3) In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including:

(a) statistical credibility of incurred claims experience and earned premiums;

(b) the period for which rates are computed to provide coverage;

(c) experienced and projected trends;

(d) concentration of experience within early policy duration;

(e) expected claim fluctuation;

(f) experience refunds, adjustments or dividends;

(g) renewability features;

(h) all appropriate expense factors;

(i) interest;

(j) experimental nature of the coverage;

(k) policy reserves;

(l) mix of business by risk classification; and

(m) product features such as long elimination periods, high deductibles and high maximum limits.

(4) The premiums charged to an insured for long-term care insurance may not increase due to either:

(a) the increasing age of the insured at ages beyond 65; or

(b) the duration the insured has been covered under the policy.

(5) Rate filings documents must contain all information required in R590-85-4.

R590-148-23. Reserve Standards.

(1) When long-term care benefits are provided through the acceleration of benefits under group or individual life policies or riders to these policies, policy reserves for these benefits shall be determined in accordance with Subsection 31A-17-504(7). Claim reserves must also be established when the policy or rider is in claim status.

Reserves for policies and riders subject to this subsection should be based on the multiple decrement model utilizing all relevant decrements except for voluntary termination rates. Single decrement approximations are acceptable if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial. The calculations may take into account the reduction in life insurance benefits due to the payment of long-term care benefits. However, in no event may the reserves for the long-term care benefit and the life insurance benefit be less than the reserves for the life insurance benefit assuming no long-term care benefit.

In the development and calculation of reserves for policies and riders subject to this subsection, due regard shall be given to the applicable policy provisions, marketing methods, administrative procedures and all other considerations which have an impact on projected claim costs, including, but not limited to, the following:

(a) definition of insured events;
(b) covered long-term care facilities;
(c) existence of home convalescence care coverage;
(d) definition of facilities;
(e) existence or absence of barriers to eligibility;
(f) premium waiver provision;
(g) renewability;
(h) ability to raise premiums;
(i) marketing method;
(j) underwriting procedures;
(k) claims adjustment procedures;
(l) waiting period;
(m) maximum benefit
(n) availability of eligible facilities;
(o) margins in claim costs;
(p) optional nature of benefit;
(q) delay in eligibility for benefit;
(r) inflation protection provisions; and
(s) guaranteed insurability option.

Any applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries.

(2) When long-term care benefits are provided other than as in Subsection R590-148-23(1), reserves shall be determined in accordance with Minimum Reserve Standards for Individual and Group Health Insurance Contracts, Appendix A-010, Accounting Practices and Procedures Manual, edition March 2001, published by the National Association of Insurance Commissioners.

R590-148-24. Premium Rate Schedule Increases.

(1) This section shall apply as follows:

(a) except as provided in Subsection R590-148-24(1)(b), this section applies to any long-term care policy or certificate issued in this state on or after January 1, 2003.

(b) for certificates issued on or after July 1, 2002, under a group long-term care insurance policy, which policy was in force at the time this rule became effective, the provisions of this section shall apply on the policy anniversary following January 1, 2003.

(2) An insurer shall file notice of a pending premium rate schedule increase, including an exceptional increase, to the commissioner prior to the notice to the policyholders and shall include:

(a) information required by Section R590-148-19;

(b) certification by a qualified actuary that:

(i) if the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated;

(ii) the premium rate filing is in compliance with the provisions of this section;

(c) an actuarial memorandum justifying the rate schedule change request that includes:

(i) lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase; and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale:

(A) annual values for the five years preceding and the three years following the valuation date shall be provided separately;

(B) the projections shall include the development of the lifetime loss ratio, unless the rate increase is an exceptional increase;

(C) the projections shall demonstrate compliance with Subsection R590-148-24(3); and

(D) for exceptional increases:

(I) the projected experience should be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and

(II) in the event the commissioner determines as provided in Section R590-148-5(2)(j)(iv) that offsets may exist, the insurer shall use appropriate net projected experience;

(ii) disclosure of how reserves have been incorporated in this rate increase whenever the rate increase will trigger contingent benefit upon lapse;

(iii) disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and what other actions taken by the company have been relied on by the actuary;

(iv) a statement that policy design, underwriting and claims adjudication practices have been taken into consideration; and

(v) in the event that it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase, the insurer will need to file composite rates reflecting projections of new certificates;

(d) a statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification is provided to the commissioner; and

(e) sufficient information for review of the premium rate schedule increase by the commissioner.

(3) All premium rate schedule increases shall be determined in accordance with the following requirements:

(a) exceptional increases shall provide that at least 70% of the present value of projected additional premiums from the exceptional increase will be returned to policyholders in benefits;

(b) premium rate schedule increases shall be calculated such that the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the sum of the following:

(i) the accumulated value of the initial earned premium times 58%;

(ii) 85% percent of the accumulated value of prior premium rate schedule increases on an earned basis;

(iii) the present value of future projected initial earned premiums times 58%; and

(iv) 85% percent of the present value of future projected premiums not in Subsection R590-148-24(3)(b)(iii) on an earned basis;

(c) in the event that a policy form has both exceptional and other increases, the values in Subsections R590-148-24(3)(b)(ii) and (iv) will also include 70% for exceptional rate increase amounts; and

(d) all present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves which is the maximum rate permitted by law in the valuation of whole life insurance issued on the same date as the health insurance contract. The actuary shall disclose as part of the actuarial memorandum, the use of any appropriate averages.

(4) For each rate increase that is implemented, the insurer shall file for review by the commissioner updated projections, as defined in Subsection R590-148-24(2)(c)(i), annually for the next three years and include a comparison of actual results to projected values. The commissioner may extend the period to greater than three years if actual results are not consistent with projected values from prior projections. For group insurance policies that meet the conditions in Subsection R590-148-24(11), the projections required by this subsection shall be provided to the policyholder in lieu of filing with the commissioner.

(5) If any premium rate in the revised premium rate schedule is greater than 200% of the comparable rate in the initial premium schedule, lifetime projections, as defined in Subsection R590-148-24(2)(c)(i), shall be filed for review by the commissioner every five years following the end of the required period in Subsection R590-148-24(4). For group insurance policies that meet the conditions in Subsection R590-148-24(11), the projections required by this subsection shall be provided to the policyholder in lieu of filing with the commissioner.

(6)(a) If the commissioner has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in Subsection R590-148-24(3), the commissioner may require the insurer to implement any of the following:

(i) premium rate schedule adjustments; or

(ii) other measures to reduce the difference between the projected and actual experience.

(b) In determining whether the actual experience adequately matches the projected experience, consideration should be given to Subsection R590-148-24(2)(c)(v), if applicable.

(7) If the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse, the insurer shall file:

(a) a plan, subject to commissioner approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form requiring further premium rate schedule increases, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect; otherwise the commissioner may impose the condition in Subsection R590-148-24(8); and

(b) the original anticipated lifetime loss ratio, and the premium rate schedule increase that would have been calculated according to Subsection R590-148-24(3) had the greater of the original anticipated lifetime loss ratio or 58% been used in the calculations described in Subsection R590-148-24(3)(a)(i) and (iii).

(8) (a) For a rate increase filing that meets the following criteria, the commissioner shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the 12 months following each increase to determine if significant adverse lapsation has occurred or is anticipated:

(i) the rate increase is not the first rate increase requested for the specific policy form or forms;

(ii) the rate increase is not an exceptional increase; and

(iii) the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse.

(b) In the event significant adverse lapsation has occurred, is anticipated in the filing or is evidenced in the actual results as presented in the updated projections provided by the insurer following the requested rate increase, the commissioner may determine that a rate spiral exists. Following the determination that a rate spiral exists, the commissioner may require the insurer to offer, without underwriting, to all in force insureds subject to the rate increase the option to replace existing coverage with one or more reasonably comparable products being offered by the insurer or its affiliates.

(i) The offer shall:

(A) be subject to the approval of the commissioner;

(B) be based on actuarially sound principles, but not be based on attained age; and

(C) provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy.

(ii) The insurer shall maintain the experience of all the replacement insureds separate from the experience of insureds originally issued the policy forms. In the event of a request for a rate increase on the policy form, the rate increase shall be limited to the lesser of:

(A) the maximum rate increase determined based on the combined experience; and

(B) the maximum rate increase determined based only on the experience of the insureds originally issued the form plus 10%.

(9) If the commissioner determines that the insurer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance, the commissioner may, in addition to the provisions of Subsection R590-148-24(8), prohibit the insurer from either of the following:

(a) filing and marketing comparable coverage for a period of up to five years; or

(b) offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

(10) Subsections R590-148-24(1) through (9) shall not apply to policies for which the long-term care benefits provided by the policy are incidental, as defined in Subsection R590-148-5(2)(m), if the policy complies with all of the following provisions:

(a) the interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;

(b) the portion of the policy that provides insurance benefits other than long-term care coverage meets the nonforfeiture requirements as applicable in any of the following:

(i) Section 31A-22-408; and

(ii) Section 31A-22-409;

(c) the policy meets the disclosure requirements of Subsections 31A-22-1409(7) and (8) and 31A-22-1410;

(d) the portion of the policy that provides insurance benefits other than long-term care coverage meets the requirements as applicable in the following:

(i) policy illustrations as required by R590-177; and

(ii) disclosure requirements in R590-133;

(e) an actuarial memorandum is filed with the insurance department that includes:

(i) a description of the basis on which the long-term care rates were determined;

(ii) a description of the basis for the reserves;

(iii) a summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;

(iv) a description and a table of each actuarial assumption used. For expenses, an insurer must include percent of premium dollars per policy and dollars per unit of benefits, if any;

(v) a description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

(vi) the estimated average annual premium per policy and the average issue age;

(vii) a statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and

(viii) a description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.

(11) Subsections R590-148-24(6) and (8) shall not apply to group insurance policies where:

(a) the policies insure 250 or more persons and the policyholder has 5,000 or more eligible employees of a single employer; or

(b) the policyholder, and not the certificateholders, pays a material portion of the premium, which shall not be less than 20% of the total premium for the group in the calendar year prior to the year a rate increase is filed.

R590-148-25. Reporting Requirements.

(1) Every insurer shall maintain records for each agent of that agent's amount of replacement sales as a percent of the agent's total annual sales and the amount of lapses of long-term care insurance policies sold by the agent as a percent of the agent's total annual sales.

(a) Every insurer shall report the 10% of its agents with the greatest percentages of lapses and replacements as measured by Subsection R590-148-25(1).

(b) Every insurer shall report the number of lapsed policies as a percent of its total annual sales and as a percent of its total number of policies in force as of the end of the preceding calendar year.

(c) Every insurer shall report the number of replacement policies sold as a percent of its total annual sales and as a percent of its total number of policies in force as of the preceding calendar year.

(d) The reports required by Subsection R590-148-25(1)(a),(b), and (c) must be reported on the "Replacement and Lapse Reporting Form," Appendix G.

(e) Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance.

(2) Every insurer shall report, for qualified long-term care insurance contracts, the number of claims denied for each class of business, expressed as a percentage of claims denied. The report used by the insurer shall contain, at a minimum, the information in the format contained in Appendix E, Claims Denial Reporting Form Long-Term Care Insurance, in not less than 12 point type.

(3) Every insurer shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those which the insured voluntarily effectuated and shall annually report this information in the format currently prescribed by the National Association of Insurance Commissioners.

(4) Every insurer shall report the total number of applications received from residents of this state, the number of those who declined to provide information on the personal worksheet, the number of applicants who did not meet the suitability standards, and the number of those who chose to confirm after receiving a suitability letter. The report must be submitted on the Suitability Reporting Form, Appendix H.

(5) For purposes of this section:

(a) "policy" shall mean only long-term care insurance;

(b) "claim" means a request for payment of benefits under an in force policy regardless of whether the benefit claimed is covered under the policy or any terms or conditions of the policy have been met;

(c) "denied" means that the insurer refuses to pay a claim for any reason other than for claims not paid for failure to meet the waiting period or because of an applicable preexisting condition; and

(d) "report" means on a statewide basis.

(6) Reports required under this section shall be filed with the commissioner annually on or before June 30. All reports must be submitted in compliance with Rule R590-220-13, Submission of Accident and Health Insurance Filings: Additional Procedures for Long Term Products.

R590-148-26. Licensing.

A producer is not authorized to sell, solicit or negotiate with respect to long-term care insurance except as authorized by Chapter 23 of Title 31A.

R590-148-27. Discretionary Powers of Commissioner.

The commissioner may upon written request and after an administrative hearing, issue an order to modify or suspend a specific provision or provisions of this rule with respect to a specific long-term care insurance policy or certificate upon a written finding that:

(1) the modification or suspension would be in the best interest of the insured; and

(2) the purposes to be achieved could not be effectively or efficiently achieved without the modification or suspension; and

(3) one of the following occur:

(a) the modification or suspension is necessary to the development of an innovative and reasonable approach for insuring long-term care;

(b) the policy or certificate is to be issued to residents of a life care or continuing care retirement community or some other residential community for the elderly and the modification or suspension is reasonably related to the special needs or nature of the community; or

(c) the modification or suspension is necessary to permit long-term care insurance to be sold as part of, or in conjunction with, another insurance product.

R590-148-28. Penalties.

In addition to any other penalties provided by the laws of this state any insurer and any agent found to have violated any requirement of this state relating to the rule of long-term care insurance or the marketing of this insurance shall be subject to a fine of up to three times the amount of any commissions paid for each policy involved in the violation or up to $10,000, whichever is greater.

R590-148-29. Enforcement Date.

Effective July 1, 2002, the department will enforce all sections of the rule that do not have a different compliance date.

R590-148-30. 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 and the provisions of this rule are declared to be severable.

KEY: insurance
July 30, 2007 31A-2-201
Notice of Continuation July 25, 2007 31A-22-1404

R590. Insurance, Administration.
R590-151. Records Access Rule.
R590-151-1. Authority.

This rule is adopted pursuant to the provisions of Chapter 2, Title 63, the Government Records Access and Management Act (GRAMA), specifically Subsections 63-2-204(2), and 63-2-904(2).

R590-151-2. Purposes.

The purposes of this rule are to define how record requests are to be made to the Insurance Department, to designate the person who shall fulfill various functions pursuant to the requirements of GRAMA, and to define how an individual may contest the accuracy and completeness of records concerning that individual which are maintained by the department.

R590-151-3. Rule.

A. Making a Request for Access to Records.

(1) All record requests made under the provisions of GRAMA shall be made in writing and shall comply with the requirements of Subsection 63-2-204(1), and shall be directed to the Records Officer, Utah Department of Insurance, State Office Building, Room 3110, Salt Lake City, Utah, 84114.

(2) The department's response may be delayed if a submitted request does not comply with the requirements of Subsection (1).

(3) The department may, at its discretion, waive the requirement for a written request if the records requested are public and readily accessible, or for other good cause shown.

B. Appeals From Initial Decisions.

All appeals from an initial decision by the department, which denies access to a record, shall be addressed to the insurance commissioner and shall conform to the requirements of Section 63-2-401. The authority to order disclosure or nondisclosure is delegated to the head of the division which maintains the record or to any other person the commissioner may designate from time to time.

C. Contesting Accuracy or Completeness of a Record.

(1) Any request pursuant to Subsection 63-2-603(2) shall be directed to the records officer.

(2) Consideration of the request shall be conducted as an informal adjudicative proceeding unless converted to a formal adjudicative proceeding by the presiding officer.

(3) A request to amend findings of fact in any administrative proceeding where the time for appeal has expired shall be denied. These types of records shall be maintained in their original form to protect the public interest and the integrity of the Administrative Records. Section 63-2-603, may not apply.

R590-151-5. Severability.

If any provision or clause of this rule or the application of it to any person is for any reason held to be invalid, the remainder of the rule and the application of any provisions to other persons or circumstances may not be affected.

KEY: insurance

1994	**63-2-204**
Notice of Continuation July 25, 2007	**63-2-904**

R590. Insurance, Administration.
R590-220. Submission of Accident and Health Insurance Filings.
R590-220-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Section 31A-2-201.1 and Subsections 31A-2-201(3), 31A-2-202(2), 31A-22-605(4), 31A-22-620(3)(f), and 31A-30-106(1)(i) and (k).

R590-220-2. Purpose and Scope.

(1) The purpose of this rule is to set forth procedures for submitting:

(a) accident and health filings required by Section 31A-21-201;

(b) individual accident and health filings in accordance with Section 31A-22-605 and Rule R590-85;

(c) Medicare supplement filings in accordance with Sections 31A-22-605 and 31A-22-620, and Rules R590-85 and R590-146;

(d) long term care filings required by Section 31A-22-1404 and Rule R590-148;

(e) basic health care plan filings required by Section 31A-22-613.5 and Rule R590-175; and

(f) health benefit plan filings required by Chapter 31A-30 and Rule R590-167.

(2) This rule applies to:

(a) all types of accident and health insurance products; and

(b) group accident and health contracts issued to nonresident policyholders, including trusts, when Utah residents are provided coverage by certificates of insurance.

R590-220-3. Documents Incorporated by Reference.

(1) The department requires that the documents described in this rule shall be used for all filings. Actual copies may be used or you may adapt them to your word processing system. If adapted, the content, size, font, and format must be similar.

(2) The following filing documents are hereby incorporated by reference and are available on the department's web site, www.insurance.utah.gov:

(a) "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document," dated March 1, 2007;

(b) "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document (Instructions)," dated March 1, 2007;

(c) "NAIC Uniform Life, Accident and Health, Annuity and Credit Coding Matrix," dated March 1, 2007;

(d) "Utah Accident and Health Insurance Filing Certification," dated July 1, 2007;

(e) "Utah Accident and Health Insurance Group Questionnaire," dated July 1, 2007; and

(f) "Utah Accident and Health Insurance Request for Discretionary Group Authorization," dated July 1, 2007.

R590-220-4. Definitions.

In addition to the definitions in Sections 31A-1-301 and 31A-30-103, the following definitions shall apply for the purposes of this rule.

(1) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.

(2) "Discretionary group" means a group that has been specifically authorized by the commissioner under Subsection 31A-22-701(1)(b).

(3) "Electronic filing" means a:

(a) filing submitted via the Internet by using the System for Electronic Rate and Form Filings, SERFF, system; or

(b) filing submitted via the Internet by using the Sircon system.

(4) "Eligible group" means a group that meets the definition in Subsection 31A-22-701(1)(a).

(5) "File And Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

(6) "File Before Use" means a filing can be used, sold, or offered for sale after it has been filed with the department and a stated period of time has elapsed from the date filed.

(7) "File For Acceptance" means a filing can be used, sold, or offered for sale after it has been filed and the filer has received written confirmation that the filing was accepted.

(8) "File for Approval" means a filing can be used, sold, or offered for sale after it has been filed and the filer has received written confirmation that the filing was approved.

(9) "Filer" means a person or entity who submits a filing.

(10) "Filing," when used as a noun, means an item required to be filed with the department including:

(a) a policy;
(b) a rate, rate manual, or rate methodologies;
(c) a form;
(d) a document;
(e) a plan;
(f) a manual;
(g) an application;
(h) a report;
(i) a certificate;
(j) an endorsement;
(k) an actuarial memorandum, demonstration, and certification;
(l) a licensee annual statement;
(m) a licensee renewal application; or
(n) an advertisement.

(11) "Filing Objection Letter" means a letter issued by the commissioner when a review has determined the filing fails to comply with Utah law and rules. The filing objection letter, in addition to requiring correction of non-compliant items, may request clarification or additional information pertaining to the filing.

(12) "Filing status information" means a list of the states to which the filing was submitted, the date submitted, and the states' actions, including their responses.

(13) "Letter of authorization" means a letter signed by an officer of the insurer on whose behalf the filing is submitted that designates filing authority to the filer.

(14) "Market type" means the type of policy that indicates the targeted market such as individual or group.

(15) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.

(16) "Rating methodology change" for the purpose of a health benefit plan means a:

(a) change in the number of case characteristics used by a covered carrier to determine premium rates for health benefit plans in a class of business;

(b) change in the manner or procedures by which insureds are assigned into categories for the purpose of applying a case characteristic to determine premium rates for health benefit plans in a class of business;

(c) change in the method of allocating expenses among health benefit plans in a class of business; or

(d) change in a rating factor, with respect to any case characteristic, if the change would produce a change in premium for any individual or small employer that exceeds 10%. A change in a rating factor shall mean the cumulative change with respect to such factor considered over a 12-month period. If a covered carrier changes rating factors with respect to more than one case characteristic in a 12-month period, the carrier shall consider the cumulative effect of all such changes in applying the 10% test.

(17) "Rejected" means a filing is:

(a) not submitted in accordance with Utah laws and rules;

(b) returned to the filer by the department with the reasons for rejection; and

(c) not considered filed with the department.

(18) "Type of insurance" means a specific accident and health product including dental, health benefit plan, long-term care, Medicare supplement, income replacement, specified disease, or vision.

(19) "Utah Filed Date" means the date provided to a filer by the Utah Insurance Department, that indicates a filing has been accepted pursuant to Subsections 4, 5, 6 or 7.

R590-220-5. General Filing Information.

(1) Each filing submitted must be accurate, consistent, complete and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

(2) An insurer and filer are responsible for assuring that a filing is in compliance with Utah laws and rules. A filing not in compliance with Utah laws and rules is subject to regulatory action under Section 31A-2-308.

(3) A filing that does not comply with this rule will be rejected and returned to the filer. A rejected filing:

(a) is not considered filed with the department;

(b) must be submitted as a new filing; and

(c) will not be reopened for purposes of resubmission.

(4) A prior filing will not be researched to determine the purpose of the current filing.

(5) The department does not review or proofread every filing.

(a) A filing may be reviewed:

(i) when submitted;

(ii) as a result of a complaint;

(iii) during a regulatory examination or investigation; or

(iv) at any other time the department deems necessary.

(b) If a filing is reviewed and is not in compliance with Utah laws and rules, a Filing Objection Letter or an Order To Prohibit Use will be issued to the filer. The commissioner may require the filer to disclose deficiencies in forms or rating practices to affected insureds.

(6) Filing correction.

(a) Filing corrections are considered informational.

(b) Filing corrections must be submitted within 15 days of the date the original filing was submitted to the department. The filer must reference the original filing.

(c) A new filing is required if a filing correction is made more than 15 days after the date the original filing was submitted to the department. The filer must reference the original filing.

(7) If responding to a Filing Objection Letter or an Order to Prohibit Use, refer to R590-220-15 for instructions.

(8) Filing withdrawal. A filer must notify the department when withdrawing a previously filed form, rate, or supplementary information.

R590-220-6. Filing Submission Requirements.

(1) All filings must be submitted as an electronic filing.

(2) A filing must be submitted by market type and type of insurance.

(3) A filing may not include more than one type of insurance, or request filing for more than one insurer.

(4) SERFF Filings.

(a) Filing Description. Do not submit a cover letter. On the general information tab, complete the Filing Description section with the following information, presented in the order shown below.

(i) Provide a description of the filing.

(ii) Indicate if the filing:

(A) is new;

(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and the previous filing's Utah Filed Date;

(C) includes forms for informational purposes; if so, provide the Utah Filed Date; or

(D) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.

(iii) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(iv) Explain any change in benefits or premiums that may occur while the contract is in force.

(v) List the issue ages, which means the range of minimum and maximum ages for which a policy will be issued.

(b) Certification. The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules. The Utah Accident and Health Insurance Filing Certification must be properly completed, signed, and attached to the supporting documentation tab. A false certification may subject the insurer or filer to administrative action.

(c) Domiciliary Approval and Filing Status Information. All filings for a foreign insurer must include on the supporting documentation tab:

(i) copy of domicile approval for the exact same filing;

(ii) filing status information which includes:

(A) a list of the states to which the filing was submitted;

(B) the date submitted; and

(C) summary of the states' actions and their responses; or

(iii) if the filing is specific to Utah and only filed in Utah, then state, "UTAH SPECIFIC - NOT SUBMITTED TO ANY OTHER STATE."

(d) Group Questionnaire or Discretionary Group Authorization Letter. A group filing must attach to the supporting documentation tab either a:

(i) signed and fully completed Utah Accident and Health Insurance Group Questionnaire; or

(ii) copy of the Utah Accident and Health Insurance Discretionary Group Authorization letter.

(e) Letter of Authorization.

(i) When the filer is not the insurer, a letter of authorization from the insurer must be attached to the supplementary documentation tab.

(ii) The insurer remains responsible for the filing being in compliance with Utah laws and rules.

(f) Items being submitted for filing.

(i) Any forms must be attached to the form schedule tab.

(ii) Any rating documentation, including actuarial memorandums and rate schedules, must be attached to the rate/rule schedule.

(5) Sircon Filings.

(a) Transmittal. The NAIC Life, Accident and Health, Annuity, Credit Transmittal Document, as provided in R590-220-3, must be properly completed.

(i) Complete the transmittal by using the following:

(A) NAIC Life, Accident and Health, Annuity, Credit Transmittal Document (Instructions); and

(B) NAIC Uniform Life, Accident and Health, Annuity and Credit Coding Matrix.

(ii) Do not submit the document described in sections (a)(i)(A) and (B) with the filing.

(b) Filing Description. Do not submit a cover letter. In Section 15 of the transmittal, complete the Filing Description with the following information presented in the order shown below.

(i) Provide a description of the filing.

(ii) Indicate if the filing:

(A) is new;

(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and the previous filing's Utah Filed Date;

(C) includes forms for informational purposes; if so, provide the Utah Filed Date; or

(D) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.

(iii) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(iv) Explain any change in benefits or premiums that may occur while the contract is in force.

(v) List the issue ages, which means the range of minimum and maximum ages for which a policy will be issued.

(c) Certification. The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules. The Utah Accident and Health Insurance Filing Certification must be properly completed and signed. A false certification may subject the insurer or filer to administrative action.

(d) Domiciliary Approval and Filing Status Information. All filings for a foreign insurer must include:

(i)copy of domicile approval for the exact same filing;

(ii) filing status information which includes:

(A) a list of the states to which the filing was submitted;

(B) the date submitted; and

(C) summary of the states' actions and their responses; or

(iii) if the filing is specific to Utah and only filed in Utah, then section 14 of the transmittal must be completed stating, "UTAH SPECIFIC - NOT SUBMITTED TO ANY OTHER STATE."

(e) Group Questionnaire or Discretionary Group Authorization Letter. A group filing must attach either a:

(i) signed and fully completed Utah Accident and Health Insurance Group Questionnaire; or

(ii) copy of the Utah Accident and Health Insurance Discretionary Group Authorization letter.

(f) Letter of Authorization.

(i) When the filer is not the insurer, a letter of authorization from the insurer must be included.

(ii) The insurer remains responsible for the filing being in compliance with Utah laws and rules.

(g) Items being submitted for filing. Any form or rate items submitted for filing must be attached to the product forms tab.

(6) Refer to each applicable section of this rule for additional procedures on how to submit forms, rates, and reports.

R590-220-7. Procedures for Form Filings.

(1) Forms in General.

(a) Forms are File and Use filings.

(b) Each form must be identified by a unique form number. The form number may not be variable.

(c) A form must be in final printed form or printer's proof format. A draft may not be submitted.

(d) Specific sections may be filed with variable data by placing brackets around affected information. Variable data must be identified within the specific section, or on a separate sheet included with the submission.

(e) Blank spaces within the forms must be completed in John Doe fashion to accurately represent the intended market, purpose, and use.

(2) Application Filing.

(a) Each application or enrollment form may be submitted as a separate filing or may be filed with its related policy or certificate filing.

(b) If an application has been previously filed or is filed separately, an informational copy of the application must be included with the policy or certificate filing.

(3) Policy Filing.

(a) Each type of insurance must be filed separately.

(b) A policy filing consists of one policy form, including its related forms, such as outline of coverage, certificate, or endorsement, and an actuarial memorandum.

(c) Only one policy filing for a single type of insurance may be filed, except as stated in subsection (d).

(d) A Medicare supplement filing may include more than one policy filing but each filing is limited to only one of each of the Medicare supplement plans A through L.

(4) Endorsement Only Filing.

(a) Up to three related endorsements may be filed together.

(b) A single endorsement that affects multiple forms may be filed if the Filing Description references all affected forms.

(c) The filing must include:

(i) A listing of all base policy form numbers, title and Utah Filed Dates; and

(ii) a description of how each filed endorsement affects the base policy.

(d) Unrelated endorsements may not be filed together.

(5) Outline of Coverage. If an outline of coverage is required to be issued with a policy or an endorsement, the outline of coverage must be filed when the policy or endorsement is filed.

R590-220-8. Additional Procedures for Individual Accident and Health Market Filings.

(1) This section does not apply to filings for individual health benefit plans that are subject to 31A-30 and Rule R590-167. Individual health benefit plan filings are discussed in R590-220-10.

(2) Rate and rate documentation filings.

(a) Rates and rate documentation submitted with a new form filing are a File and Use filing.

(b) A rate revision filing is a File for Acceptance filing.

(3) A filer submitting an individual accident and health filing is advised to review Chapter 31A-22 Part 6, and Rules R590-85, R590-126, and R590-131.

(4) Every individual accident and health policy, or endorsement affecting benefits shall be accompanied by a rate filing with an actuarial memorandum signed by a qualified actuary.

(a) A rate filing need not be submitted if the filing does not require a change in premiums, however the reason why there is not a change in premium must be explained in the Filing Description.

(b) Rates must be filed in accordance with the requirements of Section 31A-22-602, Rule R590-85, and this rule.

(5) A filer submitting a long term care filing, including an endorsement attached to a life insurance policy, is advised to review Chapter 31A-22 Part 1401-1414, Rule R590-148, and Rule R590-220-12 and 13.

(6) A filer submitting a Medicare supplement filing is advised to review Section 31A-22-620, Rule R590-146, and R590-220-11.

R590-220-9. Additional Procedures for Group Market Form Filings.

A filer submitting a group accident and health filing is advised to review 31A-8, 31A-22 Parts VI and VII, 31A-30, Rules R590-76, R590-126, R590-131, R590-146, R590-148, and R590-233. A filer submitting a group health benefit plan filing should also review R590-220-10 in addition to this section.

(1) Determine whether the group is an eligible group or a discretionary group.

(2) Eligible Group. A filing for an eligible group must include a completed Utah Accident and Health Insurance Group

Questionnaire.

(a) A questionnaire must be completed for each eligible group under Sections 31A-22-503 through 507.

(b) When a filing applies to multiple employee-employer groups under Section 31A-22-502, only one questionnaire is required to be completed.

(3) Discretionary Group. If the group is not an eligible group, then specific discretionary group authorization must be obtained prior to filing.

(a) To obtain discretionary group authorization a Utah Accident and Health Insurance Request for Discretionary Group Authorization must be submitted and include all required information.

(b) Evidence or proof of the following items are some factors considered in determining acceptability of a discretionary group:

(i) the existence of a verifiable group;

(ii) that granting permission is not contrary to public policy;

(iii) the proposed group would be actuarially sound;

(iv) the group would result in economies of acquisition and administration which justify a group rate; and

(v) the group would not present hazards of adverse selection.

(c) A discretionary group filing that does not provide authorization documentation will be rejected.

(d) A change to an authorized discretionary group, such as change of name, trustee or domicile state, must be submitted to the department within 30 days of the change.

(e) Adding additional types of insurance products to be offered, requires that the discretionary group be reauthorized. The discretionary group authorization will specify the types of products that a discretionary group may offer.

(f) The commissioner may periodically re-evaluate the group's authorization.

(4) A filer may not submit a rate or form filing prior to receiving discretionary group authorization. If a rate or form filing is submitted without discretionary group authorization, the filing will be rejected.

(5) A filer submitting a long-term care filing, including a long-term care endorsement attached to a life insurance policy, is advised to review Chapter 31A-22 Part 1401-1414, Rule R590-148, and Sections 12 and 13 of this rule.

(6) A filer submitting a Medicare supplement filing is advised to review Section 31A-22-620, Rule R590-146, and R590-220-11.

R590-220-10. Additional Procedures for Individual, Small Employer, and Group Health Benefit Plan Filings.

This section contains instructions for filings subject to 31A-30. A filer submitting health benefit plan filings that are subject to 31A-30 is advised to review 31A-8, Chapter 31A-22 Parts 6 and 7, Chapter 31A-30, Rules R590-76, R590-131, R590-167, R590-175, R590-176, and R590-233.

(1) General requirements.

(a) Letter of Intent. A filing must include a copy of the letter filed with the commissioner declaring the carrier's intention as required by R590-167-10.

(b) Class of Business. The Filing Description must describe the class of business, as provided in Section 31A-30-105.

(c) Rate Manual. A health benefit plan form filing must include a rate manual. If the rate manual was previously filed, provide documentation indicating the department's receipt.

(2) Rate Manual Filing.

(a) A rate manual that does not request a change in rating methodology is a File Before Use filing.

(b) A change in rating methodology filing is a File for Approval filing.

(c) A new and revised rate manual must:

(i) include an actuarial certification signed by a qualified actuary;

(ii) be filed 30 days prior to use;

(iii) list the case characteristics and rate factors to be used;

(iv) be applied in the same manner for all health benefit plans in a class;

(v) contain specific area factor and industry factors applicable in Utah;

(vi) the method of calculating the risk load, including the method used to determine any experience factors; and

(vii) how the overall rate is reviewed for compliance with the rate restrictions.

(d) Any case characteristic not listed in Subsection 31A-30-106(1)(h) requires prior approval of the commissioner.

(3) Health Benefit Plan Reports.

(a) Actuarial Certification.

(i) All individual and small employer carriers must file an actuarial certification as described in Section 31A-30-106 and Rule R590-167-11(1)(a).

(ii) The report is due April 1 each year.

(b) Small Employer Index Rates Report.

All small employer carriers must file their index rates as of January 1 of the current year and preceding year, as required by Subsection 31A-29-117(2).

(i) The report must include:

(A) the actual index rates; and

(B) calculate the percentage change in these rates between the two years.

(ii) The report is due February 1 each year.

(c) Each report must be filed separately and be properly identified.

R590-220-11. Additional Procedures for Medicare Supplement Filings.

A filer submitting Medicare supplement filings is advised to review Section 31A-22-620 and Rule R590-146. A Medicare supplement form filing that affects rates must be filed with all required rating documentation.

(1) An insurer must file its Medicare Supplement Buyers Guide.

(2) Rates.

(a) Rates and rate documentation submitted with a new form filing are a File and Use filing.

(b) A rate revision filing is a File for Acceptance filing.

(c) Medicare supplement rates must comply with Section 31A-22-602, Rules R590-146 and R590-85.

(d) An insurer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed.

(e) A rate revision request may not be used to satisfy the annual filing requirements of Rule R590-146-14.C.

(3) Annual Medicare Supplement Reports.

(a) Medicare supplement reports are File and Use filings.

(b) Reports are due May 31 each year.

(c) Report of Multiple Policies.

(i) As required by R590-146-22, an issuer of Medicare supplement policies shall annually submit a report of multiple policies the insurer has issued to a single insured.

(ii) The report is required each year listing each insured with multiple policies or stating that no multiple policies were issued.

(d) Annual Filing of Rates and Supporting Documentation.

(i) An issuer of Medicare supplement policies and certificates shall file annually its rates, rating schedule and supporting documentation, including ratios of incurred losses to earned premiums by policy duration, in accordance with R590-146-14.C.

(ii) The NAIC Medicare Supplement Insurance Model Regulations Manual details what should be included in the annual rate filing.

(iii) Annual reports submitted with a request or any type of reference to a rate revision will be rejected.

(e) Refund Calculation and Benchmark Ratio. An issuer shall file the Medicare Supplement Refund Calculation Form and Reporting Form for the Calculation of Benchmark Ratio Since Inception for Group Policies reports according to R590-146-14.B.

(f) Each report must be filed separately and be properly identified.

R590-220-12. Additional Procedures for Combination Policies or Endorsements Providing Life and Accident and Health Benefits.

A filer submitting health and life combination policies, or health endorsements to life policies, is advised to review Rule R590-226.

(1) A combination filing is a policy or endorsement, which creates a product that provides both life and accident and health insurance benefits.

(a) The two types of acceptable combination filings are an endorsement or an integrated policy.

(b) Combination filings take considerable time to process, and will be processed by both the Health Insurance Division, and the Life Section of the Life, Property and Casualty Insurance Division.

(2) A combination filing must be submitted separately to both the Health Insurance Division and the Life Section of the Life, Property and Casualty Insurance Division.

(3)(a) For an integrated policy, the filing must be submitted to the appropriate division based on benefits provided in the base policy.

(b) For an endorsement, the filing must be submitted to the appropriate division based on benefits provided in the endorsement.

(4) The Filing Description must identify the filing as having a combination of insurance types, such as:

(a) term life policy with a long-term care benefit rider; or

(b) major medical health policy that includes a life insurance benefit.

R590-220-13. Additional Procedures for Long Term Care Products.

A filer submitting long-term care product filings is advised to review Section 31A-22-1400, Rule R590-148, and section 12 of this rule. A long-term care form filing that affects rates must be filed with all required rating documentation.

(1) Rates.

(a) Rates and rate documentation submitted with a new form filing are a File and Use filing.

(b) A rate revision filing is a File for Acceptance filing.

(c) Long-term care rates must comply with Rules R590-148 and R590-85.

(d) An insurer shall not use or change premium rates for a long-term care policy or certificate unless the rates, rating schedule and supporting documentation have been filed.

(2) Annual Long-term Care Reports.

(a) All four long-term care reports required by Rule R590-148-25 must be submitted together as one filing.

(b) If all four reports are not submitted as one filing, the filing is considered incomplete and will be rejected.

(c) If there is no information to report, the reporting form must indicate "NONE."

(d) Reports are due June 30 each year.

(e) The four reports shown below are required by R590-148-25.

(i) Replacement and Lapse Reporting Form.

(ii) Claims Denial Reporting Form.

(iii) Rescission Reporting Form.

(iv) Suitability Report Form.

R590-220-14. Correspondence and Status Checks.

(1) Correspondence. When corresponding with the department, a filer must provide sufficient information to identify the original filing:

(a) type of insurance;

(b) date of filing;

(c) form numbers;

(d) submission method, SERFF or Sircon; and

(e) tracking number.

(2) Status Checks.

(a) A complete filing is usually processed within 45 days of receipt.

(b) A filer can request the status of its filing by telephone or email 60 days after the date of submission.

R590-220-15. Responses.

(1) Response to a Filing Objection Letter. A response to a Filing Objection Letter must include:

(a) a cover letter identifying all changes made;

(b) revised documents with all changes highlighted; and

(c) revised documents incorporating all changes without highlights.

(2) Response to an Order to Prohibit Use.

(a) An Order to Prohibit Use becomes final 15 days after the date of the Order.

(b) Use of the filing must be discontinued not later than the date specified in the Order.

(c) To contest an Order to Prohibit Use, the commissioner must receive a written request for a hearing not later than 15 days after the date of the Order.

(d) A new filing is required if the company chooses to make the requested change addressed in the Filing Objection Letter. The new filing must reference the previously prohibited filing.

R590-220-16. Penalties.

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-220-17. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 30 days from the effective date of this rule.

R590-220-18. Severability.

If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected by it.

KEY: health insurance filings

July 12, 2007

31A-2-201
31A-2-201.1
31A-2-202
31A-22-605
31A-22-620
31A-30-106

R590. Insurance, Administration.
R590-225. Submission of Property and Casualty Rate and Form Filings.
R590-225-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-2-201(3), 31A-2-201.1, 31A-2-202(2), and 31A-19a-203.

R590-225-2. Purpose and Scope.

(1) The purpose of this rule is to set forth procedures for submitting:

(a) property and casualty and title form filings required by Section 31A-21-201;

(b) property and casualty and title rates, and supplementary information under Section 31A-19a-203;

(c) service contract form filings required by Subsection 31A-6a-103(2)(a); and

(d) bail bond form filings required by Sections 31A-35-607 and Rule R590-196.

(2) This rule applies to all lines of property and casualty insurance, including title insurance, bail bond and service contracts.

R590-225-3. Documents Incorporated by Reference.

(1) The department requires that the documents described in this rule shall be used for all filings.

(a) Actual copies may be used or you may adapt them to your word processing system.

(b) If adapted, the content, size, font, and format must be similar.

(2) The following filing documents are hereby incorporated by reference and are available on the department's web site, http://www.insurance.utah.gov.

(a) "NAIC Uniform Property and Casualty Transmittal Document", dated March 1, 2007;

(b) "NAIC Property and Casualty Transmittal Document (Instructions)", dated March 1, 2007;

(c) "NAIC Uniform Property and Casualty Coding Matrix", dated March 1, 2007;

(d) "Utah Insurer Loss Cost Multiplier and Expense Constant Supplement Filing Forms", dated October 2003;

(e) "Utah Workers Compensation Insurer Loss Cost Multiplier Filing Form", dated October 2003.

R590-225-4. Definitions.

In addition to the definitions in Sections 31A-1-301 and 31A-19a-102, the following definitions shall apply for the purpose of this rule:

(1) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.

(2) "Electronic Filing" means a:

(a) filing submitted via the Internet by using the System for Electronic Rate and Form Filings, SERFF, system or

(b) filing submitted via the Internet by using the Sircon system or

(c) filing submitted via an email system.

(3) "File And Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

(4) "File Before Use" means a filing can be used, sold, or offered for sale after it has been filed with the department and a stated period of time has elapsed from the date filed.

(5) "Filer" means a person or entity who submits a filing.

(6) "Filing Objection Letter" means a letter issued by the commissioner when a review has determined the filing fails to comply with Utah law and rules. The filing objection letter may, in addition to requiring correction of non-compliant items, request clarification or additional information pertaining to the filing.

(7) "Letter of authorization" means a letter signed by an officer of the licensee on whose behalf the filing is submitted that designates filing authority to the filer.

(8) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.

(9) "Rejected" means a filing is:

(a) not submitted in accordance with applicable laws and rules;

(b) returned to the filer by the department with the reasons for rejection; and

(c) not considered filed with the department.

(10) "Type of Insurance" means a specific line of property and casualty insurance including general liability, commercial property, workers compensation, automobile, homeowners, title, bail bond and service contracts.

(11) "Use And File" means a filing can be used, sold, or offered for sale if it is filed within a stated period of time after its initial use.

(12) "Utah Filed Date" means the date provided to a filer by the Utah Insurance Department that indicates a filing has been accepted pursuant to this subsection 3,4 and 11.

R590-225-5. General Filing Information.

(1) Each filing submitted must be accurate, consistent, complete, and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

(2) Licensees are responsible for assuring that a filing is in compliance with Utah laws and rules. Filings not in compliance with Utah laws and rules are subject to regulatory action under Section 31A-2-308.

(3) Rates, supplementary information, and forms applying to a specific program or product may be submitted as one filing.

(4) A filing that does not comply with this rule will be rejected and returned to the filer. A rejected filing:

(a) is not considered filed with the department;

(b) must be submitted as a new filing;

(c) will not be reopened for purposes of resubmission.

(5) A prior filing will not be researched to determine the purpose of the current filing.

(6) The department does not review or proofread every filing.

(a) A filing may be reviewed:

(i) when submitted;

(ii) as a result of a complaint;

(iii) during a regulatory examination or investigation; or

(iv) at any other time the department deems necessary.

(b) If a filing is reviewed and is not in compliance with Utah laws and rules, A Filing Objection Letter or an Order To Prohibit Use will be issued to the filer. The commissioner may require the licensee to disclose deficiencies in forms or rating practices to affected consumers.

(7) Filing correction:

(a) Filing corrections are considered informational.

(b) Filing corrections must be submitted within 30 days of the date the original filing was submitted to the department. The filer must reference the original filing.

(c) A new filing is required if a filing correction is made more than 30 days after the date the original filing was submitted to the department. The filer must reference the original filing.

(8) If responding to a Response to Filing Objection Letter or an Order to Prohibit Use, refer to R590-225-12 for instructions.

(9) Filing withdrawal. A filer must notify the department when withdrawing a previously filed form, rate, or supplementary information.

R590-225-6. Filing Submission Requirements.

(1) All filings must be submitted as an electronic filing.
(a) All filers must use SERFF or Sircon to submit a filing.
(b) EXCEPTION: bail bond agencies and service contract providers may use email to submit a filing.
(2) A filing must be submitted by market type and type of insurance, not by annual statement line number.
(3) A filing may not include more than one type of insurance, unless the filing is a commercial or personal inter-line form filing. The inter-line use of a form must be explained in the Filing Description.
(4) A filer may submit a filing for more than one insurer if all applicable companies are listed.
(5) SERFF Filing.
(a) Filing Description. Do not submit a cover letter. On the general information tab, complete the Filing Description Section with the following information, presented in the order shown below.
(i) Certification.
(A) The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules.
(B) The following statement must be included in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORDANCE WITH UTAH ADMINISTRATIVE RULE R590-225 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".
(C) A filing will be rejected if the certification is false, missing, or incomplete.
(D) A certification that is false may subject the licensee to administrative action.
(ii) Provide a description of the filing.
(iii) Indicate if the filing:
(A) is new;
(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and previous filing's Utah Filed Date;
(C) includes forms for informational purposes; if so, provide the Utah Filed Date; or
(D) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.
(iv) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.
(b) Letter of Authorization.
(i) When the filer is not the licensee, a letter of authorization from the licensee must be attached to the supplementary documentation tab.
(ii) The licensee remains responsible for the filing being in compliance with Utah laws and rules.
(c) Items being submitted for filing.
(i) Any forms must be attached to the form schedule tab.
(ii) Any rates and supplementary rating information must be attached to the rate/rule schedule tab.
(d) Refer to each applicable section of this rule for additional procedures on how to submit forms, rates, and supplementary information.
(6) Sircon Filing.
(a) Transmittal. The NAIC Uniform Property and Casualty Transmittal Document, as provided in R590-225-3(2), must be properly completed.
(i) COMPLETE THE TRANSMITTAL BY USING THE FOLLOWING:
(A) "NAIC Coding Matrix;"
(B) "NAIC Instruction Sheet;" and
(C) "Utah Property and Casualty Content Standards."
(ii) Do not submit the documents described in (A),(B), and (C) with the filing.
(b) Filing Description. Do not submit a cover letter. In section 21 of the transmittal, complete the filing description with the following information, presented in the order shown below.
(i) Certification.
(A) The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules.
(B) The following statement must be included in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORDANCE WITH UTAH ADMINISTRATIVE RULE R590-225 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".
(C) A filing will be rejected if the certification is false, missing, or incomplete.
(D) A certification that is false may subject the licensee to administrative action.
(ii) Provide a description of the filing.
(iii) Indicate if the filing:
(A) is new;
(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and previous filing's Utah Filed Date;
(C) includes forms for informational purposes; if so, provide the Utah Filed Date; or
(D) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.
(iv) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.
(c) Letter of Authorization.
(i) When the filer is not the licensee, a letter of authorization from the licensee must be attached to the supplementary documentation tab.
(ii) The licensee remains responsible for the filing being in compliance with Utah laws and rules.
(d) Refer to each applicable Section of this rule for additional procedures on how to submit forms, rates, and supplementary information.
(e) Items being submitted for filing. All items submitted for filing must be attached to the product forms tab.
(7) A complete EMAIL filing consists of the following when submitted by a bail bond agent or a service contract provider:
(a) The title of the EMAIL must display the company name only.
(b) Transmittal. The NAIC Uniform Property and Casualty Transmittal Document, as provided in R590-225-3(2), must be properly completed.
(i) COMPLETE THE TRANSMITTAL BY USING THE FOLLOWING:
(A) "NAIC Coding Matrix;"
(B) "NAIC Instruction Sheet;" and
(C) "Utah Property and Casualty Content Standards."
(ii) Do not submit the documents described in (A), (B), and (C) with the filing.
(c) Filing Description. Filing Description. Do not submit a cover letter. In section 21 of the transmittal, complete the Filing Description with the following information, presented in the order shown below.
(i) Certification.
(A) The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules.
(B) The following statement must be included in the filing description: "BY SUBMITTING THIS FILING I CERTIFY THAT THE ATTACHED FILING HAS BEEN COMPLETED IN ACCORDANCE WITH UTAH ADMINISTRATIVE RULE

R590-225 AND IS IN COMPLIANCE WITH APPLICABLE UTAH LAWS AND RULES".

(C) A filing will be rejected if the certification is false, missing, or incomplete.

(D) A certification that is false may subject the licensee to administrative action.

(ii) Provide a description of the filing.

(iii) Indicate if the filing:

(A) is new;

(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and previous filing's Utah Filed Date;

(C) includes forms for informational purposes; if so, provide the Utah Filed Date; or

(iv) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(d) Letter of Authorization.

(i) When the filer is not the licensee, a letter of authorization from the licensee must be attached to the supplementary documentation tab.

(ii) The licensee remains responsible for the filing being in compliance with Utah laws and rules.

(e) Refer to each applicable Section of this rule for additional procedures on how to submit forms, rates, and supplementary information.

(f) Items being submitted for filing. Any items submitted for filing must be submitted in PDF format.

(8) A filing will be rejected if any of the information required is missing or incomplete.

R590-225-7. Procedures for Form Filings.

(1) Forms in general:

(a) Forms are "File And Use" filings. EXCEPTION: service contracts. Service contracts are "File Before Use".

(b) Each form must be identified by a unique form number. The form number may not be variable.

(c) A form must be in final printed form or printer's proof format. A draft may not be submitted.

(2) If you have authorized a Rate Service Organization (RSO) to make form filings on your behalf, no filing by you is required if you implement the filings as submitted by the RSO.

(a) A filing is required if you delay the effective date, non-adopt or alter the filing in any way.

(b) Your filing must be received by the department before the RSO effective date.

(c) We do not require that you attach copies of the RSO's forms when you reference a filing.

(3) If you have NOT authorized an RSO to file forms on your behalf, you must include, in your filing a letter stating your intent to adopt any RSO forms for your use.

(a) Copies of the RSO forms are not required.

(b) Your filing must include a complete list of the RSO forms you intend to adopt by form number, title/name and filing identification number of the RSO.

(4) A "Me Too" filing, referencing a filing submitted by another insurer, bail bond agency, or service contract provider is not permitted.

(5) If a previously filed Utah amendatory endorsement will be used in connection with the form being filed, explain this in the Filing Description section of the transmittal form and include a copy with the filing.

(6) If the filing is for more than one insurer and all insurers included in the filing have submitted a transmittal:

(a) only one copy of each form is required;

(b) If the name of each respective company or unique insurer logo is printed on each separate set of the form, then a separate form must be filed for each insurer.

(7) Since a form may be used once it is "Filed" and must be "Filed" before it can be used, sold or offered for sale, you do not need to re-file or notify the department if the implementation date of the original filing changes.

R590-225-8. Procedures for Rate and Supplementary Information Filings.

(1) Rates and supplementary information in general.

(a) Rates and supplementary information are "Use And File" filings. EXCEPTION: title and workers compensation rates and supplementary information are "File Before Use" filings.

(b) Service Contract Providers and Bail Bond agencies, are exempt from this section.

(2) If you have authorized a Rate Service Organization (RSO) to make a prospective loss cost, supplementary information filing, or both, on your behalf, no filing by you is required if you implement the filing as submitted by the RSO.

(a) A filing is required if you delay the effective date, non-adopt, or alter the filing in any way.

(b) Any such filing must be received by the department within 30 days of the effective date established by the RSO.

(c) We do not require that you attach copies of the RSO's manual pages when you reference an RSO filing.

(3) If you have NOT authorized an RSO to file the prospective loss cost, supplementary rating information, or both, on your behalf

(a) you must include in your filing a letter stating your intent to adopt the RSO prospective loss cost, supplementary rating information filing, or both.

(b) You must file copies of any manual pages as if they were your own and provide your actuarial justification.

(4) A "Me Too" filing, referencing a filing submitted by another licensee, is not permitted.

(5) If the filing is for more than one insurer and all insurers included in the filing have submitted a transmittal and the supporting data and manual pages are identical for each insurer included in the filing, only one copy of the supporting data and manual pages are required to be submitted.

(6) Rate and supplementary information filings must be supported and justified by each insurer.

(a) Justification must include:

(i) submission of all factors used in determining initial supplementary information and rates or changes in existing supplementary information and rates; and

(ii) a complete explanation as to the extent to which each factor has been used.

(b) Underwriting criteria are not required unless they directly affect the rating of the policy.

(c) Underwriting criteria used to differentiate between rating tiers is required.

(7) When submitting a filing for any kind of rating plan, rating modification plan, or credit and debit plan, an insurer must include in the filing:

(a) a statement identifying the arithmetic process to be used and whether factors will be added or multiplied when applying them to base rates; and

(b) justification for the method used.

(c) A filing will be rejected as incomplete if it fails to specifically provide this information.

(8) Utah and countrywide statistical data for the latest three years available must be submitted with each filing.

(a) This data should include earned premiums, incurred losses, loss ratios, establishment of expense factors, and expected loss ratios.

(b) Calculations involved in establishing rates from loss experience are to be exhibited including the establishment of trend factors, loss development factors, etc.

(c) If any of the above information is not available, a

detailed explanation of why must be provided with the filing.

(9) Rate deviation, prospective loss cost, and loss cost multiplier.

(a) In the past, a rate deviation filing was common.

(i) A rate deviation consisted of a modification, usually a percentage decrease or increase, to a RSO manual rate or supplementary information.

(ii) The justification was that an individual insurer could demonstrate experience, expense and profit factors different from the average experience, expense and profit contemplated in the RSO's manual rate.

(b) With the promulgation of a prospective loss cost, rate deviation ceased to exist.

(i) There are no longer manual rates from which to deviate.

(ii) Once an insurer has filed to implement the RSO prospective loss cost for a given line, company deviations previously filed became null and void.

(iii) A filing of a straight percentage deviation is no longer applicable.

(c) Loss cost multiplier.

(i) An individual insurer adjustment to the RSO prospective loss cost must be made as part of the calculation of the loss cost multiplier and must be included in the "Utah Insurer Loss Cost Multiplier Filing Forms."

(ii) This form allows for the inclusion of an individual insurer modification of the RSO prospective loss cost.

(10) Procedures for Reference Filings to Advisory Prospective Loss Cost.

(a) An RSO does not usually file an advisory rate that contains provisions for expenses, other than loss adjustment expenses.

(i) An RSO develops and files with the commissioner a "Reference Filing" containing advisory prospective loss cost and supporting actuarial and statistical data.

(ii) Each insurer must individually determine the rates it will file and the effective date of any rate changes.

(b) If an insurer that is a member, subscriber or service purchaser of any RSO determines to use the prospective loss cost in an RSO Reference Filing in support of its own filing, the insurer must make a filing using the "Utah Insurer Loss Cost Multiplier Filing Forms."

(c) The insurer's filed rates are the combination of the RSO's prospective loss cost and the loss cost multiplier contained in the "Utah Insurer Loss Cost Multiplier Filing Forms."

(d) An insurer may file a modification of the prospective loss cost in the RSO Reference Filing based on its own anticipated experience.

(e) Actuarial justification is required for a modification, upwards or downwards, of the prospective loss cost in the Reference Filing.

(f) An insurer may request to have its loss cost adjustments remain on file and reference all subsequent RSO prospective loss cost Reference Filings.

(i) Upon receipt of subsequent RSO Reference Filings, the insurer's filed rates are the combination of the RSO's prospective loss cost and the loss cost adjustments contained in the "Utah Insurer Loss Cost Multiplier Filing Forms" on file with the commissioner, and will be effective on the effective date of the prospective loss cost.

(ii) The insurer need not file anything further with the commissioner.

(g) If the filer wants to have its filed loss cost adjustments remain on file with the commissioner, but intends to delay, modify, or not adopt a particular RSO's Reference Filing, the filer must make an appropriate filing with the commissioner.

(h) An insurer's filed loss cost adjustments will remain in effect until the filer withdraws them or files a revised "Utah Insurer Loss Cost Multiplier Filing Form."

(i) A filer may file such other information the filer deems relevant.

(j) If an insurer wishes to use minimum premiums, it must file the minimum premiums it proposes to use.

(11) Supplementary Rate Information.

(a) The RSO files with the commissioner RSO filings containing a revision of rules, relativities and supplementary rate information. These RSO filings include:

(i) policy-writing rules;

(ii) rating plans;

(iii) classification codes and descriptions; and

(iv) territory codes, descriptions, and rules, which include factors or relativities such as, increased limits factors, classification relativities or similar factors.

(b) These filings are made by the RSO on behalf of those insurers that have authorized the RSO to file rules, relativities and supplementary rating information on their behalf.

(c) An RSO may print and distribute a manual of rules, relativities and supplementary rating information.

(d) If an insurer has authorized an RSO to file on its behalf and the insurer decides to use the revisions and effective date then the insurer does NOT file anything with the commissioner.

(e) If an insurer has authorized an RSO to file on its behalf and the insurer decides to use the revisions as filed, BUT with a different effective date, then the insurer must notify the commissioner of the insurer's effective date within 30 days after the RSO's effective date.

(f) If an insurer has authorized an RSO to file on its behalf, but the insurer decides not to use the revision, then the insurer must notify the commissioner within 30-days after the RSO's effective date.

(g) If an insurer has authorized an RSO to file on its behalf, but the insurer decides to use the revision with modification, then within 30-days of the RSO's effective date the insurer must file the modification specifying the basis for the modification and the insurer's effective date.

(12) Consent-to-rate Filing.

(a) Subsection 31A-19a-203(6) allows an insurer to file a written application for a particular risk stating the insurer's reasons for using a higher rate than that otherwise applicable to a risk.

(b) The Filing Description must indicate that it is a consent-to-rate filing, show the filed rate, the proposed rate, and the reasons for the difference.

(13) Individual Risk Filing.

(a) R590-127, "Rate Filing Exemptions", provides for those circumstances when an Individual Risk filing is permitted.

(b) An individual risk filing must be filed with the commissioner.

(i) The filing shall consist of a copy of the Declarations Page, copies of any pertinent coverage forms and rating schedules, and premium development.

(ii) The Filing Description must indicate that it is an individual risk filing, and contain the underwriter's explanation for the filing.

(14) Information Regarding Dividend Plan.

(a) Sections 31A-19a-210 and 31A-21-310 allow for dividend distributions.

(b) A plan or schedule for the distribution of a dividend developed AFTER THE INCEPTION of a policy is NOT considered a rating plan and does not have to be filed according to the provisions of this rule.

(c) A plan or schedule for the distribution of a dividend applicable to an insurance policy FROM ITS INCEPTION are required to be filed pursuant to Section 31A-21-310.

(15) The Utah Insurance Code allows tiered rating plans within one insurer or insurer group with common ownership.

(a) A filing must show that the tiers are based on mutually exclusive underwriting rules, which are based on clear,

objective criteria that would lead to a logical distinguishing of potential risk.

(b) A filing must provide supporting information that shows a clear distinction between the expected losses and expenses for each tier.

(c) If an insurer group is using a tiered rating structure, the group of insurers cannot all file the same loss cost multiplier and then file standard percentage deviations.

(i) A difference must be demonstrated in the loss cost multiplier formula, either as a modification of the RSO prospective loss cost or in the insurer expense factor.

(ii) An individual insurer adjustment or modification must be supported by actuarial data which establishes a reasonable standard for measuring probable insurer variations in historical or prospective experience, underwriting standards, expense and profit factors.

R590-225-9. Additional Procedures for Workers Compensation Rate Filings.

The following are additional procedures for workers' compensation rate filings:

(1) Rates and supplementary information must be filed 30 days before they can be used.

(2)(a) Each insurer must individually determine the rates it will file.

(b) Filed rates.

(i) An insurer's workers' compensation filed rates are the combination of the most current prospective loss cost filed by the designated rate service organization and the insurers loss cost adjustment, known as the loss cost multiplier (LCM), as calculated and filed using the "Utah Worker's Compensation Insurer Loss Cost Multiplier Filing Form."

(ii) Each insurer must implement the designated rate service organization's current prospective loss cost on the effective date assigned by the designated rate service organization. INSURERS MAY NOT DEFER NOR DELAY ADOPTION.

(iii) An insurer's filed loss cost multiplier will remain in effect until the insurer withdraws it or files a new loss cost multiplier.

(iv) Upon receipt of subsequent designated rate service organization reference filings, the insurer's filed rates are the combination of the designated RSO's prospective loss cost and the loss cost multiplier contained in the insurer's most current "Utah Loss Cost Multiplier Filing Form" on file with the department.

(3) An insurer may file a modification to the designated rate service organization prospective loss cost in the subject reference filing based on its own anticipated experience. Supporting documentation will be required for any modifications, upwards or downwards, of the designated rate service organization prospective loss cost.

(4) An insurer may vary expense loads by individual classification or grouping. An insurer may use variable or fixed expense loads or a combination of these to establish its expense loadings. However, an insurer is required to file data in accordance with the uniform statistical plan filed by the designated rate service organization.

(5) When submitting a filing for a workers compensation rating plan, a rating modification plan, or a credit and debit plan, an insurer must include in the filing the following or it will be rejected as incomplete:

(a) a statement identifying the arithmetic process to be used and whether factors will be added or multiplied when applying them to base rates; and

(b) justification for the method used.

(6) To the extent that an insurer's rates are determined solely by applying its loss cost multiplier, as presented in the "Utah Worker's Compensation Insurer Loss Cost Multiplier Filing Forms" to the prospective loss cost contained in a designated rate service organization reference filing and printed in the designated rate service organization's rating manual, the insurer need not develop or file its rate pages with the commissioner. If an insurer chooses to print and distribute rate pages for its own use, based solely upon the application of its filed loss cost multiplier, the insurer need not file those pages with the insurance commissioner.

R590-225-10. Additional Procedures for Title Rate Filings.

(1) Title rate and a supplementary information filing are "File Before Use" filings. Rates and supplementary information shall be filed with the commissioner 30 days prior to use.

(2) Each change or amendment to any schedule of rates shall state the effective date of the change or amendment, which may not be less than 30 days after the date of filing. Any change or amendment remains in force for a period of at least 90 days from its effective date.

(3) Supplementary information and rate filings must be supported and justified by each insurer. Justification must include submission of all factors used in determining initial supplementary information and rates or changes in existing supplementary information and rates along with a complete explanation as to the extent to which each factor has been used.

(4) Rates that vary by risk classification such as extended coverage or standard coverage, and all discount factors, such as refinance, subdivision, or construction for purpose of resale discounts, must be supported by differences in expected losses or expenses.

(5) No rate may be filed or used which would require the title insurer or any title agency or producer to operate at less than the cost of doing business or adequately underwriting the title insurance policies.

R590-225-11. Correspondence, and Status Checks.

(1) Correspondence. When corresponding with the department, provide sufficient information to identify the original filing:

(a) type of insurance;

(b) date of filing; and

(c) Submission method, SERFF, SIRCON or email; and

(d) tracking number

(2) Status Checks.

(a) A filer can request the status of its filing by telephone, or email 60 days after the date of submission.

(b) A complete filing is usually processed within 45 days of receipt. A response should be received within that time.

R590-225-12. Responses.

(1) Response to a Filing Objection Letter. A response to a filing objection letter must include:

(a) a cover letter identifying the changes made;

(b) revised documents with all changes highlighted, and

(c) revised documents incorporating all changes without highlights.

(3) Response to an Order to Prohibit Use.

(a) An Order to Prohibit Use becomes final 15 days after the date of the Order.

(b) Use of the filing must be discontinued not later than the date specified in the Order.

(c) To contest an Order to Prohibit Use, the commissioner must receive a written request for a hearing no later than 15 days after the date of the Order.

(d) A new filing is required if the company chooses to make the requested changes addressed in the original Filing Objection Letter. The new filing must reference the previously prohibited filing.

R590-225-13. Penalties.

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-225-14. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 30 days from the effective date of this rule.

R590-225-15. Severability.

If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected by it.

KEY: property casualty insurance filing
July 12, 2007 **31A-2-201**
31A-2-201.1
31A-2-202
31A-19a-203

R590. Insurance, Administration.
R590-226. Submission of Life Insurance Filings.
R590-226-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-2-201(3), 31A-2-201.1, and 31A-2-202(2).

R590-226-2. Purpose and Scope.

(1) The purpose of this rule is to set forth the procedures for submitting:

(a) life insurance filings required by Section 31A-21-201;

(b) viatical filings required by Rule R590-222; and

(c) report filings required by R590-177.

(2) This rule applies to:

(a) all types of individual and group life insurance; variable life insurance and viatical; and

(b) group life insurance contracts issued to nonresident policyholders, including trusts, when Utah residents are provided coverage by certificates of insurance.

R590-226-3. Documents Incorporated by Reference.

(1) The department requires that the documents described in this rule must be used for all filings.

(a) Actual copies may be used or you may adapt them to your word processing system.

(b) If adapted, the content, size, font, and format must be similar.

(2) The following documents are hereby incorporated by reference and are available on the department's website, www.insurance.utah.gov.

(a) "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document," dated March 1, 2007.

(b) "NAIC Uniform Life, Accident and Health, Annuity and Credit Coding Matrix," dated March 1, 2007.

(c) "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document (Instructions)," dated March 1, 2007.

(d) "Utah Life Filing Certification for Individual," dated July 2007.

(e) "Utah Life Filing Certification for Group," dated July 2007.

(f) "Utah Life and Annuity Group Questionnaire," dated July 2007.

(g) "Utah Life and Annuity Request for Discretionary Group Authorization," dated July 2007.

(h) "Utah Annual Life Insurance Illustration Certification Filing Checklist," dated July 2007.

R590-226-4. Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.

(2) "Data page" means the page or pages in a policy or certificate that provide the specific data for the insured detailing the coverage provided and may be titled by the insurer as policy specifications, policy schedule, policy information, etc.

(3) "Discretionary group" means a group that has been specifically authorized by the commissioner under Section 31A-22-509.

(4) "Electronic Filing" means:

(a) a filing submitted via the Internet by using the "System for Electronic Rate and Form Filings" (SERFF) System; or

(b) a filing submitted via the Internet by using the Sircon system; or

(c) A filing submitted via an email system.

(5) "Eligible group" means a group that meets the definitions in Sections 31A-22-502 through 31A-22-508.

(6) "Endorsement" means a written agreement attached to a life insurance policy that alters a provision of the policy, for example, a war exclusion endorsement, a name change endorsement and a tax qualification endorsement.

(7) "File and Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

(8) "Filer" means a person or entity that submits a filing.

(9) "Filing," when used as a noun, means an item required to be filed with the department including:

(a) a policy;

(b) a form;

(c) a document;

(d) an application;

(e) a report;

(f) a certificate;

(g) an endorsement;

(h) a rider;

(i) a life insurance illustration;

(j) a statement of policy cost and benefit information; and

(k) an actuarial memorandum, demonstration, and certification.

(10) "Filing Objection Letter" means a letter issued by the commissioner when a review has determined the filing fails to comply with Utah law and rules. The filing objection letter, in addition to requiring correction of non-compliant items, may request clarification or additional information pertaining to the filing.

(11) "Filing status information" means a list of the states to which the filing was submitted, the date submitted, and the states' actions, including their responses.

(12) "Issue Ages" means the range of minimum and maximum ages for which a policy or certificate will be issued.

(13) "Letter of Authorization" means a letter signed by an officer of the insurer on whose behalf the filing is submitted that designates filing authority to the filer.

(14) "Market type" means the type of policy that indicates the targeted market such as individual or group.

(15) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.

(16) Rejected" means a filing is:

(a) not submitted in accordance with applicable laws or rules;

(b) returned to the filer by the department with the reasons for rejection; and

(c) not considered filed with the department.

(17) "Rider" means a written agreement attached to a life insurance policy or certificate that adds a benefit, for example, a waiver of premium rider, an accidental death benefit rider and a term insurance rider.

(18) "Type of insurance" means a specific life insurance product including, but not limited to, term, universal, variable, or whole life.

(19) "Utah Filed Date" means the date provided to a filer by the Utah Insurance Department, that indicates a filing has been accepter pursuant to Subsection 7.

R590-226-5. General Filing Information.

(1) Each filing submitted must be accurate, consistent, complete and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

(2) Licensees and filers are responsible for assuring that a filing is in compliance with Utah laws and rules. A filings not in compliance with Utah laws and rules are subject to regulatory action under Section 31A-2-308.

(3) A filing that does not comply with this rule will be rejected and returned to the filer. A rejected filing:

(a) is not considered filed with the department;

(b) must be submitted as a new filing; and

(c) will not be reopened for purposes of resubmission.

(4) A prior filing will not be researched to determine the purpose of the current filing.

(5) The department does not review or proofread every filing.

(a) A filing may be reviewed:

(i) when submitted;

(ii) as a result of a complaint;

(iii) during a regulatory examination or investigation; or

(iv) at any other time the department deems necessary.

(b) If a filing is reviewed and is not in compliance with Utah laws and rules, a Filing Objection Letter or an Order To Prohibit Use will be issued to the filer. The commissioner may require the filer to disclose deficiencies in forms or rating practices to affected insureds.

(6) Filing Correction.

(a) Filing corrections are considered informational.

(b) Filing corrections must be submitted within 30 days of the date the original filing was submitted to the department.

The filer must reference the original filing.

(c) A new filing is required if a filing correction is made more than 30 days after the date the original filing was submitted to the department. The filer must reference the original filing.

(7) If responding to a Filing Objection Letter or an Order to Prohibit Use, refer to R590-226-15 for instructions.

(8) Filing withdrawal. A filer must notify the department when withdrawing a previously filed form, rate, or supplementary information.

R590-226-6. Filing Submission Requirements.

(1) All filing must be submitted electronically.

(2) A filings must be submitted by market type and type of insurance.

(3) A filing may not include more than one type of insurance, or request filing for more than one insurer.

(4) SERFF Filings.

(a) Filing Description. Do not submit a cover letter. On the general information tab, complete the Filing Description section with the following information, presented in the order shown below.

(i) Provide a description of the filing.

(ii) Indicate if the filing:

(A) is new;

(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and the previous Utah Filed Date;

(C) includes forms for informational purposes; if so, provide the Utah Filed Date; or

(D) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.

(iii) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(iv) Explain any change in benefits or premiums that may occur while the contract is in force.

(v) List the issue ages, which means the range of minimum and maximum ages for which a policy will be issued.

(vi) List the minimum death benefit.

(vii) Identify the intended market for filing, such as senior citizens, nonprofit organizations, association members, corporate owned, bank owned, etc.

(b) Certification. The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules. The "Utah Life Insurance Filing Certification for Individual" or the "Utah Life Insurance Filing Certification for Group" must be properly completed, signed, and attached to the supporting documentation tab. A false certification may subject the licensee or filer to administrative action.

(c) Domiciliary Approval and Filing Status Information. All filings for a foreign insurer must include on the supporting documentation tab:

(i) copy of domicile approval for the exact same filing;

(ii) filing status information, which includes:

(A) a list of the states to which the filing was submitted;

(B) the date submitted; and

(C) summary of the states' actions and their responses; or

(iii) if the filing is specific to Utah and only filed in Utah, then state, "UTAH SPECIFIC - NOT SUBMITTED TO ANY OTHER STATE."

(d) Group Questionnaire or Discretionary Group Authorization Letter. A group filing must attach to the supporting documentation tab either a:

(i) signed and fully completed "Utah Life and Annuity Group Questionnaire"; or

(ii) copy of the Utah Life and Annuity Discretionary Group Authorization letter.

(e) Letter of Authorization.

(i) When the filer is not the insurer, a letter of authorization from the insurer must be attached to the supplementary documentation tab.

(ii) The insurer remains responsible for the filing being in compliance with Utah laws and rules.

(f) Statement of Variability. Any item or provision on the data page or within the form that is variable must be contained within the brackets.

(i) List the ranges of variable items or factors within the brackets.

(ii) Each variable item must be identified and explained in a statement of variability.

(iii) If the information contained within the brackets changes, the form must be refilled.

(g) Life Insurance Illustration Materials. If the life insurance form is identified as illustrated, the filing must include a sample:

(i) basic illustration complete with data in John Doe fashion;

(ii) current illustration actuary's certification;

(iii) company officer certification; and

(iv) same annual report.

(h) Statement of Policy Cost and Benefit Information. If the life insurance form is not illustrated, the filing must include a sample of the Statement of Policy Cost and Benefit Information.

(i) Items being submitted for filing.

(i) Any forms must be attached to the form schedule tab.

(ii) Any rating documentation, including actuarial memorandums and rate schedules, must be attached to the rate or rule schedule.

(iii) Actuarial Memorandum, Demonstration, and Certification of Compliance. An actuarial memorandum, demonstration of compliance, and a certification of compliance are required in individual and group life insurance filings. The memorandum must be currently dated and signed by the actuary. The memorandum must include:

(A) description of the coverage in detail;

(B) demonstration of compliance with applicable nonforfeiture and valuation laws; and

(C) a certification of compliance with Utah law.

(5) Sircon Filings.

(a) Transmittal. The "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document," as provided in R590-226-3, must be properly completed.

(i) Complete the transmittal by using the following:

(A) NAIC Life, Accident and Health, annuity, Credit Transmittal Document (instructions); and

(B) NAIC Uniform Life, Accident and Health, annuity and

Credit Coding Matrix.

(ii) Do not submit the documents described in Subsections (a)(i)(A) and (B), with a filing.

(b) Filing Description. Do not submit a cover letter. In Section 15 of the transmittal, complete the Filing Description with the following information presented in the order shown below.

(i) Provide a description of the filing.

(ii) Indicate if the filing:

(A) is new;

(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and the previous Utah Filed Date;

(C) includes forms for informational purposes; if so, provide the Utah Filed Date; or

(D) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect of the submitted forms on the base policy.

(iii) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(iv) Explain any change in benefits or premiums that may occur while the contract is in force.

(v) List the issue ages, which means the range of minimum and maximum ages for which a policy will be issued;

(vi) List the minimum death benefit

(vii) Identify the intended market for the filing, such as senior citizens, nonprofit organizations, association members, corporate owned, bank owned, etc.

(c) Certification. The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules. The "Utah Life Insurance Filing Certification for Individual" or the "Utah Life Insurance Filing Certification for Group" must be properly completed and signed. A false certification may subject the licensee or filer to administrative action.

(d) Domiciliary Approval and Filing Status Information. All filings for a foreign insurer must include:

(i) a copy of domicile approval for the exact same filing;

(ii) a filing status information which includes:

(A) a list of the states to which the filing was submitted;

(B) the date submitted; and

(C) summary of the states' actions and their responses; or

(iii) if the filing is specific to Utah and only filed in Utah, then section 14 of the transmittal must be completed stating, "UTAH SPECIFIC - NOT SUBMITTED TO ANY OTHER STATE."

(e) Group Questionnaire or Discretionary Group Authorization Letter. All group filings must attach either a:

(i) signed and fully completed "Utah Life and Annuity Group Questionnaire;" or

(ii) a copy of the "Utah Life and Annuity Discretionary Group Authorization Letter."

(f) Letter of Authorization.

(i) When the filer is not the insurer, a letter of authorization from the insurer must be included.

(ii) The insurer remains responsible for the filing being in compliance with Utah laws and rules.

(g) Statement of Variability. Any item or provision on the data page or within the form that is variable must be contained within the brackets. List the ranges of variable items or factors within the brackets. Each variable item must be identified and explained in a statement of variability. If the information contained within the brackets changes, the form must be refiled.

(h) Items being submitted for filing. Any form items submitted for filing must be attached to the product forms tab.

(i) Life Insurance Illustration Materials. If the life insurance form is identified as illustrated, the filing must include a sample:

(i) basic illustration completed with data in John Doe fashion;

(ii) current illustration actuary's certification;

(iii) company officer certification; and

(iv) sample annual report.

(j) Statement of Policy Cost and Benefit Information. If the life insurance form is not illustrated, the filing must include a sample of the Statement of Policy Cost and Benefit Information.

(k) Actuarial Memorandum, Demonstration, and Certification of Compliance. An actuarial memorandum, demonstration of compliance, and a certification of compliance are required in individual and group life insurance filings. The memorandum must be currently dated and signed by the actuary. The memorandum must include:

(i) description of the coverage in detail;

(ii) demonstration of compliance with applicable nonforfeiture and valuation laws; and

(iii) a certification of compliance with Utah law.

(6) Email Filings - viatical providers only. The subject of the Email must display the company name only and be submitted to life.uid@utah.gov.

(a) Filing Description.

(i) Provide description of the forms being filed.

(ii) Indicate if the filing:

(A) is new;

(B) is replacing or modifying a previous submission, if so, describe the changes made, if previously rejected the reasons for rejection, and the previous Utah Filed Date; and

(C) if the filing includes forms for informational purposes, provide the Utah Filed Dates.

(b) Letter of Authorization.

(i) When the filer is not the licensee, a letter of authorization from the licensee must be attached.

(ii) The licensee remains responsible for the filing being in compliance with Utah laws and rules.

(c) Items being submitted for filing. Any items submitted for filing must be submitted in PDF format.

(7) Refer to each applicable Section of this rule for additional procedures on how to submit forms and reports.

R590-226-7. Procedures for Filings.

(1) Forms in General.

(a) Forms are "File and Use" filings.

(b) Each form must be identified by a unique form number. The form number may not be variable.

(c) Forms must contain a descriptive title on the cover page.

(d) Forms must be in final printed form or printer's proof format. Drafts may not be submitted.

(e) Specific sections may be filed with variable data by placing brackets around affected information. Variable data must be identified within the specific section, or on a separate sheet included with the submission.

(f) Blank spaces within the form must be completed in John Doe fashion to accurately represent the intended market, purpose, and use.

(i) If the market intended is for the senior age group, the form must be completed with data representative of senior insureds.

(ii) All John Doe data in the forms including the data page must be accurate and consistent with the actuarial memorandum, the basic illustration, the Statement of Policy Cost and Benefit information, and the application, as applicable.

(2) Application Filing.

(a) Each application or enrollment form may be submitted as a separate filing or may be filed with its related policy or certificate filing.

(b) If an application has been previously filed or is filed separately, an informational copy of the application must be included with the policy or certificate filing.

(3) Policy Filings.

(a) Each type of insurance must be filed separately.

(b) A policy filing consists of one policy form, including its related forms, such as the application, sample data page, rider, endorsement, and actuarial memorandum.

(c) A policy data page must be included with every policy filing.

(d) Only one policy form for a single type of insurance may be filed, in each filing a life insurance policy with different premium payment periods is considered one form.

(e) A policy data page that changes the basic feature of the policy may not be filed without including the entire policy form in the filing. A filing consisting of only a data page without the policy form will be rejected as incomplete.

(4) Rider or Endorsement Filing.

(a) Related riders or endorsements may be filed together.

(b) A single rider or endorsement that affect multiple forms may be filed if the Filing Description references all affected forms.

(c) A rider or endorsement that is based on morbidity risks, such as critical illness or long-term care, is considered accident and health insurance and must be filed in accordance with Rule R590-220, "Accident and Health Insurance Filings."

(d) The filing must include:

(i) a listing of all base policy form numbers, title and Utah Filed Dates;

(ii) a description of how each filed rider or endorsement affects the base policy; and

(iii) a sample data page with data for the submitted form.

(e) Unrelated riders or endorsement may not be filed together.

R590-226-8. Additional Procedures for Individual Life Insurance Forms and Group Life Insurance Certificates Marketed Individually.

(1) Insurers filing life insurance forms are advised to review the following code sections and rules prior to submitting a filing:

(a) Section 31A-21 Part III, "Specific Clauses in Contracts;"

(b) Section 31A-22 Part IV, "Life Insurance and Annuities;"

(c) R590-79, "Life Insurance Disclosure Rule;"

(d) R590-93, "Replacement of Life Insurance and Annuities;"

(e) R590-94, "Smoker/Nonsmoker Mortality Tables";

(f) R590-95, "Minimum Nonforfeiture Standards 1980 CSO and 1980 CET Mortality Tables;"

(g) R590-98, "Unfair Practice in Payment of Life Insurance and Annuity Policy Values;"

(h) R590-108, "Interest Rate During Grace Period or Upon Reinstatement of Policy;"

(i) R590-122, "Permissible Arbitration Provisions;"

(j) R590-177, "Life Insurance Illustrations;"

(k) R590-191, "Unfair Life Insurance Claims Settlement Practice;"

(l) R590-198, "Valuation of Life Insurance Policies;" and

(m) R590-223, "Rule to Recognize 2001 CSO Mortality Table."

(2) Every individual life insurance policy, rider or endorsement providing benefits, and every group life insurance filing including certificates that are marketed individually, shall include an actuarial memorandum, a demonstration, and a certification of compliance for nonforfeiture and valuation. Refer to the following:

(a) Section 31A-22-408, "Standard Nonforfeiture Law for Life Insurance;"

(b) Section 31A-17 Part V, "Standard Valuation Law."

R590-226-9. Additional Procedures for Group Market Filings.

(1) Insurers submitting group life insurance filings are advised to review the following code sections and rules prior to submitting a filing:

(a) Section 31A-21 Part III, "Specific Clauses in Contracts;"

(b) Section 31A-22 Part IV, "Life Insurance and Annuities;"

(c) Section 31A-22 Part V, "Group Life Insurance;"

(d) R590-79, "Life Insurance Disclosure Rule;" and

(e) R590-191, "Unfair Life Insurance Claims Settlement Practice."

(2) A policy must be included with each certificate filing along with a master application and enrollment form.

(3) Statement of Policy Cost and Benefit Information. A statement of policy cost and benefit information must be included in non-term group life insurance and preneed funeral policies or prearrangements. This disclosure requirement shall extend to the issuance or delivery of certificates as well as to the master policy in compliance with R590-79-3.

(4) Actuarial Memorandum. An actuarial memorandum must be included in all group life insurance filings describing the coverage in detail and certifying compliance with applicable laws and rules. For non-term group life filings, the memorandum must also demonstrate nonforfeiture compliance with Section 31A-22-515.

(5) Eligible Group. A filing for an eligible group must include a completed "Utah Life and Annuity Group Questionnaire."

(a) A questionnaire must be completed for each eligible group under Section 31A-22-502 through 508.

(b) When a filing applies to multiple employer-employee groups under Section 31A-22-502, only one questionnaire is required to be completed.

(6) Discretionary Group. If a group is not an eligible group, then specific discretionary group authorization must be obtained prior to submitting the filing. If a form filing is submitted without discretionary group authorization, the filing will be rejected.

(a) To obtain discretionary group authorization a "Utah Life and Annuity Request For Discretionary Group Authorization" must be submitted and include all required information.

(b) Evidence or proof of the following items are some factors considered in determining acceptability of a discretionary group:

(i) existence of a verifiable group;

(ii) that granting permission is not contrary to public policy;

(iii) the proposed group would be actuarially sound;

(iv) the group would result in economies of acquisition and administration which justify a group rate; and

(v) the group would not present hazards of adverse selection.

(c) Discretionary group filings that do not provide authorization documentation will be rejected.

(d) Any changes to an authorized discretionary group must be submitted to the department, such as; change of name, trustee, domicile state, within 30 days of the change.

(e) The commissioner may periodically re-evaluate the group's authorization.

R590-226-10. Additional Procedures for Variable Life Filings.

(1) Insurers submitting variable life filings are advised to

review the following code sections and rules prior to submitting a filing:

(a) Section 31A-22-411, "Contracts Providing Variable Benefits;"

(b) R590-133, "Variable Contracts."

(2) A variable life insurance policy must have been previously approved or accepted by the insurer's state of domicile before it is submitted for filing in Utah.

(3) Information regarding the status of the filing of the variable life insurance policy with the Securities and Exchange Commission must be included in the filing.

(4) The transmittal description and the actuarial memorandum must:

(a) describe the types of accounts available in the policy; and

(b) identify those accounts that are separate accounts, including modified guaranteed accounts, and those that are general accounts.

(5) The actuarial memorandum must demonstrate nonforfeiture compliance:

(a) for separate accounts pursuant to Section 31A-22-411; and

(b) for fixed interest general accounts pursuant to Section 31A-22-408.

(c) In addition, for fixed accounts, the actuarial memorandum must:

(i) identify the guaranteed minimum interest rate, and

(ii) identify the maximum surrender charges.

(6) A prospectus is not required to be filed.

R590-226-11. Additional Procedures for Combination Policies, Riders or Endorsements Providing Life and Accident and Health Benefits.

A filer submitting life and health combination policies, or health riders or endorsement to life policies, is advised to review Rule R590-220.

(1) A combination filing is a policy, rider, or endorsement which creates a product that provides both life and accident and health insurance benefits.

(a) The two types of acceptable combination filings are a rider or endorsement or an integrated policy.

(b) Combination filings take considerable time to process, and will be processed by both the Health Insurance Divison, and the Life Section of the Life, Property and Casualty Insurance Division.

(2) A combination filing must be submitted separately to both the Health Insurance Division and the Life Section of the Life, Property and Casualty Insurance Division.

(3)(a) For an integrated policy, the filing must be submitted to the appropriate division based on benefits provided in the base policy.

(b) For a rider or endorsement, the filing must be submitted to the appropriate division based on benefits provided in the rider or endorsement.

(4) The Filing Description must identify the filing as having a combination of insurance types, such as:

(a) term policy with a long-term care benefit rider; or

(b) major medical health policy that includes a life insurance benefit.

R590-226-12. Additional Procedures for Viatical Settlements.

(1) Insurers submitting Viatical Settlements filings are advised to review the following code sections and rules prior to submitting a filing:

(a) Section 31A-36, "Viatical Settlements Act;"

(b) Rule R590-222, "Viatical Settlements."

(2) The form filing is to be submitted via email to life.uid@utah.gov.

R590-226-13. Insurer Annual Reports.

(1) All insurer annual reports must be properly identified and must be filed separately from other filings. Each annual report must be submitted along with the properly completed report checklist.

(2) "Life Insurance Illustration Certification Annual Report".

(a) Filing must comply with R590-177-11. Life insurers marketing life insurance with an illustration shall provide an annual certification report to the commissioner each year by a date determined by the insurer.

(b) The report must include:

(i) a completed "Utah Life Insurance Illustration Certification Annual Report Checklist";

(ii) an Illustration Actuary's Certification signed and dated;

(iii) a Company Officer's Certification signed and dated; and

(iv) a list of all policies forms for which the certification applies.

R590-226-14. Correspondence and Status Checks.

(1) Correspondence. When corresponding with the department, filers must provide sufficient information to identify the original filing:

(a) type of insurance;

(b) date of filing;

(c) form numbers;

(d) submission method, SERFF, Sircon or EMAIL; and

(e) tracking number.

(2) Status Checks. A complete filing is usually processed within 45 days of receipt. A filer can request the status of its filing by telephone, or email 60 days after the date of submission.

R590-226-15. Responses.

(1) Response to a Filing Objection Letter. A response to a Filing Objection Letter must include:

(a) a cover letter identifying all changes made;

(b) revised documents with all changes highlighted; and

(c) revised documents incorporating all changes without highlights.

(2) Response to an Order to Prohibit Use.

(a) An Order to Prohibit Use becomes final 15 days after the date of the order.

(b) Use of the filing must be discontinued not later than the date specified in the order.

(c) To contest an Order to Prohibit Use, the commissioner must receive a written request for a hearing not later than 15 days after the date of the order.

(d) A new filing is required if the company chooses to make the requested change addressed in the Filing Objection Letter. The new filing must reference the previously prohibited filing.

R590-226-16. Penalties.

Persons found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-226-17. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule upon the effective date of this rule.

R590-226-18. Severability.

If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances may not be affected by it.

KEY: life insurance filings
July 30, 2007

31A-2-201
31A-2-201.1
31A-2-202

R590. Insurance, Administration.
R590-227. Submission of Annuity Filings.
R590-227-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-2-201(3), 31A-2-201.1, and 31A-2-202(2).

R590-227-2. Purpose and Scope.

(1) The purpose of this rule is to set forth the procedures for submitting annuity filings under Section 31A-21-201.

(2) This rule applies to:

(a) all types of individual and group annuities, variable annuities; and

(b) group annuity contracts issued to nonresident contract holders, including trusts, when Utah residents are provided coverage by certificates.

R590-227-3. Incorporation by Reference.

(1) The department requires that documents described in this rule shall be used for all filings.

(a) Actual copies may be used or you may adapt them to your word processing system.

(b) If adapted, the content, size, font, and format must be similar.

(2) The following documents are hereby incorporated by reference and are available at www.insurance.utah.gov.

(a) "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document," dated March 1, 2007.

(b) "NAIC Uniform Life, Accident and Health, Annuity and Credit Coding Matrix," dated March 1, 2007.

(c) "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document (Instructions)," dated March 1, 2007.

(d) "Utah Annuity Filing Certification," dated July 2007.

(e) "Utah Life and Annuity Group Questionnaire," dated July 2007.

(f) "Utah Life and Annuity Request for Discretionary Group Authorization," dated July 2007.

R590-227-4. Definitions.

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.

(2) "Contract" means the annuity policy including attached endorsements and riders;

(3) "Data page" means the page or pages in a contract or certificate that provide the specific data for the annuitant detailing the coverage provided and may be titled by the insurer as contract data page, specifications page, contract schedule, etc.

(4) "Discretionary group" means a group that has been specifically authorized by the commissioner under Section 31A-22-509.

(5) "Electronic Filing" means:

(a) a filing submitted via the Internet by using the "System for Electronic Rate and Form Filings" (SERFF) System; or

(b) a filing submitted via the Internet by using the Sircon system; or

(c) a filing submitted via an email system.

(6) "Eligible group" means a group that meets the definitions in Sections 31A-22-502 through 31A-22-508.

(7) "Endorsement" means a written agreement attached to an annuity contract that alters a provision of the contract, for example, a name change endorsement and a tax qualification endorsement.

(8) "File and Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

(9) "Filer" means a person or entity that submits a filing.

(10) "Filing," when used as a noun, means an item required to be filed with the department including:

(a) a contract;
(b) a form;
(c) a document;
(d) an application;
(e) a report;
(f) a certificate;
(g) an endorsement;
(h) a rider; and
(i) an actuarial memorandum, demonstration, and certification.

(11) "Filing Objection Letter" means a letter issued by the commissioner when a review has determined the filing fails to comply with Utah law and rules. The filing objection letter, in addition to requiring correction to non-compliant items, may request clarification or additional information pertaining to the filing.

(12) "Filing status information" means a list of the states to which the filing was submitted, the date submitted, and the states' actions, including their responses.

(13) "Issue Ages" means the range of minimum and maximum ages for which a contract or certificate will be issued.

(14) "Letter of Authorization" means a letter signed by an officer of the insurer on whose behalf the filing is submitted that designates filing authority to the filer.

(15) "Market type" means the type of contract that indicates the targeted market such as individual or group.

(16) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.

(17) "Rejected" means a filing is:

(a) not submitted in accordance with applicable laws or rules;

(b) returned to the insurer by the department with the reasons for rejection; and

(c) not considered filed with the department.

(18) "Rider" means a written agreement attached to an annuity contract or certificate that adds a benefit, for example, a waiver of surrender charge, a guaranteed minimum withdrawal benefit and a guaranteed minimum income benefit.

(19) "Type of insurance" means a specific type of annuity including, but not limited to, equity indexed annuity, single premium immediate annuity, modified guaranteed annuity, deferred annuity, or variable annuity.

(20) "Utah Filed Date" means the date provide to a filer by the Utah Insurance Department, that indicates a filing has been accepted pursuant to Subsection 7.

R590-227-5. General Filing Information.

(1) Each filing submitted must be accurate, consistent, complete and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

(2) Licensees and filers are responsible for assuring that a filing is in compliance with Utah laws and rules. A filing not in compliance with Utah laws and rules is subject to regulatory action under Section 31A-2-308.

(3) A filing that does not comply with this rule will be rejected and returned to the filer. A rejected filing:

(a) is not considered filed with the department;

(b) must be submitted as a new filing; and

(c) will not be reopened for purposes of resubmission.

(4) A prior filing will not be researched to determine the purpose of the current filing.

(5) The department does not review or proofread every filing.

(a) A filings may be reviewed:

(i) when submitted;

(ii) as a result of a complaint;

(iii) during a regulatory examination or investigation; or

(iv) at any other time the department deems necessary.

(b) If a filing is reviewed and is not in compliance with Utah laws and rules, A Filing Objection Letter or an Order To Prohibit Use will be issued to the filer. The commissioner may require the filer to disclose deficiencies in forms or rating practices to affected insureds.

(6) Filing Correction.

(a) Filing corrections are considered informational.

(b) Filing corrections must be submitted within 30 days of the date the original filing was submitted to the department.

The filer must reference the original filing.

(c) A new filing is required if a filing correction is made more than 30 days after the date original filing was submitted to department. The filer must reference the original filing.

(7) If responding to a Filing Objection Letter or an Order to Prohibit Use, refer to R590-227-12 for instructions.

(8) Filing withdrawal. A filer must notify the department when withdrawing a previously filed form, rate, or supplementary information.

R590-227-6. Filing Submission Requirements.

(1) All filings must be submitted as an electronic filing.

(2) A filings must be submitted by market type and type of insurance.

(3) A filing may not include more than one type of insurance, or request filing for more than one insurer.

(4) SERFF Filings.

(a) Filing Description. Do not submit a cover letter. On the general information tab, complete the Filing Description section with the following information, presented in the order shown below.

(i) Provide a description of the filing.

(ii) Indicate if the filing:

(A) is new;

(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and the previous filing's Utah Filed Date;

(C) includes forms for informational purposes; if so, provide the Utah Filed Date; or

(D) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.

(iii) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(iv) Explain any change in benefits or premiums that may occur while the contract is in force.

(v) List the issue ages, which means the range of minimum and maximum ages for which a policy will be issued.

(vi) List the minimum initial premium.

(vii) Identify the intended market for the filing, such as senior citizens, nonprofit organizations, association members, corporate owned, bank owned, etc.

(b) Certification. The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules. The "Utah Annuity Filing Certification" must be properly completed, signed, and attached to the supporting documentation tab. A false certification may subject the licensee or filer to administrative action.

(c) Domiciliary Approval and Filing Status Information. All filings for a foreign insurer must include on the supporting documentation tab:

(i) copy of domicile approval for the exact same filing;

(ii) filing status information which includes:

(A) a list of the states to which the filing was submitted;

(B) the date submitted; and

(C) summary of the states' actions and their responses; or

(iii) if the filing is specific to Utah and only filed in Utah, then state, "UTAH SPECIFIC - NOT SUBMITTED TO ANY OTHER STATE."

(d) Group Questionnaire or Discretionary Group Authorization Letter. A group filing must attach to the supporting documentation tab either a:

(i) signed and fully completed "Utah Life and Annuity Group Questionnaire"; or

(ii) copy of the Utah Life and Annuity Discretionary Group Authorization letter.

(e) Letter of Authorization.

(i) When the filer is not the insurer, a letter of authorization from the insurer must be attached to the supplementary documentation tab.

(ii) The insurer remains responsible for the filing being in compliance with Utah laws and rules.

(f) Statement of Variability. Any item or provision on the data page or within the form that is variable must be contained within the brackets. List the ranges of variable items or factors within the brackets. Each variable item must be identified and explained in a statement of variability. If the information contained within the brackets changes, the form must be refilled.

(g) Annuity Report. All annuity filings must include a sample annuity annual report.

(h) Items being submitted for filing.

(i) Any forms must be attached to the form schedule tab.

(ii) Any rating documentation, including actuarial memorandums and rate schedules, must be attached to the rate/rule schedule.

(iii) Actuarial Memorandum, Demonstration, and Certification of Compliance. An actuarial memorandum, demonstration of compliance, and a certification of compliance are required in individual and group life insurance filings. The memorandum must be currently dated and signed by the actuary. The memorandum must include:

(A) description of the coverage in detail;

(B) demonstration of compliance with applicable nonforfeiture and valuation laws; and

(C) a certification of compliance with Utah law.

(5) Sircon Filings.

(a) Transmittal. The "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document," as provided in R590-227-3, must be properly completed.

(i) Complete the transmittal by using the following:

(A) NAIC Life, Accident and Health, Annuity, Credit Transmittal Document (Instruction); and

(B) NAIC Uniform Life, Accident and Health, Annuity and Credit Coding Matrix.

(ii) Do not submit the documents described in Section (a)(i)(A) and (B) with the filing.

(b) Filing Description. Do not submit a cover letter. In Section 15 of the transmittal, complete the Filing Description with the following information presented in the order shown below.

(i) Provide a description of the filing.

(ii) Indicate if the filing:

(A) is new;

(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and the previous filing's Utah Filed Date;

(C) includes forms for informational purposes; if so, provide the Utah Filed Date; or

(D) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.

(iii) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(iv) Explain any change in benefits or premiums that may

occur while the contract is in force.

(v) List the issue Ages, which means the range of minimum and maximum ages for which a policy will be issued.

(vi) List the minimum initial premium.

(vii) Identify the intended market for the filing, such as senior citizens, nonprofit organizations, association members, corporate owned, bank owned, etc.

(c) Certification. The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules. The "Utah Annuity Filing Certification" must be properly completed and signed. A false certification may subject the licensee or filer to administrative action.

(d) Domiciliary Approval and Filing Status Information. All filings for a foreign insurer must include:

(i) a copy of domicile approval for the exact same filing;

(ii) a filing status information which includes:

(A) a list of the states to which the filing was submitted;

(B) the date submitted; and

(C) summary of the states' actions and their responses; or

(iii) if the filing is specific to Utah and only filed in Utah, then section 14 of the transmittal must be completed stating, "UTAH SPECIFIC - NOT SUBMITTED TO ANY OTHER STATE."

(e) Group Questionnaire or Discretionary Group Authorization Letter. All group filings must attach either a:

(i) signed and fully completed "Utah Life and Annuity Group Questionnaire;" or

(ii) copy of the "Utah Life and Annuity Discretionary Group Authorization letter".

(f) Letter of Authorization.

(i) When the filer is not the insurer, a letter of authorization from the insurer must be included.

(ii) The insurer remains responsible for the filing being in compliance with Utah laws and rules.

(g) Statement of Variability. Any item or provision on the data page or within the form that is variable must be contained within the brackets. List the ranges of variable items or factors within the brackets. Each variable item must be identified and explained in a statement of variability. If the information contained within the brackets changes, the form must be refiled.

(h) Items being submitted for filing. Any form items submitted for filing must be attached to the product forms tab.

(i) Annuity Report. All annuity filings must include a sample annuity annual report.

(j) Actuarial Memorandum, Demonstration, and Certification of Compliance. An actuarial memorandum, demonstration, and a certification of compliance are required in annuity filings. The memorandum must be currently dated and signed by the actuary. The memorandum must include:

(i) description of the coverage in detail;

(ii) demonstration of compliance with applicable nonforfeiture and valuation laws; and

(iii) a certification of compliance with Utah law.

(6) Refer to each applicable Section of this rule for additionalprocedures on how to submit forms and reports.

R590-227-7. Procedures for Filings.

(1) Forms in General.

(a) Forms are "File and Use" filings.

(b) Each form must be identified by a unique form number. The form number may not be variable.

(c) Contain a descriptive title on the cover page.

(d) Forms must be in final printed form or printer's proof format. Drafts may not be submitted.

(e) Specific sections may be filed with variable data by placing brackets around affected information. Variable data must be identified within the specific section, or on a separate sheet included with the submission.

(f) Blank spaces within the form must be completed in John Doe fashion to accurately represent the intended market, purpose, and use.

(i) If the market intended is for the senior age market, the form must be completed with data representative of senior annuitants.

(ii) All John Doe data in the forms including the data page must be accurate and consistent with the actuarial memorandum, the application, and any marketing materials, as applicable.

(2) Application Filing.

(a) Each application or enrollment form may be submitted as a separate filing or may be filed with its related policy or certificate filing.

(b) If an application has been previously filed or is filed separately, an informational copy of the application must be included with the policy or certificate filing.

(3) Contract Filing.

(a) Each type of annuity must be filed separately.

(b) A contract filing consists of one contract form, including its related forms, such as an application, data page, rider or endorsement, and an actuarial memorandum.

(c) A data page must be included with every contract filing.

(d) Only one contract form for a single type of insurance may be filed.

(e) A data page that changes the basic feature of the contract may not be filed without including the entire contract form in the filing. Separate data page filings without the contract form will be rejected as incomplete.

(4) Rider or Endorsement Filings.

(a) Related riders or endorsements may be filed together.

(b) A single rider or endorsement that affects multiple forms may be filed if the Filing Description references all affected forms.

(c) A rider or endorsement that is based on morbidity risks such as critical illness or long-term care, is considered accident and health insurance and must be filed in accordance with Rule R590-220, "Accident and Health Insurance Filings".

(d) The filing must include:

(i) a listing of all base contract form numbers, title and Utah Filed Dates; and

(ii) a description of how each filed rider or endorsement affects the base contract.

(iii) a sample data page with data for the submitted form.

(e) Unrelated endorsements may not be filed together.

R590-227-8. Additional Procedures for Fixed Annuity Filings.

(1) Insurers filing annuity forms are advised to review the following code sections and rules prior to submitting a filing:

(a) Section 31A-21 Part III, "Specific Clauses in Contracts;"

Section 31A-22 Part IV, "Life Insurance and Annuities;"

(c) R590-93, "Replacement of Life Insurance and Annuities;"

(d) R590-96, "Annuity Mortality Tables;" and

(e) R590-191, "Unfair Life Insurance Claims Settlement Practice."

(2) Every filing of an individual annuity contract, rider or endorsement providing benefits, and every group annuity filing including certificates that are marketed individually, shall include an actuarial memorandum, a demonstration, and a certification of compliance with nonforfeiture and valuation laws:

(a) Section 31A-22-409, "Standard Nonforfeiture Law for Deferred Annuities;" and

(b) Section 31A-17 Part V, "Standard Valuation Law."

(3) When submitting annuity filings the filing description of the transmittal must:

(a) identify the specific subsection of the Utah

nonforfeiture law, which applies to the submitted annuity;

(b) describe the basic features of the form submitted;

(c) identify and describe the interest earning features; including the guaranteed interest rate, the guaranteed interest terms, and any market value adjustment feature;

(d) describe the guaranteed and nonguaranteed values including any bonuses;

(e) describe all charges, fees and loads;

(f) list and describe all accounts, options and strategies, if any;

(g) identify whether the accounts are fixed interest general accounts, registered separate accounts including modified guaranteed separate accounts; and

(h) describe any restrictions or limitations regarding withdrawals, surrenders, and the maturity date or settlement options.

(4) The contract must be complete with a sample specification page attached.

(5) The actuarial memorandum must:

(a) be currently dated and signed by the actuary;

(b) identify the specific subsections of the Utah nonforfeiture law which applies to the submitted annuity;

(c) describe all contract provisions in detail, including all guaranteed and non-guaranteed elements, that may affect the values;

(d) identify the guaranteed minimum interest crediting rates;

(e) describe in detail the particular methods of crediting interest, including:

(i) guaranteed fixed interest rates; and

(ii) guaranteed interest terms.

(f) specifically identify, describe and list all charges and fees, including loads, surrender charges, market value adjustments or any other adjustment feature;

(g) describe in detail all accounts and factors that are used to calculate guaranteed minimum nonforfeiture values and minimum cash surrender values in the contract and the elements used in the calculation of the minimum values required by the law; and

(h) include the formulas used to calculate the minimum guaranteed values provided by the contract and the formulas used to calculate the minimum guaranteed values required by the applicable subsections of the nonforfeiture law.

(6) The actuarial demonstration must:

(a) compare minimum contract values with minimum nonforfeiture values;

(b) be based on representative premium patterns, for flexible premium products use both a single premium and level premium payment, and for both age 35 and age 60 or the highest issue age if lower;

(c) numerically demonstrate that the values based on the guaranteed minimum interest rates, the maximum surrender charges, fees, loads, and any other factors affecting values, provide values that are in compliance with the Standard Nonforfeiture Law using both the retrospective and the prospective tests, each test must be clearly identified, and include the following:

(i) For the retrospective test, describe the net consideration and the interest rates used in the accumulation. Numerically compare the guaranteed contract values with the minimum values required by the nonforfeiture law.

(ii) For the prospective test, identify the maturity value and the interest rate used for each respective year to determine the present value. Numerically compare the guaranteed contract values with the minimum values required by the nonforfeiture law.

(7) The actuarial certification of compliance must be currently dated and signed by the actuary. The certification must state that the formulas used and values provided are in compliance with Utah laws and rules.

R590-227-9. Additional Procedures for Group Annuity Filings.

(1) Insurers submitting group annuity filings are advised to review the following code sections and rules prior to submitting a filing:

(a) Section 31A-21 Part III, "Specific Clauses in Contracts;"

(b) Section 31A-22 Part IV, "Life Insurance and Annuities;"

(c) Section 31A-22 Part V, "Group Life Insurance;" and

(d) R590-191, "Unfair Life Insurance Claims Settlement Practice."

(2) A group contract must be included with each certificate filing along with the master application and enrollment form.

(3) Every group annuity filing must include an actuarial memorandum describing the features of the contract and certifying compliance with applicable Utah laws. A group filing that includes a group certificate that is marketed to individuals, must include an actuarial memorandum, demonstration and certification of compliance with the applicable Utah nonforfeiture law.

(4) Eligible Groups. A filing for an eligible group must include a completed "Utah Life and Annuity Group Questionnaire."

(a) A questionnaire must be completed for each eligible group under Sections 31A-22-502 through 508.

(b) When a filing applies to multiple employer-employee groups under Section 31A-22-502, only one questionnaire is required to be completed.

(5) Discretionary Group. If a group is not an eligible group, then specific discretionary group authorization must be obtained prior to submitting the filing. If a filing is submitted without discretionary group authorization, the filing will be rejected.

(a) To obtain discretionary group authorization a "Utah Life and Annuity Request For Discretionary Group Authorization" must be submitted and include all required information.

(b) Evidence or proof of the following items are some factors considered in determining acceptability of a discretionary group:

(i) existence of a verifiable group;

(ii) that granting permission is not contrary to public policy;

(iii) the proposed group would be actuarially sound;

(iv) the group would result in economies of acquisition and administration which justify a group rate; and

(v) the group would not present hazards of adverse selection.

(c) Discretionary group filings that do not provide authorization documentation will be rejected.

(d) Any changes to an authorized discretionary group must be submitted to the department, such as; change of name, trustee, domicile state, within 30 days of the change.

(e) The commissioner may periodically re-evaluate the group's authorization.

R590-227-10. Additional Procedures for Variable Annuity Filings Procedures.

(1) Insurers submitting variable annuity filings are advised to review the following code sections and rule prior to submitting a filing:

(a) Section 31A-22-411, "Contracts Providing Variable Benefits;" and

(b) R590-133, "Variable Contracts."

(2) A variable annuity contract must have been previously approved or accepted by the insurer's state of domicile before it

is submitted for filing in Utah. Include the approval date in the submission.

(3) Information regarding the status of the filing of the variable annuity with the Securities and Exchange Commission must be included in the filing.

(4) The transmittal description and the actuarial memorandum must:

(a) describe the accounts available in the contract; and

(b) identify and describe those accounts that are separate accounts, including modified guaranteed annuities, and those accounts that are general accounts.

(5) The actuarial memorandum must describe all contract provisions in detail, including all guaranteed and non-guaranteed elements that may affect the values.

(6) The actuarial demonstration must numerically demonstrate compliance with the applicable nonforfeiture laws:

(a) for variable annuities, including modified guaranteed annuities, pursuant to Section 31A-22-411;

(b) for fixed interest general accounts pursuant to 31A-22-409, identify and describe all guaranteed factors that affect values, including:

(i) the guaranteed minimum interest rate; and

(ii) the maximum surrender charges and loads.

(7) An actuarial certification of compliance with applicable Utah laws and rules must be included in the filing.

(8) A filing for a rider that provides benefits, such as guaranteed minimum death benefit and guaranteed minimum withdrawal benefit, must include an actuarial memorandum.

(9) A prospectus is not required to be filed.

R590-227-11. Correspondence and Status Checks.

(1) Correspondence. When corresponding with the department, filers must provide sufficient information to identify the original filing:

(a) type of insurance;

(b) date of filing;

(c) form numbers;

(d) submission method, SERFF or Sircon; and

(e) tracking number.

(2) Status Checks. A complete filing is usually processed withing 45 days of receipt. A filers may request the status of its filing by telephone, or email 60 days after the date of submission.

R590-227-12. Responses.

(1) Response to a Filing Objection Letter. A response to a Filing Objection Letter must include:

(a) a cover letter identifying all changes made;

(b) revised documents with all changes highlighted; and

(c) revised documents incorporating all changes without highlights.

(2) Response to an Order to Prohibit Use.

(a) An Order to Prohibit Use becomes final 15 days after the date of the Order.

(b) Use of the filing must be discontinued not later than the date specified in the Order.

(c) To contest an Order to Prohibit Use, the commissioner must receive a written request for a hearing not later than 15 days after the date of the Order.

(d) A new filing is required if the company chooses to make the requested change addressed in the Filing Objection Letter. The new filing must reference the previously prohibited filing.

R590-227-13. Penalties.

Persons found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-227-14. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule upon the effective date of this.

R590-227-15. Severability.

If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances may not be affected by it.

KEY: annuity insurance filings
July 12, 2007 **31A-2-201**
31A-2-201.1
31A-2-202

R590. Insurance, Administration.
R590-228. Submission of Credit Life and Credit Accident and Health Insurance Form and Rate Filings.
R590-228-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Subsection 31A-2-201(3), 31A-2-201.1, 31A-2-202(2), 31A-22-807.

R590-228-2. Purpose and Scope.

(1) The purpose of this rule is to set forth the procedures for submitting:

(a) Credit life and credit accident and health insurance filings required by Section 31A-21-201;

(b) Credit life and credit accident and health insurance rate filings required by Section 31A-22-807, R590-91; and

(c) report filings required by R590-91.

(2) This rule applies to all credit life insurance and credit accident and health insurance including group contracts issued to nonresident policyholders, including trusts, when Utah residents are provided coverage by certificates of insurance.

R590-228-3. Documents Incorporated by Reference.

(1) The department requires that documents described in this rule shall be used for all filings.

(a) Actual copies may be used or you may adapt them to your word processing system.

(b) If adapted, the content, size, font, and format must be similar.

(2) The following documents are hereby incorporated by reference and are available at www.insurance.utah.gov.

(a) "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document," dated March 1, 2007;

(b) "NAIC Uniform Life, Accident and Health, Annuity and Credit Coding Matrix," dated March 1, 2007;

(c) "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document (Instructions)," dated March 1, 2007;

(d) "Utah Credit Life and Credit Accident and Health Filing Certification," dated July 2007;

(e) "Utah Annual Credit Life and Credit Accident and Health Insurance Filing Checklist," dated July 2007.

R590-228-4. Definitions.

In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Certification" means a statement that the filing being submitted is in compliance with Utah laws and rules.

(2) "Data page" means the page or pages in a policy and certificate that provide the specific data for the insured detailing the coverage provided and may be titled by the insurer as schedule page, schedule of benefits and premiums, etc.

(3) "Electronic Filing" means;

(a) a filing submitted via the Internet by using the "System for Electronic Rate and Form filing: (SERFF) System; or

(b) a filing submitted via the Internet by using the Sircon system; or

(c) A filing submitted via an email system.

(4) "Eligible group" means a group that meets the definitions in Sections 31A-22-502 through 31A-22-508.

(5) "Endorsement" means a written agreement attached to a life insurance policy that alters a provision of the policy. An example is a company change of name.

(6) "File and Use" means a filing can be used, sold, or offered for sale after it has been filed with the department.

(7) "File for Approval" means a filing can be used, sold, or offered for sale after it has been filed and the filer has received written confirmation that the filing was approved.

(8) "Filer" means a person or entity that submits a filing.

(9) "Filing," when used as a noun, means an item required to be filed with the department including:

(a) a policy;
(b) a rate, rate methodologies;
(c) a form;
(d) a document;
(e) an application;
(f) a report;
(g) a certificate;
(h) an endorsement;
(i) a rider; and
(j) an actuarial memorandum and certification.

(10) "Filing Objection Letter" means a letter issued by the commissioner when a review has determined the filing fails to comply with Utah law and rules. The filing objection letter, in addition to requiring correction of non-compliant items, may request clarification or additional information pertaining to the filing.

(11) "Filing status information" means a list of the states to which the filing was submitted, the date submitted, and the states' actions, including their responses

(12) "Issue Ages" means the range of minimum and maximum ages for which a policy or certificate will be issued.

(13) "Letter of Authorization" means a letter signed by an officer of the insurer on whose behalf the filing is submitted that designates filing authority to the filer.

(14) "Market type" means the type of policy that indicates the targeted market such as individual or group.

(15) "Order to Prohibit Use" means an order issued by the commissioner that prohibits the use of a filing.

(16) "Rejected" means a filing is:

(a) not submitted in accordance with applicable laws or rules; and

(b) returned to the insurer by the department with the reasons for rejection; and not considered filed with the department.

(17) "Rider" means a written agreement attached to a life insurance policy or certificate that adds a benefit. An example is a credit accident and health insurance rider.

(18) "Type of insurance" means a specific credit life and credit accident and health insurance product, as defined in the NAIC Coding Matrix, including, but not limited to, gross decreasing term, net decreasing term, level term, or truncated coverage.

(19) "Utah Filing Date" means the date provided to a filer by the Utah Insurance Department, that indicates a filing has been accepted pursuant to this subsection 6 or 7.

R590-228-5. General Filing Information.

(1) Each filing submitted must be accurate, consistent, and complete and contain all required documents in order for the filing to be processed in a timely and efficient manner. The commissioner may request any additional information deemed necessary.

(2) Licensees and filers are responsible for assuring that a filing is in compliance with Utah laws and rules. A filing not in compliance with Utah laws and rules are subject to regulatory action under Section 31A-2-308.

(3) A filings that do not comply with this rule will be rejected and returned to the filer. A rejected filing:

(a) is not considered filed with the department;
(b) must be submitted as a new filing; and
(c) will not be reopened for purposes of resubmission.

(4) A prior filing will not be researched to determine the purpose of the current filing.

(5) The department does not review or proofread every filing.

(a) Filings may be reviewed:
(i) when submitted;
(ii) as a result of a complaint;
(iii) during a regulatory examination or investigation; or

(iv) at any other time the department deems necessary.

(b) If a filing is reviewed and is not in compliance with Utah laws and rules, a Filing Objection Letter or an Order To Prohibit Use will be issued to the filer. The commissioner may require the filer to disclose deficiencies in forms or rating practices to affected insureds.

(6) Filing Correction.

(a) Filing corrections are considered informational.

(b) Filing corrections must be submitted within 30 days of the date "Filed" with the department.

(c) A new filing is required if a clerical corrections is made more than 30-days after the date "Filed" with the department. The filer must reference the original filing.

(7) If responding to a Filing Objection Letter or an Order to Prohibit Use, refer to R590-220-XX for instructions.

(8) Filing withdrawal. A filer must notify the department when withdrawing a previously filed form, rate, or supplementary information.

R590-228-6. Filing Submission Requirements.

(1) All filings must be submitted as an electronic filing.

(2) A filings must be submitted by market type and type of insurance.

(3) A filing may not include more than one type of insurance; or request filing for more than one insurer.

(4) SERFF Filings.

(a) Filing Description. Do not submit a cover letter. On the general information tab, complete the Filing Description section with the following information, presented in the order shown below.

(i) Provide a description of the filing.

(ii) Indicate if the filing:

(A) is new;

(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and the previous filing's Utah Filed Date;

(C) includes forms for informational purposes; if so, provide the Utah Filed Date; or

(D) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.

(iii) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(iv) Explain any change in benefits or premiums that may occur while the contract is in force.

(v) List the types of coverage to be provided, such as gross, net, full term, truncated and critical period.

(vi) Indicate whether the insurer has a Rating and Benefits Plan on file with the department.

(vii) List the issue ages, which means the range of minimum and maximum ages for which a policy will be issued.

(viii) Identify the intended market

(ix) Identify the types and durations of loans to be insured.

(x) Describe the methods of premium charge.

(b) Certification. The filer must certify that a filing has been properly completed AND is in compliance with Utah laws and rules. The "Utah Credit Life and Credit Accident and Health Filing Certification" must be properly completed, signed, and attached to the supporting documentation tab. A false certification may subject the licensee or filer to administrative action.

(c) Domiciliary Approval and Filing Status Information. All filings for a foreign insurer must include on the supporting documentation tab:

(i) copy of domicile approval for the exact same filing;

(ii) filing status information which includes:

(A) a list of the states to which the filing was submitted;

(B) the date submitted; and

(C) summary of the states' actions and their responses; or

(iii) if the filing is specific to Utah and only filed in Utah, then state, "UTAH SPECIFIC - NOT SUBMITTED TO ANY OTHER STATE."

(d) Letter of Authorization.

(i) When the filer is not the insurer, a letter of authorization from the insurer must be attached to the supplementary documentation tab.

(ii) The insurer remains responsible for the filing being in compliance with Utah laws and rules.

(e) Statement of Variability. Any item or provision on the data page or within the form that is variable must be contained within the brackets. List the ranges of variable items or factors within the brackets. Each variable item must be identified and explained in a statement of variability. If the information contained within the brackets changes, the form must be refilled.

(f) Items being submitted for filing.

(i) Any forms must be attached to the form schedule tab.

(ii) Any rating documentation, including actuarial memorandums and rate schedules, must be attached to the rate/rule schedule.

(iii) Actuarial Memorandum, Demonstration, and Certification of Compliance. An actuarial memorandum and demonstration with sample rate calculations and a certification of compliance with Utah law are required in each filing. The memorandum must be currently dated and signed by the actuary.

(5) Sircon Filings.

(a) Transmittal. The "NAIC Life, Accident and Health, Annuity, Credit Transmittal Document," as provided in R590-228-3, must be properly completed.

(i) Completed the transmittal by using the following:

(A) NAIC Life, Accident and Health, Annuity, Credit Transmittal Document (Instructions); and

(B) NAIC Uniform Life, Accident and Health, Annuity and Credit Coding Matrix. (ii) Do not submit the documents described in Section (a)(i) (A) and (B) with the filing.

(b) Filing Description. Do not submit a cover letter. In Section 15 of the transmittal, complete the Filing Description with the following information presented in the order shown below.

(i) Provide a description of the filing.

(ii) Indicate if the filing:

(A) is new;

(B) is replacing or modifying a previous submission; if so, describe the changes made, if previously rejected the reasons for rejection, and the previous filing's Utah Filed Date;

(C) includes forms for informational purpose; if so, provide the Utah Filed Date; or

(D) does not include the base policy; if so, provide the Utah Filed Date of the base policy and describe the effect on the base policy.

(iii) Identify if any of the provisions are unusual, controversial, or have been previously objected to, or prohibited, and explain why the provision is included in the filing.

(iv) List the types of coverage to be provided, such as gross, net, full term, truncated and critical period.

(v) Identify and describe any new or nonstandard benefits or rating methodologies.

(vi) Indicate whether the insurer has a Rating and Benefits Plan on file with the department.

(vii) Explain any change in benefits or premiums that may occur while the contract is in force.

(viii) List the issue ages, which means the range of minimum and maximum ages for which a policy will be issued.

(ix) Identify the types and durations of loans to be insured.

(x) Describe the methods of premium charge.

(c) Certification. The filer must certify that a filing has

been properly completed AND is compliance with Utah laws and rules. The "Utah Credit Life and Credit Accident and Health Filing Certification "must be properly completed and signed. A false certification may subject the licensee or filer to administrative action.

(d) Domiciliary Approval and Filing Status Information. All filings for a foreign insurer must include:

(i) a copy of domicile approval for the exact same filing;

(ii) a filing status information which includes:

(A) a list of the states to which the filing was submitted;

(B) the date submitted; and

(C) summary of the states' actions and their responses; or

(iii) if the filing is specific to Utah and only filed in Utah, then section 14 of the transmittal must be completed stating, "UTAH SPECIFIC - NOT SUBMITTED TO ANY OTHER STATE."

(e) Group Questionnaire. All group filings must include signed and fully completed "Utah Life and Annuity Group Questionnaire".

(f) Letter of Authorization.

(i) When the filer is not the insurer, include a letter of authorization from the insurer.

(ii) The insurer remains responsible for the filing being in compliance with Utah laws and rules.

(g) Statement of Variability. Any information that is variable must be bracketed in the form and must be explained in a statement of variability. If after filing, the information contained within the brackets changes, the filing must be refiled.

(h) Items being submitted for filing. Any form or rate items submitted for filing must be attached to the product forms tab.

(i) Actuarial Memorandum, Demonstration, and Certification of Compliance. An actuarial memorandum with sample rate calculations and a certification of compliance are required in each filing. The memorandum must be currently dated and signed by the actuary representing the insurer.

(j) Rates. All rates must be filed prior to use. All rates must be in compliance with 31A-22-807 and R590-91. A rate filing is required with each form filing.

(6) refer to each applicable Section of this rule for additional procedures on how to submit forms, rates, and reports.

R590-228-7. Procedures for Filings.

(1) Forms in General.

(a) Forms are "File and Use" filings.

(b) Each form must be identified by a unique form number. The form number may not be variable.

(c) Forms must be in final printed form or printer's proof format.

(d) Specific sections may be filed with variable data by placing brackets around affected information. Variable data must be identified within the specific section, or on a separate sheet included with the submission

(e) Blank spaces within the forms must be completed in John Doe fashion to accurately represent the intended market, purpose, and use. All John Doe data in the forms, including the premium rates and benefits, must be accurate and consistent with the actuarial memorandum and rate schedule.

(2) Policy Filings.

(a) Each type of insurance must be filed separately.

(b) A policy filing consists of one policy form, including its related forms, including the application, enrollment form, certificate, actuarial memorandum, certification, and rate schedule.

(c) Only one policy filing for a single type of insurance may be filed.

(3) Rider or Endorsement Filings. A rider or endorsement that provides benefits must include all filing documents required for a policy filing including:

(a) a listing of the base policy form number, title and Utah Filed Dates;

(b) a description of how the rider or endorsement affects the base policy; and

(c) appropriate actuarial memorandum and rate schedule.

(4) Application Filings. An application or enrollment form may be submitted as a separate filing or filed with its related policy and certificate. If an application has been previously filed or is filed separately, an informational copy of the application must be included with a policy or certificate filing.

(5) Rates. Rates are considered "File for Approval".

R590-228-8. Additional Procedures for Credit Life and Credit Accident and Health Form and Rate Filings.

(1) Insurers are advised to review the following code sections and rules prior to submitting a filing:

(a) Section 31A-21 Part III, "Specific Clauses in Contracts;"

(b) Section 31A-22 Part IV, "Life insurance and Annuities;"

(c) Section 31A-22 Part V, "Group Life Insurance;"

(d) Section 31A-22 Part VI, "Accident and Health Insurance;"

(e) Section 31A-22 Part VIII, "Credit Life and Accident and Health;"

(f) R590-91, "Credit Life and Disability;" and

(g) R590-191, "Unfair Life Insurance Claims Settlement Practice;"

(h) R590-192, "Unfair Health and Disability Claims Settlement Practices."

(2) A policy must be included with each certificate filing along with a master application and enrollment form.

(3) Actuarial Memorandum, Demonstration and Certification of Compliance. Each form and rate fling must include an actuarial memorandum, demonstration, and certification of compliance with Utah laws, signed and dated by the actuary representing the insurer.

(a) Actuarial memorandum must include a description of the following:

(i) types of coverage, such as gross or net decreasing, single or joint life, full term or truncated, critical period;

(ii) types of loans to be insured, such as open end, closed end,

(iii) types of premium charge: single premium, monthly outstanding balance, or other method explained in detail;

(iv) durations of loans and durations of coverage. Refer to 31A-22-801(2)(a);

(v) rates per unit, rating and premium methodologies including:

(A) formulas used for each type of coverage and premium method; and

(B) sample calculations for each type of coverage and premium method;

(vi) an explanation of whether the company has a Rating and Benefits Plan on file and if so, whether the submitted rates are consistent with the filed plan;

(vii) demonstration of compliance with applicable code and rules;

(viii) refund methods and calculation including formulas for each type of coverage; and

(ix) reserve bases including methods used.

(b) The actuarial certification must include certification of compliance that formulas and methods used produce rates that are in compliance with applicable Utah laws and rules for each type of coverage and duration in the filing.

(4) Rate Schedules.

(a) Rate schedules must be included for each type of

coverage and for representative durations.

(b) Rates must be identified as prima facie rates, rates previously filed for compliance with the Rating and Benefits Plan required in R590-91-10, or deviated rates submitted pursuant to 31A-22-807, or rates on nonstandard coverage pursuant to R590-91-5.

(5) All benefits must be reasonable in relation to the premium charge. Insurers filing for approval of a rate higher than prima facie rates must comply with the requirements of 31A-22-807 and R590-91-10. Include a demonstration that the rates are reasonable in relation to the benefits.

R590-228-9. Insurer Annual Reports.

(1) All insurer annual reports must be properly identified and must be filed separately from other filings. Each annual report must be submitted along with the properly completed report checklist.

(2) "Credit Life and Credit Accident and Health Annual Report."

(a) Filings must comply with R590-91-10. Every Credit Life, and Credit Accident and Health insurer marketing must file annually.

(b) The report must include:

(i) Utah Credit Life, and Credit Accident and Health Report Checklist;

(ii) Annual report filings are due May 1 each year.

R590-228-10. Correspondence and Status Checks.

(1) Correspondence. When corresponding with the department, filers must provide sufficient information to identify the original filing. Information should include:

(a) type of insurance;

(b) date of filing;

(c) form numbers; and

(d) Submission method, SERFF or Sircon; and

(e) tracking number.

(2) Status Checks. A complete filing is usually processed within 45 days or receipt. A filers can request the status of its filing by telephone, or email 60 days after the date of submission.

R590-228-11. Responses.

(1) Response to a Filing Objection Letter. A response to a Filing Objection Letter must include:

(a) a cover letter identifying all changes made;

(b) revised documents with all changes highlighted; and

(c) revised documents incorporating all changes without highlights.

(2) Response to an Order to Prohibit Use.

(a) An Order to Prohibit Use becomes final 15 days after the date of the Order.

(b) Use of the filing must be discontinued not later than the date specified in the Order.

(c) To contest an Order to Prohibit Use, the commissioner must receive a written request for a hearing not later than 15 days after the date of the Order.

(d) A new filing is required if the company chooses to make the requested change addressed in the Filing Objection Letter. The new filing must reference the previously prohibited filing.

R590-228-12. Penalties.

Persons found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-228-13. Enforcement Date.

The commissioner will begin enforcing the provision of this rule May 1, 2004.

R590-228-14. Severability.

If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances may not be affected by it.

KEY: credit insurance filings
July 30, 2007 **31A-2-201**
31A-2-201.1
31A-2-202

R590. Insurance, Administration.
R590-233. Health Benefit Plan Insurance Standards.
R590-233-1. Authority.

This rule is issued by the insurance commissioner pursuant to the following provisions of the Utah Insurance Code:

(1) Subsection 31A-2-201(3)(a) authorizes rules to implement the Insurance Code;

(2) Sections 31A-2-202 and 31A-23a-412 authorize the commissioner to request reports, conduct examinations, and inspect records of any licensee;

(3) Subsection 31A-22-605(4) requires the commissioner to adopt rules to establish standards for disclosure in the sale of, and benefits to be provided by individual and franchise accident and health polices;

(4) Section 31A-22-623 authorizes the commissioner to establish by rule minimum standards of coverage for dietary products for inborn metabolic errors;

(5) Section 31A-22-626 authorizes the commissioner to establish by rule minimum standards of coverage for diabetes for accident and health insurance;

(6) Subsection 31A-23a-402(8) authorizes the commissioner to define by rule acts and practices that are unfair and unreasonable; and

(7) Subsection 31A-26-301(1) authorizes the commissioner to set standards for timely payment of claims.

R590-233-2. Purpose and Scope.

(1) Purpose. The purpose of this rule is to provide reasonable standardization and simplification of terms and coverages of insurance policies in order to facilitate public understanding and comparison and to prohibit provisions which may be misleading or confusing in connection either with the purchase of such coverages or with the settlement of claims, and to provide for full disclosure in the sale of such insurance.

(2) Scope.

(a) Except as excluded under (b), this regulation applies to all individual and group health benefit plan policies, including policies issued to associations, trusts, discretionary groups, or other similar groupings.

(b) This rule shall not apply to employer group health benefit plans.

(3) The requirements contained in this regulation shall be in addition to any other applicable regulations previously adopted.

R590-233-3. Definitions.

In addition to the definitions of Sections 31A-1-301 and 31A-22-605(2), the following definitions shall apply for the purpose of this rule.

(1) "Accident," "accidental injury," and "accidental means" shall be defined to employ result language and shall not include words that establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.

(a) The definition shall not be more restrictive than the following: "injury" or "injuries" means accidental bodily injury sustained by the insured person that is the direct cause of the condition for which benefits are provided, independent of disease or bodily infirmity or any other cause and that occurs while the insurance is in force.

(b) Unless otherwise prohibited by law, the definition may exclude injuries for which benefits are paid under worker's compensation, any employer's liability or similar law, or a motor vehicle no-fault plan.

(2) "Certificate of Completion" shall mean a document issued by the Utah Board of Education to a person who completes an approved course of study not leading to a diploma, or to one who passes a challenge for that same course of study, or to one whose out-of-state credentials and certificate are acceptable to the Board.

(3) "Complications of Pregnancy" shall mean diseases or conditions the diagnoses of which are distinct from pregnancy but are adversely affected or caused by pregnancy and not associated with a normal pregnancy.

(a) "Complications of Pregnancy" include acute nephritis, nephrosis, cardiac decompensation, ectopic pregnancy which is terminated, a spontaneous termination of pregnancy when a viable birth is not possible, puerperal infection, eclampsia, pre-eclampsia and toxemia.

(b) This definition does not include false labor, occasional spotting, doctor prescribed rest during the period of pregnancy, morning sickness, and conditions of comparable severity associated with management of a difficult pregnancy.

(4) "Convalescent Nursing Home," "extended care facility," or "skilled nursing facility" shall mean a facility duly licensed and operating within the scope of such license.

(5) "Cosmetic Surgery" or "Reconstructive Surgery" shall mean any surgical procedure performed primarily to improve physical appearance.

(a) This definition does not include surgery, which is necessary:

(i) to correct damage caused by injury or sickness;

(ii) for reconstructive treatment following medically necessary surgery;

(iii) to provide or restore normal bodily function; or

(iv) to correct a congenital disorder that has resulted in a functional defect.

(b) This provision does not require coverage for preexisting conditions otherwise excluded.

(6) "Elimination Period" or "Waiting Period" means the length of time an insured shall wait before benefits are paid under the policy.

(7) "Enrollment Form" shall mean application as defined in Section 31A-1-301.

(8) "Experimental Treatment" is defined as medical treatment, services, supplies, medications, drugs, or other methods of therapy or medical practices, which are not accepted as a valid course of treatment by the Utah Medical Association, the U.S. Food and Drug Administration, the American Medical Association, or the Surgeon General.

(9) "Home Health Agency" shall mean a public agency or private organization, or subdivision of a health care facility, licensed and operating within the scope of such license.

(10) "Home Health Aide" shall mean a person who obtains a Certificate of Completion, as required by law, which allows performance of health care and other related services under the supervision of a registered nurse from the home health agency, or performance of simple procedures as an extension of physical, speech, or occupational therapy under the supervision of licensed therapists.

(11) "Home Health Care" shall mean services provided by a home health agency.

(12) "Homemaker/Home Health Aide" shall mean a person who has obtained a Certificate of Completion, as required by law, which allows performance of both homemaker and home health aide services, and who provides health care and other related services under the supervision of a registered nurse from the home health agency or under the supervision of licensed therapists.

(13) "Hospice" shall mean a program of care for the terminally ill and their families which occurs in a home or in a health care facility and which provides medical, palliative, psychological, spiritual, or supportive care and treatment and is licensed and operating within the scope of such license.

(14) "Hospital" means a facility that is licensed and operating within the scope of such license. This definition may not preclude the requirement of medical necessity of hospital confinement or other treatment.

(15) "Intermediate Nursing Care" shall mean nursing services provided by, or under the supervision of, a registered nurse. Such care shall be for the purpose of treating the condition for which confinement is required.

(16) "Medical Necessity" means:

(a) health care services or products that a prudent health care professional would provide to a patient for the purpose of preventing, diagnosing or treating an illness, injury, disease or its symptoms in a manner that is:

(i) in accordance with generally accepted standards of medical practice in the United States;

(ii) clinically appropriate in terms of type, frequency, extent, site, and duration;

(iii) not primarily for the convenience of the patient, physician, or other health care provider; and

(iv) covered under the contract;

(b) when a medical question-of-fact exists medical necessity shall include the most appropriate available supply or level of service for the individual in question, considering potential benefits and harms to the individual, and known to be effective.

(i) For interventions not yet in widespread use, the effectiveness shall be based on scientific evidence.

(ii) For established interventions, the effectiveness shall be based on:

(A) scientific evidence;

(B) professional standards; and

(C) expert opinion.

(17) "Medicare" means the "Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended."

(18) "Medicare Supplement Policy" shall mean an individual, franchise, or group policy of accident and health insurance, other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act, 42 U.S.C. Section 1395 et seq., or an issued policy under a demonstration project specified in 41 U.S.C. Section 1395ss(g)(1), that is advertised, marketed, or primarily designed as a supplement to reimbursements under Medicare for hospital, medical, or surgical expenses of persons eligible for Medicare.

(19) "Mental or Nervous Disorders" may not be defined more restrictively than a definition including neurosis, psychoneurosis, psychosis, or any other mental or emotional disease or disorder which does not have a demonstrable organic cause.

(20) "Nurse" may be defined so that the description of nurse is restricted to a type of nurse, such as registered nurse, or licensed practical nurse. If the words "nurse" or "registered nurse" are used without specific instruction, then the use of such terms requires the insurer to recognize the services of any individual who qualifies under such terminology in accordance with applicable statutes or administrative rules.

(21) "Nurse, Licensed Practical" shall mean a person who is registered and licensed to practice as a practical nurse.

(22) "Nurse, Registered" shall mean any person who is registered and licensed to practice as a registered nurse.

(23) "Nursing Care" shall mean assistance provided for the health care needs of sick or disabled individuals, by or under the direction of licensed nursing personnel.

(24) "Physician" may be defined by including words such as qualified physician or licensed physician. The use of such terms requires an insurer to recognize and to accept, to the extent of its obligation under the contract, all providers of medical care and treatment when such services are within the scope of the provider's licensed authority and are provided pursuant to applicable laws.

(25) "Probationary Period" shall mean the period of time following the date of issuance or effective date of the policy before coverage begins for all or certain conditions.

(26)(a) "Scientific evidence" means:

(i) scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff; or

(ii) findings, studies or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes.

(b) Scientific evidence shall not include published peer-reviewed literature sponsored to a significant extent by a pharmaceutical manufacturing company or medical device manufacturer or a single study without other supportable studies.

(27) "Sickness" means illness, disease, or disorder of an insured person.

(28) "Skilled Nursing Care" shall mean nursing services provided by, or under the supervision of, a registered nurse. Such care shall be for the purpose of treating the condition for which the confinement is required and not for the purpose of providing intermediate or custodial care.

(29) "Therapist" may be defined as a professionally trained or duly licensed or registered person, such as a physical therapist, occupational therapist, or speech therapist, who is skilled in applying treatment techniques and procedures under the general direction of a physician.

(30)(a) "Total Disability" shall mean an individual who:

(i) is not engaged in employment or occupation for which he is or becomes qualified by reason of education, training or experience; and

(ii) is unable to perform all of the substantial and material duties of his or her regular occupation or words of similar import.

(b) An insurer may require care by a physician other than the insured or a member of the insured's immediate family.

(c) The definition may not exclude benefits based on the individual's:

(i) ability to engage in any employment or occupation for wage or profit;

(ii) inability to perform any occupation whatsoever, any occupational duty, or any and every duty of his occupation; or

(iii) inability to engage in any training or rehabilitation program.

(31)(a) "Usual and Customary" shall mean the most common charge for similar services, medicines or supplies within the area in which the charge is incurred.

(b) In determining whether a charge is usual and customary, insurers shall consider one or more of the following factors:

(i) the level of skill, extent of training, and experience required to perform the procedure or service;

(ii) the length of time required to perform the procedure or services as compared to the length of time required to perform other similar services;

(iii) the severity or nature of the illness or injury being treated;

(iv) the amount charged for the same or comparable services, medicines or supplies in the locality; the amount charged for the same or comparable services, medicines or supplies in other parts of the country;

(v) the cost to the provider of providing the service, medicine or supply; and

(vi) other factors determined by the insurer to be appropriate.

(32) "Waiting Period" shall mean "Elimination Period."

R590-233-4. Prohibited Policy Provisions.

(1) Probationary periods.

(a) A policy shall not contain provisions establishing a

probationary period during which no coverage is provided under the policy except as provided in R590-233-4(1)(b), (c), and (d).

(b) A policy may specify a probationary period not to exceed twelve months for losses resulting from:

(i) amenorrhea;

(ii) cataracts;

(iii) congenital deformities, unless coverage is required pursuant to Subsection 31A-22-610(2);

(iv) cystocele;

(v) dysmenorrhea;

(vi) enterocele;

(vii) infertility;

(viii) rectocele;

(ix) seasonal allergies, limited to testing and treatment;

(x) sleep disorders, including sleep studies;

(xi) surgical treatment for;

(A) adenoidectony,

(B) bunionectomy,

(C) carpal tunnel,

(D) hysterectomy, except in cases of malignancy,

(E) joint replacement,

(F) reduction mammoplasty,

(G) Morton's neuroma,

(H) myringotomy and tympanotomy, with or without tubes inserted,

(I) nasal septal repair, except for injuries after the effective date of coverage,

(J) retained hardware removal,

(K) sterilization, and

(L) tonsillectomy;

(xii) urethrocele;

(xiii) uterine prolapse; and

(xiv) varicose veins.

(c) Coverage must be provided for conditions and procedures prohibited in Subsection (1)(b) for emergency medical conditions in compliance with Section 31A-22-627.

(d) The probationary period must be reduced by the number of days of creditable coverage the enrollee has as of the enrollment date, in accordance with Subsection 31A-22-605.1(4)(b).

(2) Preexisting conditions provisions shall comply with Sections 31A-1-301, and 31A-22-605.1.

(3) Limitations or exclusions. A policy shall not limit or exclude coverage or benefits by type of illness, accident, treatment or medical condition, except as follows:

(a) abortion;

(b) acupuncture and acupressure services;

(c) administrative charges for completing insurance forms, duplication services, interest, finance charges, or other administrative charges, unless otherwise required by law;

(d) administrative exams and services;

(e) alcoholism and drug addictions;

(f) allergy tests and treatments;

(g) aviation;

(h) axillary hyperhidrosis;

(i) benefits provided under:

(i) Medicare or other governmental program, except Medicaid;

(ii) state or federal worker's compensation; or

(iii) employer's liability or occupational disease law.

(j) cardiopulmonary fitness training, exercise equipment, and membership fees to a spa or health club;

(k) charges for appointments scheduled and not kept;

(l) chiropractic;

(m) complementary and alternative medicine;

(n) corrective lenses, and examination for the prescription or fitting thereof, but policies may not exclude required lens implants following cataract surgery;

(o) cosmetic surgery; reversal, revision, repair, complications, or treatment related to a non-covered cosmetic surgery. This exclusions does not apply to reconstructive surgery when the service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part; or reconstructive surgery because of congenital disease or anomaly of a covered dependent child that has resulted in a functional defect;

(p) custodial care;

(q) dental care or treatment;

(r) dietary products, except as required by Rule R590-194;

(s) educational and nutritional training, except as required by Rule R590-200;

(t) experimental and/or investigational services;

(u) felony, riot or insurrection, when the insured is a voluntary participant;

(v) foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain or symptomatic complaints of the feet, including orthotics. The exclusion of routine foot care does not apply to cutting or removal of corns, calluses, or nails when provided to a person who has a systemic disease, such as diabetes with peripheral neuropathy or circulatory insufficiency, of such severity that unskilled performance of the procedure would be hazardous;

(w) gastric or intestinal bypass services including lap banding, gastric stapling, and other similar procedures to facilitate weight loss; the reversal, or revision of such procedures; or services required for the treatment of complications from such procedures;

(x) gene therapy;

(y) genetic testing;

(z) hearing aids, and examination for the prescription or fitting thereof;

(aa) illegal activities, limited to losses related directly to the insured's voluntary participation;

(bb) infertility services, except as required by Rule R590-76;

(cc) interscholastic sports, with respect to short-term nonrenewable policies;

(dd) mental or emotional disorders;

(ee) motor vehicle no-fault law, except when the covered person is required by law to have no-fault coverage, the exclusion applies to charges up to the minimum coverage required by law whether or not such coverage is in effect;

(ff) nuclear release;

(gg) preexisting conditions or diseases as allowed under Section 31A-22-605.1, except for coverage of congenital anomalies as required by Section 31A-22-610;

(hh) pregnancy, except for complications of pregnancy;

(ii) refractive eye surgery;

(jj) rehabilitation therapy services, such as physical, speech, and occupational, unless required to correct an impairment caused by a covered accident or illness;

(kk) respite care;

(ll) rest cures;

(mm) routine physical examinations;

(nn) service in the armed forces or units' auxiliary to it;

(oo) services rendered by employees of hospitals, laboratories or other institutions;

(pp) services performed by a member of the covered person's immediate family;

(qq) services for which no charge is normally made in the absence of insurance;

(rr) sexual dysfunction;

(ss) shipping and handling, unless otherwise required by law;

(tt) suicide, sane or insane, attempted suicide, or intentionally self-inflicted injury;

(uu) telephone/electronic consultations;

(vv) territorial limitations outside the United States;

(ww) terrorism, including acts of terrorism;
(xx) transplants;
(yy) transportation;
(zz) treatment provided in a government hospital, except for hospital indemnity policies;
(aaa) war or act of war, whether declared or undeclared; or
(bbb) others as may be approved by the commissioner.

(4) Waivers. All waivers issued must comply with 31A-30-107.5. Where waivers are required as a condition of issuance, renewal or reinstatement, signed acceptance by the insured is required.

(5) Commissioner authority. Policy provisions precluded in this section shall not be construed as a limitation on the authority of the commissioner to prohibit other policy provisions that in the opinion of the commissioner are unjust, unfair or unfairly discriminatory to the policyholder, beneficiary or a person insured under the policy.

R590-233-5. General Requirements.

(1) Policy definitions. No policy subject to this rule may contain definitions respecting the matters defined in Section R590-233-3 unless such definitions comply with the requirements of that section.

(2) Rights of spouse. The following provisions apply to policies that provide coverage to a spouse of the insured:

(a) A policy may not provide for termination of coverage of the spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than for nonpayment of premium.

(b) A policy shall provide that in the event of the insured's death the spouse of the insured shall become the insured.

(3) Cancellation, Renewability, and Termination. Policy cancellation, renewability and termination provisions must comply with Sections 31A-8-402.3, 31A-8-402.5, 31A-8-402.7, 31A-22-721 and 31A-30-107, 107.1 and 107.3.

(4) Termination of the policy shall be without prejudice to a continuous loss that commenced while the policy or certificate was in force. The continuous total disability of the insured may be a condition for the extension of benefits beyond the period the policy was in force, limited to the duration of the benefit period, if any, or payment of the maximum benefits.

(5) Military service. If a policy contains a status-type military service exclusion or a provision that suspends coverage during military service, the policy shall provide, upon receipt of written request, for refund of premiums as applicable to the person on a pro rata basis.

(6) Pregnancy benefit extension. In the event the insurer cancels or refuses to renew a policy providing pregnancy benefits, the policy shall provide an extension of benefits for a pregnancy commencing while the policy is in force and for which benefits would have been payable had the policy remained in force. This requirement does not apply to a policy that is canceled for the following reasons:

(a) the insured fails to pay the required premiums in accordance with the terms of the plan; or

(b) the insured person performs an act or practice that constitutes fraud in connection with the coverage or makes an intentional misrepresentation of material fact under the terms of the coverage.

(7) Transplant donor coverage. A policy providing coverage for the recipient in a transplant operation shall also provide reimbursement of any medical expenses of a live donor to the extent that benefits remain and are available under the recipient's policy or certificate, after benefits for the recipient's own expenses have been paid.

(8) Notice of premium change. A notice of change in premium shall be given no fewer than 45 days before the renewal date.

R590-233-6. Required Provisions.

(1) Applications.

(a) Questions used to elicit health condition information may not be vague and must reference a reasonable time frame in relation to the health condition.

(b) Completed applications shall be made part of the policy. A copy of the completed application shall be provided to the applicant prior to or upon delivery of the policy.

(c) Application forms shall provide a statement regarding the pre-existing waiting period and the requirements to receive any applicable credit for previous coverage.

(d) An application form shall include a question designed to elicit information as to whether the insurance to be issued is intended to replace any other accident and health insurance presently in force. A supplementary application or other form to be signed by the applicant containing the question may be used.

(2) Renewal and nonrenewal provisions. Accident and health insurance shall include a renewal, continuation or nonrenewal provision. The provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed.

(3) Endorsement acceptance.

(a) Except for endorsements by which the insurer effectuates a request made in writing by the policyholder or exercises a specifically reserved right under the policy, all endorsements added to a policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the policyholder.

(b) After the date of policy issue, any endorsement that increases benefits or coverage with a concurrent increase in premium during the policy term, must be agreed to in writing signed by the policyholder, except if the increased benefits or coverage is required by law.

(4) Additional premium. Where a separate additional premium is charged for benefits provided in connection with endorsements, the premium charge shall be set forth in the policy or certificate.

(5) Benefit payment standard. A policy or certificate that provides for the payment of benefits based on standards described as usual and customary, reasonable and customary, or words of similar import shall include a definition of the terms and an explanation of the terms in its accompanying outline of coverage.

(6) Preexisting conditions. If a policy or certificate contains any limitations with respect to preexisting conditions, the limitations shall appear as a separate paragraph of the policy or certificate and be labeled as "Preexisting Condition Limitations."

(7) Conversion privilege. If a policy or certificate contains a conversion privilege, it shall comply, in substance, with the following: The caption of the provision shall read "Conversion Privilege" or words of similar import. The provision shall indicate the persons eligible for conversion, the circumstances applicable to the conversion privilege, including any limitations on the conversion, and the person by whom the conversion privilege may be exercised. The provision shall specify the benefits to be provided on conversion or may state that the converted coverage will be as provided on a policy form then being used by the insurer for that purpose.

R590-233-7. Accident and Health Standards for Benefits.

The following standards for benefits are prescribed for the categories of coverage noted in the following subsections. An accident and health insurance policy or certificate subject to this rule shall not be delivered or issued for delivery unless it meets

the required standards for the specified categories. This section shall not preclude the issuance of any policy or contract combining two or more categories set forth in Subsection 31A-22-605(5).

Benefits for coverages listed in this section shall include coverage of inborn metabolic errors as required by Sections 31A-22-623 and Rule R590-194, and benefits for diabetes as required by Sections 31A-22-626 and Rule R590-200, if applicable.

(1) Major Medical Expense Coverage.

Major medical expense coverage is a policy of accident and health insurance that provides hospital, medical and surgical expense coverage.

(a) An aggregate maximum of not less than $1,000,000 may be applied and include any combination of the following:

(i) coinsurance percentage, paid by the covered person, not to exceed 50% of covered charges per covered person per year;

(ii) coinsurance out-of-pocket maximum after any deductibles not to exceed $20,000 per covered person per year; or

(iii) deductibles stated on per person, per family, per illness, per benefit period, or per year basis.

(b) A combination of the bases provided under Subsections(1)(a)(i), (ii), and (iii) may not exceed 5% of the aggregate maximum limit under the policy for each covered person.

(c) The following services must be provided:

(i) daily hospital room and board expenses subject only to limitations based on average daily cost of the semiprivate room rate in the area where the insured resides;

(ii) miscellaneous hospital services;

(iii) surgical services;

(iv) anesthesia services;

(v) in-hospital medical services;

(vi) out-of-hospital care, consisting of physician services rendered on an ambulatory basis where coverage is not provided elsewhere in the policy for diagnosis and treatment of sickness or injury, diagnostic x-ray, laboratory services, radiation therapy, and hemodialysis ordered by a physician; and

(vii) at least three of the following additional benefits must also be provided:

(A) in-hospital private duty registered nurse services;

(B) convalescent nursing home care;

(C) diagnosis and treatment by a radiologist or physiotherapist;

(D) rental of special medical equipment, as defined by the insurer in the policy;

(E) artificial limbs or eyes, casts, splints, trusses or braces;

(F) treatment for functional nervous disorders, and mental and emotional disorders; or

(G) out-of-hospital prescription drugs and medications.

(d) All required benefits may be subject to all applicable deductibles, coinsurance and general policy exceptions and limitations.

(e) A major medical expense policy may also have special or internal limitations for those services covered under Subsection (1)(c).

(f) Except as authorized by this subsection through the application of special or internal limitations, a major medical expense policy must be designed to cover, after any deductibles or coinsurance provisions are met, the usual, customary and reasonable charges, as determined consistently by the carrier and as subject to approval by the commissioner, or another rate agreed to between the insurer and provider, for covered services up to the lifetime policy maximum.

(2) Basic Medical Expense Coverage.

Basic medical expense coverage is a policy of accident and health insurance that provides hospital, medical and surgical expense coverage.

(a) An aggregate maximum of not less than $500,000 may be applied, and may include any combination of the following:

(i) coinsurance percentage, paid by the covered person, not to exceed 50% of covered charges per covered person per year;

(ii) coinsurance out-of-pocket maximum after any deductibles, not to exceed $25,000 per covered person per year; or

(iii) deductibles stated on per person, per family, per illness, per benefit period, or per year basis.

(b) A combination of the bases provided in Subsections (2)(a)(i), (ii) and (iii) may not exceed 10% of the aggregate maximum limit under the policy.

(c) The following services must be covered:

(i) daily hospital room and board expenses subject only to limitations based on average daily cost of the semiprivate room rate in the area where the insured resides or such other rate agreed to between the insurer and provider for a period of not less than 31 days during continuous hospital confinement;

(ii) miscellaneous hospital services;

(iii) surgical services;

(iv) anesthesia services;

(v) in-hospital medical services;

(vi) out-of-hospital care, consisting of physicians' services rendered on an ambulatory basis where coverage is not provided elsewhere in the policy for diagnosis and treatment of sickness or injury, diagnostic x-ray, laboratory services, radiation therapy and hemodialysis ordered by a physician; and

(vii) three of the following additional benefits must also be provided:

(A) in-hospital private duty registered nurse services;

(B) convalescent nursing home care;

(C) diagnosis and treatment by a radiologist or physiotherapist;

(D) rental of special medical equipment, as defined by the insurer in the policy;

(E) artificial limbs or eyes, casts, splints, trusses or braces;

(F) treatment for functional nervous disorders, and mental and emotional disorders; or

(G) out-of-hospital prescription drugs and medications.

(d) If the policy is written to complement underlying basic hospital expense coverage and basic medical-surgical expense coverage, the deductible may be increased by the amount of the benefits provided by the underlying basic coverage.

(e) The benefits required by Subsection (2) may be subject to all applicable deductibles, coinsurance and general policy exceptions and limitations.

(f) Basic medical expense policies may also have special or internal limitations for prescription drugs, nursing facilities, intensive care facilities, mental health treatment, alcohol or substance abuse treatment, transplants, experimental treatments, mandated benefits required by law and those services covered under Subsection (2)(c) and other such special or internal limitations as are authorized or approved by the commissioner.

(g) Except as authorized by this subsection through the application of special or internal limitations, basic medical expense policies must be designed to cover, after any deductibles or coinsurance provisions are met, the usual customary and reasonable charges, as determined consistently by the carrier and as subject to approval by the commissioner, or another rate agreed to between the insurer and provider, for covered services up to the lifetime policy maximum.

(3) Catastrophic Coverage.

Catastrophic coverage is a policy of accident and health insurance that:

(a) provides benefits for medical expenses incurred by the insured to an aggregate maximum of not less than $1,000,000;

(b) contains no separate internal dollar limits;

(c) may be subject to a policy deductible which does not exceed the greater of 2% of the policy limit or the amount of

other in-force accident and health insurance coverage for the same medical expenses; and

(d) contains no percentage participation or coinsurance clause for expenses which exceed the deductible.

R590-233-8. Outline of Coverage Requirements.

(1) Major Medical Expense Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Rule R590-233-7(1). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE I

(COMPANY NAME)

MAJOR MEDICAL EXPENSE COVERAGE

OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully - This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY)(CERTIFICATE) CAREFULLY!
Major medical expense coverage is designed to provide, to persons insured, comprehensive coverage for major hospital, medical, and surgical expenses incurred as a result of a covered accident or sickness. Coverage is provided for daily hospital room and board, miscellaneous hospital services, surgical services, anesthesia services, in-hospital medical services, and out-of-hospital care, subject to any deductibles, copayment provisions, or other limitations that may be set forth in the policy.
A brief specific description of the benefits, including dollar amounts, contained in this policy, in the following order:
daily hospital room and board;
miscellaneous hospital services;
surgical services;
anesthesia services;
in-hospital medical services;
out-of-hospital care;maximum dollar amount for covered charges; and
other benefits, if any.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

(2) Basic Medical Expense Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-233-7(2). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE II

(COMPANY NAME)

BASIC MEDICAL EXPENSE COVERAGE

THIS (POLICY)(CERTIFICATE) PROVIDES LIMITED BENEFITS

OUTLINE OF COVERAGE

Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY)(CERTIFICATE) CAREFULLY!
Basic medical expense coverage is designed to provide, to persons insured, limited coverage for major hospital, medical, and surgical expenses incurred as a result of a covered accident or sickness. Coverage is provided for daily hospital room and board, miscellaneous hospital services, surgical services, anesthesia services, in-hospital medical services, and out-of-hospital care, subject to any deductibles, copayment provisions, or other limitations that may be set forth in the policy.
A brief specific description of the benefits, including dollar amounts, contained in this policy, in the following order:
daily hospital room and board;
miscellaneous hospital services;
surgical services;
anesthesia services;
in-hospital medical services;
out-of-hospital care;
maximum dollar amount for covered charges; and
other benefits, if any.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

(3) Catastrophic Coverage.

An outline of coverage, in the form prescribed below, shall be issued in connection with policies meeting the standards of Subsection R590-233-7(3). The items included in the outline of coverage must appear in the sequence prescribed:

TABLE III

(COMPANY NAME)

CATASTROPHIC COVERAGE

OUTLINE OF COVERAGE
Read Your (Policy)(Certificate) Carefully-This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR (POLICY) (CERTIFICATE) CAREFULLY!
Catastrophic coverage is designed to provide benefits for medical expenses incurred by the insured. Coverage is provided for daily hospital room and board, miscellaneous hospital services, surgical services, anesthesia services, in-hospital medical services, and out-of-hospital care, subject to any deductibles with no separate internal dollar limits.
A brief specific description of the benefits, including dollar amounts, contained in this policy, in the following order:
daily hospital room and board;
miscellaneous hospital services;
surgical services;
anesthesia services;
in-hospital medical services;
out-of-hospital care; and
other benefits, if any.
A description of any policy provisions that exclude, eliminate, restrict, reduce, limit, delay, or in any other manner operate to qualify payment of the benefits.
A description of policy provisions respecting renewability or continuation of coverage, including age restrictions or any reservation of right to change premiums.

(4) An insurer shall deliver an outline of coverage to an applicant or enrollee prior to upon the sale of an individual accident and health insurance policy as required in this rule.

(5) If an outline of coverage was delivered at the time of application or enrollment and the policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate must accompany the policy or certificate when it is delivered and contain the following statement in no less than 12-point type, immediately above the company name:

"NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application, and the coverage originally applied for has not been issued."

(6) Where the prescribed outline of coverage is inappropriate for the coverage provided by the policy or certificate, an alternate outline of coverage shall be submitted to the commissioner for prior approval.

(7) Advertisements may fulfill the requirements for outlines of coverage if they satisfy the standards specified for outlines of coverage in this rule.

R590-233-9. Replacement of Accident and Health Insurance Requirements.

(1) Upon determining that a sale will involve replacement, an insurer, other than a direct response insurer, or its producer, shall furnish the applicant, prior to issuance or delivery of the policy, the notice described in Subsection (2). The insurer shall retain a copy of the notice. A direct response insurer shall deliver to the applicant, upon issuance of the policy, the notice described in Subsection (3).

(2) The notice required by Subsection (1) for an insurer, other than a direct response insurer, shall provide, in substantially the following form:

TABLE IV

NOTICE TO APPLICANT REGARDING REPLACEMENT
OF ACCIDENT AND HEALTH INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and health insurance and replace it with a policy to be issued by (insert company name) Insurance Company. For your own information and protection, you should be aware of and seriously consider certain factors that may affect the insurance protection available to you under the new policy. Health conditions which you may presently have, (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.
You may wish to secure the advice of your present insurer or its producer regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.
If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical/health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force.
After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.
The above "Notice to Applicant" was delivered to me on:
.....
(Date)
.....

(Applicant's Signature)

(3) The notice required by Subsection (1) for a direct response insurer shall be as follows:

TABLE V

NOTICE TO APPLICANT REGARDING REPLACEMENT
OF ACCIDENT AND HEALTH INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and health insurance and replace it with the policy delivered herewith issued by (insert company name) Insurance Company. Your new policy provides 30 days within which you may decide without cost whether you desire to keep the policy.
For your own information and protection, you should be aware of and seriously consider certain factors that may affect the insurance protection available to you under the new policy. Health conditions that you may presently have, (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.
You may wish to secure the advice of your present insurer or its producer regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interests to make sure you understand all the relevant factors involved in replacing your present coverage.
(To be included only if the application is attached to the policy). If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (insert company name and address) within ten days if any information is not correct and complete, or if any past medical history has been left out of the application.
COMPANY NAME

R590-233-10. Existing Contracts.

Contracts issued prior to the effective date of this rule must be amended to comply with the revised provisions on the first policy anniversary following the effective date of this rule.

R590-233-11. Enforcement Date.

The commissioner will begin enforcing this rule January 1, 2006.

R590-233-12. Severability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.

KEY: health insurance
July 30, 2007

31A-2-201
31A-2-202
31A-22-605
31A-22-623
31A-22-626
31A-23a-402
31A-23a-412
31A-26-301

R602. Labor Commission, Adjudication.
R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims.
R602-2-1. Pleadings and Discovery.

A. Definitions.

1. "Commission" means the Labor Commission.

2. "Division" means the Division of Adjudication within the Labor Commission.

3. "Application for Hearing" means the request for agency action regarding a workers' compensation claim.

4. "Supporting medical documentation" means a Summary of Medical Record or other medical report or treatment note completed by a physician that indicates the presence or absence of a medical causal connection between benefits sought and the alleged industrial injury.

5. "Authorization to Release Medical Records" is a form authorizing the injured workers' medical providers to provide medical records and other medical information to the commission or a party.

6. "Supporting documents" means supporting medical documentation, list of medical providers, Authorization to Release Medical Records and, when applicable, an Appointment of Counsel Form.

7. "Petitioner" means the person or entity who has filed an Application for Hearing.

8. "Respondent" means the person or entity against whom the Application for Hearing was filed.

9. "Discovery motion" includes a motion to compel or a motion for protective order.

B. Application for Hearing.

1. Whenever a claim for compensation benefits is denied by an employer or insurance carrier, the burden rests with the injured worker, or medical provider, to initiate agency action by filing an Application for Hearing with the Division. Applications for hearing shall include an original, notarized Authorization to Release Medical Records.

2. An employer, insurance carrier, or any other party with standing under the Workers' Compensation Act may obtain a hearing before the Adjudication Division by filing a request for agency action with the Division.

3. All Applications for Hearing shall include any available supporting medical documentation of the claim where there is a dispute over medical issues. Applications for Hearing without supporting documentation and a properly completed Authorization to Release Medical Records may not be mailed to the employer or insurance carrier for answer until the appropriate documents have been provided. In addition to respondent's answer, a respondent may file a motion to dismiss the Application for Hearing where there is no supporting medical documentation filed to demonstrate medical causation when such is at issue between the parties.

4. When an Application for Hearing with appropriate supporting documentation is filed with the Division, the Division shall forthwith mail to the respondents a copy of the Application for Hearing, supporting documents and Notice of Formal Adjudication and Order for Answer.

5. In cases where the injured worker is represented by an attorney, a completed and signed Appointment of Counsel form shall be filed with the Application for Hearing or upon retention of the attorney.

C. Answer.

1. The respondent(s) shall have 30 days from the date of mailing of the Order for Answer, to file a written answer to the Application for Hearing.

2. The answer shall admit or deny liability for the claim and shall state the reasons liability is denied. The answer shall state all affirmative defenses with sufficient accuracy and detail that the petitioner and the Division may be fully informed of the nature and substance of the defenses asserted.

3. All answers shall include a summary of benefits which have been paid to date on the claim, designating such payments by category, i.e. medical expenses, temporary total disability, permanent partial disability, etc.

4. When liability is denied based upon medical issues, copies of all available medical reports sufficient to support the denial of liability shall be filed with the answer.

5. If the answer filed by the respondents fails to sufficiently explain the basis of the denial, fails to include available medical reports or records to support the denial, or contains affirmative defenses without sufficient factual detail to support the affirmative defense, the Division may strike the answer filed and order the respondent to file within 20 days, a new answer which conforms with the requirements of this rule.

6. All answers must state whether the respondent is willing to mediate the claim.

7. Petitioners are allowed to timely amend the Application for Hearing, and respondents are allowed to timely amend the answer, as newly discovered information becomes available that would warrant the amendment. The parties shall not amend their pleadings later than 45 days prior to the scheduled hearing without leave of the Administrative Law Judge.

8. Responses and answers to amended pleadings shall be filed within ten days of service of the amended pleading without further order of the Labor Commission.

D. Default.

1. If a respondent fails to file an answer as provided in Subsection C above, the Division may enter a default against the respondent.

2. If default is entered against a respondent, the Division may conduct any further proceedings necessary to take evidence and determine the issues raised by the Application for Hearing without the participation of the party in default pursuant to Section 63-46b-11(4), Utah Code.

3. A default of a respondent shall not be construed to deprive the Employer's Reinsurance Fund or Uninsured Employers' Fund of any appropriate defenses.

4. The defaulted party may file a motion to set aside the default under the procedures set forth in Section 63-46b-11(3), Utah Code. The Adjudication Division shall set aside defaults upon written and signed stipulation of all parties to the action.

E. Waiver of Hearing.

1. The parties may, with the approval of the administrative law judge, waive their right to a hearing and enter into a stipulated set of facts, which may be submitted to the administrative law judge. The administrative law judge may use the stipulated facts, medical records and evidence in the record to make a final determination of liability or refer the matter to a Medical Panel for consideration of the medical issues pursuant to R602-2-2.

2. Stipulated facts shall include sufficient facts to address all the issues raised in the Application for Hearing and answer.

3. In cases where Medical Panel review is required, the administrative law judge may forward the evidence in the record, including but not limited to, medical records, fact stipulations, radiographs and deposition transcripts, to a medical panel for assistance in resolving the medical issues.

F. Discovery.

1. Upon filing the answer, the respondent and the petitioner may commence discovery. Discovery allowed under this rule may include interrogatories, requests for production of documents, depositions, and medical examinations. Discovery shall not include requests for admissions. Appropriate discovery under this rule shall focus on matters relevant to the claims and defenses at issue in the case. All discovery requests are deemed continuing and shall be promptly supplemented by the responding party as information comes available.

2. Without leave of the administrative law judge, or written stipulation, any party may serve upon any other party

written interrogatories, not exceeding 25 in number, including all discrete subparts, to be answered by the party served. The frequency or extent of use of interrogatories, requests for production of documents, medical examinations and/or depositions shall be limited by the administrative law judge if it is determined that:

a. The discovery sought is unreasonably cumulative or duplicative, or is obtainable from another source that is more convenient, less burdensome, or less expensive;

b. The party seeking discovery has had ample opportunity by discovery in the action to obtain the discovery sought; or

c. The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the adjudication.

3. Upon reasonable notice, the respondent may require the petitioner to submit to a medical examination by a physician of the respondent's choice.

4. All parties may conduct depositions pursuant to the Utah Rules of Civil Procedure and Section 34A-1-308, Utah Code.

5. Requests for production of documents are allowed, but limited to matters relevant to the claims and defenses at issue in the case, and shall not include requests for documents provided with the petitioner's Application for Hearing, nor the respondents' answer.

6. Parties shall diligently pursue discovery so as not to delay the adjudication of the claim. If a hearing has been scheduled, discovery motions shall be filed no later than 45 days prior to the hearing unless leave of the administrative law judge is obtained.

7. Discovery motions shall contain copies of all relevant documents pertaining to the discovery at issue, such as mailing certificates and follow up requests for discovery. The responding party shall have 10 days from the date the discovery motion is mailed to file a response to the discovery motion.

8. Parties conducting discovery under this rule shall maintain mailing certificates and follow up letters regarding discovery to submit in the event Division intervention is necessary to complete discovery. Discovery documents shall not be filed with the Division at the time they are forwarded to opposing parties.

9. Any party who fails to obey an administrative law judge's discovery order shall be subject to the sanctions available under Rule 37, Utah Rules of Civil Procedure.

G. Subpoenas.

1. Commission subpoena forms shall be used in all discovery proceedings to compel the attendance of witnesses. All subpoenas shall be signed by the administrative law judge assigned to the case, or the duty judge where the assigned judge is not available. Subpoenas to compel the attendance of witnesses shall be served at least 14 days prior to the hearing consistent with Utah Rule of Civil Procedure 45. Witness fees and mileage shall be paid by the party which subpoenas the witness.

2. A subpoena to produce records shall be served on the holder of the record at least 14 days prior to the date specified in the subpoena as provided in Utah Rule of Civil Procedure 45. All fees associated with the production of documents shall be paid by the party which subpoenas the record.

H. Medical Records Exhibit.

1. The parties are expected to exchange medical records during the discovery period.

2. Petitioner shall submit all relevant medical records contained in his/her possession to the respondent for the preparation of a joint medical records exhibit at least twenty (20) working days prior to the scheduled hearing.

3. The respondent shall prepare a joint medical record exhibit containing all relevant medical records. The medical record exhibit shall include all relevant treatment records that tend to prove or disprove a fact in issue. Hospital nurses' notes, duplicate materials, and other non-relevant materials need not be included in the medical record exhibit.

4. The medical records shall be indexed, paginated, arranged by medical care provider in chronological order and bound.

5. The medical record exhibit prepared by the respondent shall be delivered to the Division and the petitioner or petitioner's counsel at least ten (10) working days prior to the hearing. Late-filed medical records may or may not be admitted at the discretion of the administrative law judge by stipulation or for good cause shown.

6. The administrative law judge may require the respondent to submit an additional copy of the joint medical record exhibit in cases referred to a medical panel.

7. The petitioner is responsible to obtain radiographs and diagnostic films for review by the medical panel. The administrative law judge shall issue subpoenas where necessary to obtain radiology films.

I. Hearing.

1. Notices of hearing shall be mailed to the addresses of record of the parties. The parties shall provide current addresses to the Division for receipt of notices or risk the entry of default and loss of the opportunity to participate at the hearing.

2. Judgment may be entered without a hearing after default is entered or upon stipulation and waiver of a hearing by the parties.

3. No later than 45 days prior to the scheduled hearing, all parties shall file a signed pretrial disclosure form that identifies: (1) fact witnesses the parties actually intend to call at the hearing; (2) expert witnesses the parties actually intend to call at the hearing; (3) language translator the parties intend to use at the hearing; (4) exhibits, including reports, the parties intend to offer in evidence at the hearing; (5) the specific benefits or relief claimed by the petitioner; (6) the specific defenses that the respondent actually intends to litigate; (7) whether, or not, a party anticipates that the case will take more than four hours of hearing time; (8) the job categories or titles the respondents claim the petitioner is capable of performing if the claim is for permanent total disability, and; (9) any other issues that the parties intend to ask the administrative law judge to adjudicate. The administrative law judge may exclude witnesses, exhibits, evidence, claims, or defenses as appropriate of any party who fails to timely file a signed pre-trial disclosure form as set forth above. The parties shall supplement the pre-trial disclosure form with information that newly becomes available after filing the original form. The pre-trial disclosure form does not replace other discovery allowed under these rules.

4. If the petitioner requires the services of language translation during the hearing, the petitioner has the obligation of providing a person who can translate between the petitioner's native language and English during the hearing. If the respondents are dissatisfied with the proposed translator identified by the petitioner, the respondents may provide a qualified translator for the hearing at the respondent's expense.

5. The petitioner shall appear at the hearing prepared to outline the benefits sought, such as the periods for which compensation and medical benefits are sought, the amounts of unpaid medical bills, and a permanent partial disability rating, if applicable. If mileage reimbursement for travel to receive medical care is sought, the petitioner shall bring documentation of mileage, including the dates, the medical provider seen and the total mileage.

6. The respondent shall appear at the hearing prepared to address the merits of the petitioner's claim and provide evidence to support any defenses timely raised.

7. Parties are expected to be prepared to present their evidence on the date the hearing is scheduled. Requests for

continuances may be granted or denied at the discretion of the administrative law judge for good cause shown. Lack of diligence in preparing for the hearing shall not constitute good cause for a continuance.

8. Subject to the continuing jurisdiction of the Labor Commission, the evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted without leave of the administrative law judge.

J. Motions-Time to Respond.

Responses to all motions other than discovery motions shall be filed within ten (10) days from the date the motion was filed with the Division. Reply memoranda shall be filed within seven (7) days from the date a response was filed with the Division.

K. Notices.

1. Orders and notices mailed by the Division to the last address of record provided by a party are deemed served on that party.

2. Where an attorney appears on behalf of a party, notice of an action by the Division served on the attorney is considered notice to the party represented by the attorney.

L. Form of Decisions.

Decisions of the presiding officer in any adjudicative proceeding shall be issued in accordance with the provisions of Section 63-46b-5 or 63-46b-10, Utah Code.

M. Motions for Review.

1. Any party to an adjudicative proceeding may obtain review of an Order issued by an Administrative Law Judge by filing a written request for review with the Adjudication Division in accordance with the provisions of Section 63-46b-12 and Section 34A-1-303, Utah Code. Unless a request for review is properly filed, the Administrative Law Judge's Order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 20 calendar days of the date the request for review was filed. If such a response is filed, the party filing the original request for review may reply within 10 calendar days of the date the response was filed. Thereafter the Administrative Law Judge shall:

a. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary;

b. Amend or modify the prior Order by a Supplemental Order; or

c. Refer the entire case for review under Section 34A-2-801, Utah Code.

2. If the Administrative Law Judge enters a Supplemental Order, as provided in this subsection, it shall be final unless a request for review of the same is filed.

N. Procedural Rules.

In formal adjudicative proceedings, the Division shall generally follow the Utah Rules of Civil Procedure regarding discovery and the issuance of subpoenas, except as the Utah Rules of Civil Procedure are modified by the express provisions of Section 34A-2-802, Utah Code or as may be otherwise modified by these rules.

O. Requests for Reconsideration and Petitions for Judicial Review.

A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provisions of Section 63-46b-13, Utah Code. Any petition for judicial review of final agency action shall be governed by the provisions of Section 63-46b-14, Utah Code.

R602-2-2. Guidelines for Utilization of Medical Panel.

Pursuant to Section 34A-2-601, the Commission adopts the following guidelines in determining the necessity of submitting a case to a medical panel:

A. A panel will be utilized by the Administrative Law Judge where one or more significant medical issues may be involved. Generally a significant medical issue must be shown by conflicting medical reports. Significant medical issues are involved when there are:

1. Conflicting medical opinions related to causation of the injury or disease;

2. Conflicting medical reports of permanent physical impairment which vary more than 5% of the whole person,

3. Conflicting medical opinions as to the temporary total cutoff date which vary more than 90 days;

4. Conflicting medical opinions related to a claim of permanent total disability, and/or

5. Medical expenses in controversy amounting to more than $10,000.

B. A hearing on objections to the panel report may be scheduled if there is a proffer of conflicting medical testimony showing a need to clarify the medical panel report. Where there is a proffer of new written conflicting medical evidence, the Administrative Law Judge may, in lieu of a hearing, re-submit the new evidence to the panel for consideration and clarification.

C. The Administrative Law Judge may authorize an injured worker to be examined by another physician for the purpose of obtaining a further medical examination or evaluation pertaining to the medical issues involved, and to obtain a report addressing these medical issues in all cases where:

1. The treating physician has failed or refused to give an impairment rating, and/or

2. A substantial injustice may occur without such further evaluation.

D. Any expenses of the study and report of a medical panel or medical consultant and of their appearance at a hearing, as well as any expenses for further medical examination or evaluation, as directed by the Administrative Law Judge, shall be paid from the Uninsured Employers' Fund, as directed by Section 34A-2-601.

R602-2-3. Compensation for Medical Panel Services.

Compensation for medical panel services, including records review, examination, report preparation and testimony, shall be $112.50 per half hour for medical panel members and $125 per half hour for the medical panel chair.

R602-2-4. Attorney Fees.

A. Pursuant to Section 34A-1-309, the Commission adopts the following rule to regulate and fix reasonable fees for attorneys representing applicants in workers' compensation or occupational illness claims.

1. This rule applies to all fees awarded after July 1, 2007.

2. Fees awarded prior to the effective date of this rule are determined according to the prior version of this rule in effect on the date of the award.

B. Upon written agreement, when an attorney's services are limited to consultation, document preparation, document review, or review of settlement proposals, the attorney may charge the applicant an hourly fee of not more than $125 for time actually spent in providing such services, up to a maximum of four hours.

1. Commission approval is not required for attorneys fees charged under this subsection B. It is the applicant's responsibility to pay attorneys fees permitted by this subsection B.

2. In all other cases involving payment of applicants' attorneys fees which are not covered by this subsection B., the entire amount of such attorneys fees are subject to subsection C. or D. of this rule.

C. Except for legal services compensated under subsection B. of this rule, all legal services provided to applicants shall be

compensated on a contingent fee basis.

1. For purposes of this subsection C., the following definitions and limitations apply:

a. The term "benefits" includes only death or disability compensation and interest accrued thereon.

b. Benefits are "generated" when paid as a result of legal services rendered after an Appointment of Counsel form is signed by the applicant. A copy of this form must be filed with the Commission by the applicant's attorney.

c. In no case shall an attorney collect fees calculated on more than the first 312 weeks of any and all combinations of workers' compensation benefits.

2. Fees and costs authorized by this subsection shall be deducted from the applicant's benefits and paid directly to the attorney on order of the Commission. A retainer in advance of a Commission approved fee is not allowed.

3. Attorney fees for benefits generated by the attorney's services shall be computed as follows:

a. For all legal services rendered through final Commission action, the fee shall be 20% of weekly benefits generated for the first $24,275, plus 15% of the weekly benefits generated in excess of $24,275 but not exceeding $48,550, plus 10% of the weekly benefits generated in excess of $48,550, to a maximum of $12,250.

b. For legal services rendered in prosecuting or defending an appeal before the Utah Court of Appeals, an attorney's fee shall be awarded amounting to 25% of the benefits in dispute before the Court of Appeals. This amount shall be added to any attorney's fee awarded under subsection C.3.a. for benefits not in dispute before the Court of Appeals. The total amount of fees awarded under subsection C.3.a. and this subsection C.3.b. shall not exceed $17,900;

c. For legal services rendered in prosecuting or defending an appeal before the Utah Supreme Court, an attorney's fee shall be awarded amounting to 30% of the benefits in dispute before the Supreme Court. This amount shall be added to any attorney's fee awarded under subsection C.3.a. and subsection C.3.b. for benefits not in dispute before the Supreme Court. The total amount of fees awarded under subsection C.3.a, subsection C.3.b. and this subsection C.3.c shall not exceed $23,550.

4. In addition to attorneys fees authorized by this subsection, a prevailing applicant's attorney shall be awarded reasonable and necessary costs actually incurred in the prosecution of the applicant's claim, as determined by the ALJ.

D. In "medical only" cases in which awards of attorneys' fees are authorized by Subsection 34A-1-309(4), the amount of such fees and costs shall be computed according to the provisions of subsection C.

R602-2-5. Settlement Agreements.

A. Statutory authority:

Section 34A-2-420 requires the Commission to review all agreements for the settlement or commutation of claims for workers' compensation or occupational disease benefits and grants the Commission discretion to approve such agreements. The Commission's authority under Section 34A-2-420 applies to all claims arising under the Utah Workers' Compensation Act or Occupational Disease Act, regardless of the date of accident or occupational disease. This rule sets forth the requirements for Commission approval of such agreements.

B. General Considerations:

Settlement agreements may be appropriate in claims of disputed validity or when the parties' interests are served by payment of benefits in a manner different than otherwise prescribed by the workers' compensation laws. However, settlement agreements must also fulfill the underlying purposes of the workers' compensation laws. Once approved by the Commission, settlement agreements are permanently binding on the parties. The Commission will not approve any proposed settlement that is manifestly unjust.

C. Procedure:

1. Parties interested in a present or potential workers' compensation claim, whether or not an application for hearing has been filed, may submit their settlement agreement to the Commission for review and approval. The Commission may delegate its authority to review and approve such agreements.

2. Each settlement agreement shall be in writing, executed by each party and such party's attorney, if any, and shall include a proposed order for Commission approval of the agreement.

3. Each settlement agreement shall set forth the nature of the claim being settled and what claims are in dispute, if any.

4. Each settlement agreement shall contain a statement that each party understands that the agreement is permanent, binding and constitutes full and final settlement of any right the claimant may otherwise have to future benefits, including medical benefits. The Commission may establish an approved form for complying with the foregoing disclosure requirement.

5. Attorneys' fees shall be allowed as provided by Rule R602-2-4. Each settlement agreement shall describe the amount to be paid to claimant's counsel as attorney's fees and costs, the manner in which such amounts are computed and the method of payment thereof.

6. The settlement agreement may provide for payment of benefits through insurance contract or by other third parties if the Commission determines a) such payment provisions are secure and b) such payment provisions do not relieve the parties of their underlying liability for payments required by the agreement.

7. Upon receipt of a proposed settlement agreement meeting the requirements of this rule, the Commission shall review such proposed agreement:

a. As needed, the Commission may contact the parties and others to obtain further information about the proposed settlement;

b. If the Commission determines that a proposed settlement agreement conforms with this rule, the Commission shall approve such agreement and notify the parties in writing.

c. If the Commission determines that a proposed settlement agreement does not comply with this rule, the Commission shall notify the parties in writing of its reasons for rejecting the proposed agreement.

d. The Commission shall retain a record of its action on all settlement agreements submitted to it for approval.

KEY: workers' compensation, administrative procedures, hearings, settlements
July 24, 2007 34A-1-301 et seq.
Notice of Continuation September 5, 2002 63-46b-1 et seq.

R612. Labor Commission, Industrial Accidents.
R612-2. Workers' Compensation Rules-Health Care Providers.
R612-2-1. Definitions.

A. All definitions in Rule R612-1 apply to this section.

B. "Medical Practitioner" - means any person trained in the healing arts and licensed by the State in which such person practices.

C. "Global Fee Cases" - are those flat fee cases where fees include pre-operative and follow-up or aftercare.

D. "Usual and Customary Rate (UCR)" is the rate of payment to a dental provider using Ingenix, or a similar service, for charges for services for a particular zip code.

E. Unless otherwise specified, the term "insurer" includes workers' compensation insurance carriers and self-insured employers.

R612-2-2. Authority.

This rule is enacted under the authority of Section 34A-1-104 and Section 34A-2-407.

R612-2-3. Filings.

A. Within one week following the initial examination of an industrial patient, nurse practicioners, physicians and chiropractors shall file "Form 123 - Physicians' Initial Report" with the carrier/self-insured employer, employee, and the division. This form is to be completed in as much detail as feasible. Special care should be used to make sure that the employee's account of how the accident occurred is completely and accurately reported. All questions are to be answered or marked "N/A" if not applicable in each particular instance. All addresses must include city, state, and zip code. If modified employment in #29 is marked "yes," the remarks in #29 must reflect the particular restrictions or limitations that apply, whether as to activity or time per day or both. Estimated time loss must also be given in #29. If "Findings of Examination" (#17) do not correctly reflect the coding used in billing, a reduction of payment may be made to reflect the proper coding. A physician, chiropractor, or nurse practitioner is to report every initial visit for which a bill is generated, including first aid, when a worker reports that an injury or illness is work related. All initial treatment, beyond first aid, that is provided by any health care provider other than a physician, chiropractor, or nurse practictioner must be countersigned by the supervising physician and reported on Form 123 to the Industrial Accidents Division and the insurance carrier or self-insured employer.

B. 1. Any medical provider billing under the restorative services section of the Labor Commission's adopted Resource-Based Relative Value Scale (RBRVS) or the Medical Fee Guidelines shall file the Restorative Services Authorization (RSA) form with the insurance carrier or self-insured employer (payor) and the division within ten days of the initial evaluation.

2. Upon receipt of the provider's RSA form, the payor has ten days to respond, either authorizing a specified number of visits or denying the request. No more than eight visits may be incurred during the authorization process.

3. After the initial RSA form is filed with the payor and the division, an updated RSA form must be filed for approval or denial at least every six visits until a fixed state of recovery has been achieved as evidenced by either subjective or objective findings. If the medical provider has filed the RSA form per this rule, the payor is responsible for payment, unless compensability is denied by the payor. In the event the payor denies the entire compensability of a claim, the payor shall so notify the claimant, provider, and the division, after which the provider may then bill the claimant.

4. Any denial of payment for treatment must be based on a written medical opinion or medical information. The denial notification shall include a copy of the written medical opinion or information from which the denial was based. The payor is not liable for payment of treatment after the provider, claimant, and division have been notified in writing of the denial for authorization to pay for treatment. The claimant may then become responsible for payment.

5. Any dispute regarding authorization or denial for treatment will be determined from the date the division received the RSA form or notification of denial for payment of treatment.

6. The claimant may request a hearing before the Division of Adjudication to resolve compensability or treatment issues.

7. Subjective objective assessment plan/procedure (SOAP notes) or progress notes are to be sent to the payor in addition to the RSA form.

8. Any medical provider billing under the Restorative Services Section of the RBRVS or the Commission's Medical Fee Guidelines who fails to submit the required RSA form shall be limited to payment of up to eight visits for a compensable claim. The medical provider may not bill the patient or employer for any remaining balances.

C. S.O.A.P. notes or progress reports of each visit are to be sent to the payor by all medical practitioners substantiating the care given, the need for further treatment, the date of the next treatment, the progress of the patient, and the expected return-to-work date. These reports must be sent with each bill for the examination and treatment given to receive payment. S.O.A.P. notes are not to be sent to the division unless specifically requested.

D. "Form 110 - Release to Return to Work" must be mailed by either the medical practitioner or carrier/employer to the employee and the division within five calendar days of release.

E. The carrier/employer may request medical reports in addition to regular progress reports. A charge may be made for such additional reports, which charge should accurately reflect the time and effort expended by the physician.

R612-2-4. Hospital or Surgery Pre-Authorization.

Any ambulatory surgery or impatient hospitalization other than a life or limb threatening admission, allegedly related to an industrial injury or occupational disease, shall require pre-authorization by the employer/insurance carrier. Within two working days of a telephone request for pre-authorization, the employer/carrier shall notify the physician and employee of approval or denial of the surgery or hospitalization, or that a medical examination or review is going to be obtained. The medical examination/review must be conducted without undue delay which in most circumstances would be considered less than thirty days. If the request for pre-authorization is made in writing, the employer/carrier shall have four days from receipt of the request to notify the physician and employee. If the employee chooses to be hospitalized and/or to have the surgery prior to such pre-authorization or medical examination/review, the employee may be personally responsible for the bills incurred and may not be reimbursed for the time lost unless a determination is made in his/her favor.

R612-2-5. Regulation of Medical Practitioner Fees.

Pursuant to Section 34A-2-407:

A. The Labor Commission of Utah:

1. Establishes and regulates fees and other charges for medical, surgical, nursing, physical and occupational therapy, mental health, chiropractic, naturopathic, and osteopathic services, or any other area of the healing arts as required for the treatment of a work-related injury or illness.

2. Adopts and by this reference incorporates the National Centers for Medicare and Medicaid Services (CMS) for the Medicare Physician Fee Schedule (MPFS) "Resource-Based Relative Value Scale" (RBRVS), 2006 edition, as the method for calculating reimbursement and the American Medical

Association's CPT-4, 2006 edition, coding guidelines. The non-facility total unit value will apply in calculating the reimbursement, except that procedures provided in a facility setting shall be reimbursed at the facility total unit value and the facility may bill a separate facility charge. The CPT-4 coding guidelines and RBRVS are subject to the Utah Labor Commission's Medical Fee Guidelines and Codes and the following Labor Commission conversion factors for medical care rendered for a work-related injury or illness, effective July 11, 2006: (Conversion Rates below EFFECTIVE July 11, 2006, to be used with the RBRVS procedural Unit value as per specialty.)

Anesthesiology $41.00 (1 unit per 15 minutes of anesthesia);

Medicine E and M $44.00;

Pathology and Laboratory 150% of Utah's published Medicare carrier;

Radiology $53.00;

Restorative Services $44.00, with Utah code 97001 and 97003 at a 1.5 relative value unit and Utah code 97002 and 97004 at a 1.0 of relative value unit.

Surgery $37.00;

All 20000 codes, codes 49505 thru 49525 and all 60000 codes of the CPT-4 coding guidelines $58.00.

3. Adopts and incorporates by this reference the Utah Labor Commission's Medical Fee Guidelines and Codes, as of July 11, 2006. The Utah Medical Fee Guidelines and Codes can be obtained from the division for a fee sufficient to recover costs of development, printing, and mailing or can be downloaded at the Labor Commission's website at www.laborcommission.utah.gov/indacc/indacc.htm.

4. Decides appropriate billing procedure codes when disputes arise between the medical practitioner and the employer or its insurance carrier. In no instance will the medical practitioner bill both the employer and the insurance carrier.

B. Employees cannot be billed for treatment of their work-related injuries or illnesses.

C. Discounting from the fees established by the Labor Commission is allowed only through specific contracts between a medical provider and a payor for treatment of work-related injury or illness.

D. Restocking fee 15%. Rule R612-2-16 covers the restocking fee.

E. Dental fees are not published. Rule R612-2-18 covers dental injuries.

F. Ambulance fees are not published. Rule R612-2-19 covers ambulance charges.

R612-2-6. Fees in Cases Requiring Unusual Treatment.

The RBRVS scheduled fees are maximum fees except that fees higher than RBRVS scheduled may be authorized by the Commission when extraordinary difficulties encountered by the physician justify increased charges and are documented by written reports.

R612-2-7. Insurance Carrier's Privilege to Examine.

The employer or the employer's insurance carrier or a self-insured employer shall have the privilege of medical examination of an injured employee at any reasonable time. A copy of the medical examination report shall be made available to the Commission at any time upon request of the Commission.

R612-2-8. Who May Attend Industrial Patients.

A. The employer has first choice of physicians; but if the employer fails or refuses to provide medical attention, the employee has the choice of physicians.

B. An employee of an employer with an approved medical program may procure the services of any qualified practitioner for emergency treatment if a physician employed in the program is not available for any reason.

R612-2-9. Changes of Doctors and Hospitals.

A. It shall be the responsibility of the insurance carrier or self-insured employer to notify each claimant of the change of doctor rules. Those rules are as follows:

1. If a company doctor, designated facility or PPO is named, the employee must first treat with that designated provider. The insurance carrier or self-insured employer shall be responsible for payment for the initial visit, less any health insurance copays and subject to any health insurance reimbursement, if the employee was directed to and treated by the employer's or insurance carrier's designated provider, and liability for the claim is denied and if the treating physician provided treatment in good faith and provided the insurance carrier or self-insured employer a report necessary to make a determination of liability. Diagnostic studies beyond plain x-rays would need prior approval unless the claimed industrial injury or occupational illness required emergency diagnosis and treatment.

2. The employee may make one change of doctor without requesting the permission of the carrier, so long as the carrier is promptly notified of the change by the employee.

(a) Physician referrals for treatment or consultation shall not be considered a change of doctor.

(b) Changes from emergency room facilities to private physicians, unless the emergency room is named as the "company doctor", shall not be considered a change of doctor. However, once private physician care has begun, emergency room visits are prohibited except in cases of:

(i) Private physician referral, or

(ii) Threat to life.

3. Regardless of prior changes, a change of doctor shall be automatically approved if the treating physician fails or refuses to rate permanent partial impairment.

B. Any changes beyond those listed above made without the permission of the carrier/self-insurer may be at the employee's own expense if:

1. The employee has received notification of rules, or

2. A denial of request is made.

C. An injured employee who knowingly continues care after denial of liability by the carrier may be individually responsible for payment. It shall be the burden of the carrier to prove that the patient was aware of the denial.

D. It shall be the responsibility of the employee to make the proper filings with the division when changing locale and doctor. Those forms can be obtained from the division.

E. Except in special cases where simultaneous attendance by two or more medical care practitioners has been approved by the carrier/employer or the division, or specialized services are being provided the employee by another physician under the supervision and/or by the direct referral of the treating physician, the injured employee may be attended by only one practitioner and fees will not be paid to two practitioners for similar care during the same period of time.

F. The Commission has jurisdiction to decide liability for medical care allegedly related to an industrial accident.

R612-2-10. One Fee Only to be Paid in Global Fee Cases.

In a global fee case which is transferred from one doctor to another doctor, one fee only will be paid, apportioned at the discretion of the Commission. Adequate remuneration shall also be paid to the medical practitioner who renders first aid treatment where the circumstances of the case require such treatment.

R612-2-11. Surgical Assistants' Fees.

Fees, in accordance with the Commission's adopted Resource-Based Relative Value Scale (RBRVS), in addition to

the global fee for surgical services, will be paid surgical assistants only when specifically authorized by the employer or insurance carrier involved, or in hospitals where interns and residents are not available and the complexity of the surgery makes a surgical assistant necessary.

R612-2-12. Separate Bills.

Separate bills must be presented by each surgeon, assistant, anesthetist, consultant, hospital, special nurse, or other medical practitioner within 30 days of treatment on a HCFA 1500 billing form so that payment can be made to the medical practitioner who rendered the service. All bills must contain the federal ID number of the person submitting the bill.

R612-2-13. Interest for Medical Services.

A. All hospital and medical bills must be paid promptly on an accepted liability claim. All bills which have been submitted properly on an accepted liability claim are due and payable within 45 days of being billed unless the bill or a portion of the bill is in dispute. Any portion of the bill not in dispute is payable within 45 days of the billing.

B. Per Section 34A-2-420, any award for medical treatment made by the Commission shall include interest at 8% per annum from the date of billing for the medical service.

R612-2-14. Hospital Fees Separate.

Fees covering hospital care shall be separate from those for professional services and shall not extend beyond the actual necessary hospital care. When it becomes evident that the patient needs no further hospital treatment, he/she must be discharged. All billings must be submitted on a UB92 form and be properly itemized and coded and shall include all appropriate documentation to support the billing. There shall not be a separate fee charged for the necessary documentation in billing for payment of hospital services. The documentation of hospital services shall include at a minimum the discharge summary. The insurance carrier may request further documentation if needed in order to determine liability for the bill.

R612-2-15. Charges for Ordinary Supplies, Materials, or Drugs.

Fees covering ordinary dressing materials or drugs used in treatment shall not be charged separately but shall be included in the amount allowed for office dressings or treatment.

R612-2-16. Charges for Special or Unusual Supplies, Materials, or Drugs.

A. Charges for special or unusual supplies, materials, or drugs not included as a normal and usual part of the service or procedure shall, upon receipt of an itemized and coded billing, be paid at cost plus 15% restocking fees.

B. For purposes of part A above, the amount to be paid shall be calculated as follows:

1. Applicable shipping charges shall be added to the purchase price of the product;

2. The 15% restocking fee shall then be added to the amount determined in sub part 1;

3. The amount of taxes paid on the purchase of the supplies, materials, or drugs shall then be added to the amount determined in sub part 2, which sum shall constitute the total amount to be paid.

R612-2-17. Fees for Unscheduled Procedures.

Fees for medical or surgical procedures not appearing in the Commission's adopted RBRVS current fee schedule are subject to the Commission's approval and should be submitted to the Commission when the physician and employer or insurance carrier do not agree on the value of the service. Such fees shall be in proportion as nearly as practicable to fees for similar services appearing in the RBRVS.

R612-2-18. Dental Injuries.

A. This rule establishes procedures to obtain dental care for work-related dental injuries and sets fees for such dental care.

B. Initial Treatment.

1. If an employer maintains a medical staff or designates a company doctor, an injured worker seeking dental treatment for work-related injuries shall report to such medical staff or doctor and follow their instructions.

2. If an employer does not maintain a medical staff or designate a company doctor, or if such staff or doctor are not available, an injured worker may consult a dentist to obtain immediate care dental for injuries caused by a work-related accident. The insurer shall pay the dentist providing this initial treatment at 70% of UCR for the services rendered.

C. Subsequent care by initial treatment provider.

1. If additional treatment is necessary, the dentist who provided initial treatment may submit to the insurer a request for authorization to continue treatment. The transmission date of the request must be verifiable. The request itself must include a description of the injury, the additional treatment required, and the cost of the additional treatment. If the dentist proceeds with treatment without authorization, the dentist must accept 70% of UCR as payment in full and may not charge any additional sum to the injured worker.

2. The insurer shall respond to the request for authorization within 10 working days of the request's transmission. This 10-day period can be extended only with written approval of the Industrial Accidents Division. If the insurer does not respond to the dentist's request for authorization within 10 working days, the insurer shall pay the cost of treatment as contained in the request for authorization.

3. If the insurer approves the proposed treatment, the insurer shall send written authorization to the dentist and injured worker. This authorization shall include the anticipated payment amount.

4. On receipt of the insurer's written authorization, and if the dentist accepts the payment provisions therein, the dentist may proceed to provide the approved services. The dentist must accept the amount to be paid by the insurer as full payment for those services and may not bill the injured worker for any additional amount.

D. Subsequent care by other providers.

1. If the dentist who provided initial treatment does not agree to the payment offered by the insurer, the insurer shall within 20 calendar days direct the injured worker to a dentist located within a reasonable travel distance who will accept the insurer's payment offer.

2. If the insurer cannot locate another dentist to provide the necessary services, the insurer shall attempt to negotiate a satisfactory reimbursement with the dentist who provided initial treatment. The negotiated reimbursement may not include any balance billing to the claimant.

3. If the insurer is successful in arranging treatment with another dentist, the insurer shall notify the injured worker.

4. If, after having received notice that the insurer has arranged the services of another dentist, the injured worker chooses to obtain treatment from a different dentist, the insurer shall only be responsible for payment at 70% of UCR. Under the circumstances of this subsection (4), the treating dentist may bill the injured worker for the difference between the dentist's charges and the amount paid by the insurer.

E. Payment or treatment disputes that cannot be resolved by the parties may be submitted to the Labor Commission's Adjudication Division for decision, pursuant to the Adjudication Division's established forms and procedures.

R612-2-19. Ambulance Charges.

Ambulance charges must not exceed the rates adopted by the State Emergency Medical Service Commission for similar services.

R612-2-20. Travel Allowance and Per Diem.

A. An employee who, based upon his/her physician's advice, requires hospital, medical, surgical, or consultant services for injuries arising out of and in the course of employment and who is authorized by the self-insurer, the carrier, or the Commission to obtain such services from a physician and/or hospital shall be entitled to:

1. Subsistence expenses of $6 per day for breakfast, $9 per day for lunch, $15 per day for dinner, and actual lodging expenses as per the state of Utah's in-state travel policy provided:

(a) The employee travels to a community other than his/her own place of residence and the distance from said community and the employee's home prohibits return by 10:00 p.m., and

(b) The absence from home is necessary at the normal hour for the meal billed.

2. Reasonable travel expenses regardless of distance that are consistent with the state of Utah's travel reimbursement rates, or actual reasonable costs of practical transportation modes above the state's travel reimbursement rates as may be required due to the nature of the disability.

B. This rule applies to all travel to and from medical care with the following restrictions:

1. The carrier is not required to reimburse the injured employee more often than every three months, unless:

(a) More than $100 is involved, or

(b) The case is about to be closed.

2. All travel must be by the most direct route and to the nearest location where adequate treatment is reasonably available.

3. Travel may not be required between the hours of 10:00 p.m. and 6:00 a.m., unless approved by the Commission.

4. Requests for travel reimbursement must be submitted to the carrier for payment within one year of the authorized medical care.

5. Travel allowance shall not include picking up prescriptions unless documentation is provided substantiating a claim that prescriptions cannot be obtained locally within the injured worker's community.

6. The Commission has jurisdiction to resolve all disputes.

R612-2-21. Notice to Health Care Providers.

Any notice from a carrier denying further liability must be mailed to the Commission and the patient on the same day as it is mailed to the health care provider. Where it can be shown, in fact, that a medical care provider and the injured employee have received a denial of further care by the insurance carrier or self-insured employer, further treatment may be performed at the expense of the employee. Any future ratification of the denial by the Commission will not be considered a retroactive denial but will serve to uphold the force and effect of the previous denial notice.

R612-2-22. Medical Records.

A. Workers' compensation insurers, employers and the Utah Labor Commission need access to health information of individuals who are injured on the job or who have a work-related illness in order to process or adjudicate claims, or to coordinate care under Utah's workers' compensation system. Generally, this health information is obtained from health care providers who treat these individuals and who may be covered by federal "HIPAA" privacy rules.

The HIPAA Privacy Rule specifically recognizes the legitimate need of the workers' compensation system to have access to individuals' health information to the extend authorized by State law. See 45 CFR 164.512(1). The Privacy Rule also recognizes the importance of permitting disclosures required by other laws. See 45 CFR 164.512(a). Therefore, disclosures permitted by this rule for workers' compensation purposes or otherwise required by this rule do not conflict with and are not prohibited by the HIPAA Privacy Rule.

B. A medical provider, without authorization from the injured workers, shall:

1. For purposes of substantiating a bill submitted for payment or filing required Labor Commission forms, such as the "Physician's Initial Report of Injury/Illness" or the "Restorative Services Authorization," disclose medical records necessary to substantiate the billing, including drug and alcohol testing, to:

a. An employer's workers' compensation insurance carrier or third party administrator;

b. A self-insured employer who administers its own workers' compensation claims;

c. The Uninsured Employers' Fund;

d. The Employers' Reinsurance Fund; or

e. The Labor Commission as required by Labor Commission rules.

2. Disclose medical records pertaining to treatment of an injured worker, who makes a claim for workers' compensation benefits, to another physician for specialized treatment, to a new treating physician chosen by the claimant, or for a consultation regarding the claimed work related injury or illness.

C. 1. Except as limited in C(3), a medical provider, whose medical records are relevant to a workers' compensation claim shall, upon receipt of a Labor Commission medical records release form, or an authorization form that conforms to HIPAA requirements, disclose his/her medical records to:

a. An employer's insurance carrier or third party administrator;

b. A self-insured employer who administers its own workers' compensation claims;

c. An agent of an entity listed in B(1)(a through e), which includes, but is not limited to a case manager or reviewing physician;

d. The Uninsured Employers Fund;

e. The Employers' Reinsurance Fund;

f. The Labor Commission;

g. The injured worker;

h. An injured workers' personal representative;

i. An attorney representing any of the entities listed above in an industrial injury or occupational disease claim.

2. Medical records are relevant to a workers' compensation claim if:

a. The records were created after the reported date of the accident or onset of the illness for which workers' compensation benefits have been claimed; or

b. The records were created in the past ten years (15 years if permanent total disability is claimed) and;

i. There is a specific reason to suspect that the medical condition existed prior to the reported date of the claimed work related injury or illness or

ii. The claim is being adjudicated by the Labor Commission.

3. Medical records related to care provided by a psychiatrist, psychologist, obstetrician, or care related to the reproductive organs may not be disclosed by a medical provider unless a claim has been made for a mental condition, a condition related to the reproductive organs, or the claimant has signed a separate, specific release for these records.

D. A medical provider, who has treated an injured worker for a work related injury or illness, shall disclose information to an injured workers' employer as to when and what restrictions an injured worker may return to work.

E. Requests for medical records beyond what sections B,

C, and D permit require a signed approval by the director, the medical director, a designated person(s) within the Industrial Accidents Division or an administrative law judge if the claim is being adjudicated.

F. A party affected by the decision made by a person in section E may appeal that decision to the Adjudication Division of the Labor Commission.

G. Upon receipt and within the scope of this rule, an injured worker shall provide those entities or person listed in C(1) the names, address, and dates of medical treatment (if known) of the medical providers who have provided medical care within the past 10 years (15 years for permanent total disability claim) except for those medical providers names in C(3). Labor Commission form number 307 "Medical Treatment Provider List" must be used for this purpose. Parties listed in C(1) of this rule must provide each medical provider identified on form 307 with a signed authorization for access to medical records. A copy of the signed authorization may be sent to the medical providers listed on form 307.

H. An injured worker may contest, for good reason, a request for medical records created prior to the reported date of the accident or illness for which the injured worker has made a claim for benefits by filing a complaint with the Labor Commission. Good reason is defined as the request has gone beyond the scope of this rule or sensitive medical information is contained in a particular medical record.

I. 1. Any party obtaining medical records under authority of this rule may not disclose those medical records, without a valid authorization, except as required by law.

2. An employer may only use medical records obtained under the authority of this rule to:

a. Pay or adjudicate workers' compensation claims if the employer is self-insured;

b. To assess and facilitate an injured workers' return to work;

c. As otherwise authorized by the injured worker.

3. An employer obtaining medical records under authority of this rule must maintain the medical records separately from the employee's personnel file.

J. Any medical records obtained under the authority of this rule to make a determination regarding the acceptance of liability or for treatment of a condition related to a workers' compensation claim shall only be used for workers' compensation purposes and shall not be released, without a signed release by the injured worker or his/her personal representative, to any other party. An employer shall make decisions related only to the workers' compensation claim based on any medical information received under this rule.

K. When any medical provider provides copies of medical records, other than the records required when submitting a bill for payment or as required by the Labor commission rules, the following charges are presumed reasonable:

1. A search fee of $15 payable in advance of the search;

2. Copies at $.50 per page, including copies of microfilm, payable after the records have been prepared and

3. Actual costs of postage payable after the records have been prepared an sent. Actual cost of postage are deemed to be the cost of regular mail unless the requesting party has requested the delivery of the records by special mail or method.

4. The Labor Commission will release its records per the above charges to parties/entities with a signed and notarized release from the injured worker unless the information is classified and controlled under the Government Records Access and Management Act (GRAMA).

L. No fee shall be charged when the RBRVS or the Commission's Medical Fee Guidelines require specific documentation for a procedure or when medical providers are required to report by statute or rule.

M. An injured worker or his/her personal representative may obtain one copy of each of the following records related to the industrial injury or occupational disease claim, at no cost, when the injured worker or his/her personal representative have signed a form by the Industrial Accidents Division to substantiate his/her industrial injury/illness claim;

1. History and physical;
2. Operative reports of surgery;
3. Hospital discharge summary;
4. Emergency room records;
5. Radiological reports;
6. Specialized test results; and
7. Physician SOAP notes, progress notes, or specialized reports.

(a) Alternatively, a summary of the patients records may be made available to the injured worker or his/her personal representative at the discretion of the physician.

R612-2-23. Adjusting Resource-Based Relative Value Scale (RBRVS) Codes.

A. When adjusting any medical provider's bill who has billed per the Commission's adopted RBRVS the adjusting entity shall provide one or more of the following explanations as applies to the down coding when payment is made to the medical provider:

1. Code 99202, 99203, 99204 or 99205 - the submitted documentation for a new patient did not meet the three key components lacking in the level of history for the code billed.

2. Code 99202, 99203, 99204 or 99205 - the submitted documentation for a new patient did not meet the three key components lacking in the level of examination for the code billed.

3. Code 99202, 99203, 99204 or 99205 - the submitted documentation for a new patient did not meet the three key components lacking in the level of medical decision making for the code billed.

4. Code 99202, 99203, 99204, or 99205 - the submitted documentation for a new patient did not meet the three key components lacking in the level of history and exam for the code billed.

5. Code 99213, 99214 or 99215 - the submitted documentation for an established patient did not meet the two key components lacking in the level of history and exam that the code billed.

6. Code 99213, 99214 or 99215 - the submitted documentation for an established patient did not meet the two key components lacking in the level of history and medical decision making for the code billed.

7. Code 99213, 99214 or 99215 - the submitted documentation for the established patient did not meet the two key components lacking in the level of exam and medical decision making for the code billed.

B. The above explanations may be abbreviated, with a legend provided, to accommodate the space of computerized messages.

R612-2-24. Review of Medical Payments.

A. Health care providers and payors are primarily responsible to resolve disputes over fees for medical services between themselves. However, in some cases it is necessary to submit such disputes to the Division for resolution. The Commission therefore establishes the following procedure for submission and review of fees for medical services.

1. The provider shall submit a bill for services rendered, with supporting documentation, to the payor within one year of the date of service;

2. The payor shall evaluate the bill according to the guidelines contained in the Commission's Medical Fee Guidelines and RBRVS and shall pay the provider the appropriate fee within 45 days as required by Rule R612-2-13.

3. If the provider believes that the payor has improperly computed the fee under the RBRVS, the provider or designee shall request the payor to re-evaluate the fee. The provider's request for re-evaluation shall be in writing, shall describe the specific areas of disagreement and shall include all appropriate documentation. The provider shall submit all requests for re-evaluation to the payor within one year of the date of the original payment.

4. Within 30 days of receipt of the written request for re-evaluation, the payor shall either pay the additional fee due the provider or respond with a specific written explanation of the basis for its denial of additional fees. The payor shall maintain proof of transmittal of its response.

B. If the provider continues to disagree with the payor's determination of the appropriate fee, the provider shall submit the matter to the Division by filing with the Division a written explanation of the disagreement. The provider's explanation shall include copies of:

1. The provider's original bill and supporting documentation;

2. The payor's initial payment of that bill;

3. The provider's request for re-evaluation and supporting documentation; and

4. The payor's written explanation or its denial of additional fees.

C. The Division will evaluate the dispute according to the requirements of the Medical Fee Guidelines and RBRVS and, if necessary, by consulting with the provider, payor, or medical specialists. Within 45 days from the date the Division receives the provider's request, the Division will mail its determination to both parties.

D. Any party aggrieved by the Division's determination may file an application for hearing with the Division of Adjudication to obtain formal adjudication of the dispute.

E. A payor seeking reimbursement from a provider for overpayment of a bill shall submit a written request to the provider detailing the circumstances of the payment requested within one year of submission of the bill.

1. Providers should make appropriate reimbursements, or respond in writing detailing the reasons why repayment will not be made, within 90 days or receipt of a written request from a payor.

2. If a dispute as to reimbursement occurs, an aggrieved party may request resolution of the dispute by the Labor Commission.

R612-2-25. Injured Worker's Right to Privacy.

A. No agent of the employer or the employer's insurance carrier shall be present during an injured worker's visit with a medical provider, unless agreed upon by the claimant.

B. If an agent of the employer or the employer's insurance carrier is excluded from the medical visit, the medical provider and the injured worker shall meet with the agent at the conclusion of the visit so as to communicate regarding medical care and return to work issues.

R612-2-26. Utilization Review Standards.

A. As used in this subsection:

1. "Payor" means a workers' compensation insurance carrier, a self-insured employer, third-party administrator, uninsured employer or the Uninsured Employers' Fund, which is responsible for payment of the workers' compensation claim.

2. "Health Care Provider" means a provider of medical services, including an individual provider, a health-service plan, a health-care organization, or a preferred-provider organization.

3. "Request for Authorization" means any request by a physician for assurance that appropriate payment will be made for a course of proposed medical treatment, including surgery or hospitalization, or any diagnostic studies beyond plain X-rays.

4. "Utilization Review," as authorized in Section 34A-2-111, is a process used to manage medical costs, improve patient care, and enhance decision-making. Utilization review includes, but is not limited to, the review of requests for authorization to treat, and the review of bills, for the purpose of determining whether the medical services provided were or would be necessary, to treat the effects of the injury/illness. Utilization review does not include bill review for the purpose of determining whether the medical services rendered were accurately billed. Nor does it include any system, program, or activity in connection with making decisions concerning whether a person has sustained an injury or illness which is compensable under Section 34A-2 or 34A-3.

5. "Reasonable Attempt" is defined as at least two phone calls and a fax, or three phone calls, within five business days from date of the payor's receipt of the physician's request for review.

B. Any utilization review system shall establish an appeals process which utilizes a physician(s) for a final decision by the insurer, should an initial review decision be contested. The payor may establish levels of review that meet the following criteria:

1. Level I--Initial Request and Review. A payor may use medical or non-medical personnel to initially apply medically-based criteria to a request for authorization for payment of a specific treatment. The treating physician must send all the necessary documentation for the payor to make a decision regarding the treatment recommended. The payor must then notify the physician within five business days of the request for authorization of payment for the treatment, by a method which provides certification of transmission of the document, of either an acceptance or a denial of the request. A denial for authorization of payment for a recommended treatment utilizing the Commission's form, Form 223, must be sent to the provider with the criteria used in making the determination to deny payment for the treatment. A copy of the denial must also be mailed to the claimant. Level I--Request and Review does not include authorization requests for services billed from the Restorative section of the Resource-Based Relative Value Scale (RBRVS). Requests for authorization for restorative services are governed by rule R612-2-3(B).

2. Level II--Review. A physician, who has been denied authorization of payment for treatment, or has received no response within five business days from the request for authorization for payment at Level I review, may request a physician's review by sending the completed portion of the Commission form 223 to the payor. Such a request for review may be filed by any physician who has been denied authorization for payment for restorative services beyond the initial eight visits as authorized by Rule R612-2-3(B). The requesting physician must include the times and days that he/she is available to discuss the case with the reviewing physician, and must be reasonably available during normal business hours. The payor's physician representative must complete the review within five business days of the treating physician's request for review. Before the insurer's physician representative may issue a denial of an authorization for payment to treat, a reasonable effort must have made to contact the requesting treating physician to discuss the differing aspects of the case. Failure by the payor to respond within five business days, by a method which provides certification of transmission, to a denial for authorization for payment for treatment, shall constitute an authorization for payment of the treatment. The payor's denial to pay for the recommended treatment must be issued on Commission's form 223, and the denial must be accompanied by the criteria that was used in making the decision to deny authorization, along with the name and speciality of the reviewing physician. The denial to authorize payment for treatment must then be sent to the physician, the claimant, and

the Commission. The payor shall notify the Commission if an additional five days is needed in order to contact the treating physician or to review the case. An additional extension of time may be requested from the Commission to accommodate highly unusual circumstances or particularly difficult cases.

C. Upon receipt of denial of authorization for payment for medical treatment at Level II, the Commission will facilitate, upon the request of the claimant, the final disposition of the case. If the parties agree, the medical dispute may be resolved by the Commission through binding mediation or medical review. If there is not agreement among the parties, the Commission will resolve the dispute through formal adjudication. The payor shall be responsible for sending the claimant the Commission appeals information when the denial for authorization for payment for medical treatment is sent to the claimant.

D. If the medical treatment requested is not an emergency, and treatment is rendered by the physician after, receiving notice of the utilization standards encompassed in this rule, the following shall apply:

1. The Commission shall, if the disputed medical treatment is ultimately determined to be compensable as an expense necessary to treat the industrial injury or occupational disease, order that the physician be reimbursed at only 75% of the of the amount otherwise payable had appropriate authorization been timely obtained. The injured worker shall not be liable for any additional payment to the physician above the 75%.

2. Neither the worker's employer or its workers' compensation insurer shall be liable for any portion of the cost of disputed medical treatment, if that treatment is ultimately determined not to be compensable as an expense necessary to treat an industrial injury or occupational disease.

3. A worker may become liable for the cost of the disputed medical treatment, if that treatment is ultimately determined not to be compensable as an expense necessary to treat the industrial injury or occupational disease.

4. Except for any co-pays or deductibles under the worker's health insurance plan, the penalty provision in D(1) and D(3) shall not apply if the physician performs the medical treatment in question, having been preauthorized in writing to do the same by a health insurer or other non-worker's compensation insurance payor.

5. The penalty provisions in D(1) shall not apply to medical treatment rendered in emergency situations, which are defined as a threat to life or limb.

6. The Commission shall notify a physician, in writing, of reported violations of this rule. Repeated violations of this rule by a physician may result in a report from the Commission to the Department of Commerce, Division of Occupational/Professional Licensing.

R612-2-27. Commission Approval of Health Care Treatment Protocol.

A. Authority. Pursuant to authority granted by Section 34A-2-111(2)(c)(i)(B)(VII) of the Utah Workers' Compensation Act, the Utah Labor Commission establishes the following standards and procedures for Commission approval of medical treatment and quality care guidelines.

B. Standards:

1. Scientifically based: Section 34A-2-111(2)(c)(i)(B)(VII)(Aa) of the Act requires that guidelines be scientifically based. The Commission will consider a guideline to be "scientifically based" when it is supported by medical studies and/or research.

2. Peer reviewed: Section 34A-2-111(2)(c)(i)(B)(VII)(Bb) of the Act requires that guidelines be peer reviewed. The Commission will consider a guideline to be "peer reviewed" when the medical study's content, methodology, and results have been reviewed and approved prior to publication by an editorial board of qualified experts".

3. Other standards: Pursuant to its rulemaking authority under Section 34A-2-111(2)(c)(i)(B)(VII), the Utah Labor Commission establishes the following additional standards for medical treatment and quality care guidelines.

a. The guidelines must be periodically updated and, subject to Commission discretion, may not be approved for use unless updated in whole or in part at least biannually;

b. Guideline sources must be identified;

c. The guidelines must be reasonably priced;

d. The guidelines must be easily accessible in print and electronic versions.

C. Procedure: Pursuant to Section 34A-2-111(2)(c)(i)(B)(VII) of the Utah Workers' Compensation Act, a party seeking Commission action to approve or disapprove a guideline shall file a petition for such action with the Labor Commission.

KEY: workers' compensation, fees, medical practitioner

July 10, 2007	**34A-2-101 et seq.**
Notice of Continuation May 28, 2003	**34A-3-101 et seq.**
	34A-1-104

R628. Money Management Council, Administration.
R628-2. Investment of Funds of Public Education Foundations Established Under Section 53A-4-205 or Funds Acquired by Gift, Devise or Bequest.
R628-2-1. Authority.

This rule is issued pursuant to Section 51-7-18(2)(b).

R628-2-2. Scope of Rule.

This rule relates to all funds of public education foundations established under Section 53A-4-205 and any funds held by a public treasurer which were acquired by gift, devise, or bequest and which are permitted by statute to be invested according to rules adopted by the Money Management Council.

R628-2-3. Investment Directions Contained in Gift or Grant.

If any gift, devise, or bequest, whether outright or in trust, is made by a written instrument which contains lawful directions as to investment thereof, the funds embodied within the gift, devise or bequest shall be invested and held in accordance with those directions. Common stock received by donation which is registered stock, or which is otherwise restricted from sale because it is not registered with the Securities and Exchange Commission, may be retained until the restrictions lapse, expire, or are revoked and shall be considered to be invested according to the terms of the donation. A gift, devise or bequest of closely held non-marketable securities, shall be purchased by the closely held entity within twenty four months of the gift, devise or bequest. Evidence of such put shall be furnished at the time of the gift, devise or bequest.

R628-2-4. Investment of Funds.

A. Funds within the scope of this rule, except funds described in Section R628-2-3, may be invested in any of the following:

1. in any deposit or investment authorized by Section 51-7-11 or 51-7-5;

2. in professionally managed pooled or commingled investment funds registered with the Securities and Exchange Commission with a Morningstar rating of "3" or higher.

3. in equity securities, including common and convertible preferred stock and convertible bonds, issued by corporations listed on a major securities exchange or in the NASDAQ, in accordance with the following criteria applied, on a total market basis, at the time of investment:

a) no more than 20% of all funds may be invested in securities listed in the NASDAQ;

b) no more than 5% of all funds may be invested in the securities of any one corporate issuer;

c) no more than 25% of all funds may be invested in a particular industry;

d) no more than 5% of all funds may be invested in securities of corporations that have been in continuous operation for less than three years;

e) no more than 5% of the outstanding voting securities of any one corporation may be held; and

f) at least 50% of the corporations in which equity investments are made under R628-2-4.(A)(3) must appear on the Standard and Poor's 500 Composite Stock Price Index and the Wilshire 5000;

4. in fixed-income securities, including bonds, notes, mortgage securities and zero coupon securities, issued by corporations rated "investment grade" or higher by Moody's Investors Service, Inc. or by Standard and Poor's Corporation in accordance with the following criteria applied, on a total market basis, at the time of investment:

a) no more than 5% of all funds may be invested in the securities of any one corporate issuer;

b) no more than 25% of all funds may be invested in a particular industry;

c) the dollar-weighted average maturity of fixed-income securities acquired under R628-2-4(A)(4) may not exceed ten years; and

5. in fixed-income securities issued by agencies of the United States and United States government-sponsored organizations, including mortgage-backed pass-through certificates, mortgage-backed bonds and collateralized mortgage obligations (CMO's).

6.

A. Investments made under this rule shall observe the following investment percentages on a total market basis as of the most recent quarterly review, for specified subsections;

1. no more than 75% of all funds may be invested in equity securities (Subsection R628-2-4(A)(3) investments).

2. no more than 5% of all funds may be invested in collateralized mortgage obligations (CMO's) (Subsection R628-2-4(A)(5) investments).

B. The selection criteria established in Section 51-7-14 shall apply to investments permitted by this rule.

C. Professional asset managers may be employed to assist in the investment of funds under this rule. Compensation to asset managers may be provided from earnings generated by the funds' investments.

R628-2-5. Disposition of Nonqualifying Investments.

A. If at any time securities do not qualify for investment in accordance with this rule, investments shall be disposed of within a reasonable time. In determining what constitutes reasonable time for the disposition of assets, the following factors, among others, shall be given consideration:

1. the legality of sale under the rules and regulations of the Securities and Exchange Commission and the Utah State Securities Commission;

2. the size of the investment held in relation to the normal trading volume therein, and the effect upon the market price of the sale of the investment; and

3. the wishes of the donor respecting the sale of the investment.

B. If, in the opinion of the custodian or investment manager of the funds, an orderly liquidation of a nonqualifying investment cannot be accomplished within a period of two years, a request may be made to the Council for approval of a specific plan of disposition of nonqualifying investments. Nothing contained in this paragraph shall make an investment nonqualifying, if the retention of the investment is specifically authorized or directed under terms of the gift, devise, or bequest, or if the security is restricted from sale as provided in this rule.

R628-2-6. Nonqualifying Investments Held on Effective Date.

Any nonqualifying investments held on November 1, 2005 shall be treated as having been received on the effective date and shall be disposed of as provided in Subsection R628-2-5.

R628-2-7. Multiple Funds.

If a public treasurer or a public education foundation has more than one fund or investment pool in which funds covered by this rule are managed, the following rules apply in determining investment percentages:

A. If the investment of any funds is covered by a direction in the instrument creating a gift, devise, or bequest, or if the donation consists of securities restricted from sale, the funds shall be excluded from any computation of permitted investments.

B. All other funds within the scope of this rule shall be consolidated for determining the propriety of investments. Any restrictions as to investment percentages shall be determined as provided for in Subsection R628-2-4(B).

R628-2-8. Investment Policy Approval.

Each public education foundation or public treasurer having funds acquired by gift, devise, or bequest shall have their investment policies approved by their respective board of trustees or governing body.

R628-2-9. Reporting by Public Education Foundations and Public Treasurers.

Each public education foundation and public treasurer, having funds acquired by gift, devise, or bequest and funds functioning as endowments shall file a written report with the Council on or before July 31 and January 31 of each year containing the following information for investments held on June 30 and December 31 respectively:

A. total market value of funds held under gifts, devise or bequest and funds functioning as endowments;

B. amount invested under this rule;

C. amounts invested under this rule indicating the carrying value and market value of each category of investment; and

D. a list of all nonqualifying assets held under this rule containing the date acquired, the carrying value and market value of each asset.

E. The board of trustees or governing body shall review the portfolio at least quarterly, and shall receive the certification from the public treasurer that the portfolio complies with the Money Management Act, Rules of the Money Management Council and the prudent person rule in section 51-7-14 of the Act.

KEY: public investments, higher education, public education

November 1, 2005	**51-7-11(4)**
Notice of Continuation July 10, 2007	**51-7-13**
	51-7-18(2)

R651. Natural Resources, Parks and Recreation.
R651-102. Government Records Access Management Act.
R651-102-1. Purpose and Authority.

(1) This rule prescribes where and to whom requests for information shall be directed and provides procedures for access to division records as allowed under Subsection 63-2-204(2).

(2) Specific procedures for requesting division records are provided in Chapter 2, Title 63, Government Records Access and Management Act.

R651-102-2. Definitions.

(1) Terms used in this rule are defined in Section 63-2-103.

(2) In addition:

(a) "Records officer" means the individual located in the Salt Lake division office designated by the director of the division to work with state archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.

(b) "Division" means the Division of Parks and Recreation.

R651-102-3. Allocation of Responsibility Within the Division.

The division is considered a governmental entity and the director of the division is considered the head of the governmental entity.

R651-102-4. Requesting Information.

(1) A person making a request for any record shall furnish the division with a written request as provided in Subsection 63-2-204(1) on a form provided by the division.

(2)(a) A request for any record shall be made only to the records officer in the Salt Lake division office located at 1594 West North Temple Salt Lake City, Utah.

(b) Response to a request submitted to any person other than the records officer in the Salt Lake division office may be delayed.

(3)(a) The records officer shall respond to each request according to Section 63-2-204.

(b) Under authority of Subsection 63-2-201(5)(b) the director may, in his discretion, disclose records that are private under Subsection 63-2-302(2) or protected under Section 63-2-304 to persons other than those specified in Section 63-2-202 or 63-2-206 if he determines there is no interest in restricting access to the record, or that the interests favoring access outweighs the interest favoring restriction of access.

R651-102-5. Requests for Access for Research Purposes.

(1) Access to private or controlled records for research purposes is allowed under Section 63-2-202(8).

(2) Requests for access to private or controlled records for research purposes may be made to the records officer in the Salt Lake division office.

R651-102-6. Intellectual Property Records.

(1) The division may duplicate and distribute an intellectual property right that is owned by the division in accordance with Subsection 63-2-201(10).

(2) Decisions with regard to these rights shall be made by the records officer in the Salt Lake division office.

(3) Any request regarding the duplication and distribution of such materials shall be made in writing to the records officer in the Salt Lake division office.

R651-102-7. Fees.

(1) The division, pursuant to Section 63-2-203, may charge a reasonable fee to cover the actual cost of duplicating a record or compiling a record in a form other than that maintained by the division.

(2) The division shall establish fees according to Subsection 63-38-3(3).

(3) Fees must be paid at the time of the request or before the records are provided to the requester.

(4) The records officer may fulfill a record request without charge according to the guidelines established in Subsection 63-2-203(3).

(5) Requests for a fee waiver may be made to the records officer in the Salt Lake division office.

R651-102-8. Denials.

(1) If the records officer denies a request in whole or in part, he shall send a notice of denial to the requester either in person or by sending the notice to the requester's address.

(2) The notice of denial shall contain the information required in Subsection 63-2-205(2).

R651-102-9. Appeal of Access Determination.

(1) Any person aggrieved by an access determination made by the records officer, including a person not a party to the division proceeding may, within 30 days after the determination, appeal the determination to the director by submitting a notice of appeal on a form provided by the division.

(2) The notice of appeal shall contain the information provided in Subsection 63-2-401(2).

(3) Upon receiving the notice of appeal the director shall make a determination according to the guidelines and within the time periods specified in Section 63-2-401.

R651-102-10. Appeal of Request to Amend a Record.

(1) Any individual contesting the accuracy or completeness of any public, private, or protected record concerning him may request the division amend the record according to the guidelines specified in Subsection 63-2-603(2).

(2) The request to amend shall be considered a request for agency action as prescribed in Subsection 63-46b-3 and the adjudicative proceeding shall be conducted informally according to the procedures prescribed in Section 63-46b-5 and R651-101, Adjudicative Proceedings.

(3) Any request to amend a record must be made to the records officer in the Salt Lake division office on a form provided by the division.

KEY: government documents, freedom of information, public records
1993 63-2-204
Notice of Continuation July 26, 2007

R651. Natural Resources, Parks and Recreation.
R651-205. Zoned Waters.
R651-205-1. Obeying Zoned Waters.

The operator of a vessel shall obey zoned water requirements or restrictions.

R651-205-2. Deer Creek Reservoir.

Vessels and all other water activities are prohibited within 1500 feet of the dam. No water skiing in Wallsberg Bay.

R651-205-3. Green River.

The use of motors is prohibited between the Flaming Gorge Dam and the confluence with Red Creek.

R651-205-4. Stansbury Park Lake.

The use of vessels over 20 feet in length and motors, except electric trolling motors, is prohibited.

R651-205-5. Lower Provo River.

The section from where it enters into Utah Lake upstream to the gas pipeline is designated as a wakeless speed area, and the use of motors is prohibited upstream from this point.

R651-205-6. Decker Lake.

The use of motors is prohibited.

R651-205-7. Palisade Lake.

The use of motors, except electric trolling motors, is prohibited.

R651-205-8. Ivins Reservoir.

The use of motors whose manufacture listed horsepower is 10 horsepower or more is prohibited.

R651-205-9. Jordan River.

The use of motors is prohibited, except motors whose manufacture listed horsepower is less than 10 horsepower. Such motors are permitted on the Utah County portion of the river.

R651-205-10. Ken's Lake.

The use of motors, except electric trolling motors, is prohibited.

R651-205-11. Pineview Reservoir.

The use of motors, except electric motors, is prohibited in the designated area in the North Arm, North Geersten Bay and the Middle Fork of the Ogden River. Vessels are prohibited in the Middle Inlet and Cemetery Point picnic areas.

R651-205-12. Jordanelle Reservoir.

The use of motorboats or sailboats is prohibited in the designated area of Hailstone Beach.

R651-205-13. Little Dell Reservoir.

The use of motors is prohibited.

R651-205-14. Bear Lake.

The use of a vessel is prohibited from July 1 through Labor Day in the area adjacent to Cisco Beach starting at the entrance station and extending approximately 1/4 mile south, when this area is marked with appropriate buoys.

R651-205-15. Lost Creek Reservoir.

A vessel may not be operated at a speed greater than wakeless speed at any time.

R651-205-16. Huntington Reservoir.

The use of motors whose manufacturer listed horsepower is 10 horsepower or more is prohibited.

KEY: boating, parks
July 9, 2007 **73-18-4(1)(c)**
Notice of Continuation April 18, 2006

R651. Natural Resources, Parks and Recreation.
R651-207. Registration Fee.
R651-207-1. Yearly Registration Fee.
The registration fee shall be $25 per year.

KEY: boating
July 9, 2007 **73-18-7(2)**
Notice of Continuation April 18, 2006

R651. Natural Resources, Parks and Recreation.
R651-301. State Recreation Fiscal Assistance Programs.
R651-301-1. Authority and Effective Date.

(a) These rules are established as required by 63-11a-501, and 63-11-17.8, and apply to the following state funded recreation fiscal assistance programs:

(1) Riverway Enhancement
(2) Non-Motorized Trails
(3) Off Highway Vehicles

(b) These rules govern procedures for fiscal assistance applications, priorities, and project selection criteria commencing on or after April 15, 2000.

R651-301-2. Definitions.

(a) "Advisory Council" means the Riverway Enhancement, Recreational Trails, and Off-Highway Vehicle Advisory Councils.

(b) "Board" means the Utah Board of Parks and Recreation.

(c) "Division" means the Utah Division of Parks and Recreation.

(d) "High density population" means areas in the state where people are grouped in communities, towns, or cities, and where the majority of residents live in the area, regardless of community size.

(e) "Public comment" means a survey of residents, bond election, written comments, or open public meeting designed to give input to the decision making process from the general public.

(f) "River or stream" means a natural watercourse flowing in a more or less permanent bed or channel, between defined banks or walls, with a current which is continuous in one direction, and which does not lose its character as a watercourse even though it may break and disappear.

R651-301-3. Fiscal Assistance Application Process.

(a) Deadline for submission of applications is May 1 annually. Submissions post-marked on or before that date will be eligible for funding consideration.

(b) Applications are to be submitted on a form to be provided by the Division. Eligible applicants will be notified by mail of the application deadline and procedures at least 45 days prior to the deadline.

(c) Applications must be submitted to:
Utah Division of Parks and Recreation
Attention: Grants Coordinator
1594 West North Temple, Suite 116
Salt Lake City, Utah 84114-6001

(d) Eligible applicants include:
(1) Riverway Enhancement Program
(i) State agencies
(ii) Cities and towns
(iii) Counties
(iv) Special Improvement Districts
(2) Non-Motorized Trails Program
(i) Federal government agencies
(ii) State agencies
(iii) Cities and towns
(iv) Counties
(v) Special Improvement Districts
(3) Off-Highway Vehicle Program
(i) Federal government agencies
(ii) State agencies
(iii) Cities and towns
(iv) Counties
(v) Organized User Group (as defined in U.C.A. 41-22-2(15))
(4) Centennial Non-Motorized Paths and Trail Crossings Program
(i) State agencies
(ii) Cities and towns
(iii) Counties

R651-301-4. Fiscal Assistance Program Requirements.

(a) All programs require a 50/50 match.

(b) An applicant's match may be in the form of cash, force account labor, equipment, or materials; donated materials and labor or donation of land from a third party to be exclusively used for the proposed project. The value of donated labor will be based on a general laborer rate, unless the person is professionally skilled in the work being performed on the project. When this is the case, the wage rate normally paid for performing this service may be charged to the project. A general laborer's wages may be charged in the amount of that which the project sponsor pays its own employees having similar experience and performing similar duties. Donated materials and land will be valued at the fair market value based on an appraisal that is approved by the Division.

(c) Riverway Enhancement fiscal assistance must be along a river or stream that is impacted by high density population or is prone to flooding.

(d) Recreational trails that are on lands under the control of the Division must comply with Section 63-11a-203, and require public hearings in the area of proposed trail development.

(e) Program funds may be used for land acquisition, development, and planning. Off-highway vehicle funds may also be used for operation and maintenance. No administrative or indirect costs are allowed.

(f) Not more than 50% of program funds may be advanced to the project sponsor, and only after official notice to the Division is made by the sponsor that project costs will be incurred within 120 days.

(g) No more than 50% of the monies available to the Centennial Non-Motorized Paths and Trail Crossings Program in a fiscal year may be allocated to a single project, except upon unanimous recommendation of the Recreational Trails Advisory Council.

(g) The balance of funding shall be provided to sponsors at the project completion, and only after a final accounting is made to the Division of total project costs.

R651-301-5. Project Selection Procedures.

(a) Advisory Councils shall make recommendations to the Division concerning the project selection criteria and the priority of projects selected for funding.

(b) The Division shall review all eligible applications, evaluate projects based on priority criteria, and submit project description information, proposed funding recommendations and justification to the appropriate Advisory Council for review and comments.

(c) The Board shall select and approve projects based on recommendations from the Division and Advisory Councils, which may be in the form of joint or separate recommendations.

R651-301-6. Priorities and Project Selection Criteria.

(a) All applicants shall be evaluated on administrative considerations, such as prior project performance and proper use of funds.

(b) All applications shall be evaluated on meeting legislative intent, and meeting outdoor recreation needs.

(c) All applications shall be evaluated on cooperative efforts of the project among agencies and user groups. This includes, but is not limited to, cooperative funding.

(d) Location of the proposed project site shall be evaluated based on proximity to the majority of users, adequacy of access to the site, safety, linking similar existing facilities, and convenience to users.

(e) Projects that promote multiple season use for maximum year-round participation and multiple uses or users shall be encouraged.

(f) Planning, design, and programs for the Riverway Enhancement and Non-Motorized Trails programs shall be evaluated to encourage:

(1) Innovative or unique design features that enhance the environment and recreation opportunities.

(2) Linking access to natural, scenic, historic, or recreational areas of statewide significance.

(3) Minimizing adverse effects on wildlife, natural areas, and adjacent landowners.

(4) Harmony with existing and planned land uses.

(5) Masterplanning.

KEY: recreation, fiscal, assistance
May 19, 2003 63-11a-501
Notice of Continuation July 26, 2007 63-11-17.8

R651. Natural Resources, Parks and Recreation.
R651-611. Fee Schedule.
R651-611-1. Use Fees.

All fees required under this fee schedule are to be paid in advance of occupancy or use of facilities.

A. Fees for services covering one or more months, for docks and dry storage, must be paid in advance for the season as determined by the Division.

B. Fee permits and passes are not refundable or transferable. Duplicate annual permits and special fun tags will be issued only upon completion of an affidavit and payment of the required fee. Inappropriate use of fee permits and passes may result in confiscation by park authorities.

C. Fees shall not be waived, reduced or refunded unless authorized by Division guideline; however, park or unit managers may determine and impose equitable fees for unique events or situations not covered in the current fee schedule. The director has the prerogative to waive or reduce fees.

D. The Multiple Park Permit, Senior Multiple Park Permit, Special Fun Tag, Camping Permit and Daily Private Vehicle Permit are good for one (1) private vehicle with up to eight (8) occupants, with the exception of any special charges. Multiple Park Permits, Senior Multiple Park Permits, and Special Fun Tags, are not honored at This Is The Place State Park.

E. No charge for persons five years old and younger.

F. With the exception of the Multiple Park Permit, Senior Multiple Park Permit, and Special Fun Tag, fees are applicable only to the specific park or facility where paid and will not be honored at other parks or facilities, unless otherwise stated in division guideline.

G. The contract operator, with the approval of the Division Director, will set fees for This Is The Place State Park.

H. A "senior" is defined as any resident of the State of Utah 62 years of age or older. Residency and proof of age are verified by presentation of a valid driver's license or a valid Utah identification card.

I. Charges for services unique to a park may be established by the park manager with approval from the region manager. All approved charges must be submitted to the Division director or designee.

R651-611-2. Day Use Entrance Fees.

Permits the use of all day activity areas in a state park. These fees do not include overnight camping facilities or special use fees.

A. Annual Permits

1. $70.00 Multiple Park Permit (good for all parks)

2. $35.00 Senior Multiple Park Permit (good for all parks)

3. $200.00 Commercial Dealer Demonstration Pass

4. Duplicate Annual Permits may be purchased if originals are lost, destroyed, or stolen, upon payment of a $10.00 fee and the submittal of a signed affidavit to the Division office. Only one duplicate is allowed.

B. Special Fun Tag - Available free to Utah residents, who are disabled, as defined by the Special Fun Tag permit affidavit.

C. Daily Permit - Allows access to a specific state park on the date of purchase.

1. $9.00 ($5.00 for seniors) per private motor vehicle or $5.00 per person ($3.00 for seniors), for pedestrians or bicycles at the following parks:

TABLE 1

Deer Creek	Jordanelle - Hailstone
Utah Lake	Willard Bay

2. $7.00 ($4.00 for seniors) per private motor vehicle or $4.00 per person ($2.00 for seniors) for pedestrians or bicycles at the following parks:

TABLE 2

Bear Lake - Marina	Bear Lake - Rendezvous
Dead Horse Point	East Canyon
Jordanelle - Rockcliff	Quail Creek
Rockport	Sand Hollow
Yuba	

3. $6.00 ($3.00 for seniors) per private motor vehicle or $3.00 per person ($2.00 for seniors), for pedestrians or bicycles at the following parks:

TABLE 3

Antelope Island	Goblin Valley
Hyrum	Kodachrome
Palisade	

4. $2.00 ($1.00 for seniors) per private vehicle at the following park:

TABLE 4

Great Salt Lake

5. $6.00 per adult, $3.00 per child (a child is defined as any person between the ages of six (6) and twelve (12) years old inclusively), and $3.00 for seniors at Utah Field House State Park.

6. $2.00 per person ($1.00 for seniors), or $6.00 per family (up to eight (8) individuals ($3.00 for seniors), at the following parks:

TABLE 5

Camp Floyd
Territorial

7. $3.00 per person ($1.50 for seniors), or $6.00 per family (up to eight (8) individuals ($3.00 for seniors), at the following parks:

TABLE 6

Anasazi	Edge of the Cedars
Fremont	Iron Mission

8. $5.00 ($3.00 for seniors) per private motor vehicle or $3.00 per person ($2.00 for seniors),for pedestrians or bicycles at the parks not identified above, including the east side of Bear Lake.

9. $10.00 per OHV rider at the Jordan River OHV Center.

10. $2.00 per person for commercial groups or vehicles with nine (9) or more occupants ($15.00 per group at Great Salt Lake).

D. Group Site Day Use Fee - Advance reservation only. $2.00 per person, age six (6) and over, for sites with basic facilities. Minimum $50.00 fee established for each facility.

E. Antelope Island Wildlife Management Program: A $1.00 fee will be added to the entrance fee at Antelope Island. This additional fee will be used by the Division to fund the Wildlife Management Program on the Island.

R651-611-3. Camping Fees.

Permits overnight camping and day use for the day of arrival until 2:00 p.m. of the following day or each successive day. Camp sites must be vacated by 12:00 noon following the last camping night at Dead Horse Point. Camping is limited to 14 consecutive days at all campgrounds with the exception of Snow Canyon State Park, with a five (5) consecutive day limit.

A. Individual Sites -- One (1) vehicle with up to eight (8) occupants and any attached recreational equipment as one (1) independent camp unit. Fees for individual sites are based on the following schedule:

1. $9.00 with pit or vault toilets; $12.00 with flush toilets;

$15.00 with flush toilets and showers or electrical hookups; $18.00 with flush toilets, showers and electrical hookups; (Dead Horse Point, electrical hookups - $20); $21.00 with full hookups.

2. Primitive camping fees may be decreased at the park manager's discretion dependent upon the developed state of the facilities to be used by park visitors. Notification of the change must be made to the Division's financial manager and reservations manager before the reduced fee can be made effective.

3. Special Fun Tag holders may receive a $2.00 discount for individual camping sites Monday through Thursday nights, excluding holidays.

4. One-half the campsite fee rounded up to the nearest dollar will be charged per vehicle at all parks and individual camping sites for all additional transportation vehicles that are separate and not attached to the primary vehicle, but are dependent upon that unit. No more than one additional vehicle is allowed at any individual campsite. This fee is not applicable at primitive campsites.

B. Group Sites - (by advance reservation for groups)

1. $2.00 per person, age six (6) and over at sites with vault toilets. Minimum $50.00 fee for each facility.

2. $3.00 per person, age six (6) and over at sites with flush toilets and/or pavilions. Minimum $75.00 fee for each facility.

R651-611-4. Special Fees.

A. Golf Course Fees

1. Palisade rental and green fees.

a. Nine holes general public - weekends and holidays - $12.00

b. Nine holes weekdays (except holidays) - $10.00

c. Nine holes Jr/Sr weekdays (except holidays) - $8.00

d. 20 round card pass - $160.00

e. 20 round card pass (Jr only) - $100.00

f. Promotional pass - single person (any day) - $450.00

g. Promotional pass - single person (weekdays only) - $300.00

h. Promotional pass - couples (any day) - $650.00

i. Promotional pass - family (any day) - $850.00

j. Promotional pass - annual youth pass - $150.00

k. Companion fee - walking, non -player - $4.00

l. Motorized cart (18 holes) - $10.00

m. Motorized cart (9 holes) - $5.00

n. Pull carts (9 holes) - $2.00

o. Club rental (9 holes) - $5.00

p. School teams - No fee for practice rounds with coach and team roster. Tournaments are $3.00 per player.

q. Driving range - small bucket - $2.50

r. Driving range - large bucket - $3.50

2. Wasatch Mountain and Soldier Hollow rental and green fees.

a. Nine holes general public - $13.50

b. Nine holes general public (weekends and holidays) - $13.50

c. Nine holes Jr/Sr weekdays (except holidays) - $11.00

d. 20 round card pass - $220.00 - no holidays or weekends

e. Annual Promotional Pass (except holidays) - $1,000.00

f. Business Class Membership Pass - $1,000.00

g. Companion fee - walking, non-player - $4.00

h. Motorized cart (9 holes - mandatory on Mt. course) - $13.00

i. Motorized cart (9 holes single rider) - $7.00

j. Pull carts (9 holes) - $2.25

k. Club rental (9 holes) - $6.00

l. School teams - No fee for practice rounds with coach and team roster (Wasatch County only).

Tournaments are $3.00 per player.

l. Tournament fee (per player) - $5.00

m. Driving range - small bucket - $2.50

n. Driving range - large bucket - $5.00

o. Advance tee time booking surcharge - $15.00

3. Green River rental and green fees.

a. Nine holes general public - $10.00

b. Nine holes Jr/Sr weekdays (except holidays) - $8.00

c. Eighteen holes general public - $16.00

d. 20 round card pass - $140.00

e. Promotional pass - single person (any day) - $350.00

f. Promotional pass - personal golf cart - $350.00

g. Promotional pass - single person (Jr/Sr weekdays) - $275.00

h. Promotional pass - couple (any day) - $600.00

i. Promotional pass - family (any day) - $750.00

j. Promotional pass - annual youth pass - $150.00

k. Companion fee - walking, non-player - $4.00

l. Motorized cart (9 holes) - $10.00

m. Motorized cart (9 holes single rider) - $5.00

n. Pull carts (9 holes) - $2.25

o. Club rental (9 holes) - $5.00

p. School teams - No fee for practice rounds with coach and team roster. Tournaments are $3.00 per player.

4. Golf course hours are daylight to dark

5. No private, motorized golf carts are allowed, except where authorized by existing contractual agreement.

6. Jr golfers are 17 years and under. Sr golfers are 62 and older.

B. Boat Mooring and Dry Storage

1. Mooring Fees:

a. Day Use - $5.00

b. Overnight Boat Parking - $7.00 (until 8:00 a.m.)

c. Overnight Boat Camping - $15.00 (until 2:00 p.m.)

d. Monthly - $4.00/ft.

e. Monthly with Utilities - (Bear Lake) $6.00/ft.

f. Monthly with Utilities - (Other Parks) $5.00/ft.

g. Monthly Off Season - $2.00/ft

h. Monthly (Off Season with utilities) - $3.00/ft

2. Dry Storage Fees:

a. Overnight (until 2:00 p.m.) - $5.00

b. Monthly During Season - $75.00

c. Monthly Off Season - $50.00

d. Monthly (unsecured) - $25.00

C. Application Fees - Non -refundable PLUS Negotiated Costs.

1. Grazing Permit - $20.00

2. Easement - $250.00

3. Construction/Maintenance - $50.00

4. Special Use Permit - $50.00

5. Commercial Filming - $50.00

6. Waiting List - $10.00

D. Assessment and Assignment Fees.

1. Duplicate Document - $10.00

2. Contract Assignment - $20.00

3. Returned checks - $20.00

4. Staff time - $40.00/hour

5. Equipment - $30.00/hour

6. Vehicle - $20.00/hour

7. Researcher - $5.00/hour

8. Photo copy - $ .10/each

9. Fee collection - $10.00

R651-611-5. Reservations.

A. Camping Reservation Fees.

1. Individual Campsite $8.00

2. Group site or building rental $10.25

3. Fees identified in #1 and #2 above are to be charged for both initial reservations and for changes to existing reservations.

B. All park facilities will be allocated on a first-come, first-serve basis.

C. Selected camp and group sites are reservable in advance by calling 322-3770, 1-800-322-3770 or on the Internet at: www.stateparks.utah.gov.

D. Applications for reservation of skating rinks, meeting rooms, buildings, mooring docks, dry storage spaces and other sites not covered above, will be accepted by the respective park personnel beginning on the first business day of February for the next 12 months. Application forms and instructions are available at the park.

E. All unreserved mooring docks, dry storage spaces and camp picnic sites are available on a first-come, first-serve basis.

F. The park manager for any group reservation or special use permit may require a cleanup deposit.

G. Golf course reservations for groups of 20 or more and tournaments will be accepted for the calendar year beginning the first Monday of March. Reservations for up to two starting times (8 persons) may be made for Saturday, Sunday and Monday, the preceding Monday; and for Tuesday through Friday, the preceding Saturday. Reservations will be taken by phone and in person during golf course hours.

H. One party will reserve park facilities for more than fourteen (14) consecutive days in any 30-day period.

KEY: parks, fees
July 9, 2007 **63-11-17(8)**
Notice of Continuation February 13, 2006

R655. Natural Resources, Water Rights.
R655-1. Wells Used for the Discovery and Production of Geothermal Energy in the State of Utah.
R655-1-1. General Provisions.

1.1 Authority: In Section 73-22-5, the Division of Water Rights is given jurisdiction and authority to require that all wells for the discovery and production of water to be used for geothermal energy production of water in the State of Utah, be drilled, operated, maintained, and abandoned in a manner as to safeguard life, health, property, the public welfare, and to encourage maximum economic recovery.

1.2 Definitions:

(a) "Applicant" means any person submitting an application to the Division of Water Rights to appropriate water, brine or steam for geothermal purposes and for the construction and operation of any well or injection well.

(b) "BOPE" is an abbreviation for Blow-Out Prevention Equipment which is designed to be attached to the casing in a geothermal well in order to prevent a blow-out.

(c) "Completion." A well is considered to be completed thirty days after drilling operations have ceased unless a suspension of operation is approved by the Division, or thirty days after it has commenced producing a geothermal resource, whichever occurs first, unless drilling operations are resumed before the end of the thirty-day period or at the end of the suspension.

(d) "Correlative Rights" means the owners' or operators' just and equitable share in the geothermal resource.

(e) "Division" means the Division of Water Rights, Department of Natural Resources, State of Utah.

(f) "Drilling Logs" means the recorded description of the lithologic sequence encountered in drilling a well.

(g) "Drilling Operations" means the actual drilling, redrilling, or recompletion of the well for production or injection including the running and cementing of casing and the installation of well head equipment. Drilling operations do not include perforating, logging, and related operations.

(h) "Exploratory Well" means a well drilled for the discovery or evaluation of geothermal resources either in an established geothermal field or in unexplored areas.

(i) "Geothermal Area" means the same general land area which in its subsurface is underlaid or reasonably appears to be underlaid by geothermal resources from or in a reservoir, pool, or other source or interrelated sources.

(j) "Geothermal Field" means an area designated by the Division which contains a well or wells capable of commercial production of geothermal resources.

(k) "Geothermal Resource" means the natural heat energy of the earth, the energy in whatever form which may be found in any position and at any depth below the surface of the earth, present in, resulting from, or created by, or which may be extracted from natural heat and all minerals in solution or other products obtained from the material medium of any geothermal resource.

(l) "Injection Well" means any special well, converted producing well, or reactivated or converted abandoned well employed for injecting material into a geothermal area or adjacent area to maintain pressures in a geothermal reservoir, pool, or other source, or to provide new material to serve as a material medium therein, or for reinjecting any material medium or the residue thereof, or any by-product of geothermal resource exploration or development into the earth.

(m) "Material Medium" means any substance including, but not limited to, naturally heated fluids, brines, associated gases and steam in whatever form, found at any depth and in any position below the surface of the earth, which contains or transmits the natural heat energy of the earth, but excluding petroleum, oil, hydrocarbon gas, or other hydrocarbon substances.

(n) "Notice" means a statement to the Division that the applicant intends to do work.

(o) "Operator" means any person drilling, maintaining, operating, pumping, or in control of any well. The term operator also includes owner when any well is or has been or is about to be operated by or under the direction of the owner.

(p) "Owner" means the owner of the geothermal lease or well and includes operator when any well is operated or has been operated or is about to be operated by any person other than the owner.

(q) "Person" means any individual natural person, general or limited partnership, joint venture, association, cooperative organization, corporation, whether domestic or foreign, agency or subdivision of this or any other state or municipal or quasi-municipal entity whether or not it is incorporated.

(r) "Production Well" means any well which is commercially producing or is intended for commercial production of a geothermal resource.

(s) "State Engineer" is the Director of the Division of Water Rights, which is the agency having general administrative supervision over the waters of the State. The duties of this Division are primarily set forth in Title 73, Chapters 1 through 6.

(t) "Suspension of Operations" means the cessation of drilling, redrilling, or alteration of casing before the well is officially abandoned or completed. All suspensions must be authorized by the Division.

(u) "Waste" means any physical waste including, but not limited to:

(1) Underground waste resulting from inefficient, excessive, or improper use, or dissipation of geothermal energy, or of any geothermal resource pool, reservoir, or other source; or the locating, spacing, constructing, equipping, operating, or producing of any well in a manner which results, or tends to result in reducing the quantity of geothermal energy to be recovered from any geothermal area in the State.

(2) The inefficient above-ground transporting and storage of geothermal energy; and the locating, spacing, equipping, operating, or producing of any well or injection well in a manner causing or tending to cause unnecessary or excessive surface loss or destruction of geothermal energy; the escape into the open air from a well of steam or hot water in excess of what is reasonably necessary in the efficient development or production of a well.

(v) "Well" means any well drilled for the discovery or production of geothermal resources or any well on lands producing geothermal resources or reasonably presumed to contain geothermal resources, or any special well, converted producing well or reactivated or converted abandoned well employed for reinjecting geothermal resources or the residue thereof.

1.3 All administrative procedures involving applications, approvals, hearings, notices, revocations, orders and their judicial review, and all other administrative procedures required or allowed by these rules are governed by rules for administrative procedures adopted by the Division, including R655-6, Administrative Procedures for Informal Proceedings Before the Division of Water Rights of the State of Utah.

R655-1-2. Drilling.

2.1 Applications:

2.1.1 Application to drill for Geothermal Resources.

Any person, owner or operator, who proposes to drill a well for the production of geothermal resources or to drill an injection well shall first apply to the Division in accordance with Title 73, Chapter 3. Applications to appropriate water for geothermal purposes will be processed and investigated by the Division, and if they meet the requirements of Section 73-3-8, they will be approved by the State Engineer on a well-to-well

basis or as a group of wells which comprise an operating unit and have like characteristics.

Appropriation of water for geothermal purposes shall not be considered mutually interchangeable with water for any other purpose. Water, brine, steam or condensate produced during a geothermal operation may be subject to further appropriation if physical conditions permit.

2.1.2 Plan of Operations:

Before drilling an exploratory or production well, the applicant shall submit a plan of operations to the State Engineer for his approval. The plan shall include:

(a) Location, elevation and layout.

(b) Lease identification and Well Number.

(c) Tools and equipment description including maximum capacity and depth rating.

(d) Expected depth and geology.

(e) Drilling, mud, cementing and casing program.

(f) BOPE installation and test.

(g) Logging, coring and testing program.

(h) Methods for disposal of waste materials.

(i) Environmental considerations.

(j) Emergency procedures.

(k) Other information as the State Engineer may require.

2.1.3 Application to deepen or modify an existing well.

If the owner or operator plans to deepen, redrill, plug, or perform any operation that will in any manner modify the well, an application shall be filed with the Division and written approval must be received prior to beginning work; however, in an emergency, the owner or operator may take action to prevent damage without receiving prior written approval from the Division, but in those cases the owner or operator shall report his action to the Division as soon as possible.

2.1.4 Application for permit to convert to injection.

If the owner or operator plans to convert an existing geothermal well into an injection well with no change of mechanical condition, written request shall be filed with the Division and written approval must be received prior to beginning injection.

2.1.5 Amendment of permit.

No changes in the point of diversion, place or nature of use shall be allowed until an amendment to the application is approved by the State Engineer in accordance with Section 73-3-3.

2.1.6 Notice to other agencies.

Notice of applications, permits, orders, or other actions received or issued by the Division may be given to any other agency or entity which may have information, comments, or interest in the activity involved.

2.2 Fees: Any application filed with the State Engineer shall be accompanied by a filing fee in accordance with Section 73-2-14.

2.3 Bonds:

2.3.1 Any operator having approval to drill, re-enter, test, alter or operate a well, prior to any construction or operation, shall file with the Division of Water Rights and obtain its approval of a surety bond, payable to the Division of Water Rights for not less than $10,000 for each individual well or $50,000 for all wells. The bond shall be on a form prescribed by the Division and shall be conditioned on faithful compliance with all statutes and these rules.

2.3.2 Bonds remain in force for the life of the well or wells and may not be released until the well or wells are properly abandoned or another valid bond is substituted.

2.3.3 Transfer of property does not release the bond. If any property is transferred and the principal desires to be released from his bond, the operator shall:

a. Assign or transfer ownership in the manner prescribed in Sections 73-1-10 and 73-3-18, identifying the right by application number, well number or location and,

b. Provide the Division with a declaration in writing from the assignee or transferee that he accepts the assignment and tenders his own bond therewith or therein accepts responsibility under his blanket bond on file with the Division.

2.4 Well Spacing:

2.4.1 Any well drilled for the discovery or production of geothermal resources or as an injection well shall be located 100 feet or more from and within the outer boundary of the parcel of land on which the well is situated, or 100 feet or more from a public road, street, or highway dedicated prior to the commencement of drilling. This requirement may be modified or waived by the State Engineer upon written request if it can be demonstrated that public safety is preserved and that the integrity of the geothermal source is not jeopardized.

2.4.2 For several contiguous parcels of land in one or different ownerships that are operated as a single geothermal field, the term outer boundary line means the outer boundary line of the land included in the field. In determining the contiguity of parcels of land, no street, road, or alley lying within the lease or field shall be determined to interrupt such contiguity.

2.4.3 The State Engineer shall approve the proposed well spacing programs or prescribe modifications to the programs as he deems necessary for proper development giving consideration to factors as, but not limited to, topographic characteristics of the area, the number of wells that can be economically drilled to provide the necessary volume of geothermal resources for the intended use, protecting correlative rights, minimizing well interference, unreasonable interference with multiple use of lands, and protection of the environment.

2.4.4 Directional drilling.

Where the surface of the parcel of land is unavailable for drilling, the surface well location may be located upon property which may or may not be contiguous. Surface well locations shall not be less than 25 feet from the outer boundary of the parcel on which it is located, nor less than 25 feet from an existing street or road. The production or injection interval of the well shall not be less than 100 feet from the outer boundary of the parcel into which it is drilled. Directional surveys must be filed with the Division for all wells directionally drilled.

2.5 Identification: Each well being drilled or drilled and not abandoned shall be identified by a durable sign posted in a conspicuous place near the well. The lettering shall be large enough to be legible at 50 feet under normal conditions and shall show the name of the applicant, well number, location by 10-acre tract, and name of lease.

The well number shall be according to the modified Kettleman Well Numbering System adopted by the U.S. Geological Survey.

2.6 Unit Agreements: At the request of any interested party or on his own initiative, the State Engineer may establish a unit plan or agreement for a geothermal area to prevent waste, protect correlative rights and avoid drilling unnecessary wells. Proper notice to interested parties must be given and a hearing held before the State Engineer before the unit may be created.

2.7 Casing Requirements:

2.7.1 General.

All wells shall be cased in a manner to protect or minimize damage to the environment, usable ground waters and surface waters, geothermal resources, life, health, and property. The permanent well head completion equipment shall be attached to the production casing or to the intermediate casing if production casing does not reach the surface.

Specifications for casing strings shall be determined or approved on a well-to-well basis. All casing strings reaching the surface shall provide adequate anchorage for blowout-prevention equipment, hole pressure control and protection for all natural resources. The casing requirements given are general but should be used as guidelines in submitting proposals to drill.

2.7.2 Conductor Casing.

A minimum of 40 feet of conductor casing shall be installed. The annular space is to be cemented solid to the surface. A 24-hour cure period for the grout must be allowed prior to drilling out the shoe unless additives approved by the State Engineer are used to obtain early strength. An annular blowout preventer shall be installed on all exploratory wells and on development wells when deemed necessary by the Division. For low-temperature geothermal wells less than 90 degrees C. this requirement may be reduced or waived by the State Engineer.

2.7.3 Surface Casing.

Except in the case of low-temperature geothermal wells, the surface casing hole shall be logged with an induction electrical log, or equivalent, before running casing or by gamma-neutron log. This requirement may vary from area to area, depending upon the amount of pre-existing subsurface geological data available. If sufficient subsurface geologic data is available, the State Engineer may not require additional logging of the surface casing hole. However, permission to omit this requirement must be granted by the Division prior to running surface casing.

Surface casing shall provide for control of formation fluids, for protection of shallow usable ground water and for adequate anchorage for blowout-prevention equipment. All surface casing shall be cemented solid to the surface. A 24-hour cure period shall be allowed prior to drilling out the shoe of the surface casing unless additives approved by the State Engineer are used to obtain early strength.

2.7.3.1 Length of Surface Casing.

(a) In areas where subsurface geological conditions are variable or unknown, surface casing in general shall be set at a depth of wells drilled in those areas. A minimum of surface casing shall be set through a sufficient series of low permeability, competent lithologic units to ensure a solid anchor for blowout-prevention equipment and to protect usable ground water and surface water from contamination. A second string or intermediate casing may be required if the first string has not been cemented through a sufficient series of low permeability, competent lithologic units and either a rapidly increasing geothermal gradient or rapidly increasing formation pressures are encountered.

(b) In areas of known high formation pressure, surface casing shall be set at a depth approved by the Division after a careful study of geological conditions.

(c) Within the confines of designated geothermal fields, the depth to which surface casing shall be set shall be approved by the Division on the basis of known field conditions.

(d) These requirements may be reduced or waived by the State Engineer for low-temperature geothermal wells.

2.7.3.2 Mud Return Temperatures.

The temperature of the return mud shall be monitored regularly during the drilling of the surface casing hole. Either a continuous temperature monitoring device shall be installed and maintained in working condition, or the temperature shall be read manually. In either case, return mud temperature shall be logged after each joint of pipe has been drilled down 30 feet.

2.7.3.3 Blowout-Prevention Equipment.

BOPE capable of shutting-in the well during any operation shall be installed on the surface casing and maintained ready for use at all times. BOPE pressure tests shall be witnessed by Division personnel on all exploratory wells prior to drilling out the shoe of the surface casing. The decision to require and witness BOPE pressure tests on all other wells shall be made on a well-to-well basis. The Division must be contacted 24 hours in advance of a scheduled pressure test. The State Engineer may give verbal permission to proceed with the test upon request by the operator.

2.7.4 Intermediate Casing.

Intermediate casing shall be required for protection against unusual pressure zones, cave-ins, wash-outs, abnormal temperature zones, uncontrollable lost circulation zones or other drilling hazards. Intermediate casing strings shall be cemented solid to the surface or to the top of the liner hanger whenever the intermediate casing string is run as a liner. The liner lap shall be pressure tested prior to resumption of drilling.

2.7.5 Production Casing.

Production casing may be set above or through the producing or injection zone and cemented above the injection zones. Sufficient cement shall be used to exclude overlying formation fluids from the geothermal zone, to segregate zones and to prevent movement of fluids behind the casing into zones that contain usable ground water. Production casing shall either be cemented solid to the surface or lapped into intermediate casing, if run. If the production casing is lapped into an intermediate casing, the casing overlap shall be at least 100 feet, the lap shall be cemented solid, and it shall be pressure tested to ensure its integrity.

2.8 Electric Logging:

All wells, except observation wells for monitoring purposes only, shall be logged with an induction electrical log or equivalent or gamma-neutron log from the bottom of the hole to the bottom of the conductor pipe. This requirement may be modified or waived by the Division upon written request if such request demonstrates sufficient existing data of surrounding wells.

R655-1-3. Blowout Prevention.

3.1 General.

3.1.1 Blowout-Prevention Equipment (BOPE) installations shall include high temperature-rated packing units and ram rubbers, if available, and shall have a minimum working-pressure rating equal to or greater than the lesser of:

(a) A pressure equal to the product of the depth of the BOPE anchor string in feet times one psi per foot.

(b) A pressure equal to the rated burst pressure of the BOPE anchor string.

(c) A pressure equal to 2,000 psi.

Specific inspections and tests of the BOPE may be made by the Division. The requirements for tests will be included in the Division's answer to the notice of the intention to drill.

3.1.2 A Division employee may be present at the well at any time during the drilling.

3.1.3 A logging unit equipped to regularly record the following data shall be installed and operated continuously after drilling out the shoe of the conductor pipe and until the well has been drilled to the total depth.

(a) Drilling mud temperature.

(b) Drilling mud pit level.

(c) Drilling mud pump volume.

(d) Drilling mud weight.

(e) Drilling rate.

(f) Hydrogen sulfide gas volume.

The Division may waive the requirement for installation of a logging unit on evidence that the owner or operator has engaged a qualified mud engineer to monitor, log and record the data specified in the above subparagraphs a. through d. The drilling rate required in subparagraph e. shall be logged with standard industry recording devices, and hydrogen sulfide monitoring and safety equipment shall be provided whenever needed to satisfy the requirement of subparagraph f.

3.2 Requirements Using Mud as the Drilling Fluid.

The following requirements are for exploratory areas, unstable areas containing fumaroles, geysers, hot springs, mud pots, and for fields with a history of lost circulation, a blowout, or zone pressures less than 1000 psi. These requirements may be reduced by the State Engineer where the geothermal formations are known to be shallow and of low pressure and temperature.

(a) An annular BOPE and a spool, fitted with a low-pressure safety pop-off and blow-down line, installed on the conductor pipe may be required to ensure against possible gas blowouts during the drilling of the surface casing hole.

(b) Annular BOPE and pipe-ram/blind-ram BOPE with a minimum working pressure rating of 2,000 psi shall be installed on the surface casing so that the well can be shut-in at any time. The double-ram preventer shall have a mechanical locking device.

(c) A hydraulic actuating system utilizing an accumulator of sufficient capacity and a high pressure auxiliary back-up system. This total system shall be equipped with dual controls: one at the driller's station and one at least 50 feet away from the well head.

(d) Kelly cock and standpipe valve.

(e) A fill-up line installed above the BOPE.

(f) A kill line installed below the BOPE, leading directly to the mud pumps and fitted with a valve through which cement could be pumped if necessary.

(g) A blow-down line fitted with two valves installed below the BOPE. The blow-down line shall be directed in a manner to permit containment of produced fluids and to minimize any safety hazard to personnel.

(h) All lines and fittings shall be steel and have a minimum working-pressure rating of at least that required of the BOPE.

(i) The temperature of the return mud during the drilling of the surface casing hole shall be monitored regularly. Either a continuous temperature monitoring device shall be installed and maintained in working condition, or the temperature shall be read manually. In either case, return mud temperatures shall be logged after each joint of pipe is drilled down every 30 feet.

3.3 Requirements Using Air as the Drilling Fluid.

The following requirements are for areas where it is known that dry steam exists at depth or formation pressures are less than hydrostatic:

(a) A rotating-head installed at the top of the BOPE stack.

(b) A pipe-ram/blind-ram BOPE, with a minimum working-pressure rating of 1,000 psi, installed below the rotating-head so that the well can be shut-in at any time.

(c) A banjo-box or mud-cross steam diversion unit installed below the double-ram BOPE fitted with a muffler capable of lowering sound emissions to within State standards.

(d) A blind-ram BOPE, with a minimum working-pressure rating of 1,000 psi, installed below the banjo-box or mud-cross so that the well can be shut-in while removing the rotating-head during bit changes.

(e) A master gate valve, with a minimum working-pressure rating of 600 psi, installed below the blind-ram so that the well can be shut-in after the well has been completed, prior to removal of the BOPE stack.

(f) All ram-type BOPE shall have a hydraulic actuating system utilizing an accumulator of sufficient capacity and a high-pressure backup system.

(g) Dual control stations for hydraulic backup system: one at the driller's station and the other at least 50 feet away from the well head.

(h) Float and standpipe valves.

(i) A kill line installed below the BOPE, leading directly to the mud pumps and fitted with a valve through which cement could be pumped if necessary.

(j) All lines and fittings must be steel and have a minimum working-pressure rating of 1,000 psi.

R655-1-4. Records.

4.1 General: The owner or operator of any well shall keep or cause to be kept a careful and accurate log, core record, and history of the drilling of the well. These records shall be kept in the nearest office of the owner or operator or at the well site and together with all other reports of the owner and operator regarding the well shall be subject to the inspection by the Division during business hours. All records, unless otherwise specified, must be filed with the Division within 90 days after completion of the well.

4.2 Records to be Filed with the Division:

4.2.1 Drilling Logs and Core Record -- the drilling log shall include the lithologic characteristics and depths of formations encountered, the depth and temperatures, chemical compositions and other chemical and physical characteristics of fluids encountered from time to time so far as ascertained. The core record shall show the depth, lithologic character, and fluid content of cores obtained so far as determined.

4.2.2 Well History -- the history shall describe in detail in chronological order on a daily basis all significant operations carried out and equipment used during all phases of drilling, testing, completion, and abandonment of any well.

4.2.3 Well Summary Report -- the well summary report shall accompany the core record and well history reports. It is designed to show data pertinent to the condition of a well at the time of completion of work done.

4.2.4 Production Records -- the owner or operator of any well producing geothermal resources shall file with the Division on or before the tenth day of each month for the preceding month, a statement of production utilized in a form as the Division may designate.

4.2.5 Injection Records -- the owner or operator of any well injecting geothermal fluids or waste water for any purpose shall file with the Division on or before the tenth day of each month for the preceding month a report of the injection as the Division may designate.

4.2.6 Electric Logs and Directional Surveys if Conducted -- electric logs and directional surveys shall be filed upon recompletion of any well. Like copies shall be filed upon recompletion of any well. Upon a showing of hardship, the Division may extend the time within which to comply for a period not to exceed one year.

4.3 Confidential Status: Any reports, logs, records, or histories filed with the Division shall not be available for public inspection and shall be kept confidential by the Division unless agreed to by the owner, provided, however, that the Division may use any reports, logs, records, or histories in any action in any court to enforce the provisions of Title 73, Chapter 22, or any order adopted hereunder. The following information may be made public by the Division:

(a) Owner or operator's name.

(b) Well designation or number.

(c) Elevation of derrick floor or ground elevation.

(d) Location of well.

(e) The application and all information pertaining to it, including its current status.

4.4 Inspection of Records: The records filed by an operator with the Division shall be open to inspection only to those authorized in writing by the operator and to designated Division personnel. The records of any operator filed for a completed or producing well that has been transferred by sale, lease, or otherwise shall be available to the new owner or lessee for his inspection or copying and shall be available for inspection or copying by others upon written authorization of new owner or lessee.

R655-1-5. Injection Wells.

5.1 Construction: The owner or operator of a proposed injection well or series of injection wells shall provide the Division with information it deems necessary for evaluation of the impact of injection on the geothermal reservoir and other natural resources. Information shall include existing reservoir conditions, method of injection, source of injection fluid, estimates of daily amount of material medium to be injected, zones or formations affected, and analysis of fluid to be injected

and of the fluid from the intended zone of the injection, if available.

5.2 Surveillance:

5.2.1 When an operator or owner proposes to drill or modify an injection well or convert a well to an injection well, he shall be required to demonstrate to the Division by means of a test that the casing has complete integrity. This test shall be conducted in a method approved by the Division.

5.2.2 To establish the integrity of the annular cement above the shoe of the casing, the owner or operator shall make sufficient surveys within thirty days after injection is started into a well to prove that all the injected fluid is confined to the intended zone of injection. Thereafter, surveys shall be made at least every two years or more often if necessary. The Division shall be notified 48 hours in advance of surveys in order that a representative may be present if deemed necessary. If the operator can substantiate by existing data that these tests are not necessary, then, after review of the data, the State Engineer may grant a waiver exempting the operator from the tests.

5.2.3 After a well has been placed into injection, the injection well site will be visited periodically by Division personnel. The operator or owner will be notified of any necessary remedial work. Unless modified by the State Engineer, this work must be performed within ninety days of approval for the injection well, or approval for the injection well issued by the Division will be rescinded.

R655-1-6. Abandonment and Sealing.

6.1 Objectives: The objectives of abandonment are to block interzonal migration of fluids so as to:

(a) Prevent contamination of fresh waters or other natural resources.

(b) Prevent damage to geothermal reservoirs.

(c) Prevent loss of reservoir energy.

(d) Protect life, health, environment and property.

6.2 General Requirements: The following are general requirements which are subject to review and modification for individual wells or field conditions:

(a) A notice of intent to abandon geothermal resource wells is required to be filed with the Division five days prior to beginning abandonment procedures. A permit to abandon may be given orally by the State Engineer provided the operator submits a written request for abandonment within 24 hours of the oral request.

(b) A history of geothermal resource wells shall be filed within sixty days after completion of abandonment procedures.

(c) All wells abandoned shall be monumented and the description of the monument shall be included in the history of well report. Monument shall consist of a four-inch diameter pipe 10 feet in length of which four feet shall be above ground. The remainder shall be imbedded in concrete. The applicant's name, application number, and location of the well shall be shown on the monument. An abandoned well on tilled land shall be marked in a manner approved by the State Engineer.

(d) Good quality, heavy drilling fluid shall be used to replace any water in the hole and to fill all portions of the hole not plugged with grout.

(e) All grout plugs with a possible exception of the surface plug shall be pumped into the hole through drill pipe or tubing.

(f) All open annuli shall be filled solid with grout to the surface.

(g) A minimum of 100 feet of grout shall be emplaced straddling the interface or transition zone at the base of ground water aquifers.

(h) One hundred feet of grout shall straddle the placement of the shoe plug on all casings including conductor pipe.

(i) A surface plug of either neat cement or concrete mix shall be in place from the top of the casing to at least 50 feet below the top of the casing.

(j) All casing shall be cut off at least five feet below land surface.

(k) Grout plugs shall extend at least 50 feet over the top of any liner installed in the well.

(l) Injection wells are required to be abandoned in the same manner as other wells.

(m) Other abandonment procedures may be approved by the Division if the owner or operator can demonstrate that the geothermal resource, ground waters, and other natural resources will be protected. Approval must be given in writing prior to the beginning of any abandonment procedures.

(n) Within five days after the completion of the abandonment of any well or injection well, the owner or operator of the abandoned well or injection well shall report in writing to the Division on all work done with respect to the abandonment.

R655-1-7. Maintenance.

7.1 General: All well heads, separators, pumps, mufflers, manifolds, valves, pipelines, and other equipment used for the production of geothermal resources shall be maintained in good condition in order to prevent loss of or damage to life, health, property, and natural resources.

7.2 Corrosion: All surface well head equipment and pipelines and subsurface casing and tubing will be subject to periodic corrosion surveillance in order to safeguard health, life, property, and natural resources.

7.3 Tests: The Division may require tests or remedial work as in its judgment are necessary to prevent damage to life, health, property, and natural resources, to protect geothermal reservoirs from damage or to prevent the infiltration of detrimental substances into underground or surface water suitable for irrigation or other beneficial uses to the best interest of the neighboring property owners and the public. Tests may include, but are not limited to, casing tests, cementing tests, and equipment tests.

R655-1-8. Temperature Gradient Wells.

8.1 General: Wells may be drilled upon approval of the State Engineer for measurement of subsurface temperatures and conductive heat flow.

8.2 Information: Request for a temperature gradient well program shall include the following information:

(a) Well number.

(b) Well location, elevation and expected depth.

(c) Geologic interpretation of area under investigation, including any known or inferred temperature data.

(d) Proposed drilling program, including method and casing schedule.

(e) Proposed method of abandonment.

(f) The State Engineer may require other data and impose restrictions or supervision by the Division as his studies may indicate.

8.3 Conditions: The following general conditions shall apply to temperature gradient wells:

(a) The depth of the hole shall not exceed 500 feet unless otherwise authorized by the State Engineer.

(b) The wells are to be cased and sealed against the water in the formations to be drilled.

(c) Return mud or air temperatures shall be monitored at, at least 30 foot intervals and should the temperature reach 125 degrees F. the drilling shall cease and the casing installed or the hole abandoned. Plastic casing may be used at temperatures under 125 degrees F.; otherwise, steel casing shall be used.

(d) Upon completion of the testing program, the casings are to be capped, or the casings are to be pulled and the holes cemented from bottom to top.

(e) The driller must be bonded and have a current well driller's permit from the State Engineer. Before starting, he

must give this Division notice of the day he will begin drilling.

(f) Temperature data and logs of each hole surveyed are to be submitted to the State Engineer. These will be held in confidential status until released by the owner.

(g) The driller shall exercise due caution in all drilling operations to prevent blowouts, explosions or fires.

R655-1-9. Environment.

9.1 General: The owner shall conduct exploration and development operations in a manner that provides maximum protection of the environment; rehabilitate disturbed lands; take all necessary precautions to protect the public health and safety; and conduct operations in accordance with the spirit and objectives of all applicable environmental legislation, and executive orders.

Adverse environmental impacts from geothermal-related activity shall be prevented or mitigated through enforcement of applicable Federal, State, and local standards, and the application of existing technology. Inability to meet these environmental standards or continued violation of environmental standards due to operations of the lessee, after notification, may be construed as grounds for the State Engineer to order a suspension of operations.

R655-1-10. Penalties.

As stated in Section 73-22-10, any willful violation of or failure to comply with any provision of these rules shall be a misdemeanor and each day that the violation continues shall constitute a separate offense.

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R655. Natural Resources, Water Rights.
R655-2. Procedure for Administrative Proceedings Before the Division of Water Rights Commenced Prior to January 1, 1988.
R655-2-1. General Provisions.

1.1 Procedure Governed. These rules shall govern all hearings which are held by the State Engineer on matters within his jurisdiction for all adjudicative proceedings commenced prior to January 1, 1988. Adjudicative proceedings commenced on and after January 1, 1988, are governed by R655-6 of these rules.

1.2 Definitions.

(a) "Division" means Division of Water Rights.

(b) "State Engineer" is the Administrator of the Division of Water Rights, which is the agency having general administrative supervision over the waters of the State. The duties of this Division are primarily set forth in Title 73, Chapters 1 through 6.

(c) "Staff" means the Division of Water Rights staff.

(d) "Hearing officer" is the individual conducting a hearing which is provided for in these rules and will be either the State Engineer or a designated member of his staff.

(e) "Application" means any application which has been filed pursuant to Title 73, Chapters 1 through 3, and shall include -- but not be limited to -- applications to appropriate, change applications, requests for extension of time, exchange applications, segregation applications, applications to resume the use of water, and applications for stream channel changes. The rules governing the filing and perfecting of these documents are specified in said Chapters, and the following rules govern only the hearing procedures for those applications which have been properly filed and have proceeded to the point that they are ready for hearing.

(f) "Applicant" is a person applying for an application.

(g) "Petitioner" is any person, other than the applicant, seeking relief from the State Engineer where the relief sought falls within the jurisdiction of the State Engineer's statutory duties and responsibilities.

(h) "Protestant" means a person who protests an application before the State Engineer.

(i) "Person" means any governmental subdivision or agency, individual, corporation, partnership or association.

(j) "Proceeding" shall include -- but not be limited to -- hearings, petitions, orders to show cause, and formal investigations made by the State Engineer.

(k) "Party" means each person named or admitted as a party in a proceedings before the State Engineer.

(l) "Water user" means any person using water and subject to the regulatory authority of the State Engineer.

1.3 Liberal Construction. These rules shall be liberally construed to secure a just, speedy and economical determination of all issues presented to the State Engineer.

1.4 Deviation from Rules. During emergency situations where it is essential to restore or establish water for the preservation of life or critical crops, the State Engineer may permit a deviation from these rules except where precluded by statute.

1.5 Computation of Time. The time within which any act shall be done shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or State holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday, nor State holiday. For good cause shown, the State Engineer may extend or waive any time limit prescribed or allowed by these rules.

1.6 Notice. The State Engineer shall give written notice of hearings to all persons who have become parties to a proceeding, by regular mail at least ten days prior to the hearing.

R655-2-2. Parties.

2.1 Generally. Parties to a proceeding before the State Engineer shall be:

(a) Persons who have a statutory right to be a party;

(b) Persons who may become a party when they have established to the satisfaction of the State Engineer that they have a substantial interest in the subject matter of the proceeding and that their intervention will not unduly broaden the issues.

2.2 Rights of Parties. All parties shall be entitled to introduce evidence, examine and cross-examine witnesses, make arguments, and fully participate in the proceeding.

R655-2-3. Intervention.

3.1 Order Granting Leave to Intervene Required. Persons desiring to intervene in a proceeding shall obtain permission from the State Engineer granting leave to intervene before being allowed to participate. Permission shall be requested by means of a petition in the following manner, provided that for good cause shown leave to intervene may be requested orally at the hearing.

(a) Content of Petition. Petitions for leave to intervene must be in writing and must identify the proceeding by water right number, if known. The petition must contain a clear and concise statement of the direct and substantial interest of the petitioner in the proceeding and the manner in which the proceeding will affect his interests.

(b) When Petition Must be Filed. A petition for leave to intervene must be filed with the State Engineer at least five days prior to the date set for the hearing.

(c) Granting of Petition. If a petition for leave to intervene shows a direct and substantial interest in the subject matter of the proceeding and does not unduly broaden the issues, the State Engineer may grant leave to intervene.

R655-2-4. Pleadings.

4.1 Pleadings before the State Engineer for administrative hearings shall consist of:

(a) Applications.

For purposes of a hearing before the State Engineer, applications which have been filed with the State Engineer in accordance with the provisions of Title 73, Chapters 1 through 3, and which have been protested, shall be deemed pleadings for purposes of the administrative hearing procedure provided for in these rules.

(b) Formal Protests.

Formal protests shall consist of those protests which have been filed with the State Engineer in objection to the granting of an application. The provisions for filing formal protests and the time within which they must be filed is provided in Section 73-3-7. The formal protest shall set forth clearly and concisely the grounds for the protest. Two or more grounds of protest concerning the same application may be included in one formal protest, but should be numbered and stated separately. Two or more protestants may join in one formal protest if their respective protests are against the same application and deal substantially with the same issue.

(c) Informal Protests.

Informal protests may be made by a letter or other writing, and no particular form is required. The writing must clearly state the matters complained of and must identify the party complained against and must be signed by the protestant or his attorney and show the address of protestant or his attorney.

Informal protests may be handled by the State Engineer by informal conference, correspondence, or otherwise with the parties affected in an endeavor to bring about adjustment of the protest without a formal hearing.

(d) Orders to Show Cause or Other Notice.

Pleadings before the State Engineer shall also include

Orders to Show Cause or other notices used by the State Engineer to initiate a hearing on his own motion.

(e) Petitions.

All pleadings other than applications requesting affirmative relief, including requests to intervene or for re-hearing, shall be entitled "petitions". A petition shall set forth clearly and concisely the basis and grounds for the petition and the relief requested.

(f) Title and Content of Pleadings.

Applications and other similar documents must only be filed upon the forms provided by the State Engineer. All other pleadings filed with the State Engineer should include the water right number as it appears in the State Engineer's office, if the water right which is the subject matter of the pleading has been assigned a number by the State Engineer. The pleading should also identify the name and address of the water user against whom the protest is directed.

If the water right involved in the pleading has not been assigned a water right number by the State Engineer, then the protestant or petitioner should identify the water right involved by other means -- the name and address of the water user, the water source, nature and location of the use, and other information as will aid in the identification of the water right.

Protests and petitions should be filed on legal-sized paper, type-written and double-spaced, but may be submitted in hand-written form. Protests and petitions should identify the water right by number and should contain a clear, concise statement of the matter relied upon as the basis for the pleading, together with an appropriate request for relief when relief is sought.

(g) Signing of Pleadings.

Pleadings shall be signed by the party or by the party's attorney or other authorized representative, and shall show the signer's address. The signature shall be deemed to be a certification by the signer that he has read the pleading and that, to the best of his knowledge and belief, the statements are true.

(h) Amendments to Pleadings.

The State Engineer may allow pleadings to be amended or corrected, and defects which do not affect substantial rights of the parties may be disregarded; provided, however, that applications and other similar documents which are governed by specific statutory provisions shall be amended only as provided by statute.

R655-2-5. Filing and Service.

5.1 Filing of Pleadings. Applications and protests shall be filed in accordance with the applicable statutory provisions. Petitions shall be filed with the State Engineer as specified in these rules.

5.2 Service. The State Engineer, upon receipt of a protest or petition, shall mail copies to those parties against whom relief is sought.

5.3 Service on Attorney. When any party has appeared by an attorney or other authorized representative, service upon the attorney or representative constitutes service upon the party he represents.

5.4 Time for Filing. Protests and other documents which are governed by statute shall be filed in accordance with the time specified in the statute. Other pleadings which are provided for in these rules shall be filed within the time specified.

R655-2-6. Appearances and Representation.

6.1 Taking Appearances. Parties shall enter their appearances at the beginning of a hearing or at a time designated by the State Engineer by giving their names and addresses and stating their positions or interests in the proceeding.

6.2 Representation of Parties.

(a) An individual who is a party to a proceeding, or an officer designated by a partnership, corporation, association or governmental subdivision or agency which is a party to a proceeding, may represent his or its interest in the proceeding.

(b) Any party may be represented by an attorney at law.

R655-2-7. Pre-Hearing Procedure.

The State Engineer may, upon written notice to all parties or record, hold a pre-hearing conference for the purposes of formulating or simplifying the issues, obtaining admissions of fact and of documents which will avoid unnecessary proof, arranging for the exchange of proposed exhibits, and agreeing to other matters as may expedite the orderly conduct of the proceedings or the settlement.

R655-2-8. Hearings.

8.1 Initiation of Formal Hearing in Contested Cases.

(a) By the State Engineer. The State Engineer may initiate a formal hearing upon his own motion to determine matters within his authority. If the hearing is directed toward an applicant or water user, the State Engineer shall serve on that person an order to show cause or other notice or order suitable to the purposes of the hearing which shall set forth in ordinary and concise language the acts or omissions with which the person is charged, or the issues to be determined at the hearing. The notice or order shall specify the statutes and rules involved in the proceeding.

(b) By Other Persons. A formal hearing may be initiated by other persons by filing with the State Engineer a formal protest or petition. Upon the filing of a formal protest or petition which is directed toward an applicant or water user, the State Engineer shall serve a copy of the formal protest or petition upon the applicant or water user, except as provided in the following sub-paragraphs (c) and (d) of this rule.

(c) Dismissal of Formal Protest or Petition. If it appears to the State Engineer upon the filing of a formal protest or petition that the matters alleged in the formal protest or petition are not within his jurisdiction or regulatory powers, the State Engineer in his discretion need not serve a copy of the formal protest or petition on the applicant or water user, but shall serve a notice on the protestant or petitioner which shall state the reasons why the formal protest or petition has not been served, and shall set a time at which the protestant or petitioner may appear before the State Engineer or submit a written memorandum setting forth reasons why the State Engineer has jurisdiction and authority to resolve the matter. Following appearance or submission of memorandum, the State Engineer may proceed to serve the formal protest or petition on the applicant or water user, or may -- upon his own motion -- dismiss the formal protest or petition if he concludes that he does not have jurisdiction over or the authority to resolve the matter. The State Engineer shall mail a written notice to the protestant or petitioner of his action, and, if he dismisses the formal protest or petition, the notice shall contain a statement of the reasons for his decision. If the State Engineer proceeds to serve the protestant or petitioner, no action taken pursuant to this paragraph shall preclude the applicant or water user from challenging the jurisdiction and authority of the State Engineer over the matter in issue.

(d) Protest or Petition Insufficient. If a formal protest or petition filed with the State Engineer does not contain sufficient information in the opinion of the State Engineer to adequately apprise the applicant or water user of the matters which are complained of and to enable the applicant or water user to prepare his defense, the State Engineer may require the protestant or petitioner to furnish additional information, or to file a new protest or petition before the formal protest or petition is served on the applicant or water user.

8.2 Setting of Hearing. Upon the filing of a formal protest or petition which does not require a responsive pleading, or when the State Engineer initiates a proceeding upon his own

motion and no responsive pleading is required, the State Engineer shall set a time and place for hearing. No hearing shall take place within the ten-day period immediately following the filing of the formal protest or petition unless the parties consent to a shorter period of time. Notice of the hearing will be served on all parties by regular mail at least ten days prior to the hearing.

8.3 Failure to Appear. When a party or his authorized representative to a proceeding fails to appear at a hearing after due notice has been given, the State Engineer may dismiss or continue the matter, or may proceed to hear the matter in the absence of the defaulting party.

8.4 Continuance. If application is made to the State Engineer within a reasonable time prior to the date of hearing, upon proper notice to the other parties the State Engineer may grant a continuance of the hearing.

8.5 Hearings. All hearings held by the State Engineer shall be open to the public.

8.6 Testimony. At a hearing, the State Engineer or his hearing officer shall accept oral or written testimony from any party. Further, the hearing officer shall have the right to question and examine any witnesses called to present testimony at a hearing. The testimony and statements which are received at hearings before the State Engineer may be under oath.

8.7 Order of Presentation of Evidence. Unless otherwise directed by the State Engineer at a hearing, the presentation of evidence shall be as follows:

(a) Upon applications and other documents filed in connection with the appropriation and use of water:

1. applicant;
2. protestants.

(b) Upon petitions or objections concerning the exercise of a water right:

1. protestants;
2. water user whose use is being protested.

(c) Upon complaints by the State Engineer and orders to show cause --

1. Division of Water Rights staff;
2. party against whom the action is being taken.

During any of the hearings specified above, a party may offer rebuttal evidence.

8.8 Rules of Evidence. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in a judicial proceeding. The hearing officer shall admit all relevant and material evidence, except evidence which is unduly repetitious, even though evidence may be inadmissible under rules of evidence in judicial proceedings. The weight to be given to evidence shall be determined by the State Engineer. Any relevant evidence may be admitted if it is the type of evidence commonly relied upon by prudent men in the conduct of their affairs. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible in a judicial proceedings. Irrelevant, immaterial and unduly repetitious evidence shall be excluded.

8.9 Documentary Evidence. Documentary evidence may be received in the form of copies or excerpts. However, upon request, parties shall be given an opportunity to compare the copy with the original.

8.10 Official Notice. The State Engineer may take official notice of the following matters:

(a) Rules, regulations, official reports, decisions and orders of the State Engineer and any other regulatory agency, state or federal;

(b) Official documents introduced into the record by proper reference; provided, however, that documents shall be made available so that the parties to the hearing may examine the documents and present rebuttal testimony if they so desire;

(c) Matters of common knowledge and generally recognized technical or scientific facts within the State Engineer's specialized knowledge and of any factual information which he may have gathered from a field inspection of the water sources or area involved in the proceeding.

8.11 Oral Argument and Memoranda. Upon the conclusion of the taking of evidence, the State Engineer may, in his discretion, permit the parties to make oral arguments setting forth their positions and also to submit written memoranda within the time specified by the State Engineer.

8.12 Record of Hearing. A record of any hearing may be made at the option of either the State Engineer or any party to the hearing. However, should a party desire a record of any hearing, that party must notify the State Engineer within a reasonable time prior to the time the hearing begins. When a record is made by the State Engineer, it shall be done by means of an automatic recording device. If the tape of the hearing is later transcribed, the transcript will be made available for inspection by any party. The State Engineer will make a transcription only if he deems it advisable and necessary to do so.

If a party desires that the testimony be recorded by means of a court reporter, that party may employ a court reporter at his own expense and shall furnish a transcript of the testimony to the State Engineer free of charge. This transcript shall be available at the State Engineer's office to any party to the hearing.

R655-2-9. Decisions and Orders.

9.1 Report and Order. After the State Engineer has reached a final decision upon any proceeding, he shall make and enter a decision containing his findings of fact and conclusions and order.

9.2 Service of Decisions. A copy of the decision shall be served on the parties of record or their representatives by regular mail.

9.3 Judicial Review of State Engineer's Decision. Any person aggrieved by a decision of the State Engineer may, within 60 days after notice thereof, bring a civil action in the district court for a plenary review thereof in accordance with Sections 73-3-14 and -15.

R655-2-10. Re-Hearings.

10.1 Time for Filing. A petition for re-hearing must be filed within 20 days after notice of a written order or decision of the State Engineer.

10.2 Contents of Petition. A petition for re-hearing shall set forth specifically the grounds upon which the petitioner considers the order or decision of the State Engineer to be in error.

10.3 Action on the Petition. Upon the filing of a petition for re-hearing, the State Engineer may set a time for hearing the petition or may summarily grant or deny the petition in whole or in part.

10.4 Re-Hearings Limited. If an order is made granting the petition for re-hearing, it shall be limited to the matter specified in the order. Upon re-hearing, the State Engineer may affirm his former decision or may abrogate it, change or modify the same in any particular. That decision shall have the same force and effect as the original decision, but shall not affect any right or the enforcement of any right arising out of or by virtue of the original decision unless so ordered by the State Engineer.

R655-2-11. Declaratory Rulings.

Any interested person may petition the State Engineer for a declaratory ruling on the applicability of any decision, rule, regulation, or statutory provision relating to the State Engineer. The petition will be in the same form as other petitions and will set forth in detail the specific facts for which the ruling is requested and the manner in which the petitioner claims the

rule, regulation, decision or statutory provision may affect him. If the petition sets forth information which requires the issuance of a ruling, the State Engineer shall set the matter down for hearing as in other cases.

The State Engineer may in his discretion decline to issue declaratory rulings where he deems the facts presented to be conjectural, or where the public interest would best be served by not issuing a ruling.

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R657. Natural Resources, Wildlife Resources.
R657-5. Taking Big Game.
R657-5-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking deer, elk, pronghorn, moose, bison, bighorn sheep, and Rocky Mountain goat.

(2) Specific dates, areas, methods of take, requirements, and other administrative details which may change annually are published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation and the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Antlerless deer" means a deer without antlers or with antlers five inches or shorter.

(b) "Antlerless elk" means an elk without antlers or with antlers five inches or shorter.

(c) "Antlerless moose" means a moose with antlers shorter than its ears.

(d) "Arrow quiver" means a portable arrow case that completely encases all edges of the broadheads.

(e) "Buck deer" means a deer with antlers longer than five inches.

(f) "Buck pronghorn" means a pronghorn with horns longer than five inches.

(g) "Bull elk" means an elk with antlers longer than five inches.

(h) "Bull moose" means a moose with antlers longer than its ears.

(i) "Cow bison" means a female bison.

(j) "Doe pronghorn" means a pronghorn without horns or with horns five inches or shorter.

(k) "Highway" means the entire width between property lines of every way or place of any nature when any part of it is open to the use of the public as a matter of right for vehicular travel.

(l) "Hunter's choice" means either sex may be taken.

(m) "Limited entry hunt" means any hunt published in the hunt tables of the proclamation of the Wildlife Board for taking big game, which is identified as limited entry and does not include general or once-in-a-lifetime hunts.

(n) "Limited entry permit" means any permit obtained for a limited entry hunt by any means, including conservation permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(o) "Once-in-a-lifetime hunt" means any hunt published in the hunt tables of the proclamation of the Wildlife Board for taking big game, which is identified as once-in-a-lifetime, and does not include general or limited entry hunts.

(p) "Once-in-a-lifetime permit" means any permit obtained for a once-in-a-lifetime hunt by any means, including conservation permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

(q) "Ram" means a male desert bighorn sheep or Rocky Mountain bighorn sheep.

(r)(i) "Resident" for purposes of this rule means a person who:

(A) has been domiciled in the state of Utah for six consecutive months immediately preceding the purchase of a license or permit; and

(B) does not claim residency for hunting, fishing, or trapping in any other state or country.

(ii) A Utah resident retains Utah residency if that person leaves this state:

(A) to serve in the armed forces of the United States or for religious or educational purposes; and

(B) complies with Subsection (m)(i)(B).

(iii)(A) A member of the armed forces of the United States and dependents are residents for the purposes of this chapter as of the date the member reports for duty under assigned orders in the state if the member:

(I) is not on temporary duty in this state; and

(II) complies with Subsection (m)(i)(B).

(iv) A copy of the assignment orders must be presented to a wildlife division office to verify the member's qualification as a resident.

(v) A nonresident attending an institution of higher learning in this state as a full-time student may qualify as a resident for purposes of this chapter if the student:

(A) has been present in this state for 60 consecutive days immediately preceding the purchase of the license or permit; and

(B) complies with Subsection (m)(i)(B).

(vi) A Utah resident license or permit is invalid if a resident license for hunting, fishing, or trapping is purchased in any other state or country.

(vii) An absentee landowner paying property tax on land in Utah does not qualify as a resident.

(s) "Spike bull" means a bull elk which has at least one antler having no branching above the ears. Branched means a projection on an antler longer than one inch, measured from its base to its tip.

(t)(i) "Valid application" means:

(A) it is for a species that the applicant is eligible to possess a permit;

(B) there is a hunt for that species regardless of estimated permit numbers; and

(C) there is sufficient information on the application to process the application, including personal information, hunt information, and sufficient payment.

(ii) Applications missing any of the items in Subsection (a) may still be considered valid if the application is timely corrected through the application correction process.

R657-5-3. License, Permit, and Tag Requirements.

(1) A person may engage in hunting protected wildlife or in the sale, trade, or barter of protected wildlife or their parts in accordance with Section 23-19-1 and the rules or proclamations of the Wildlife Board.

(2) Any license, permit, or tag that is mutilated or otherwise made illegible is invalid and may not be used for taking or possessing big game.

R657-5-4. Age Requirements and Restrictions.

(1)(a) Subject to the exceptions in subsection (c), a person 12 years of age or older may apply for or obtain a permit to hunt big game. A person 11 years of age may apply for a permit to hunt big game if that person's 12th birthday falls within the calendar year for which the permit is issued.

(b) A person may not use a permit to hunt big game before their 12th birthday.

(c) A person who is younger than 14 years of age may not apply for or obtain the following types of big game permits issued by the division through a public drawing:

(i) premium limited entry;

(ii) limited entry;

(iii) once-in-a-lifetime; and

(iv) cooperative wildlife management unit.

(d) A person who is 13 years of age may apply for or obtain a type of permit listed in Subsection(1)(c) if that person's 14th birthday falls within the calendar year for which the permit is issued.

(e) antlerless deer, antlerless elk, and doe pronghorn permits are not limited entry, premium limited entry or

cooperative wildlife management unit permits for purposes of determining a 12 or 13 year olds eligibility to apply for or obtain through a public drawing administered by the division.

(2)(a) A person at least 12 years of age and under 16 years of age must be accompanied by his parent or legal guardian, or other responsible person 21 years of age or older and approved by his parent or guardian, while hunting big game with any weapon.

(b) As used in this section, "accompanied" means at a distance within which visual and verbal communication are maintained for the purposes of advising and assisting.

R657-5-5. Duplicate License and Permit.

(1) Whenever any unexpired license, permit, tag or certificate of registration is destroyed, lost or stolen, a person may obtain a duplicate from a division office or online license agent, for five dollars or half of the price of the original license, permit, or certificate of registration, whichever is less.

(2) The division may waive the fee for a duplicate unexpired license, permit, tag or certificate of registration provided the person did not receive the original license, permit, tag or certificate of registration.

R657-5-6. Hunting Hours.

Big game may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

R657-5-7. Temporary Game Preserves.

(1)(a) A person who does not have a valid permit to hunt on a temporary game preserve may not carry a firearm or archery equipment on any temporary game preserve while the respective hunts are in progress.

(b) "Carry" means having a firearm on your person while hunting in the field.

(2) As used in this section, "temporary game preserve" means all bull elk, buck pronghorn, moose, bison, bighorn sheep, Rocky Mountain goat, limited entry buck deer areas and cooperative wildlife management units, excluding incorporated areas, cities, towns and municipalities.

(3) Weapon restrictions on temporary game preserves do not apply to:

(a) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Proclamation and Waterfowl Proclamation, respectively, and possessing only legal weapons to take upland game and waterfowl;

(b) livestock owners protecting their livestock;

(c) peace officers in the performance of their duties; or

(d) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife.

R657-5-8. Prohibited Weapons.

(1) A person may not use any weapon or device to take big game other than those expressly permitted in this rule.

(2) A person may not use:

(a) a firearm capable of being fired fully automatic; or

(b) any light enhancement device or aiming device that casts a beam of light.

R657-5-9. Rifles and Shotguns.

(1) The following rifles and shotguns may be used to take big game:

(a) any rifle firing centerfire cartridges and expanding bullets; and

(b) a shotgun, 20 gauge or larger, firing only 00 or larger buckshot or slug ammunition.

R657-5-10. Handguns.

(1) A handgun may be used to take deer and pronghorn, provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet and develops 500 foot-pounds of energy at the muzzle.

(2) A handgun may be used to take elk, moose, bison, bighorn sheep, and Rocky Mountain goat provided the handgun is a minimum of .24 caliber, fires a centerfire cartridge with an expanding bullet and develops 500 foot-pounds of energy at 100 yards.

R657-5-11. Muzzleloaders.

(1) A muzzleloader may be used during any big game hunt, except an archery hunt, provided the muzzleloader:

(a) can be loaded only from the muzzle;

(b) has open sights, peep sights, or a fixed non-magnifying 1x scope;

(c) has a single barrel;

(d) has a minimum barrel length of 18 inches;

(e) is capable of being fired only once without reloading;

(f) powder and bullet, or powder, sabot and bullet are not bonded together as one unit for loading;

(g) is loaded with black powder or black powder substitute, which must not contain nitrocellulose based somkeless powder.

(2)(a) A lead or expanding bullet or projectile of at least 40 caliber must be used to hunt big game.

(b) A 170 grain or heavier bullet, including sabots must be used for taking deer and pronghorn.

(c) A 210 grain or heavier bullet must be used for taking elk, moose, bison, bighorn sheep, and Rocky Mountain goat, except sabot bullets used for taking these species must be a minimum of 240 grains.

(3)(a) A person who has obtained a muzzleloader permit may not possess or be in control of any firearm other than a muzzleloading rifle or have a firearm other than a muzzleloading rifle in his camp or motor vehicle during a muzzleloader hunt.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Proclamation and Waterfowl Proclamation, respectively, and possessing only legal weapons to take upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the muzzleloader hunt;

(iii) livestock owners protecting their livestock; or

(iv) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife.

R657-5-12. Archery Equipment.

(1) Archery equipment may be used during any big game hunt, except a muzzleloader hunt, provided:

(a) the minimum bow pull is 40 pounds at the draw or the peak, whichever comes first; and

(b) arrowheads used have two or more sharp cutting edges that cannot pass through a 7/8 inch ring;

(c) expanding arrowheads cannot pass through a 7/8 inch ring when expanded, and

(d) arrows must be a minimum of 20 inches in length from the tip of the arrowhead to the tip of the nock, and must weigh at least 300 grains.

(2) The following equipment or devices may not be used to take big game:

(a) a crossbow, except as provided in Rule R657-12;

(b) arrows with chemically treated or explosive arrowheads;

(c) a mechanical device for holding the bow at any increment of draw;

(d) a release aid that is not hand held or that supports the draw weight of the bow; or

(e) a bow with an attached electronic range finding device or a magnifying aiming device.

(3) Arrows carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(4)(a) A person who has obtained an archery permit may not possess or be in control of a firearm or have a firearm in his camp or motor vehicle during an archery hunt.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Proclamation and Waterfowl Proclamation, respectively, and possessing only legal weapons to take upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the archery hunt;

(iii) livestock owners protecting their livestock; or

(iv) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife.

R657-5-13. Areas With Special Restrictions.

(1)(a) Hunting of any wildlife is prohibited within the boundaries of all park areas, except those designated by the Division of Parks and Recreation in Rule R651-603-5.

(b) Hunting with rifles and handguns in park areas designated open is prohibited within one mile of all park area facilities, including buildings, camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches.

(c) Hunting with shotguns or archery equipment is prohibited within one-quarter mile of the areas provided in Subsection (b).

(2) Hunting is closed within the boundaries of all national parks and monuments unless otherwise provided by the governing agency.

(3) Hunters obtaining a Utah license, permit or tag to take big game are not authorized to hunt on tribal trust lands. Hunters must obtain tribal authorization to hunt on tribal trust lands.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

(5) In Salt Lake County, a person may not:

(a) hunt big game within one-half mile of Silver Lake in Big Cottonwood Canyon;

(b) hunt big game or discharge a shotgun or archery equipment within 600 feet of a road, house, or any other building; or

(c) discharge a rifle, handgun, shotgun firing slug ammunition, or muzzleloader within one mile of a cabin, house, or other building regularly occupied by people, except west of I-15 a muzzleloader may not be discharged within one-half mile of a cabin, house or other building regularly occupied by people.

(6) Hunting is closed within a designated portion of the town of Alta. Hunters may refer to the town of Alta for boundaries and other information.

(7) Domesticated Elk Facilities and Domesticated Elk Hunting Parks, as defined in Section 4-39-102(2) and Rules R58-18 and R58-20, are closed to big game hunting. This restriction does not apply to the lawful harvest of domesticated elk as defined and allowed pursuant to Rule R58-20.

(8) State waterfowl management areas are closed to taking big game, except as otherwise provided in the proclamation of the Wildlife Board for taking big game.

(9) Hunters are restricted to using archery equipment, muzzleloaders or shotguns on the Matheson Wetlands.

(10) A person may not discharge a firearm, except a shotgun or muzzleloader, from, upon, or across the Green River located near Jensen, Utah from the Highway 40 bridge upstream to the Dinosaur National Monument boundary.

R657-5-14. Spotlighting.

(1) Except as provided in Section 23-13-17:

(a) a person may not use or cast the rays of any spotlight, headlight, or other artificial light to locate protected wildlife while having in possession a firearm or other weapon or device that could be used to take or injure protected wildlife; and

(b) the use of a spotlight or other artificial light in a field, woodland, or forest where protected wildlife are generally found is prima facie evidence of attempting to locate protected wildlife.

(2) The provisions of this section do not apply to:

(a) the use of headlights or other artificial light in a usual manner where there is no attempt or intent to locate protected wildlife; or

(b) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-5-15. Use of Vehicle or Aircraft.

(1)(a) A person may not use an airplane or any other airborne vehicle or device, or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles, except a vessel as provided in Subsection (c), to take protected wildlife.

(b) A person may not take protected wildlife being chased, harmed, harassed, rallied, herded, flushed, pursued or moved by an aircraft or any other vehicle or conveyance listed in Subsection (a).

(c) Big game may be taken from a vessel provided:

(i) the motor of a motorboat has been completely shut off;

(ii) the sails of a sailboat have been furled; and

(iii) the vessel's progress caused by the motor or sail has ceased.

(2)(a) A person may not use any type of aircraft from 48 hours before any big game hunt begins through 48 hours after any big game hunting season ends to:

(i) transport a hunter or hunting equipment into a hunting area;

(ii) transport a big game carcass; or

(iii) locate, or attempt to observe or locate any protected wildlife.

(b) Flying slowly at low altitudes, hovering, circling or repeatedly flying over a forest, marsh, field, woodland or rangeland where protected wildlife is likely to be found may be used as evidence of violations of Subsections (1) and (2).

(3) The provisions of this section do not apply to the operation of an aircraft in a usual manner, or landings and departures from improved airstrips, where there is no attempt or intent to locate protected wildlife.

R657-5-16. Party Hunting and Use of Dogs.

(1) A person may not take big game for another person, except as provided in Section 23-19-1 and Rule R657-12.

(2) A person may not use the aid of a dog to take, chase, harm or harass big game.

R657-5-17. Big Game Contests.

A person may not enter or hold a big game contest that:

(1) is based on big game or their parts; and

(2) offers cash or prizes totaling more than $500.

R657-5-18. Tagging.

(1) The carcass of any species of big game must be tagged

in accordance with Section 23-20-30.

(2) A person may not hunt or pursue big game after any of the notches have been removed from the tag or the tag has been detached from the permit.

(3) The tag must remain with the largest portion of the meat until the animal is entirely consumed.

R657-5-19. Transporting Big Game Within Utah.

(1) A person may transport big game within Utah only as follows:

(a) the head or sex organs must remain attached to the largest portion of the carcass;

(b) the antlers attached to the skull plate must be transported with the carcass of an elk taken in a spike bull unit; and

(c) the person who harvested the big game animal must accompany the carcass and must possess a valid permit corresponding to the tag attached to the carcass, except as provided in Subsection (2).

(2) A person who did not take the big game animal may transport it only after obtaining a shipping permit or disposal receipt from the division or a donation slip as provided in Section 23-20-9.

R657-5-20. Exporting Big Game From Utah.

(1) A person may export big game or their parts from Utah only if:

(a) the person who harvested the big game animal accompanies it and possesses a valid permit corresponding to the tag which must be attached to the largest portion of the carcass; or

(b) the person exporting the big game animal or its parts, if it is not the person who harvested the animal, has obtained a shipping permit from the division.

R657-5-21. Purchasing or Selling Big Game or Their Parts.

(1) A person may only purchase, sell, offer or possess for sale, barter, exchange or trade any big game or their parts as follows:

(a) Antlers, heads and horns of legally taken big game may be purchased or sold only on the dates published in the proclamation of the Wildlife Board for taking big game;

(b) Untanned hides of legally taken big game may be purchased or sold only on the dates published in the proclamation of the Wildlife Board for taking big game;

(c) Inedible byproducts, excluding hides, antlers and horns, or legally possessed big game as provided in Subsection 23-20-3(1)(d), may be purchased or sold at any time;

(d) tanned hides of legally taken big game may be purchased or sold at any time; and

(e) shed antlers and horns may be purchased or sold at any time.

(2)(a) Protected wildlife that is obtained by the division by any means may be sold or donated at any time by the division or its agent.

(b) A person may purchase or receive protected wildlife from the division, which is sold or donated in accordance with Subsection (2)(a), at any time.

(3) A person selling or purchasing antlers, heads, horns or untanned hides shall keep transaction records stating:

(a) the name and address of the person who harvested the animal;

(b) the transaction date; and

(c) the permit number of the person who harvested the animal.

(4) Subsection (3) does not apply to scouting programs or other charitable organizations using untanned hides.

R657-5-22. Possession of Antlers and Horns.

(1) A person may possess antlers or horns or parts of antlers or horns only from:

(a) lawfully harvested big game;

(b) antlers or horns lawfully obtained as provided in Section R657-5-21; or

(c) shed antlers or shed horns.

(2)(a) A person may gather shed antlers or shed horns or parts of shed antlers or shed horns only during the shed antler and shed horn season published in the Bucks, Bulls, Once-in-a-Lifetime, Proclamation of the Wildlife Board for taking big game.

(b) No permit, license or Certificate or Registration is required to gather shed antlers and shed horns.

(3) "Shed antler" means an antler which:

(a) has been dropped naturally from a big game animal as part of its annual life cycle; and

(b) has a rounded base commonly known as the antler button or burr attached which signifies a natural life cycle process.

(4) "Shed horn" means the sheath from the horn of a pronghorn that has been dropped naturally as part of its annual life cycle. No other big game species shed their horns naturally.

R657-5-23. Poaching-Reported Reward Permits.

(1) For purposes of this section, "successful prosecution" means the screening, filing of charges and subsequent adjudication for the poaching incident.

(2) Any person who provides information leading to another person's successful prosecution for wanton destruction of a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat, bison, bull elk, buck deer or buck pronghorn under Section 23-20-4 for any once-in-a-lifetime species or within any limited entry area may receive a permit from the division to hunt for the same species and on the same once-in-a-lifetime or limited entry area where the violation occurred, except as provided in Subsection (3).

(3)(a) In the event that issuance of a poaching-reported reward permit would exceed 5% of the total number of limited entry or once-in-a-lifetime permits issued in the following year for the respective area, a permit shall not be issued for that respective area. As an alternative, the division may issue a permit as outlined in Subsections (b) or (c).

(b) If the illegally taken animal is a bull moose, desert bighorn ram, rocky mountain bighorn ram, rocky mountain goat or bison, a permit for an alternative species and an alternative once-in-a-lifetime or limited entry area that has been allocated more than 20 permits may be issued.

(c) If the illegally taken animal is a bull elk, buck deer or buck pronghorn, a permit for the same species on an alternative limited entry area that has been allocated more than 20 permits may be issued.

(4)(a) The division may issue only one poaching-reported reward permit for any one animal illegally taken.

(b) No more than one poaching-reported reward permit shall be issued to any one person per successful prosecution.

(c) No more than one poaching-reported reward permit per species shall be issued to any one person in any one calendar year.

(5)(a) Poaching-reported reward permits may only be issued to the person who provides the most pertinent information leading to a successful prosecution. Permits are not transferrable.

(b) If information is received from more than one person, the director of the division shall make a determination based on the facts of the case, as to which person provided the most pertinent information leading to the successful prosecution in the case.

(c) The person providing the most pertinent information shall qualify for the poaching-reported reward permit.

(6) Any person who receives a poaching-reported reward permit must be eligible to hunt and obtain big game permits as provided in all rules and regulations of the Wildlife Board and the Wildlife Resources Code.

R657-5-24. Application Process for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit, Once-In-A-Lifetime Permits and Management Bull Elk, and Application Process for General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Permits.

(1)(a) A person may obtain only one permit per species of big game, including premium limited entry, limited entry, cooperative wildlife management unit, once-in-a-lifetime, conservation, sportsman, landowner and general permits, except antlerless permits as provided in the Antlerless Addendum and permits as provided in Rule R657-42.

(b) Hunting with a permit where payment has not been received for that permit constitutes a violation of hunting without a valid permit.

(c) A person who applies for, or obtains a permit must notify the division of any change in mailing address, residency, telephone number, and physical description.

(2) Applications are available from license agents, division offices, and through the division's Internet address.

(3) A resident may apply in the big game drawing for the following permits:

(a) only one of the following:

(i) buck deer - premium limited entry, limited entry and cooperative wildlife management unit;

(ii) bull elk - premium limited entry, limited entry and cooperative wildlife management unit; or

(iii) buck pronghorn - limited entry and cooperative wildlife management unit; and

(b) only one once-in-a-lifetime permit, including once-in-a-lifetime cooperative wildlife management unit permits, except as provided in Section R657-5-64(2)(b).

(4) A nonresident may apply in the big game drawing for the following permits:

(a) only one of the following:

(i) buck deer - premium limited entry and limited entry;

(ii) bull elk - premium limited entry and limited entry; or

(iii) buck pronghorn - limited entry; and

(b) only one once-in-a-lifetime permit.

(5) A resident or nonresident may apply in the big game drawing for:

(a)(i) a statewide general archery buck deer permit;

(ii) by region for general any weapon buck deer; or

(iii) by region for general muzzleloader buck deer.

(b) A youth may apply in the drawing as provided in Subsection (a) or Subsection R657-5-27(4), and for youth general any bull elk pursuant to Section R657-5-46.

(6) A person may not submit more than one application per species as provided in Subsections (3) and (4), and Subsection (5) in the big game drawing.

(7)(a) Applications must be mailed by the date prescribed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation may be rejected.

(b) If an error is found on an application, the applicant may be contacted for correction.

(8)(a) Late applications, received by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation, will not be considered in the drawing, but will be processed, for the purpose of entering data into the division's draw database to provide:

(i) future preprinted applications;

(ii) notification by mail of late application and other draw opportunities; and

(iii) re-evaluation of division or third-party errors.

(b) The nonrefundable handling fee will be used to process the late application. Any permit fees submitted with the application will be refunded.

(c) Late applications received after the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation shall not be processed and shall be returned to the applicant.

(9) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

(10) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Subsections R657-5-27(4).

(12) To apply for a resident permit, a person must be a resident at the time of purchase.

(13) The posting date of the drawing shall be considered the purchase date of a permit.

R657-5-25. Fees for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit, Once-In-A-Lifetime and Management Bull Elk Permits, and for General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Permits.

(1) Each premium limited entry, limited entry, cooperative wildlife management unit and once-in-a-lifetime application must include:

(a) the highest permit fee of any permits applied for;

(b) a nonrefundable handling fee for one of the following permits:

(i) buck deer;

(ii) bull elk; or

(iii) buck pronghorn; and

(c) the nonrefundable handling fee for a once-in-a-lifetime permit; and

(d) the nonrefundable handling fee, if applying only for a bonus point.

(2) Each general buck deer and general muzzleloader elk application must include:

(a) the permit fee, which includes the nonrefundable handling fee; or

(b) the nonrefundable handling fee per species, if applying only for a preference point.

R657-5-26. Applying as a Group for Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit, Once-In-A-Lifetime and Management Bull Elk Permits, and for General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Permits.

(1)(a) Up to four people may apply together for premium limited entry, limited entry, and resident cooperative wildlife management unit deer, elk or pronghorn permits in the big game drawing and in the antlerless drawing.

(b) People may not apply together for management bull elk permits in the big game drawing as provided in R657-5-71(2)(b).

(c) Up to two youth may apply together for youth general any bull elk permits in the big game drawing.

(d) Up to ten people may apply together for general deer permits in the big game drawing.

(e) Youth applicants who wish to participate in the youth general buck deer drawing process as provided in Subsection R657-5-27(4), or the youth antlerless drawing process as provided in Subsection R657-5-59(3), must not apply as part of

a group.

(2)(a) Applicants must indicate the number of hunters in the group by filling in the appropriate box on each application form.

(b) If the appropriate box is not filled out with the number of hunters in the group, each hunter in that group shall be entered into the drawing as individual hunters, and not as a group.

(3) Group applicants must submit their applications together in the same envelope.

(4) Residents and nonresidents may apply together.

(5)(a) Group applications shall be processed as one single application.

(b) Any bonus points used for a group application, shall be averaged and rounded down.

(6) When applying as a group:

(a) if the group is successful in the drawing, then all applicants with valid applications in that group shall receive a permit;

(b) if the group is rejected due to an error in fees and only one species is applied for, then the entire group is rejected;

(c) if the group is rejected due to an error in fees and more than one species is applied for, the group will be kept in the drawing for any species with sufficient fees, using the draw order; or

(d) if one or more members of the group are rejected due to an error other than fees, the members with valid applications will be kept in the drawing, unless the group indicates on the application that all members are to be rejected.

(i) The applicant whose application is on the top of all the applications for that group, will be designated the group leader.

(ii) If any group member has an error on their application that is not corrected during the correction process, the reject box on the group leader's application will determine whether the entire group is rejected.

R657-5-27. Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit, Once-In-A-Lifetime and Management Bull Elk Drawings, and General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Drawings.

(1)(a) Big game drawing results may be posted at the Lee Kay Center for Hunter Education, Cache Valley Hunter Education Center, division offices and on the division Internet address on the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) Applicants shall be notified by mail of draw results by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) Permits for the big game drawing shall be drawn in the following order:

(a) premium limited entry, limited entry and cooperative wildlife management unit buck deer;

(b) premium limited entry, limited entry and cooperative wildlife management unit bull elk;

(c) limited entry and cooperative wildlife management unit buck pronghorn;

(d) once-in-a-lifetime;

(e) youth general buck deer;

(f) general buck deer; and

(g) youth general any bull elk.

(3) Any person who draws one of the following permits is not eligible to draw a once-in-a-lifetime permit:

(a) a premium limited entry, limited entry or Cooperative Wildlife Management unit buck deer;

(b) a premium limited entry, limited entry, or Cooperative Wildlife Management unit elk; or

(c) a limited entry or Cooperative Wildlife Management unit buck pronghorn.

(4)(a) Fifteen percent of the general buck deer permits in each region are reserved for youth hunters.

(b) For purposes of this section, "youth" means any person 18 years of age or younger on the opening day of the general archery buck deer season.

(c) Youth hunters who wish to participate in the youth drawing must:

(i) submit an application in accordance with Section R657-5-24; and

(ii) not apply as a group.

(d) Youth applicants who apply for a general buck deer permit as provided in Subsection (c), will automatically be considered in the youth drawing based upon their birth date.

(e) Preference points shall be used when applying.

(f) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the general buck deer drawing.

(5) If any permits listed in Subsection (2)(a) through (2)(d) remain after the big game drawing after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

R657-5-28. Premium Limited Entry, Limited Entry, Cooperative Wildlife Management Unit, Once-In-A-Lifetime and Management Bull Elk Application Refunds, and General Buck Deer, General Muzzleloader Elk and Youth General Any Bull Elk Application Refunds.

(1) Unsuccessful applicants who applied in the big game drawing with a check or money order will receive a refund in May.

(2)(a) Unsuccessful applicants who applied in the big game drawing with a credit or debit card will not be charged for a permit.

(b) Unsuccessful applicants who applied as a group will receive an equally distributed refund of money remaining after the successful applicants' permits are paid for.

(c) If group members have other financial arrangements between themselves, group members should be prepared to reallocate each group member's individual refunds among themselves.

(3) The handling fees are nonrefundable.

R657-5-29. Permits Remaining After the Drawing.

(1) Permits remaining after the big game drawing are sold only by mail or on a first-come, first-served basis beginning and ending on the dates provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-30. Waiting Periods for Deer.

(1) A person who obtained a premium limited entry buck, limited entry buck or cooperative wildlife management unit buck deer permit through the big game drawing process during the preceding two years may not apply in the big game drawing for any of these permits during the current year.

(2) A person who obtains a premium limited entry buck, limited entry buck or cooperative wildlife management unit buck deer permit through the big game drawing process, may not apply for any of these permits again for a period of two years.

(3) A waiting period does not apply to:

(a) general archery, general any weapon, general muzzleloader, antlerless deer, conservation, sportsman, poaching-reported reward and dedicated hunter limited entry deer permits; or

(b) cooperative wildlife management unit or limited entry landowner buck deer permits obtained through the landowner.

R657-5-31. Waiting Periods for Elk.

(1) A person who obtained a premium limited entry, limited entry, management bull elk or cooperative wildlife management unit bull elk permit through the big game drawing process during the preceding four years may not apply in the big game drawing for any of these permits during the current year.

(2) A person who obtains a premium limited entry, limited entry or cooperative wildlife management unit bull elk permit through the big game drawing, may not apply for any of these permits for a period of five years.

(3) A waiting period does not apply to:

(a) general archery, general any weapon, general muzzleloader, antlerless elk, cooperative wildlife management unit spike bull elk, conservation, sportsman, poaching-reported reward and dedicated hunter limited entry elk permits; or

(b) cooperative wildlife management unit or limited entry landowner bull elk permits obtained through the landowner.

(4) The waiting period imposed on a management bull elk permit will be removed if:

(a) the hunter complies with the mandatory reporting requirements in R657-5-71(6), and the animal harvested has five points or less on at least one antler.

R657-5-32. Waiting Periods for Pronghorn.

(1) A person who obtained a buck pronghorn permit through the big game drawing process in the preceding two years, may not apply in the big game drawing for a buck pronghorn permit during the current year.

(2) A person who obtains a buck pronghorn or cooperative wildlife management unit buck pronghorn permit through the big game drawing, may not apply for any of these permits for a period of two years.

(3) A waiting period does not apply to:

(a) doe pronghorn, pronghorn conservation, sportsman and poaching-reported reward permits; or

(b) cooperative wildlife management unit or limited entry landowner buck pronghorn permits obtained through the landowner.

R657-5-33. Waiting Periods for Antlerless Moose.

(1) A person who obtained an antlerless moose permit or a cooperative wildlife management unit antlerless moose permit through the antlerless drawing process during the preceding four years, may not apply for an antlerless moose permit during the current year.

(2) A person who obtains an antlerless moose permit or a cooperative wildlife management unit antlerless moose permit through the antlerless drawing process in the current year, may not apply for an antlerless moose permit for a period of five years.

(3) A waiting period does not apply to cooperative wildlife management unit antlerless moose permits obtained through the landowner.

R657-5-34. Waiting Periods for Once-In-A-Lifetime Species.

(1) Any person who has obtained a permit for any bull moose, bison, Rocky Mountain bighorn sheep, desert bighorn sheep, or Rocky Mountain goat may not apply for a once-in-a-lifetime permit for the same species in the big game drawing or sportsman permit drawing.

(2) A person who has been convicted of unlawfully taking a once-in-a-lifetime species may not apply for or obtain a permit for that species.

R657-5-35. Waiting Periods for Permits Obtained After the Drawing.

(1) Waiting periods provided in Sections R657-5-30 through R657-5-34 do not apply to the purchase of the remaining permits sold over the counter.

(2) However, waiting periods are incurred as a result of purchasing remaining permits after the drawing. Therefore, if a remaining permit is purchased in the current year, waiting periods will be in effect when applying in the drawing in following years.

R657-5-36. Waiting Periods for Cooperative Wildlife Management Unit Permits and Landowner Permits.

(1)(a) A waiting period or once-in-a-lifetime status does not apply to purchasing limited entry landowner or cooperative wildlife management unit permits obtained through a landowner, except as provided in Subsection (b).

(b) Waiting periods are incurred for the purpose of applying in the big game drawing as a result of obtaining a cooperative wildlife management unit bull moose permit through a landowner.

R657-5-37A. Bonus Point System.

(1) Bonus points are used to improve odds for drawing permits.

(2)(a) A bonus point is awarded for:

(i) each valid unsuccessful application when applying for limited entry permits in the big game or antlerless drawing; or

(ii) each valid application when applying for bonus points in the big game or antlerless drawing.

(b) Bonus points are awarded by species for:

(i) premium limited entry, limited entry and cooperative wildlife management unit buck deer;

(ii) premium limited entry, limited entry, management bull elk, and cooperative wildlife management unit bull elk;

(iii) limited entry and cooperative wildlife management unit buck pronghorn;

(iv) all once-in-a-lifetime species; and

(v) antlerless moose.

(3) A person may apply for a bonus point for:

(a) only one of the following species:

(i) buck deer - premium limited entry, limited entry and cooperative wildlife management unit;

(ii) bull elk - limited entry, management and cooperative wildlife management unit; or

(iii) buck pronghorn - limited entry and cooperative wildlife management unit;

(iv) antlerless moose, and

(b) only one once-in-a-lifetime, including once-in-a-lifetime cooperative wildlife management unit.

(4)(a) A person may not apply in the drawing for both a premium limited entry or limited entry bonus point and a premium limited entry or limited entry permit.

(b) A person may not apply in the drawing for a once-in-a-lifetime bonus point and a once-in-a-lifetime permit.

(c) A person may not apply in the drawing for an antlerless moose bonus point and an antlerless moose permit.

(d) A person may not apply for a bonus point if that person is ineligible to apply for a permit for the respective species.

(e) A person may only apply for bonus points in the big game and antlerless drawings.

(f) Group applications will not be accepted when applying for bonus points.

(5)(a) Fifty percent of the permits for each hunt unit and species will be reserved for applicants with bonus points.

(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points for each species.

(c) If reserved permits remain, the reserved permits will be designated by a random number to eligible applicants with the next greatest number of bonus points for each species.

(d) The procedure in Subsection (c) will continue until all reserved permits have been issued or no applications for that

species remain.

(e) Any reserved permits remaining and any applicants who were not selected for reserved permits will be returned to the big game drawing.

(6)(a) Each applicant receives a random drawing number for:

(i) each species applied for; and

(ii) each bonus point for that species.

(7) Bonus points are forfeited if a person obtains a permit through the drawing for that bonus point species as provided in Subsection (2)(c), including any permit obtained after the drawing.

(8) Bonus points are not forfeited if:

(a) a person is successful in obtaining a conservation permit or sportsman permit;

(b) a person obtains a landowner or a cooperative wildlife management unit permit from a landowner; or

(c) a person obtains a poaching-reported reward permit.

(9) Bonus points may be reinstated if a hunter obtains a management bull elk permit and complies with R657-5-71(7).

(10) Bonus points are not transferable.

(11) Bonus points are averaged and rounded down when two or more applicants apply together on a group application.

(12)(a) Bonus points are tracked using social security numbers or division-issued customer identification numbers.

(b) The division shall retain paper copies of applications for three years prior to the current big game and antlerless drawings for the purpose of researching bonus point records.

(c) The division shall retain electronic copies of applications from 1996 to the current big game drawing for the purpose of researching bonus point records.

(d) Any requests for researching an applicant's bonus point records must be requested within the time frames provided in Subsection (b) and (c).

(e) Any bonus points on the division's records shall not be researched beyond the time frames provided in Subsection (b) and (c).

(f) The division may eliminate any bonus points earned that are obtained by fraud or misrepresentation.

R657-5-37B. Preference Point System.

(1) Preference points are used in the big game and antlerless drawings to ensure that applicants who are unsuccessful in the drawing will have first preference in the next year's drawing.

(2)(a) A preference point is awarded for:

(i) each valid unsuccessful application when applying for a general buck deer, antlerless deer, antlerless elk, or doe pronghorn permit; or

(ii) each valid application when applying only for a preference point in the big game or antlerless drawing.

(b) Preference points are awarded by species for:

(i) general buck deer;

(ii) antlerless deer;

(iii) antlerless elk; and

(iv) doe pronghorn.

(3)(a) A person may not apply in the drawing for both a preference point and permit for the species listed in (2)(b).

(b) A person may not apply for a preference point if that person is ineligible to apply for a permit.

(c) Preference points shall not be used when obtaining remaining permits after the big game or antlerless drawing.

(4) Preference points are forfeited if a person obtains a general buck deer, antlerless deer, antlerless elk or doe pronghorn permit through the drawing.

(5)(a) Preference points are not transferable.

(b) Preference points shall only be applied to the big game and antlerless drawing.

(6) Preference points are averaged and rounded down when two or more applicants apply together on a group application.

(7)(a) Preference points are tracked using social security numbers or division-issued hunter identification numbers.

(b) The division shall retain copies of paper applications for three years prior to the current big game and antlerless drawings for the purpose of researching preference point records.

(c) The division shall retain copies of electronic applications from 2000 to the current big game drawing for the purpose of researching preference point records.

(d) Any requests for researching an applicant's preference point records must be requested within the time frames provided in Subsection (b) and (c).

(e) Any preference points on the division's records shall not be researched beyond the time frames provided in Subsection (b) and (c).

(f) The division may eliminate any preference points earned that are obtained by fraud or misrepresentation.

R657-5-38. General Archery Buck Deer Hunt.

(1) The dates of the general archery buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer may use archery equipment to take:

(a) one buck deer statewide within a general hunt area published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game; or

(b) a deer of hunter's choice within the Wasatch Front or Uintah Basin extended archery area as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(c) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(d) A person who has obtained a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may not hunt within premium limited entry deer and limited entry deer areas, except Crawford Mountain.

(3)(a) A person who obtains a general archery buck deer permit, or any other permit which allows that person to hunt general archery buck deer, may hunt within the Wasatch Front, Ogden or the Uintah Basin extended archery areas during the extended archery area seasons as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game and as provided in Subsection (b).

(b) A person must complete the Archery Ethics Course annually to hunt the Wasatch Front, Ogden or Uintah Basin extended archery areas during the extended archery season.

(c) A person must possess an Archery Ethics Course Certificate of Completion while hunting.

(4) A person who has obtained a general archery deer permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.

(5)(a) Any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the statewide general archery, or by region the general any weapon and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-8 through R657-5-12, respectively, for each respective season, provided that person obtains a general any weapon or general muzzleloader deer permit for a specified region.

(b) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the statewide general archery deer season and the

extended archery season as provided Section R657-5-38(3).

(6) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Archers are cautioned to study rifle hunt tables and identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-39. General Any Weapon Buck Deer Hunt.

(1) The dates for the general any weapon buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general any weapon buck permit may use any legal weapon to take one buck deer within the hunt area specified on the permit as published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person who has obtained a general any weapon buck deer permit, or any other permit which allows that person to hunt general any weapon buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(c) A person who has obtained a general any weapon buck deer permit, or any other permit which allows that person to hunt general any weapon buck deer, may not hunt within premium limited entry deer and limited entry deer areas, except Crawford Mountain.

(3) A person who has obtained a general any weapon buck deer permit may not hunt during any other deer hunt or obtain any other deer permit, except:

(a) antlerless deer; and

(b) any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the general archery, general any weapon and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-8 through R657-5-12, respectively, for each respective season.

(i) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the statewide general archery deer season and the extended archery season as provided Section R657-5-38(3).

R657-5-40. General Muzzleloader Buck Deer Hunt.

(1) The dates for the general muzzleloader buck deer hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general muzzleloader buck permit may use a muzzleloader to take one buck deer within the general hunt area specified on the permit as published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person who has obtained a general muzzleloader buck deer permit, or any other permit which allows that person to hunt general muzzleloader buck deer, may not hunt within Cooperative Wildlife Management unit deer areas.

(c) A person who has obtained a general muzzleloader buck deer permit, or any other permit which allows that person to hunt general muzzleloader buck deer, may not hunt within premium limited entry deer and limited entry deer areas, except Crawford Mountain.

(3) A person who has obtained a general muzzleloader deer permit may not hunt during any other deer hunt or obtain any other deer permit, except:

(a) antlerless deer; and

(b) any person 18 years of age or younger on the opening day of the general archery buck deer season, may hunt the general archery, general any weapon and general muzzleloader deer seasons, using the appropriate equipment as provided in Sections R657-5-8 through R657-5-12, respectively, for each respective season.

(i) If a person 18 years of age or younger purchases a general archery buck deer permit, that person may only hunt during the statewide general archery deer season and the extended archery season as provided Section R657-5-38(3).

(4) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Muzzleloader hunters are cautioned to study the rifle hunt tables to identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-41. Limited Entry Buck Deer Hunts.

(1) To hunt in a premium limited entry or limited entry area, hunters must obtain the respective limited entry buck permit. Limited entry areas are not open to general archery buck, general any weapon buck, or general muzzleloader buck hunting, except as specified in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A limited entry buck deer permit allows a person using the prescribed legal weapon, to take one buck deer within the area and season specified on the permit, except deer cooperative wildlife management units located within the limited entry unit.

(3)(a) A person who has obtained a premium limited entry, limited entry, or cooperative wildlife management unit buck deer permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck deer.

(b) Limited entry and cooperative wildlife management unit buck deer permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(4) A person who has obtained a limited entry buck permit may not hunt during any other deer hunt or obtain any other deer permit, except antlerless deer.

R657-5-42. Antlerless Deer Hunts.

(1) To hunt an antlerless deer, a hunter must obtain an antlerless deer permit.

(2)(a) An antlerless deer permit allows a person to take one antlerless deer, per antlerless deer tag, using any legal weapon within the area and season as specified on the permit and in the antlerless addendum.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless deer permit for a cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained an antlerless deer permit may not hunt during any other antlerless deer hunt or obtain any other antlerless deer permit.

(4)(a) A person who obtains an antlerless deer permit and any of the permits listed in Subsection (b) may use the antlerless deer permit during the established season for the antlerless deer permit and during the established season for the permits listed in Subsection (b) provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used if hunting with an archery permit;

(iii) the appropriate muzzleloader equipment is used if hunting with a muzzleloader permit.

(b)(i) General archery deer;

(ii) general muzzleloader deer;

(iii) limited entry archery deer; or

(iv) limited entry muzzleloader deer.

R657-5-43. General Archery Elk Hunt.

(1) The dates of the general archery elk hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2)(a) A person who has obtained a general archery elk permit may use archery equipment to take:

(i) one elk of hunter's choice on a general any bull elk unit, except on elk cooperative wildlife management units;

(ii) an antlerless elk or spike bull elk on a general spike bull elk unit, except on elk cooperative wildlife management units;

(iii) one elk of hunter's choice on the Wasatch Front or Uintah Basin extended archery areas as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3)(a) A person who obtains a general archery elk permit may hunt within the Wasatch Front, Uintah Basin, Nebo-West Desert, and Sanpete Valley extended archery areas during the extended archery area seasons as provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game and as provided in Subsection (b).

(b) A person must complete the Archery Ethics Course annually to hunt the extended archery areas during the extended archery season.

(c) A person must possess an Archery Ethics Course Certificate of Completion while hunting.

(4) A person who has obtained an archery elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-48(3).

(5) Hunter orange material must be worn if a centerfire rifle hunt is also in progress in the same area as provided in Section 23-20-31. Archers are cautioned to study the rifle hunt tables to identify these areas described in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-44. General Season Bull Elk Hunt.

(1) The dates for the general season bull elk hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game within general season elk units, except in the following areas:

(a) Salt Lake County south of I-80 and east of I-15; and

(b) elk cooperative wildlife management units.

(2)(a) A person may purchase either a spike bull permit or an any bull permit.

(b) A person who has obtained a general season spike bull elk permit may take a spike bull elk on a general season spike bull elk unit. Any bull units are closed to spike bull permittees.

(c) A person who has obtained a general season any bull elk permit may take any bull elk, including a spike bull elk on a general season any bull elk unit. Spike bull units are closed to any bull permittees.

(3) A person who has obtained a general season bull elk permit may use any legal weapon to take a spike bull or any bull elk as specified on the permit.

(4) A person who has obtained a general season bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-48(3).

R657-5-45. General Muzzleloader Elk Hunt.

(1) The dates of the general muzzleloader elk hunt are provided in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game within the general season elk units, except in the following closed areas:

(a) Salt Lake County south of I-80 and east of I-15; and

(b) elk cooperative wildlife management units.

(2)(a) General muzzleloader elk hunters may purchase either a spike bull elk permit or an any bull elk permit.

(b) A person who has obtained a general muzzleloader spike bull elk permit may use a muzzleloader take a spike bull elk on an any general spike bull elk unit. Any bull units are closed to spike bull muzzleloader permittees.

(c) A person who has obtained a general muzzleloader any bull elk permit may use a muzzleloader take any bull elk on an any bull elk unit. Spike bull units are closed to any bull muzzleloader permittees.

(3) A person who has obtained a general muzzleloader elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsection R657-5-48(3).

R657-5-46. Youth General Any Bull Elk Hunt.

(1)(a) For purposes of this section "youth" means any person 18 years of age or younger on the opening day of the youth any bull elk season published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A youth may apply for or obtain a youth any bull elk permit.

(c) A youth may only obtain a youth any bull elk permit once during their youth.

(2) The youth any bull elk hunting season and areas are published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3)(a) A youth who has obtained a youth general any bull elk permit may take any bull elk, including a spike bull elk, on a general any bull elk unit. Spike bull elk units are closed to youth general any bull elk permittees.

(b) A youth who has obtained a youth general any bull elk permit may use any legal weapon to take any bull elk as specified on the permit.

(4) A youth who has obtained a youth general any bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Section R657-5-48(3).

(5) Preference points shall not be awarded or utilized when applying for, or in obtaining, youth general any bull elk permits.

R657-5-47. Premium Limited Entry and Limited Entry Bull Elk Hunts.

(1) To hunt in a premium limited entry or limited entry bull elk area, a hunter must obtain the respective premium limited entry or limited entry elk permit.

(2)(a) A premium limited entry bull elk permit allows a person, using the prescribed legal weapon, to take one bull elk within the area and to hunt all limited entry bull elk seasons specified in the hunt tables, published in the proclamation of the Wildlife Board for taking big game, for the area specified on the permit, except elk cooperative wildlife management units located within a premium limited entry unit. Spike bull elk restrictions do not apply to premium limited entry elk permittees.

(b) A limited entry bull elk permit allows a person, using the prescribed legal weapon, to take one bull elk within the area and season specified on the permit, except elk cooperative wildlife management units located within a limited entry unit. Spike bull elk restrictions do not apply to limited entry elk permittees.

(3)(a) A person who has obtained a premium limited entry, limited entry or cooperative wildlife management unit bull elk permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bull elk.

(b) Limited entry and cooperative wildlife management unit bull elk permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(4) A person who has obtained a premium limited entry or limited entry bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Subsections (4)(a) and R657-5-48(3).

R657-5-48. Antlerless Elk Hunts.

(1) To hunt an antlerless elk, a hunter must obtain an antlerless elk permit.

(2)(a) An antlerless elk permit allows a person to take one antlerless elk using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless elk permit for a cooperative wildlife management unit as specified on the permit.

(3)(a) A person may obtain two elk permits each year, provided one or both of the elk permits is an antlerless elk permit.

(b) For the purposes of obtaining two elk permits, a hunter's choice elk permit may not be considered an antlerless elk permit.

(4)(a) A person who obtains an antlerless elk permit and any of the permits listed in Subsection (b) may use the antlerless elk permit during the established season for the antlerless elk permit and during the established season for the permits listed in Subsection (b) provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used if hunting with an archery permit;

(iii) the appropriate muzzleloader equipment is used if hunting with a muzzleloader permit.

(b)(i) General archery deer;

(ii) general archery elk;

(iii) general muzzleloader deer;

(iv) general muzzleloader elk;

(v) limited entry archery deer;

(vi) limited entry archery elk;

(vii) limited entry muzzleloader deer; or

(viii) limited entry muzzleloader elk.

R657-5-49. Buck Pronghorn Hunts.

(1) To hunt buck pronghorn, a hunter must obtain a buck pronghorn permit.

(2) A person who has obtained a buck pronghorn permit may not obtain any other pronghorn permit or hunt during any other pronghorn hunt.

(3)(a) A person who has obtained a limited entry or cooperative wildlife management unit buck pronghorn permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a buck pronghorn.

(b) Limited entry and cooperative wildlife management unit buck pronghorn permit holders must report hunt information by telephone, or through the Division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

(4) A buck pronghorn permit allows a person using any legal weapon to take one buck pronghorn within the area and season specified on the permit, except during the buck pronghorn archery hunt when only archery equipment may be used and on buck pronghorn cooperative wildlife management unit located within a limited entry unit.

R657-5-50. Doe Pronghorn Hunts.

(1) To hunt a doe pronghorn, a hunter must obtain a doe pronghorn permit.

(2)(a) A doe pronghorn permit allows a person to take one doe pronghorn, per doe pronghorn tag, using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless moose permit for a cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained a doe pronghorn permit may not hunt during any other pronghorn hunt or obtain any other pronghorn permit.

R657-5-51. Antlerless Moose Hunts.

(1) To hunt an antlerless moose, a hunter must obtain an antlerless moose permit.

(2)(a) An antlerless moose permit allows a person to take one antlerless moose using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management unit unless that person obtains an antlerless moose cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained an antlerless moose permit may not hunt during any other moose hunt or obtain any other moose permit.

R657-5-52. Bull Moose Hunts.

(1) To hunt bull moose, a hunter must obtain a bull moose permit.

(2) A person who has obtained a bull moose permit may not obtain any other moose permit or hunt during any other moose hunt.

(3) A bull moose permit allows a person using any legal weapon to take one bull moose within the area and season specified on the permit, except in bull moose cooperative wildlife management units located within a limited entry unit.

(4)(a) A person who has obtained a bull moose permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bull moose.

(b) Bull moose permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

R657-5-53. Bison Hunts.

(1) To hunt bison, a hunter must obtain a bison permit.

(2) A person who has obtained a bison permit may not obtain any other bison permit or hunt during any other bison hunt.

(3) The bison permit allows a person using any legal weapon to take a bison of either sex within the area and season as specified on the permit.

(4)(a) An orientation course is required for bison hunters who draw a an Antelope Island bison permit. Hunters shall be notified of the orientation date, time and location.

(b) The Antelope Island hunt is administered by the Division of Parks and Recreation.

(5) A Henry Mountain cow bison permit allows a person to take one cow bison using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(6) An orientation course is required for bison hunters who draw Henry Mountain cow bison permits. Hunters will be notified of the orientation date, time and location.

(7)(a) A person who has obtained a bison permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a bison.

(b) Bison permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

R657-5-54. Desert Bighorn and Rocky Mountain Bighorn Sheep Hunts.

(1) To hunt desert bighorn sheep or Rocky Mountain bighorn sheep, a hunter must obtain the respective permit.

(2) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit may not obtain any other desert bighorn sheep or Rocky Mountain bighorn sheep permit or hunt during any other desert bighorn sheep or Rocky Mountain bighorn sheep hunt.

(3) Desert bighorn sheep and Rocky Mountain big horn sheep permits are considered separate once-in-a-lifetime hunting opportunities.

(4)(a) The desert bighorn sheep permit allows a person using any legal weapon to take one desert bighorn ram within the area and season specified on the permit.

(b) The Rocky Mountain sheep permit allows a person using any legal weapon to take one Rocky Mountain bighorn ram within the area and season specified on the permit.

(5) The permittee may attend a hunter orientation course. The division provides each permittee with the time and location of the course.

(6) All bighorn sheep hunters are encouraged to have a spotting scope with a minimum of 15 power while hunting bighorn sheep. Any ram may be legally taken, however, permittees are encouraged to take a mature ram. The terrain inhabited by bighorn sheep is extremely rugged, making this hunt extremely strenuous.

(7) Successful hunters must deliver the horns of the bighorn sheep to a division office within 72 hours of leaving the hunting area. A numbered seal will be permanently affixed to the horn indicating legal harvest.

(8)(a) A person who has obtained a desert bighorn sheep or Rocky Mountain bighorn sheep permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a desert bighorn sheep or Rocky Mountain bighorn sheep.

(b) Desert bighorn sheep or Rocky Mountain bighorn sheep permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

R657-5-55. Rocky Mountain Goat Hunts.

(1) To hunt Rocky Mountain goat, a hunter must obtain a Rocky Mountain goat permit.

(2) A person who has obtained a Rocky Mountain goat permit may not obtain any other Rocky Mountain goat permit or hunt during any other Rocky Mountain goat hunt.

(3) A Rocky Mountain goat of either sex may be legally taken on a hunter's choice permit. Permittees are encouraged to take a mature goat. A mature goat is a goat older than two years of age, as determined by counting the annual rings on the horn.

(4) The goat permit allows a person using any legal weapon to take one goat within the area and season specified on the permit.

(5) All goat hunters are encouraged to have a spotting scope with a minimum of 15 power while hunting goats. The terrain inhabited by Rocky Mountain goat is extremely rugged making this hunt extremely strenuous. The goat's pelage may be higher quality later in the hunting season.

(6) A female-goat only permit allows a person to take one female-goat using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(7) An orientation course is required for Rocky Mountain goat hunters who draw female-goat only permits. Hunters will be notified of the orientation date, time and location.

(8)(a) A person who has obtained a Rocky Mountain goat permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a Rocky Mountain goat.

(b) Rocky Mountain goat permit holders must report hunt information by telephone, or through the division's Internet address.

(c) A person who fails to comply with the requirement in Subsection (a) shall be ineligible to apply for any once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit permit or bonus points in the following year.

R657-5-56. Depredation Hunter Pool Permits.

When deer, elk or pronghorn are causing damage, antlerless control hunts not listed in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be held as provided in Rule R657-44. These hunts occur on short notice, involve small areas, and are limited to only a few hunters.

R657-5-57. Antlerless Application - Deadlines.

(1) Applications are available through the division's Internet address.

(2) Residents may apply for, and draw the following permits, except as provided in Subsection (5):

(a) antlerless deer;

(b) antlerless elk;

(c) doe pronghorn; and

(d) antlerless moose.

(3) Nonresidents may apply in the drawing for, and draw the following permits, except as provided in Subsection (5):

(a) antlerless deer;

(b) antlerless elk;

(c) doe pronghorn; and

(d) antlerless moose, if permits are available during the current year.

(4) A youth may apply in the antlerless drawing as provided in Subsection (3) or Subsection R657-5-59(3).

(5) Any person who has obtained a pronghorn permit, or

a moose permit may not apply for a doe pronghorn permit or antlerless moose permit, respectively, except as provided in Section R657-5-61.

(6) A person may not submit more than one application in the antlerless drawing per each species as provided in Subsections (2) and (3).

(7) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Subsection R657-5-59(4) and Section R657-5-61.

(8)(a) Applications must be submitted online by the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) If an error is found on an application, the applicant may be contacted for correction.

(9) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get written permission before applying. The division does not guarantee access and does not have the names of landowners where hunts occur.

(10) To apply for a resident permit, a person must establish residency at the time of purchase.

(11) The posting date of the drawing shall be considered the purchase date of a permit.

R657-5-58. Fees for Antlerless Applications.

The permit fees and handling fees must be paid pursuant to Rule R657-42-8(5).

R657-5-59. Antlerless Big Game Drawing.

(1) The antlerless drawing results may be posted at the Lee Kay Center, Cache Valley Hunter Education Center, division offices and on the division Internet address on the date published in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) Permits are drawn in the order listed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3)(a) Twenty percent of the antlerless deer, elk and doe pronghorn permits are reserved for youth hunters.

(b) For purposes of this section, "youth" means any person 18 years of age or younger on the opening day of the general archery buck deer season.

(c) Youth hunters who wish to participate in the youth drawing must:

(i) submit an application in accordance with Section R657-5-57; and

(ii) not apply as a group.

(d) Youth applicants who apply for an antlerless deer, elk, or doe pronghorn permit as provided in Subsection (c), will automatically be considered in the youth drawing based upon their birth date.

(e) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the antlerless drawing.

(4) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

R657-5-60. Antlerless Application Refunds.

(1) Unsuccessful applicants will not be charged for a permit.

(2) The handling fees are nonrefundable.

R657-5-61. Over-the-Counter Permit Sales After the Antlerless Drawing.

Permits remaining after the drawing will be sold beginning on the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game on a first-come, first-served basis from division offices, through participating online license agents, and through the mail.

R657-5-62. Application Withdrawal or Amendment.

(1)(a) An applicant may withdraw their application for premium limited entry, limited entry, cooperative wildlife management unit, once-in-a-lifetime and management bull elk, and general buck deer and general muzzleloader elk permits from the big game drawing, or antlerless drawing provided a written request for such is received by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the address published in the proclamation of the Wildlife Board for taking big game.

(c) Handling fees will not be refunded.

(2)(a) An applicant may amend their application for the premium limited entry, limited entry, cooperative wildlife management unit and once-in-a-lifetime, and general buck deer and general muzzleloader elk permits from the big game drawing, or antlerless drawing provided a written request for such is received by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the address published in the proclamation of the Wildlife Board for taking big game.

(c) The applicant must identify in their statement the requested amendment to their application.

(d) Handling fees will not be refunded.

(e) An amendment may cause rejection if the amendment causes an error on the application.

R657-5-63. Special Hunts.

(1)(a) In the event that wildlife management objectives are not being met for once-in-a-lifetime, premium limited entry, or limited entry species, the division may recommend that the Wildlife Board authorize a special hunt for a specific species.

(b) The division will only utilize Subsection (1)(a) if the Bucks, Bulls and Once-In-A-Lifetime Proclamation and Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game has been published and the Bucks, Bulls and Once-In-A-Lifetime and Antlerless drawings have been completed.

(2) The special hunt season dates, areas, number of permits, methods of take, requirements and other administrative details shall be provided in an addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum of the Wildlife Board for taking big game.

(3) Permits will be allocated through a special drawing for the pertinent species.

R657-5-64. Special Hunt Application - Deadlines.

(1) Applications are available from license agents and division offices.

(2)(a) Residents and nonresidents may apply.

(b) Any person who was unsuccessful in the Bucks, Bulls and Once-In-A-Lifetime or Antlerless drawing may apply.

However, any person who has obtained a permit may not apply, unless otherwise provided in this rule and the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3)(a) Applications must be mailed by the date prescribed in the addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum of the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be rejected. Late applications will be returned unopened.

(b) If an error is found on an application, the applicant may be contacted for correction.

(4) Bonus points will be used in the special hunt drawings to improve odds for drawing permits as provided in Section R657-5-37. However, bonus points will not be awarded for unsuccessful applications in the special hunt drawings.

(5) Any person who obtains a special hunt permit is subject to all rules and regulations provided in this rule, the Bucks, Bulls and Once-In-A-Lifetime Proclamation and Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game, unless otherwise provided in Sections R657-5-63 through R657-5-68.

R657-5-65. Fees for Special Hunt Applications.

(1) Each application must include:

(a) the permit fee for the species applied for; and

(b) a nonrefundable handling fee.

(2)(a) Personal checks, money orders, cashier's checks and credit or debit cards are accepted from residents.

(b) Money orders, cashier's checks and credit or debit cards are accepted from nonresidents. Personal checks are not accepted from nonresidents.

(3)(a) Credit or debit cards must be valid at least 30 calendar days after the drawing results are posted.

(b) If applicants are applying as a group, all fees for all applicants in that group must be charged to one credit or debit card.

(c) Handling fees are charged to the credit or debit card when the application is processed. Permit fees are charged after the drawing, if successful.

(d) Payments to correct an invalid or refused credit or debit card must be made with a cashier's check or money order for the full amount of the application fees plus any permits requested.

(4) An application is voidable if the check is returned unpaid from the bank or the credit or debit card is invalid or refused.

R657-5-66. Special Hunt Drawing.

(1) The special hunt drawing results may be posted at the Lee Kay Center, Cache Valley Hunter Education Center and division offices on the date published in the addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

R657-5-67. Special Hunt Application Refunds.

(1) Unsuccessful applicants, who applied on the initial drawing and who applied with a check or money order will receive a refund within six weeks after posting of the drawing results.

(2) Unsuccessful applicants, who applied with a credit or debit card, will not be charged for a permit.

(3) The handling fees are nonrefundable.

R657-5-68. Permits Remaining After the Special Hunt Drawing.

Permits remaining after the special hunt drawing may be sold by mail or on a first-come, first-served basis as provided in the addendum to the Bucks, Bulls and Once-In-A-Lifetime or Antlerless Addendum of the Wildlife Board for taking big game. These permits may be purchased by either residents or nonresidents.

R657-5-69. Carcass Importation.

(1) It is unlawful to import dead elk, mule deer, or white-tailed deer or their parts from the areas of any state, province, game management unit, equivalent wildlife management unit, or county, which has deer or elk diagnosed with Chronic Wasting Disease, except the following portions of the carcass:

(a) meat that is cut and wrapped either commercially or privately;

(b) quarters or other portion of meat with no part of the spinal column or head attached;

(c) meat that is boned out;

(d) hides with no heads attached;

(e) skull plates with antlers attached that have been cleaned of all meat and tissue;

(f) antlers with no meat or tissue attached;

(g) upper canine teeth, also known as buglers, whistlers, or ivories; or

(h) finished taxidermy heads.

(2)(a) The affected states, provinces, game management units, equivalent wildlife management units, or counties, which have deer or elk diagnosed with Chronic Wasting Disease shall be available at division offices and through the division's Internet address.

(b) Importation of harvested elk, mule deer or white-tailed deer or their parts from the affected areas are hereby restricted pursuant to Subsection (1).

(3) Nonresidents of Utah transporting harvested elk, mule deer, or white-tailed deer from the affected areas are exempt if they:

(a) do not leave any part of the harvested animal in Utah and do not stay more than 24 hours in the state of Utah;

(b) do not have their deer or elk processed in Utah; or

(c) do not leave any parts of the carcass in Utah.

R657-5-70. Chronic Wasting Disease - Infected Animals.

(1) Any person who under the authority of a permit issued by the division legally takes a deer or elk that is later confirmed to be infected with Chronic Wasting Disease may:

(a) retain the entire carcass of the animal;

(b) retain any parts of the carcass, including antlers, and surrender the remainder to the division for proper disposal; or

(c) surrender all portions of the carcass in their actual or constructive possession, including antlers, to the division and receive a free new permit the following year for the same hunt.

(2) The new permit issued pursuant to Subsection (1)(c) shall be for the same species, sex, weapon type, unit, region, and otherwise subject to all the restrictions and conditions imposed on the original permit, except season dates for the permit shall follow the proclamation of the Wildlife Board for taking big game published in the year the new permit is valid.

(3) Notwithstanding other rules to the contrary, private landowners and landowner associations may refuse access to private property to persons possessing new permits issued under

Subsection (1)(c).

R657-5-71. Management Bull Elk Hunt.

(1)(a) For the purposes of this section "management bull" means any bull elk with 5 points or less on at least one antler. A point means a projection longer than one inch, measured from its base to its tip.

(b) For purposes of this section "youth" means any person 18 years of age or younger on the opening day of the management bull elk archery season published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(c) For the purposes of this section "senior" means any person 65 years of age or older on the opening day of the management bull elk archery season published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2)(a) Management bull elk permits shall be distributed through the division's big game drawing. Thirty percent of the permits are allocated to youth, 30 percent to seniors and the remaining 40 percent to hunters of all ages.

(b) Group application shall not be accepted in the division's big game drawing for management bull elk permits.

(3) Waiting periods as provided in R657-5-31 are incurred as a result of obtaining management bull elk permits, except as provided in Subsection (7).

(4)(a) Bonus points shall be awarded when an applicant is unsuccessful in obtaining a management bull elk permit in the big game drawing.

(b) Bonus points shall be expended when an applicant is successful in obtaining a management bull elk permit in the big game drawing, except as provided in Subsection (7).

(5) Management bull elk permit holders may take one management bull elk during the season, on the area and with the weapon type specified on the permit. Management bull elk hunting seasons, areas and weapon types are published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(6)(a) A person who has obtained a management bull elk permit must report hunt information within 30 calendar days after the end of the hunting season, whether the permit holder was successful or unsuccessful in harvesting a management bull elk.

(b) Management bull elk permit holders must report hunt information by telephone, or through the division's Internet address.

(7)(a) Management bull elk permit holders who successfully harvest a management bull elk, as defined in Subsection (1)(a), and have their animal inspected by the division, will have their bonus points reinstated and waiting period for limited bull elk removed.

(b) Successful hunters must deliver the head and antlers of the elk they harvest to a division office for inspection within 72 hours of leaving the hunting area.

(8) Management bull elk permit holders may not retain possession of any harvested bull elk that fails to satisfy the definition requirements in Subsection (1)(a).

(9) A person who has obtained a management bull elk permit may not hunt during any other elk hunt or obtain any other elk permit, except as provided in Section R657-5-48(3).

R657-5-72. General Any Weapon Buck Deer and Bull Elk Combination Hunt.

(1) Permit numbers, season dates and unit boundary descriptions for the general any weapon buck deer and bull elk combination hunt shall be established in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(2) A person who obtains a general any weapon buck deer and bull elk combination permit may use any legal weapon to take one buck deer and one bull elk during the season and within the unit specified on the permit.

(a) A general any weapon buck deer and bull elk combination permit does not authorize the holder to hunt deer or elk within any cooperative wildlife management unit.

(3) A person who has obtained a general any weapon buck deer and bull elk combination permit may not hunt during any other deer or elk hunt or obtain any other deer or elk permit, except:

(a) antlerless deer, as provided in Subsection R657-5-42, and

(b) antlerless elk, as provided in Subsection R657-5-48.

(4)(a) Lifetime license holders may obtain a general any weapon buck deer and bull elk combination permit.

(b) Upon obtaining a general any weapon buck deer and bull elk combination permit, the lifetime license holder foregoes any rights to receive a buck deer permit for the general archery, general any weapon or general muzzleloader deer hunts as provided in Section 23-19-17.5.

(c) A refund or credit is not issued for the general archery, general any weapon or general muzzleloader deer permit.

KEY: wildlife, game laws, big game seasons

July 9, 2007	**23-14-18**
Notice of Continuation November 21, 2005	**23-14-19**
	23-16-5
	23-16-6

R657. Natural Resources, Wildlife Resources.
R657-14. Commercial Harvesting of Protected Aquatic Wildlife.
R657-14-1. Purpose and Authority.

(1)(a) Under authority of Sections 23-14-3, 23-14-18, and 23-14-19, and Sections 23-15-7 through 23-15-9, this rule provides the procedures, standards, and requirements for:

(i) harvesting protected aquatic wildlife for use as fish bait; and

(ii) seining protected aquatic wildlife.

(b) The commercial harvesting of brine shrimp and brine shrimp eggs is regulated under Rule R657-52.

R657-14-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Alternate seiner" means the person in charge of and responsible for supervising a crew of helpers harvesting authorized species of protected aquatic wildlife in the absence of the primary seiner.

(b) "Certified bait dealer" means a person who has obtained a certificate of registration authorizing the harvest, possession, or sale of protected aquatic wildlife for use as dead fish bait.

(c) "Harvest" means to seine, or gather in protected aquatic wildlife and reduce it to possession.

(d) "Harvest location" means the location where the gathering or harvesting of protected aquatic wildlife takes place.

(e) "Helper" means a person aiding a certificate of registration holder in the harvesting, transporting, or selling of protected aquatic wildlife, including any employee, agent, family member, or donated labor.

(f) "Helper card" means a card authorizing a person to act as a helper.

(g) "Nongame fish" means all species of fish, except:

(i) any species or hybrid species of trout, including albino, brook, brown, cutthroat, golden, grayling, kokanee salmon, lake or mackinaw, rainbow, splake, and tiger;

(ii) Bonneville cisco;

(iii) bluegill;

(iv) bullhead;

(v) catfish;

(vi) crappie;

(vii) green sunfish;

(viii) northern pike;

(ix) largemouth bass;

(x) Sacramento perch;

(xi) smallmouth bass;

(xii) striped bass;

(xiii) tiger muskellunge;

(xiv) walleye;

(xv) white bass;

(xvi) whitefish;

(xvii) wiper; and

(xviii) yellow perch.

(h) "Primary seiner" means the person in charge of and responsible for supervising a crew of helpers harvesting protected aquatic wildlife.

(i) "Purchase" means to buy, acquire, or obtain from sale, exchange, barter, or trade protected aquatic wildlife for pecuniary consideration or advantage.

(j) "Seining" means to harvest protected aquatic wildlife with the use of a net or other similar device.

(k) "Wildlife registration office" means the division office in Salt Lake responsible for processing applications and issuing certificates of registration.

R657-14-3. Certificate of Registration Required.

(1)(a) A person may not harvest, possess, or transport protected aquatic wildlife without first obtaining a certificate of registration and a helper card for each individual assisting that person.

(b) The original copy of the certificate of registration must be present at the harvest location while harvesting protected aquatic wildlife.

(2) Except as provided in Subsection R657-14-13(4), a person must obtain a separate certificate of registration to engage in the following activities:

(a) harvesting or selling designated species of fish for use as fish bait; and

(b) seining and selling protected aquatic wildlife for any purpose other than for use as fish bait.

(3) A certificate of registration is not required for the retail sale of dead protected aquatic wildlife imported into Utah, provided the product is clearly labeled as to its out-of-state origin.

(4) Certificates of registration are not transferable, except as provided in Section R657-14-21.

(5) Any certificate of registration issued to a business or any other commercial organization shall be void upon the termination of the business or organization or upon bankruptcy.

(6)(a) The issuance of a certificate of registration automatically incorporates within its terms the conditions and requirements of this rule specifically governing the activity for which the certificate of registration is issued.

(b) Any person accepting a certificate of registration under this rule acknowledges the necessity for close regulation and monitoring by the division.

R657-14-4. Application for Certificate of Registration.

(1) Applications for certificates of registration are available at division offices.

(2) Applications for commercial seining or harvesting protected aquatic wildlife for use as fish bait may be submitted any time during the year.

(3) If an application for a certificate of registration is made in the name of a commercial organization, the applicant must specify the person responsible for that entity.

(4)(a) Completed applications must be submitted to the wildlife registration office.

(b) The division may return any application that is incomplete or completed incorrectly.

(5)(a) The application review process may require up to 45 days.

(b) The division may deny issuing a certificate of registration to any applicant for any of the following reasons:

(i) the applicant has previously been issued a certificate of registration and has failed to submit any report required by this rule, the division, or the Wildlife Board;

(ii) the applicant has been found guilty, pleaded guilty or pleaded no contest in an administrative proceeding to violating any rule, statute, proclamation, or Wildlife Board Order relating to the harvest, possession, or sale of protected aquatic wildlife; or

(iii) the applicant has been found guilty, pleaded guilty or pleaded no contest in a criminal proceeding to violating any rule, statute, proclamation, or Wildlife Board Order relating to the harvest, possession, or sale of protected aquatic wildlife.

(6) The division may limit the number of certificates of registration issued or deny any application in the interest of wildlife, wildlife habitat, serving the public, or public safety.

(7) If an application is approved, the division shall issue the applicant a certificate of registration that specifies:

(a) the species and amounts of protected aquatic wildlife that may be harvested or sold;

(b) the water and locations where protected aquatic wildlife may be harvested;

(c) the gear that may be used;

(d) the hours during which protected aquatic wildlife may be harvested;

(e) the means and amounts of protected aquatic wildlife that may be transported; and

(f) any restriction imposed on the applicant in addition to the provisions of this rule.

(8)(a) Certificates of registration for seining or harvesting protected aquatic wildlife for use as fish bait are valid for a calendar year.

R657-14-5. Use of Helpers.

(1)(a) Except as provided in Subsection (2), any person aiding the certificate of registration holder in seining protected aquatic wildlife shall be in possession of a helper card.

(b) A helper card shall be deemed to be in possession if it is on the person or on the boat from which the person is working.

(2) A helper card is not required of any person engaged only in the retail sale or transportation of protected aquatic wildlife.

(3) Helper cards are issued in the name of the certificate of registration holder and are transferable among individuals assisting the certificate of registration holder.

(4)(a) A helper may assist in the harvest of protected aquatic wildlife only while working under the direct supervision of a primary or alternate seiner.

(b) For purposes of this rule, "direct supervision" means to be physically present, either on a boat with the helper or within close proximity so as to be able to provide direct instructions to the helper.

(5) Twelve additional helper cards for each Certificate of Registration may be obtained from the wildlife registration office at any time during the year.

R657-14-6. Records - Report of Activities.

(1) Each person who has been issued a certificate of registration authorizing the harvest or sale of protected aquatic wildlife shall keep accurate records of the number or weight harvested and to whom the products were sold.

(2) The records required under Subsection (1) shall be retained for at least five years and must be available for inspection upon division request.

(3)(a) A person who has been issued a certificate of registration for seining or harvesting protected aquatic wildlife for use as fish bait shall include the following information, broken down by month, in an annual report to the division:

(i) the species of protected aquatic wildlife harvested;

(ii) the water from which the protected aquatic wildlife were harvested; and

(iii) the total number or weight of protected aquatic wildlife harvested.

(b) A person who has been issued a certificate of registration for the retail sale of protected aquatic wildlife shall include the following information, broken down by month, in an annual report to the division:

(i) the name and address of each person from which protected aquatic wildlife was purchased or sold;

(ii) the species of protected aquatic wildlife purchased or sold; and

(iii) the weight and number of protected aquatic wildlife purchased or sold.

(c) Report forms are provided by the division.

R657-14-7. Species of Protected Aquatic Wildlife That May Be Harvested.

(1)(a) The division may authorize a person to harvest or sell the following nongame fish:

(i) Utah Chub (Gila atraria);

(ii) Carp (Cyprinus carpio);

(iii) Mountain sucker (Catostomus platyrhynchus);

(iv) Utah sucker (Catostomus ardens); or

(v) Redside shiner (Richardsonius batteatus).

(b) The division may authorize a person to harvest or sell overabundant nuisance game species, as determined by the division.

(c) The certificate of registration shall identify those species of protected aquatic wildlife that may be harvested or sold.

(2) Any species of protected aquatic wildlife caught that is not authorized for harvest must be immediately returned alive and unharmed to the water from which it was harvested.

R657-14-8. Prohibited Nongame Species.

The following species of protected aquatic wildlife may not be harvested, and if caught must be immediately returned alive and unharmed to the water from which it was taken:

(1) bonytail (Gila elegans);
(2) bluehead sucker (Catostomus discobolus);
(3) Colorado pikeminnow (Ptychocheilus lucius);
(4) flannelmouth sucker (Catostomus latipinnis);
(5) gizzard shad (Dorosoma cepedianum);
(6) grass carp (Ctenopharyngodon idella);
(7) humpback chub (Gila cypha);
(8) June sucker (Chasmistes liorus);
(9) least chub (Iotichthys phlegethontis);
(10) leatherside chub (Gila cypha);
(11) razorback sucker (Xyrauchen texanus);
(12) roundtail chub (Gila robusta);
(13) Virgin River chub (Gila robusta seminuda);
(14) Virgin spinedace (Lepidomeda mollispinis); and
(15) woundfin (Plagopterus argentissimus).

R657-14-9. Harvest Hours.

(1) Protected aquatic wildlife may be harvested from 5 a.m. to 10 p.m. year-round, unless otherwise specified on the certificate of registration.

(2) When the harvest season is suspended or closed, all harvest activity shall cease at official sunset.

R657-14-10. Identification of Traps and Nets.

(1) A metal tag or plate stamped with the owner's name and certificate of registration number must be securely attached to each seine, trap and net.

(2) Any improperly tagged seine, trap, or net may be seized by the division.

R657-14-11. Transportation, Purchase, or Sale of Live Protected Aquatic Wildlife.

(1) A person may not have in possession any live species of protected aquatic wildlife, except as provided in Rules R657-3 or R657-16.

(2) A person may not purchase any live protected aquatic wildlife from or sell any live protected aquatic wildlife to any person or entity who has not obtained a certificate of registration to possess or sell live protected aquatic wildlife, except as provided in Subsection R657-14-3(3).

R657-14-12. Certified Bait Dealers.

(1) The division may authorize a person to harvest or sell designated species of protected aquatic wildlife for use as dead fishing bait, including cut baits.

(2)(a) The division may allow a person to harvest, possess, or sell the species of protected aquatic wildlife for use as dead fish bait as provided in Section R657-14-7.

(b) The division shall not allow a person to harvest, possess, or sell any other protected aquatic wildlife for use as dead fish bait except as provided in Section R657-14-7.

(3)(a) A person may not purchase dead fish bait from any

person who has not obtained a certificate of registration from the division.

(b) Subsection (a) does not preclude commerce with out-of-state sellers of dead, prepared fish baits if the dead fish bait is clearly labeled as to its origin.

(4)(a) Only a person who has obtained a certificate of registration from the division may harvest, sell, or trade protected aquatic wildlife for use as fish bait.

(b) Any protected aquatic wildlife sold for use as fish bait must be packaged in a suitable container, and have securely attached a clearly discernable business label on each package that provides the brand or business name, business address, type of product, and certificate of registration number.

(5) A person may not purchase or sell any dead fish bait that does not have a label attached to the package as provided in Subsection (4)(b).

R657-14-13. Commercial Seining.

(1) The division may issue a certificate of registration authorizing a person to harvest designated species of protected aquatic wildlife by seining.

(2)(a) Three helper cards are issued with the certificate of registration.

(b) Additional helper cards may be obtained from the division.

(3) A seiner may harvest any species of nongame fish listed under Section R657-14-7, and any overabundant game species as determined by the division and indicated on the certificate of registration.

(4) A seiner may harvest or sell protected aquatic wildlife for use as dead fish bait as provided in Section R657-14-12, if authorization is obtained from the division and indicated on the certificate of registration.

R657-14-14. Violations.

(1) The penalty for any violation of this rule is a class C misdemeanor as provided in Section 23-13-11(2).

(2) Any violation of, or failure to comply with the provisions of this rule, any requirement contained in a certificate of registration issued pursuant to this rule, or any Wildlife Board Order may be grounds for revocation, suspension or denial of future certificates of registration as determined by a division hearing officer.

KEY: game laws, bait dealers, commercialization of aquatic wildlife

September 4, 2002	**23-14-18**
Notice of Continuation July 9, 2007	**23-14-19**
	23-13-13
	23-15-7
	23-15-8
	23-15-9
	23-14-3

R671. Pardons (Board of), Administration.
R671-101. Rules.
R671-101-1. Rules.

Board of Pardons rules shall be processed according to state rulemaking procedures. The Board shall determine if the rule is to be submitted through the regular rulemaking or emergency rulemaking procedure. Rules shall then be distributed as necessary.

Any error, defect, irregularity or variance in the application of these rules which does not affect the substantial rights of a party may be disregarded. Rules are to be interpreted with the interests of public safety in mind so long as the rights of a party are not substantially affected.

KEY: pardons
February 18, 1998 77-27-9
Notice of Continuation July 25, 2007 63-46a

R671. Pardons (Board of), Administration.
R671-102. Americans with Disabilities Act Complaint Procedure Rule.
R671-102-1. Purpose and Authority.

A. This rule is promulgated pursuant to Section 63-46a-3 (2) of the State Administrative Rulemaking Act. The Board of Pardons Office adopts, defines, and publishes within this rule complaint procedures to provide for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans with Disabilities Act, pursuant to 2002 ed.

B. No qualified individual with a disability, by reason of such disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of this office, or be subjected to discrimination by this office.

R671-102-2. Definitions.

A. "The ADA Coordinator" means the Office of the Board of Pardons' coordinator or designee, who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities in accordance with the Americans With Disabilities Act, or provisions of this rule.

B. "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

(1) Office of Planning and Budget;
(2) Department of Human Resource Management;
(3) Division of Risk Management;
(4) Division of Facilities Construction Management; and
(5) Office of Attorney General.

C. "Disability" means, with respect to an individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment.

D. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

E. "Individual with a disability" (hereafter individual) means a person who has a disability which limits one of his/her major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the Office of the Board of Pardons, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the state.

F. "Board" means the Board of Pardons and Parole.

G. "Chairman" or "Chairman of the Board" means Chairman of the Board of Pardons and Parole.

R671-102-3. Filing of Complaints.

A. A complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 60 days from the date of the alleged act of discrimination. However, any complaint alleging an act of discrimination occurring between January 26, 1992 and the effective date of this rule may be filed within 60 days of the effective date of this rule.

B. The Complaint shall be filed with the Board's ADA Coordinator in writing or in another accessible format suitable to the individual.

C. Each complaint shall:

(1) include the individual's name and address;
(2) include the nature and extent of the individual's disability;
(3) describe the office's alleged discriminatory action in sufficient detail to inform the office of the nature and date of the alleged violation;
(4) describe the action and accommodation desired; and
(5) be signed by the individual or by his/her legal representative.

D. Complaints filed on behalf of classes of third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

R671-102-4. Investigation of Complaint.

A. The ADA coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in Section 3 (C) of this rule if it is not made available by the individual.

B. When conducting the investigation, the coordinator may seek assistance from the Board's legal, human resource and budget staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve:

(1) an expenditure of funds which is not absorbable within the agency's budget and would require appropriation authority;
(2) facility modifications which require an expenditure of funds which is not absorbable within the agency's budget and would require appropriation authority; or
(3) reclassification or reallocation in grade; the coordinator shall consult with the ADA State Coordinating Committee.

R671-102-5. Issuance of Decision.

A. Within 15 working days after receiving the complaint, the ADA Coordinator shall issue a decision outlining in writing, or in another suitable format, stating what action, if any, shall be taken on the complaint.

B. If the coordinator is unable to reach a decision within the 15 day period, he shall notify the individual in writing or by another suitable format why the decision is being delayed and what additional time is needed to reach a decision.

R671-102-6. Appeals.

A. The individual may appeal the decision of the ADA Coordinator by filing an appeal within five working days from the receipt of the decision.

B. The appeal shall be filed in writing with the Chairman of the Board or a designee other than the Board's ADA Coordinator.

C. The filing of an appeal shall be considered as authorization to the Board's Chairman or designee, by the individual, to allow review of all information, including information classified as private or controlled.

D. The appeal shall describe in sufficient detail why the coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

E. The Chairman of the Board or designee shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making any decision that would involve the Chairman or designee to:

(1) an expenditure of funds which is not absorbable and would require appropriation authority;
(2) facility modifications which require an expenditure of funds which is not absorbable and would require appropriation authority; or
(3) reclassification or reallocation in grade; he/she shall also consult with the State ADA Coordinating Committee.

F. The decision shall be issued within ten working days after receiving the appeal and shall be in writing or in another suitable format to the individual.

G. If the Chairman or designee is unable to reach a

decision within the ten working day period, he/she shall notify the individual in writing or by another suitable format why the decision is being delayed and the additional time needed to reach a decision.

R671-102-7. Classification of Records.

A. The record of each complaint and appeal, and all written records produced or received as part of such actions, shall be classified as protected as defined under Section 63-2-304 until the ADA Coordinator, the Chairman of the Board or their designees issue the decision, at which time any portions of the record which may pertain to the individual's medical condition shall remain classified as private as defined under Section 63-2-302 or controlled as defined in Section 63-2-303. All other information gathered as part of the complaint record shall be classified as private information. Only the written decision of the coordinator, Chairman of the Board or designees shall be classified as public information.

R671-102-8. Relationship to Other Laws.

A. This rule does not prohibit or limit the use of remedies available to individuals under the State Anti-Discrimination Complaint Procedures Section (67-19-32); the Federal ADA Complaint Procedures (2002 Edition, beginning with Part 35.170, 1992 Edition); or any other Utah State of Federal law that provides equal or greater protection for the rights of individuals with disabilities.

R671-102-9. Interpreters.

The Board will provide interpreters for the hearing impaired.

KEY: disabilities
February 15, 2003 67-19-32
Notice of Continuation July 25, 2007

R671. Pardons (Board of), Administration.
R671-201. Original Parole Grant Hearing Schedule and Notice.
R671-201-1. Schedule and Notice.

Within six months of an offender's commitment to prison the Board will give notice of the month and year in which the inmate's original hearing will be conducted. A minimum of one week (7 calendar days) prior notice should be given regarding the specific day and approximate time of such hearing.

All felonies, where a life has been taken, will be routed to the Board as soon as practicable for the determination of the month and year for their original hearing date. The Board will only consider information available to the court at the time of sentencing. All first degree felonies, where death is not involved, will be eligible for a hearing after the service of three years. All second degree felonies, where death is not involved, will be eligible for a hearing after the service of six months unless the second degree is a sex offense and in those cases will be eligible for a hearing after the service of eighteen months.

All third degree felonies, where a death is not involved, and all class A misdemeanors, will be eligible for a hearing after the service of three months unless the third degree felony is a sex offense and in those cases will be eligible for a hearing after the service of twelve months.

Excluded from the above provisions are inmates who are sentenced to death or life without parole.

An inmate may petition the Board to calendar him/her at a time other than the usual times designated above or the Board may do so on its own motion. A petition by the inmate shall set out the special reasons which give rise to the request. The Board will notify the petitioner of its decision in writing as soon as possible.

KEY: parole, inmates
May 16, 2003 77-27-7
Notice of Continuation July 25, 2007

R671. Pardons (Board of), Administration.
R671-202. Notification of Hearings.
R671-202-1. Notification.

An offender will be notified at least seven calendar days in advance of any hearing where personal appearance is involved, except in extraordinary circumstances, and will be specifically advised as to the purpose of the hearing.

In extraordinary circumstances, the hearing may be conducted without the seven day notification, or the offender may waive this notice requirement.

A public notice of hearings will also be posted one week in advance at the Board.

Open public hearings are regularly scheduled by the Board at the various correctional facilities throughout the state.

KEY: parole, inmates
February 12, 2003 77-27-7
Notice of Continuation July 25, 2007 77-27-9

R671. Pardons (Board of), Administration.
R671-203. Victim Input and Notification.
R671-203-1. Victim Input and Notification.

Pursuant to statute, the Department of Corrections will provide the Board of Pardons with all available information concerning the impact a crime may have had upon the victim or victim's family. Pursuant to statute, the prosecutor of the case will forward to the Board a victim impact statement referring to physical, mental or economic loss suffered by the victim or victim's family.

In accordance with statute victims shall be allowed to testify before the Board of Pardons at original parole grant hearings, rehearings and applicable parole violation and rescission hearings. Victims will be given timely notice, delivered to their last known address, of the date, place and time of the hearing.

A victim is defined as an individual, of any age, against whom an offender committed a felony or class A misdemeanor offense for which the hearing is being held. If a victim does not wish to give testimony or is unable to do so, a designee may be appointed to speak on their behalf. Family may testify if the victim is deceased as a result of the offense or if the victim is a child.

Oral testimony at hearings will be limited to five minutes in length per victim or designee. If family testifies, testimony should be limited to one family representative from the marital family (i.e. spouse or children) and/or one family representative from the nuclear/extended family (i.e. parent, sibling or grandparent). Under exceptional or extraordinary circumstances a victim may formally petition the Board to request additional testimony.

If requested by the victim, the victim may present testimony during the hearing outside the presence of the offender. The offender will be excused from the hearing room so that the victim can give testimony. The victim's testimony will be recorded. At the conclusion of the testimony, the offender will be returned to the hearing room and the Board will play the recorded testimony to allow the offender to respond to the victim's testimony.

Victims who want to testify are requested to notify the Board as far in advance of the hearing as possible so that appropriate arrangements can be made and time allocated for the presentations. Victims or designees should bring a written copy of their remarks to the hearing or send a copy to the Victim Coordinator for the Board file.

If multiple victims want to testify, the Board may reschedule the hearing to accommodate the extra time required to hear all the testimony. If Board business is not concluded by 5:00 p.m. on a hearing day, all remaining hearings may be rescheduled and visitors may have to return.

A victim or designee, who is appearing at a hearing where photographic equipment is being used by the media, will not be photographed without the approval of the victim and the individual presiding at the hearing.

Victims may contact the Board of Pardons, after any parole hearing, for information concerning the outcome of that hearing. Victims are advised that they may also contact the Utah State Prison Records Unit Supervisor for information on offender releases.

All persons attending hearings must comply with the security and clearance regulations of the facility where the hearing is held. These regulations include a picture identification, appropriate dress, and no contraband. Visitors should arrive at the facility 15 to 20 minutes prior to the scheduled hearing to allow adequate time for the security clearance.

KEY: victims of crimes
February 18, 1998 **77-27-9.5**

Notice of Continuation July 25, 2007 **77-27-13**
64-13-20

R671. Pardons (Board of), Administration.
R671-205. Credit for Time Served.
R671-205-1. Policy.

(1) Credit for time served will be granted against the expiration date on a crime of commitment when:

(a) a conviction is set aside and there is a subsequent commitment for the same criminal conduct;

(b) a commitment is made to the Utah State Hospital pursuant to a "guilty and mentally ill" conviction;

(c) time is spent in custody outside the State of Utah based solely on the Utah warrant;

(d) the Board deems such credit just under the circumstances; or

(e) credit is otherwise required by law.

(2) No credit will be given for time spent in custody at the Utah State Hospital or comparable non-prison, psychiatric facility while the offender is judicially-declared incompetent.

(3) If no record of official detention time is found in the Board file, the Board will presume that none was served. In cases where the offender desires credit, the burden is on the offender to request it and to provide copies of records supporting the claim of time spent in custody.

KEY: capital punishment, prison release, parole, government hearings

December 9, 1998	**77-27-7**
Notice of Continuation July 25, 2007	**77-27-9**
	77-19-7

R671. Pardons (Board of), Administration.
R671-206. Competency of Offenders.
R671-206-1. General.

If a board member or staff presiding at a hearing has reason to believe that an offender may be mentally incompetent as defined in UCA 77-15-2, all proceedings will be stayed. The Board shall request a mental health evaluation to assist in determining whether the offender is competent, or is likely to become competent while housed in the custody of the Department of Corrections.

If there is reason to believe that the inmate or parolee is incompetent, the Board may request the Attorney General file a petition with the district court for a competency hearing pursuant to UCA 77-15-3.

If the district court determines the offender is mentally competent, the Board shall proceed with scheduled hearings or other actions.

KEY: criminal competency
November 21, 2002 **77-15-3**
Notice of Continuation July 25, 2007 **77-15-5**
77-27-2
77-27-7

R671. Pardons (Board of), Administration.
R671-207. Mentally Ill and Deteriorated Offender Custody Transfer.
R671-207-1. Transfer From the Prison to the Hospital of an Offender Whose Mental Health Has Deteriorated.

The Department of Corrections will notify the Board whenever a mentally ill offender is transferred from the Hospital to the Prison pursuant to 77-16a-204 (5).The custody transfer of an inmate, who has not been adjudicated as mentally-ill by the Court and who is housed at the Prison, whose mental health has deteriorated to the point that admission to the State Hospital is necessary to ensure adequate mental health treatment, will occur when the Prison and the Hospital agree to a transfer. The Department of Corrections will notify the Board's Mental Health Advisor whenever an offender is transferred from the Prison to the Hospital and the Board will stay any hearing until the offender is transferred from the Hospital back to the Prison pursuant to the requirements of 77-16a-204, Utah Code, and the provisions of rule R207-2, Utah Administrative Code.

If the Prison and the Hospital cannot agree upon the transfer, the Board will make the decision as to whether the transfer should occur pursuant to 62A-15-605. Upon notification by the Department of Corrections to the Board's Mental Health Advisor that the agencies cannot agree, the Mental Health Advisor will conduct an administrative hearing. Both agencies will provide written reports and recommendations to the Advisor prior to the hearing and the Advisor will take testimony at the hearing. The Mental Health Advisor will then make a recommendation pursuant to the requirement of 62A-15-605.5 to the Board. The Board will issue its decision within 30 days of the Administrative Hearing.

R671-207-2. Mentally-Ill Offender Custody Transfer.

Custody transfer of a mentally-ill offender, under the jurisdiction of the Board of Pardons and Parole, and placed by the Court at the Utah State Hospital, will occur when the Hospital and the Prison agree that the Prison can provide the mentally-ill offender with the level of care necessary to maintain the offender's current mental condition and status. The Department of Corrections will notify the Board whenever a mentally-ill offender is transferred from the Hospital to the Prison and the Board will set a date for a parole hearing.

If the Hospital and the Prison cannot agree upon the transfer, the Board will make the decision as to whether the offender should be transferred to the Prison. Upon notification from the Division of Human Services to the Board's Mental Health Advisor that the agencies cannot agree upon the transfer, the Advisor will conduct an Administrative hearing. Both agencies will provide written reports and recommendations to the Advisor prior to the hearing and the Advisor will take testimony at the hearing. The Mental Health Advisor will then make a recommendation, pursuant to the requirements of 77-16a-204, to the Board as to the transfer. The Board will issue its decision within 30 days of the Administrative Hearing.

R671-207-3. Retransfer From the Department of Corrections to the Utah State Hospital.

Custody transfer of a mentally-ill offender, under the jurisdiction of the Board, whose custody was transferred from the Utah State Hospital to the Utah State Prison may be transferred back to the Utah State Hospital when the Prison and the Hospital agree that the offender's mental condition has deteriorated or the offender has become mentally unstable to the point that admission to the State Hospital is necessary to ensure adequate mental health treatment. The Department of Corrections will notify the Board's Mental Health Advisor whenever a mentally-ill offender is transferred back to the State Hospital from the Prison. The Board will stay any hearing until the offender's mental health has been stabilized and the offender has been transferred back to the prison, in accordance with Rule R207-1, Utah Administrative Code and Section 77-16a-204, Utah Code.

If the Prison and the Hospital cannot agree upon the transfer, the Board will make the decision as to whether the offender should be transferred back to the Hospital. Upon notification form the Department of Corrections that the Prison and the Hospital cannot agree upon a transfer, the Mental Health Advisor will conduct an administrative hearing. Both agencies will provide written reports and recommendations to the Advisor prior to the hearing and the Advisor will take testimony at the hearing. The Advisor will then make a recommendation to the Board as to the transfer pursuant to the requirements of 77-16a-204. The Board will issue its decision within 30 days of the administrative hearing.

A mentally-ill offender who has been readmitted to the Utah State Hospital pursuant to these rules may be transferred back to the Department of Corrections in accordance with Rule R207-1, Utah Administrative Code and the requirements of Section 77-16a-204, Utah Code.

KEY: criminal competency
December 4, 2002 77-16a-204
Notice of Continuation July 25, 2007

R671. Pardons (Board of), Administration.
R671-301. Personal Appearance.
R671-301-1. Personal Appearance.

By statute, the Board or its designee is required to convene at least one public hearing for all offenders except those serving life without parole or death. In rehearings, the offender is afforded all the rights and considerations afforded in the initial hearing except as provided by other Board rules because the setting of a parole date is still at issue.

An offender has the right to be present at a parole grant, rehearing, or parole violation hearing if in the state (UCA 77-27-7). The offender may speak present documents, ask, and answer questions. In the event an offender waives this right, or refuses to personally attend the hearing the Board may proceed with the hearing and issuance of a decision.

If an offender is housed out of state the Board may elect one of the following procedures:

1. The offender may waive the right to be present.

2. Request the Warden to return the offender to the state for the hearing.

3. A courtesy hearing may be conducted by the appropriate paroling authority of the custodial state. A request along with a complete copy of Utah's record shall be forwarded for the hearing. All reports, a record of the hearing, and a recommendation shall be returned to the Utah Board for final action.

4. An individual Board member or designee may travel to the custodial facility and conduct the hearing, record the proceeding, and make a recommendation for the Board's final decision.

5. A hearing may be conducted by way of conference telephone call.

KEY: inmates, parole

November 21, 2002	**77-27-2**
Notice of Continuation July 25, 2007	**77-27-7**
	77-27-9
	77-27-29

R671. Pardons (Board of), Administration.
R671-302. News Media and Public Access to Hearings.
R671-302-1. Open Hearings.

According to state law and subject to fairness and security requirements, Board hearings shall be open to the public, including representatives of the news media.

R671-302-2. Limited Seating.

When the number of people wishing to attend a hearing exceeds the seating capacity of the room where the hearing will be conducted, priority shall be given to:

1. Individuals involved in the hearing
2. Victim(s) of record.
3. Up to five people selected by the victim(s) of record.
4. Up to five people selected by the offender
5. Up to five members of the news media as allocated by the Board or its designee (see RESERVED MEDIA SEATING)
6. Members of the public and media on a first-come, first served basis.

R671-302-3. Security and Conduct.

All attendees are subject to prison security requirements and must conduct themselves in a manner which does not interfere with the orderly conduct of the hearing. Any individual causing a disturbance or engaging in behavior deemed by the Board to be disruptive of the proceeding may be ordered to leave and security personnel may be requested to escort the individual from the premises. All persons granted admission to a hearing must have a picture Identification and subject themselves to the security regulations of the custodial facility.

R671-302-4. Executive Session.

Executive sessions are closed sessions with no access. No filming, recording or transmitting of executive session portions of any hearing will be allowed.

R671-302-5. News Media Equipment.

Subject to prior approval by the Board or its designee (see APPROVING EQUIPMENT), the news agency representatives will be permitted to operate photographic, recording or transmitting equipment during the public portions of any hearing. When more than one news agency requests permission to use photographic, recording or transmitting equipment, a pooling arrangement may be required.

When it is determined by the Board or its designee, that any such equipment or operators of that equipment have the potential to cause a disturbance or interfere with the holding of a fair and impartial hearing, or are causing a disturbance or interfering with the holding of a fair and impartial hearing, restrictions may be imposed to eliminate those problems.

Photographing, recording and/or transmitting the image of a victim testifying before the Board will be prohibited unless approved by the victim and the individual presiding over the hearing.

R671-302-6. Prior Approval.

News media representatives wishing to use photographic, recording or transmitting equipment or to be considered for one of the five reserved media seats shall submit a request in writing to the Board or its designee. Such requests must be submitted in compliance with the policy and procedures of the Department of Corrections. If requesting the use of equipment, the request must specify by type, all the pieces of equipment to be used.

R671-302-7. Approving Equipment.

If the request is to use photographic, recording or transmitting equipment, at least 48 hours prior to a regularly scheduled hearing and 96 hours prior to a Commutation Hearing, it will be the responsibility of a representative of the news agency making the request to confer with the designated staff member of the Board to work out the details. If the designated staff member is unfamiliar with the equipment proposed to be used, he may require that a demonstration be performed to determine if it is likely to be intrusive, cause a disturbance or will inhibit the holding of a fair and impartial hearing in any way. Any equipment causing a disturbance or distraction will be removed from the premises.

Video tape or "on air" type cameras and still cameras shall be deemed to be approved equipment.

If the equipment is approved for use at a hearing, its location and mode of operation shall be approved in advance by the Board's designated staff member and it will remain in a stationary position during the entire hearing and will be operated as unobtrusively as possible.

There will be no artificial light used.

If there are multiple request for the same type of equipment, the news agencies will be required to make pool arrangements, as no more than one piece of the same type of equipment will be allowed. If no agreement can be reached on who the pool representative will be, the Board, or its designee, will draw a name at random. All those wishing to be a pool representative must make their request known in advance, identifying the specific hearing and agree to fully cooperate with all pool arrangements.

R671-302-8. Reserved Media Seating.

If there are five or fewer requests received prior to the deadline, the request will be approved. If more than five requests are made, the Board's designee will allocate the seating based on a pool arrangement. Each category will select its own representative(s). If no agreement can be reached on who the representative(s) will be, the Board's designee will draw names at random. All those wishing to be a pool representative must agree in advance to fully cooperate with all pool arrangements.

One seat will be allocated to each of the following categories:

1. Local daily newspapers with statewide circulation
2. Major wire services with local bureaus
3. Local television stations with regularly scheduled daily newscasts
4. Local radio stations with regularly scheduled daily newscasts
5. Daily, weekly or monthly publications (in that order) with priority given to the area where the offense occurred.
6. If the requests submitted do not fill all of the above categories, a seat will be allocated to a representative of a major wire service with no local bureau or a national publication (in that order).

If seats remain unfilled, one additional seat will be allocated to the categories in the above order until all seats are filled. No news agency will have more than one individual assigned to reserved media seating unless all other requests have been satisfied.

R671-302-9. Violations.

Any news agency found to be in violation of this policy may have its representatives restricted in or banned from covering future Board hearings.

KEY: news agencies
November 21, 2002 **77-27-9**
Notice of Continuation July 25, 2007

R671. Pardons (Board of), Administration.
R671-303. Offender Access to Information.
R671-303-1. Offender Access to Information.

Absent a legitimate security or safety concern, an offender will be provided access to the information being considered by the Board and given an opportunity to respond whenever the Board fixes or extends the offender's parole or release date. If a security or safety concern is an issue, the offender will be provided a written summary of the material information being considered.

The Board, upon request or upon it's own motion, may continue a hearing to allow submission of additional documentation or information. The Board will consider any relevant facts obtained at the hearing or later submitted by the offender.

The Board will also provide an offender with a copy of the records contained in the offender's file at least three days prior to any personal appearance hearing in which parole or an early-release date may be fixed or extended by the Board. Any additional information obtained by the Board after this initial disclosure will be provided to the offender at the beginning of the hearing. In such event, the offender will be given an opportunity to review the supplemental information before proceeding. If no additional time is requested by the offender, the hearing will proceed as scheduled.

For administrative routings to fix an original hearing date, the board will only consider information available to the court at the time of sentencing. This information will not be disclosed to the offender until the time of his/her original hearing, as it has already been disclosed in court.

KEY: inmates' rights, inmates, parole, records
November 22, 2002 63-2
Notice of Continuation July 25, 2007

R671. Pardons (Board of), Administration.
R671-304. Hearing Record.
R671-304-1. Hearing Record.

The Board will cause a record to be made of all public hearings and dispositions.

R671-304-2. Procedure.

A record will be made of all board hearings pursuant to UCA 77-27-8 (1). The record will be kept at the Board of Pardons and Parole offices for five (5) years. Upon written request a copy of the record may be purchased. Copies will be provided at no cost to petitioner in accordance with ACA 77-28.8 (3).

KEY: government hearings

November 21, 2002	**77-27-8**
Notice of Continuation July 25, 2007	**77-27-9**

R671. Pardons (Board of), Administration.
R671-305. Notification of Board Decision.
R671-305-1. Notification of Board's Decision.

The decision of the Board will be reached by a majority vote and reduced to writing, including a rationale for the decision. Copies of the written decision are sent to the offender, the institution and Field Operations. The Board will publish written results of Board decisions.

The Board should take reasonable steps to assured that the offender has been notified before the information is released to the public.

KEY: government hearings
November 21, 2002 77-27-9.7
Notice of Continuation July 25, 2007

R671. Pardons (Board of), Administration.
R671-308. Offender Hearing Assistance.
R671-308-1. Offender Hearing Assistance.

An offender who is deemed by the Board to be unable to effectively represent them at a Board hearing will be allowed to have assistance from another person. The person who is assisting must be approved by the Board.

R671-308-2. Offender Hearing Legal Council.

At parole violation hearings where there are no new criminal convictions, an attorney may be retained by the State to represent parolees on a case by case basis. However, an alleged parole violator may choose to have a private attorney represent the offender at his/her own expense.

Except as otherwise provided by law, no person other than the offender may address the Board at any hearing except for the offender's attorney at a Parole Revocation hearing, or such persons as the Board may find necessary to the orderly conducting of any hearing.

KEY: parole, inmates

February 12, 2003	**77-27-9**
Notice of Continuation July 25, 2007	**77-27-11**
	77-27-29

R671. Pardons (Board of), Administration.
R671-309. Impartial Hearings.
R671-309-1. Impartial Hearings.

Offenders are entitled to an impartial hearing before the Board. The Board discourages any direct outside contact with individual Board Members regarding specific cases. This also applies to Hearing Officers designated to conduct the hearing. Any such contact should be made with the Board's designated staff member.

All contacts by offenders, victims of crime, their family members or any other person outside the staff of the Board regarding a specific case shall be referred, whenever possible, to the staff member designated by the Board who may not be directly involved in hearing the case. If circumstances dictate, the designated Board staff member shall prepare a memorandum for the file containing the substance of the contact. If the contact is by a victim wishing to make a statement for the Board's consideration, the Board's rule on Victim Input and Notification shall apply.

If a contact, or prior knowledge of a case or individuals involved, is such that it may affect the ability of a Board Member or designated Hearing Officer to make a fair and impartial decision in a case, the Board Member or designated Hearing Officer shall decide whether to participate in the hearing. Should the offender request that a board member or hearing officer not participate, such a request is not binding in any way, but shall be weighed along with all other factors in making a final decision regarding participation in the hearing.

This rule shall not preclude contact regarding procedural matters so long as such contact is not for the purpose of influencing the decision of an individual Board Member on any particular case or hearing.

KEY: parole, inmates
November 22, 2002 77-27-7
Notice of Continuation July 25, 2007 77-27-9

R671. Pardons (Board of), Administration.
R671-310. Rescission Hearings.
R671-310-1. Rescission Hearings.

Any prior Board decision may be reviewed and rescinded by the Board at any time until an offender's actual release from custody.

If the rescission of a release or rehearing date is being requested by an outside party, information shall be provided to the Board establishing the basis for the request. Upon receipt of such information, the offender may be scheduled for a rescission hearing. The Board may also review and rescind an offender's release or rehearing date on its own initiative. Except under extraordinary circumstances, the offender should be notified of all allegations and the date of the scheduled hearing at least seven calendar days in advance of the hearing. The offender may waive this period.

In the event of an escape, the Board will rescind the inmate's date upon official notification of escape from custody and continue the hearing until the inmate is available for appearance, charges have been resolved and appropriate information regarding the escape has been provided.

The hearing officer will conduct the hearing and make an interim decision to be reviewed, along with a summary report of the hearing, by the Board members.

KEY: parole, inmate

February 18, 1998	**77-27-5**
Notice of Continuation July 25, 2007	**77-27-6**
	77-27-11

R671. Pardons (Board of), Administration.
R671-311. Special Attention Hearings and Reviews.
R671-311-1. General.

This type of consideration is used to grant relief in special circumstances requiring action by the Board. This action is initiated by the receipt of a written request indicating that special circumstances exist for which a change in status may be warranted. These circumstances could include, but are not limited to, illness of the offender requiring extensive medical attention, exceptional performance or progress in the institution, exceptional opportunity for employment, exceptional family circumstances, and involves information that was not previously considered by the Board. For Special Attentions that have not originated from or been processed through the Department of Corrections, the Board may request the Department review and make recommendations before taking action.

Special Attention requests that are considered to be repetitive, frivolous or lacking in substantial merit may be placed in the offenders file without formal action or response.

R671-311-2. Special Attention Hearing.

A Special Attention Hearing will be convened or conducted when, in the opinion of the Board, a personal appearance is in the best interest to resolve the issue. Special Attention Hearings are open to the public, are hearings of record and the offender should receive 7 days notice of the purpose, place, date and time of the hearing.

R671-311-3. Special Attention Review.

A Special Attention Review will be processed administratively based on written reports supplied to the Board without the personal appearance of the offender.

KEY: parole, inmates

February 12, 2003	**77-27-7**
Notice of Continuation July 25, 2007	**77-27-5**
	77-27-6
	77-27-10
	77-27-11

R671. Pardons (Board of), Administration.
R671-315. Pardons.
R671-315-1. Pardons.

The Board will consider a petition for a pardon from an individual whose sentence(s) have been terminated or expired for at least five years and who has exhausted all judicial remedies including expungement. Upon verification of these criteria, the Board may cause an investigation of the petitioner to be conducted which may include, but not be limited to, criminal, personal and employment history. The Board may publish the petition in the legal notices section of a newspaper of general circulation and invite comment from the public.

The Board will consider the petition and all available information relevant to it. The Board may deny a pardon by majority vote without a hearing. If the Board decides to consider the granting of a pardon, a hearing will be scheduled with appropriate notice given to victim(s) of record if they can be located, the chief law enforcement officer of the arresting agency, the presiding judge where the conviction was entered, and the County, District or City Attorney where the case was prosecuted. Notice may also be posted in a public place in the jurisdiction where the conviction occurred. The Board may grant a conditional pardon or an unconditional pardon. The petitioner will be notified in writing of the results as soon as practicable.

The Board may dispense with any requirement created by this policy if good cause exists.

KEY: pardons

February 18, 1998	**77-27-2**
Notice of Continuation July 25, 2007	**77-27-5**
	77-27-9
	Art VII Sec 12

R671. Pardons (Board of), Administration.
R671-316. Redetermination.
R671-316-1. Redetermination Review.

Offenders are eligible to apply for redetermination at five-year intervals from the last time-related decision. A time-related decision is defined as a personal appearance hearing or redetermination review dealing with release or rehearing dates. Offenders who have been given a decision of natural life in prison will be eligible for redetermination at ten year intervals.

When applying for redetermination, the offender waives personal appearance and accepts that the Board may reduce the time served, request psychological or other assessment, change conditions of release, make no change or increase the time to be served.

Applications for redetermination must originate with and be signed by the offender. Applications may be routed directly to the Board or preferably be submitted through the offender's caseworker. In either event, the Board will request a written progress report to include rationale and recommendation based on the Department of Corrections' assessment. The Department of Corrections should provide these materials to the Board in a timely manner.

KEY: parole, inmate
February 18, 1998 77-27-5
Notice of Continuation July 25, 2007

R671. Pardons (Board of), Administration.
R671-402. Special Conditions of Parole.
R671-402-1. General.

The Board will order special conditions as part of a parole agreement on an individual basis and only if such conditions can be reasonably related to rehabilitation of the offender, the protection of society, or compensation of the victim. The offender will be given an opportunity to respond to proposed special conditions.

At any time, the Board may review an offender at its own initiative or upon recommendation by the Department of Corrections or others and add any special conditions it deems appropriate. The offender shall be afforded a personal appearance before the Board or a Board Hearing Officer to discuss the proposed condition(s) unless that appearance is waived.

KEY: parole

February 18, 1998	**77-27-5**
Notice of Continuation July 25, 2007	**77-27-6**
	77-27-10
	77-27-11

R671. Pardons (Board of), Administration.
R671-405. Parole Termination.
R671-405-1. Termination of Parole.

The Board will consider terminating an offender's parole when petitioned to do so by the Department of Corrections, other interested parties or on its own initiative. When considering termination, the Board will toll any parole time when a parolee is an absconder. The toll time will be from the date a Board warrant was issued to the date the warrant was executed.

When a termination is approved by the Board, written notification of the Board's action will be provided to the parolee through the Department of Corrections.

Depending on the crime, statutory periods of parole without violation are three, ten years, or life.

Upon receipt of written notification of the service of the statutory maximum period on parole and verification of that information, the Board of Pardons will then order the closing of the file.

KEY: sentencing, parole
December 4, 2002 **76-3-202**
Notice of Continuation July 25, 2007 **77-27-9**
77-27-12

R728. Public Safety, Peace Officer Standards and Training.
R728-411. Guidelines Regarding Administrative Action Taken Against Individuals Functioning As Peace Officers Without Peace Officer Certification Or Powers.
R728-411-0.

If an individual is found to be performing the duties and functions of a peace officer without certification or authority as required by Title 53, Chapter 13 Utah Code Annotated, the following procedures will be initiated by the Division of Peace Officer Standards and Training.

1. A letter will be sent to the individual and the individual's employing agency administrator indicating that the individual does not have the statutory authority to act as a peace officer in the State of Utah. The letter will state that the individual should cease any and all activities as a peace officer. The letter will indicate the appropriate option(s) for the individual and employing agency to follow in order for the individual to acquire peace officer authority. Eight days will be given for the individual to respond to the notification before any of the following procedures will be taken by POST.

2. POST will notify those persons or agencies which could be held liable through civil action due to the individual's pretended peace officer authority, notification is to include the subject of the notification, the chief law enforcement administrator of the employing agency, the chief administrator of the jurisdiction, the city prosecutor, county attorney, and/or the Attorney General of the State of Utah, the Sheriff of the county, and any other persons deemed accessible through civil action.

3. If Subsection (a) and (b) have not been acted upon by the individual or the individual's employing agency, the issuance of a writ from the Attorney General's Office to cease and desist from acting as a peace officer in the State of Utah may be made and directed to the individual and the individual's employing agency.

4. If Subsection (a), (b), or (c) have not been acted upon by the individual or the individual's employing agency, criminal charges may be sought against the individual for a violation of Section 76-8-512 U.C.A.

5. The procedures in this Section may also be applied towards any peace officer who has been found to be deficient in the statutory 40-hour yearly training requirement, as per Section 53-6-202 U.C.A., and who continues to perform the duties and functions of a peace officer without having said peace officer powers restored by the Division of Peace Officer Standards and Training, or to any person who attempts to avoid the statutory peace officer certification process.

6. At any time in the above procedures, the Division of Peace Officer Standards and Training may, if cause exists, seek an administrative action against the individual for a violation of Section 53-6-211, if the individual is acting as a peace officer without statutory peace officer authority.

KEY: professional competency, police training
April 15, 1997 53-13
Notice of Continuation July 23, 2007

R859. Sports Authority (Utah), Pete Suazo Utah Athletic Commission.

R859-1. Pete Suazo Utah Athletic Commission Act Rule.

R859-1-101. Title.

This Rule is known as the "Pete Suazo Utah Athletic Commission Act Rule."

R859-1-102. Definitions.

In addition to the definitions in Title 63C, Chapter 11, the following definitions are adopted for the purpose of this Rule:

(1) "Boxing" means the sport of attack and defense using the fist, covered by an approved boxing glove.

(2) "Designated Commission member" means a member of the Commission designated as supervisor for a contest and responsible for the conduct of a contest, as assisted by other Commission members, Commission personnel, and others, as necessary and requested by the designated Commission member.

(3) "Drug" means a controlled substance, as defined in Title 58, Chapter 37, Utah Controlled Substances Act, or alcohol.

(4) "Elimination Tournament" means a contest involving unarmed combat in which contestants compete in a series of matches until not more than one contestant remains in any weight category.

(5) "Mandatory count of eight" means a required count of eight that is given by the referee of a boxing contest to a contestant who has been knocked down.

(6) "Unprofessional conduct" is as defined in Subsection 63C-11-302(25), and is defined further to include the following:

(a) as a promoter, failing to promptly inform the Commission of all matters relating to the contest;

(b) as a promoter, substituting a contestant in the 24 hours immediately preceding the scheduled contest without approval of the Commission;

(c) violating the rules for conduct of contests;

(d) testing positive for drugs or alcohol in a random body fluid screen before or after participation in any contest;

(e) testing positive for HIV;

(f) failing or refusing to comply with a valid order of the Commission or a representative of the Commission; and

(g) for a promoter and a contestant, entering into a secret contract that contradicts the terms of the contract(s) filed with the Commission.

R859-1-201. Authority - Purpose.

The Commission adopts this Rule under the authority of Subsection 63C-11-304(1)(b), to enable the Commission to administer Title 63C, Chapter 11, of the Utah Code.

R859-1-202. Scope and Organization.

Pursuant to Title 63C, Chapter 11, general provisions codified in Sections R859-1-101 through R859-1-512 apply to all contests or exhibitions of "unarmed combat," as that term is defined in Subsection 63C-11-302(23). The provisions of Sections R859-1-601 through R859-1-623 shall apply only to contests of boxing, as defined in Subsection R859-1-102(1). The provisions of Sections R859-1-701 through R859-1-702 shall apply only to elimination tournaments, as defined in R859-1-102(4). The provisions of Section R859-1-801 shall apply only to martial arts contest and exhibitions. The provisions of Sections R859-1-901 through R859-1-904 shall apply only to grants for amateur boxing.

R859-1-301. Qualifications for Licensure.

(1) In accordance with Section 63C-11-308, a license is required for a person to act as or to represent that the person is a promoter, manager, contestant, second, referee, or judge.

(2) A licensed manager shall not hold a license as a referee or judge.

(3) A promoter shall not hold a license as a referee, judge, or contestant.

R859-1-302. Renewal Cycle - Procedure.

(1) In accordance with the authority granted in Section 63C-11-309, the renewal date for licenses issued by the Commission shall be December 31st of even-numbered years.

(2) Expiration of licensure due to failure to renew in accordance with this Section is not an adjudicative proceeding under Title 63, Chapter 46b, Administrative Procedures Act.

(3)(a) The Commission shall notify each licensee that the licensee's license is due for renewal and that unless an application for renewal is received by the Commission by the expiration date shown on the license, together with the appropriate renewal fee and documentation showing completion of or compliance with renewal qualifications, the license will not be renewed.

(b) The application procedures and requirements specified in Section 63C-11-308 apply to renewals.

(4)(a) A renewed license shall be issued to applicants who submit a complete application, unless it is apparent to the Commission that the applicant no longer meets the qualifications for continued licensure.

(b) The Commission may evaluate or verify documentation showing completion of or compliance with renewal requirements. If necessary, the Commission may complete its evaluation or verification subsequent to renewal and, if appropriate, pursue action to suspend or revoke the license of a licensee who no longer meets the qualifications for continued licensure.

(5) Any license that is not renewed may be reinstated at any time within two years after nonrenewal upon submission of an application for reinstatement, payment of the renewal fee together with the reinstatement fee determined by the Department under Section 63-38-3.2, and upon submission of documentation showing completion of or compliance with renewal qualifications.

(6) If not reinstated within two years, the holder may obtain a license only if he meets the requirements for a new license.

R859-1-401. Designation of Adjudicative Proceedings.

(1) Formal Adjudicative Proceedings. The following proceedings before the Commission are designated as formal adjudicative proceedings:

(a) any action to revoke, suspend, restrict, place on probation or enter a reprimand as to a license;

(b) approval or denial of applications for renewal of a license;

(c) any proceedings conducted subsequent to the issuance of a cease and desist order; and

(d) the withholding of a purse by the Commission pursuant to Subsection 63C-11-321(3).

(2) Informal Adjudicative Proceedings. The following proceedings before the Commission are designated as informal adjudicative proceedings:

(a) approval or denial of applications for initial licensure;

(b) approval or denial of applications for reinstatement of a license; and

(c) protests against the results of a match.

(3) Any other adjudicative proceeding before the Commission not specifically listed in Subsections (1) and (2) above, is designated as an informal adjudicative proceeding.

R859-1-402. Adjudicative Proceedings in General.

(1) The procedures for formal adjudicative proceedings are set forth in Sections 63-46b-6 through 63-46b-10; and this Rule.

(2) The procedures for informal adjudicative proceedings are set forth in Section 63-46b-5; and this Rule.

(3) No evidentiary hearings shall be held in informal adjudicative proceedings before the Commission with the exception of protests against the results of a match in which an evidentiary hearing is permissible if timely requested. Any request for a hearing with respect to a protest of match results shall comply with the requirements of Section R859-1-404.

(4) Unless otherwise specified by the Commission, an administrative law judge shall be designated as the presiding officer to conduct any hearings in adjudicative proceedings before the Commission and thus rule on evidentiary issues and matters of law or procedure.

(5) The Commission shall be designated as the sole presiding officer in any adjudicative proceeding where no evidentiary hearing is conducted. The Commission shall be designated as the presiding officer to serve as the fact finder at evidentiary hearings.

(6) A majority vote of the Commission shall constitute its decision. Orders of the Commission shall be issued in accordance with Section 63-46b-10 for formal adjudicative proceedings, Subsection 63-46b-5(1)(i) for informal adjudicative proceedings, and shall be signed by the Director or, in his or her absence, by the Chair of the Commission.

R859-1-403. Additional Procedures for Immediate License Suspension.

(1) In accordance with Subsection 63C-11-310(7), the designated Commission member may issue an order immediately suspending the license of a licensee upon a finding that the licensee presents an immediate and significant danger to the licensee, other licensees, or the public.

(2) The suspension shall be at such time and for such period as the Commission believes is necessary to protect the health, safety, and welfare of the licensee, other licensees, or the public.

(3) A licensee whose license has been immediately suspended may, within 30 days after the decision of the designated Commission member, challenge the suspension by submitting a written request for a hearing. The Commission shall convene the hearing as soon as is reasonably practical but not later than 20 days from the receipt of the written request, unless the Commission and the party requesting the hearing agree to conduct the hearing at a later date.

R859-1-404. Evidentiary Hearings in Informal Adjudicative Proceedings.

(1) A request for an evidentiary hearing in an informal adjudicative proceeding shall be submitted in writing no later than 20 days following the issuance of the Commission's notice of agency action if the proceeding was initiated by the Commission, or together with the request for agency action, if the proceeding was not initiated by the Commission, in accordance with the requirements set forth in the Utah Administrative Procedures Act, Title 63, Chapter 46b.

(2) Unless otherwise agreed upon by the parties, no evidentiary hearing shall be held in an informal adjudicative proceeding unless timely notice of the hearing has been served upon the parties as required by Subsection 63-46b-5(1)(d). Timely notice means service of a Notice of Hearing upon all parties no later than ten days prior to any scheduled evidentiary hearing.

(3) Parties shall be permitted to testify, present evidence, and comment on the issues at an evidentiary hearing in an informal adjudicative proceeding.

R859-1-405. Reconsideration and Judicial Review.

Agency review is not available as to any order or decision entered by the Commission. However, any person aggrieved by an adverse determination by the Commission may either seek reconsideration of the order pursuant to Section 63-46b-13 of the Utah Administrative Procedures Act or seek judicial review of the order pursuant to Sections 63-46b-14 through 63-46b-17.

R859-1-501. Promoter's Responsibility in Arranging Contests-Permit Fee, Bond, Restrictions.

(1) Before a licensed promoter may hold a contest or single contest as part of a single promotion, the promoter shall file with the Commission an application for a permit to hold the contest not less than 15 days before the date of the proposed contest, or not less than seven days for televised contests.

(2) The application shall include the date, time, and place of the contest as well as information concerning the on-site emergency facilities, personnel, and transportation.

(3) The permit application must be accompanied by a contest registration fee determined by the Department under Section 63-38-32.

(4) Before a permit to hold a contest is granted, the promoter shall post a surety bond with the Commission in the amount of $10,000.

(5) Prior to the scheduled time of the contest, the promoter shall have available for inspection the completed physical facilities which will be used directly or indirectly for the contest. The designated Commission member shall inspect the facilities in the presence of the promoter or the promoter's authorized representative, and all deficiencies cited upon inspection shall be corrected before the contest.

(6) A promoter shall be responsible for verifying the identity, ring record, and suspensions of each contestant. A promoter shall be held responsible for the accuracy of the names and records of each of the participating contestants in all publicity or promotional material.

(7) A promoter shall be held responsible for a contest in which one of the contestants is disproportionately outclassed.

(8) Before a contest begins, the promoter shall give the designated Commission member the money for payment of contestants, referees, judges, and the attending physician. The designated Commission member shall pay each contestant, referee, judge, and physician in the presence of one witness.

(9) At the time of a boxing contest weigh-in, the promoter of a contest shall provide evidence of health insurance pursuant to Public Law 104272, "The Professional Boxing Safety Act of 1996."

R859-1-502. Ringside Equipment.

(1) Each promoter shall provide all of the following:

(a) a sufficient number of buckets for use by the contestants;

(b) stools for use by the seconds;

(c) rubber gloves for use by the referees, seconds, ringside physicians, and Commission representatives;

(d) a stretcher, which shall be available near the ring and near the ringside physician;

(e) a portable resuscitator with oxygen;

(f) an ambulance with attendants on site at all times when contestants are competing. Arrangements shall be made for a replacement ambulance if the first ambulance is required to transport a contestant for medical treatment. The location of the ambulance and the arrangements for the substitute ambulance service shall be communicated to the physician;

(g) seats at ringside for the assigned officials;

(h) seats at ringside for the designated Commission member;

(i) scales for weigh-ins, which the Commission shall require to be certified;

(j) a gong;

(k) a public address system;

(l) a separate dressing room for each sex, if contestants of both sexes are participating;

(m) a separate room for physical examinations;

(n) a separate dressing room shall be provided for officials, unless the physical arrangements of the contest site make an additional dressing room impossible;

(o) adequate security personnel; and

(p) sufficient bout sheets for ring officials and the designated Commission member.

(2) A promoter shall only hold contests in facilities that conform to the laws, ordinances, and regulations regulating the city, town, or village where the bouts are situated.

(3) Restrooms shall not be used as dressing rooms and for physical examinations and weigh-ins.

R859-1-503. Contracts.

(1) Pursuant to Section 63C-11-320, a copy of the contract between a promoter and a contestant shall be filed with the Commission before a contest begins. The contract that is filed with the Commission shall embody all agreements between the parties.

(2) A contestant's manager may sign a contract on behalf of the contestant. If a contestant does not have a licensed manager, the contestant shall sign the contract.

(3) A contestant shall use his own legal name to sign a contract. However, a contestant who is licensed under another name may sign the contract using his licensed name if the contestant's legal name appears in the body of the contract as the name under which the contestant is legally known.

(4) The contract between a promoter and a contestant shall be for the use of the contestant's skills in a contest and shall not require the contestant to sell tickets in order to be paid for his services.

R859-1-504. Complimentary Tickets.

(1) Limitation on issuance, calculation of price, and service charge for payment to contestant working on percentage basis.

(a) A promoter may not issue complimentary tickets for more than 4 percent of the seats in the house without the Commission's written authorization. The Commission shall not consider complimentary tickets which it authorizes under this Section to constitute part of the total gross receipts from admission fees for the purposes of calculating the license fee prescribed in Subsection 63C-11-311(1).

(b) If complimentary tickets are issued for more than 4 percent of the seats in the house, each contestant who is working on a percentage basis shall be paid a percentage of the normal price of all complimentary tickets in excess of 4 percent of the seats in the house, unless the contract between the contestant and the promoter provides otherwise and stipulates the number of complimentary tickets which will be issued. In addition, if a service fee is charged for complimentary tickets, the contestant is entitled to be paid a percentage of that service fee, less any deduction for federal taxes and fees.

(c) Pursuant to Subsection 63C-11-311(3)(a) a promoter shall file, within 10 days after the contest, a report indicating how many complimentary tickets the promoter issued and the value of those tickets.

(2) Complimentary ticket and tickets at reduced rate, persons entitled or allowed to receive such tickets, duties of promoter, disciplinary action, fees and taxes.

(a) Each promoter shall provide tickets without charge to the following persons who shall not be liable for the payment of any fees for those tickets:

(i) the Commission members, Director and representatives;

(ii) principals and seconds who are engaged in a contest or exhibition which is part of the program of unarmed combat; and

(iii) holders of lifetime passes issued by the Commission.

(b) Each promoter may provide tickets without charge or at a reduced rate to the following persons who shall be liable for payment of applicable fees on the reduced amount paid, unless the person is a journalist, police officer or fireman as provided in this Subsection:

(i) Any of the promoter's employees, and if the promoter is a corporation, to a director or officer who is regularly employed or engaged in promoting programs of unarmed combat, regardless of whether the director or officer's duties require admission to the particular program and regardless of whether the director or officer is on duty at the time of that program;

(ii) Employees of the Commission;

(iii) A journalist who is performing a journalist's duties; and

(iv) A fireman or police officer that is performing the duties of a fireman or police officer.

(c) Each promoter shall perform the following duties in relation to the issuance of complimentary tickets or those issued at a reduced price:

(i) Each ticket issued to a journalist shall be clearly marked "PRESS." No more tickets may be issued to journalists than will permit comfortable seating in the press area;

(ii) Seating at the press tables or in the press area must be limited to journalists who are actually covering the contest or exhibition and to other persons designated by the Commission;

(iii) A list of passes issued to journalists shall be submitted to the Commission prior to the contest or exhibition;

(iv) Only one ticket may be sold at a reduced price to any manager, second, contestant or other person licensed by the Commission;

(v) Any credential issued by the promoter which allows an admission to the program without a ticket, shall be approved in advance by a member of the Commission or the Director. Request for the issuance of such credentials shall be made at least 5 hours before the first contest or exhibition of the program.

(d) Admission of any person who does not hold a ticket or who is not specifically exempted pursuant to this Section is grounds for suspension or revocation of the promoter's license or for the assessment of a penalty.

(e) The Commission shall collect all fees and taxes due on any ticket that is not specifically exempt pursuant to this Section, and for any person who is admitted without a ticket in violation of this Section.

(3) Reservation of area for use by Commission. For every program of unarmed combat, the promoter of the program shall reserve seats at ringside for use by the designated Commission member and Commission representatives.

R859-1-505. Physical Examination - Physician.

(1) Not less than one hour before a contest, each contestant shall be given a medical examination by a physician who is appointed by the designated Commission member. The examination shall include a detailed medical history and a physical examination of all of the following:

(a) eyes;
(b) teeth;
(c) jaw;
(d) neck;
(e) chest;
(f) ears;
(g) nose;
(h) throat;
(i) skin;
(j) scalp;
(k) head;
(l) abdomen;
(m) cardiopulmonary status;
(n) neurological, musculature, and skeletal systems;
(o) pelvis; and
(p) the presence of controlled substances in the body.

(2) If after the examination the physician determines that a contestant is unfit for competition, the physician shall notify the Commission of this determination, and the Commission shall prohibit the contestant from competing.

(3) The physician shall provide a written certification of those contestants who are in good physical condition to compete.

(4) Before a bout, a female contestant shall provide the ringside physician with the results of a pregnancy test performed on the contestant within the previous 14 days. If the results of the pregnancy test are positive, the physician shall notify the Commission, and the Commission shall prohibit the contestant from competing.

(5) A female contestant with breast implants shall be denied a license.

(6) A contestant who has had cardiac surgery shall not be issued a license unless he is certified as fit to compete by a cardiovascular surgeon.

(7) A contest shall not begin until a physician and an attended ambulance are present. The physician shall not leave until the decision in the final contest has been announced and all injured contestants have been attended to.

(8) The contest shall not begin until the physician is seated at ringside. The physician shall remain at that location for the entire fight, unless it is necessary for the physician to attend to a contestant.

R859-1-506. Drug Tests.

In accordance with Section 63C-11-317, the following shall apply to drug testing:

(1) At the request of the Commission, the designated Commission member, or the ringside physician, a contestant or assigned official shall submit to a test of body fluids to determine the presence of drugs. The promoter shall be responsible for any costs of testing.

(2) If the test results in a finding of the presence of a drug or if the contestant or assigned official is unable or unwilling to provide a sample of body fluids for such a test, the Commission may take one or more of the following actions:

(a) immediately suspend the contestant's or assigned official's license in accordance with Section R859-1-403;

(b) stop the contest in accordance with Subsection 63C-11-316(2);

(c) initiate other appropriate licensure action in accordance with Section 63C-11-310; or

(d) withhold the contestant's purse in accordance with Subsection 63C-11-321.

(3) A contestant who is disciplined pursuant to the provisions of this Rule and who was the winner of a contest shall be disqualified and the decision of the contest shall be changed to "no contest."

R859-1-507. HIV Testing.

In accordance with Section 63C-11-317, contestants shall produce evidence of a clear test for HIV as a condition to participation in a contest as follows:

(1) All contestants shall provide evidence in the form of a competent laboratory examination certificate verifying that the contestant is HIV negative at the time of the weigh-in.

(2) The examination certificate shall certify that the HIV test was completed within 180 days prior to the contest.

(3) Any contestant whose HIV test is positive shall be prohibited from participating in a contest.

R859-1-508. Contestant Use or Administration of Any Substance.

(1) The use or administration of drugs, stimulants, or non-prescription preparations by or to a contestant during a contest is prohibited, except as provided by this Rule.

(2) The giving of substances other than water to a contestant during the course of the contest is prohibited.

(3) The discretional use of petroleum jelly may be allowed, as determined by the referee.

(4) The discretional use of coagulants, adrenalin 1/1000, avetine, and thrombin, as approved by the Commission, may be allowed between rounds to stop the bleeding of minor cuts and lacerations sustained by a contestant. The use of monsel solution, silver nitrate, "new skin," flex collodion, or substances having an iron base is prohibited, and the use of any such substance by a contestant is cause for immediate disqualification.

(5) The ringside physician shall monitor the use and application of any foreign substances administered to a contestant before or during a contest and shall confiscate any suspicious foreign substance for possible laboratory analysis, the results of which shall be forwarded to the Commission.

R859-1-509. Weighing-In.

(1) Unless otherwise approved by the Commission for a specific contest, the weigh-in shall occur not less than six nor more than 24 hours before the start of a contest. The designated Commission member or authorized Commission representative(s), shall weigh-in each contestant in the presence of other contestants.

(2) Contestants shall be licensed at the time they are weighed-in.

(3) Only those contestants who have been previously approved for the contest shall be permitted to weigh-in.

R859-1-510. Announcer.

(1) At the beginning of a contest, the announcer shall announce that the contest is under the auspices of the Commission.

(2) The announcer shall announce the names of the referee, judges, and timekeeper when the competitions are about to begin, and shall also announce the changes made in officials as the contest progresses.

(3) The announcer shall announce the names of all contestants, their weight, professional record, their city and state of residence, and country of origin if not a citizen.

R859-1-511. Timekeepers.

(1) A timekeeper shall indicate the beginning and end of each round by the gong.

(2) A timekeeper shall possess a whistle and a stopwatch.

(3) Ten seconds before the beginning of each round, the timekeeper shall warn the contestants of the time by blowing a whistle.

(4) If a contest terminates before the scheduled limit of rounds, the timekeeper shall inform the announcer of the exact duration of the contest.

(5) The timekeeper shall keep track of and record the exact amount of time that any contestant remains on the canvas.

R859-1-512. Stopping a Contest.

In accordance with Subsections 63C-11-316(2) and 63C-11-302(14)(b), authority for stopping a contest is defined, clarified or established as follows.

(1) The referee may stop a contest to ensure the integrity of a contest or to protect the health, safety, or welfare of a contestant or the public for any one or more of the following reasons:

(a) injuries, cuts, or other physical or mental conditions that would endanger the health, safety, or welfare of a contestant if the contestant were to continue with the competition.

(b) one-sided nature of the contest;

(c) refusal or inability of a contestant to reasonably compete; and

(d) refusal or inability of a contestant to comply with the rules of the contest.

(2) If a referee stops a contest, the referee shall disqualify the contestant, where appropriate, and recommend to the designated Commission member that the purse of that professional contestant be withheld pending an impoundment decision in accordance with Section 63C-11-321.

(3) The designated Commission member may stop a contest at any stage in the contest when there is a significant question with respect to the contest, the contestant, or any other licensee associated with the contest, and determine whether the purse should be withheld pursuant to Section 63C-11-321.

R859-1-601. Boxing - Contest Weights and Classes.

(1) Boxing weights and classes are established as follows:

(a) Strawweight: up to 105 lbs. (47.627 kgs.)

(b) Light-Flyweight: over 105 to 108 lbs. (47.627 to 48.988 kgs.)

(c) Flyweight: over 108 to 112 lbs. (48.988 to 50.802 kgs.)

(d) Super Flyweight: over 112 to 115 lbs. (50.802 to 52.163 kgs.)

(e) Bantamweight: over 115 to 118 lbs. (52.163 to 53.524 kgs.)

(f) Super Bantamweight: over 118 to 122 lbs. (53.524 to 55.338 kgs.)

(g) Featherweight: over 122 to 126 lbs. (55.338 to 57.153 kgs.)

(h) Super Featherweight: over 126 to 130 lbs. (57.153 to 58.967 kgs.)

(i) Lightweight: over 130 to 135 lbs. (58.967 to 61.235 kgs.)

(j) Super Lightweight: over 135 to 140 lbs. (61.235 to 63.503 kgs.)

(k) Welterweight: over 140 to 147 lbs. (63.503 to 66.678 kgs.)

(l) Super Welterweight: over 147 to 154 lbs. (66.678 to 69.853 kgs.)

(m) Middleweight: over 154 to 160 lbs. (69.853 to 72.574 kgs.)

(n) Super Middleweight: over 160 to 168 lbs. (72.574 to 76.204 kgs.)

(o) Light-heavyweight: over 168 to 175 lbs. (76.204 to 79.378 kgs.)

(p) Cruiserweight: over 175 to 200 lbs. (79.378 to 90.80 kgs.)

(q) Heavyweight: all over 200 lbs. (90.80 kgs.)

(2) A contestant shall not fight another contestant who is outside of the contestant's weight classification unless prior approval is given by the Commission.

(3) A contestant who has contracted to box in a given weight class shall not be permitted to compete if he or she exceeds that weight class at the weigh-in, unless the contract provides for the opposing contestant to agree to the weight differential. If the weigh-in is held the day before the contest and if the opposing contestant does not agree or the contract does not provide for a weight exception, the contestant may have two hours to attempt to lose not more than three pounds in order to be reweighed.

(4) The Commission shall not allow a contest in which the contestants are not fairly matched. In determining if contestants are fairly matched, the Commission shall consider all of the following factors with respect to the contestant:

(a) the win-loss record of the contestants;

(b) the weight differential;

(c) the caliber of opponents;

(d) each contestant's number of fights; and

(e) previous suspensions or disciplinary actions.

R859-1-602. Boxing - Number of Rounds in a Bout.

(1) A contest bout shall consist of not less than four and not more than twelve scheduled rounds. Three minutes of boxing shall constitute a round for men's boxing, and two minutes shall constitute a round for women's boxing. There shall be a rest period of one minute between the rounds.

(2) A promoter shall contract with a sufficient number of contestants to provide a program consisting of at least 30 and not more than 56 scheduled rounds of boxing, unless otherwise approved by the Commission.

R859-1-603. Boxing - Ring Dimensions and Construction.

(1) The ring shall be square, and the sides shall not be less than 16 feet nor more than 22 feet. The ring floor shall extend not less than 18 inches beyond the ropes. The ring floor shall be padded with a base not less than 5/8 of an inch of ensolite or another similar closed-cell foam. The padding shall extend beyond the ring ropes and over the edge of the platform, and shall be covered with canvas, duck, or a similar material that is tightly stretched and laced securely in place.

(2) The ring floor platform shall not be more than four feet above the floor of the building, and shall have two sets of suitable stairs for the use of contestants, with an extra set of suitable stairs to be used for any other activities that may occur between rounds. Ring posts shall be made of metal and shall be not less than three nor more than four inches in diameter, extending a minimum of 58 inches above the ring floor. Ring posts shall be at least 18 inches away from the ropes.

(3) The ring shall not have less than four ring ropes which can be tightened and which are not less than one inch in diameter. The ring ropes shall be wrapped in a soft material. The turnbuckles shall be covered with a protective padding. The ring ropes shall have two spacer ties on each side of the ring to secure the ring ropes. The lower ring rope shall be 18 inches above the ring floor. The ring shall have corner pads in each corner.

R859-1-604. Boxing - Gloves.

(1) A boxing contestant's gloves shall be examined before a contest by the referee and the designated Commission member. If gloves are found to be broken or unclean or if the padding is found to be misplaced or lumpy, they shall be changed before the contest begins.

(2) A promoter shall be required to have on hand an extra set of gloves that are to be used if a contestant's gloves are broken or damaged during the course of a contest.

(3) Gloves for a main event may be put on in the ring after the referee has inspected the bandaged hands of both contestants.

(4) During a contest, male contestants shall wear gloves weighing not less than eight ounces each if the contestant weighs 154 1bs. (69.853 kgs.) or less. Contestants who weigh more than 154 1bs. (69.853 kgs.) shall wear gloves weighing ten ounces each. Female contestants' gloves shall be ten-ounce gloves. The designated Commission member shall have complete discretion to approve or deny the model and style of the gloves before the contest.

(5) The laces shall be tied on the outside of the back of the wrist of the gloves and shall be secured. The tips of the laces shall be removed.

R859-1-605. Boxing - Bandage Specification.

(1) Except as agreed to by the managers of the contestants opposing each other in a contest, a contestant's bandage for each hand shall consist of soft gauze not more than 20 yards long and not more than two inches wide. The gauze shall be held in place by not more than eight feet of adhesive tape not more than one and one-half inches wide. The adhesive tape must be white or a light color.

(2) Bandages shall be adjusted in the dressing room under

the supervision of the designated Commission member.

(3) The use of water or any other substance other than medical tape on the bandages is prohibited.

(4) The bandages and adhesive tape may not extend to the knuckles, and must remain at least three-fourths of an inch away from the knuckles when the hand is clenched to make a fist.

R859-1-606. Boxing - Mouthpieces.

A round shall not begin until the contestant's form-fitted protective mouthpiece is in place. If, during a round, the mouthpiece falls out of the contestant's mouth, the referee shall, as soon as practicable, stop the bout and escort the contestant to his corner. The mouthpiece shall be rinsed out and replaced in the contestant's mouth and the contest shall continue. If the referee determines that the contestant intentionally spit the mouthpiece out, the referee may direct the judges to deduct points from the contestant's score for the round.

R859-1-607. Boxing - Contest Officials.

(1) The officials for each boxing contest shall consist of not less than the following:

(a) one referee;

(b) three judges;

(c) one timekeeper; and

(d) one physician licensed in good standing in Utah.

(2) A licensed referee, judge, or timekeeper shall not officiate at a contest that is not conducted under the authority or supervision of the designated Commission member.

(3) A referee or judge shall not participate or accept an assignment to officiate when that assignment may tend to impair the referee's or judge's independence of judgment or action in the performance of the referee's or judge's duties.

(4) A judge shall be seated midway between the ring posts of the ring, but not on the same side as another judge, and shall have an unimpaired view of the ring.

(5) A referee shall not be assigned to officiate more than 32 scheduled rounds in one day, except when substituting for another referee who is incapacitated.

(6) A referee shall not wear jewelry that might cause injury to the contestants. Glasses, if worn, shall be protective athletic glasses or goggles with plastic lenses and a secure elastic band around the back of the head.

(7) Referees, seconds working in the corners, the designated Commission member, and physicians may wear rubber gloves in the performance of their duties.

(8) No official shall be under the influence of alcohol or controlled substances while performing the official's duties.

R859-1-608. Boxing - Contact During Contests.

(1) Beginning one minute before the first round begins, only the referee, boxing contestants, and the chief second may be in the ring. The referee shall clear the ring of all other individuals.

(2) Once a contest has begun, only the referee, contestants, seconds, judges, Commission representatives, physician, the announcer and the announcer's assistants shall be allowed in the ring.

(3) At any time before, during or after a contest, the referee may order that the ring and technical area be cleared of any individual not authorized to be present in those areas.

(4) The referee, on his own initiative, or at the request of the designated Commission member, may stop a bout at any time if individuals refuse to clear the ring and technical area, dispute a decision by an official, or seek to encourage spectators to object to a decision either verbally, physically, or by engaging in disruptive conduct. If the individual involved in disruptive conduct or encouraging disruptive conduct is the manager or second of a contestant, the referee may disqualify the contestant or order the deduction of points from that contestant's score. If the conduct occurred after the decision was announced, the Commission may change the decision, declare no contest, or pursue disciplinary action against any licensed individual involved in the disruptive conduct.

R859-1-609. Boxing - Referees.

(1) The chief official of a boxing contest shall be the referee. The referee shall decide all questions arising in the ring during a contest that are not specifically addressed in this Rule.

(2) The referee shall, before each contest begins, determine the name and location of the physician assigned to officiate at the contest and each contestant's chief second.

(3) At the beginning of each contest, the referee shall summon the contestants and their chief seconds together for final instructions. After receiving the instructions, the contestants shall shake hands and retire to their respective corners.

(4) Where difficulties arise concerning language, the referee shall make sure that the contestant understands the final instructions through an interpreter and shall use suitable gestures and signs during the contest.

(5) No individual other than the contestants, the referee, and the physician when summoned by the referee, may enter the ring or the apron of the ring during the progress of a round.

(6) If a contestant's manager or second steps into the ring or onto the apron of the ring during a round, the fight shall be halted and the referee may eject the manager or second from the ringside working area. If the manager or second steps into the ring or onto the apron a second time during the contest, the fight may be stopped and the decision may be awarded to the contestant's opponent due to disqualification.

(7) A referee shall inspect a contestant's body to determine whether a foreign substance has been applied.

R859-1-610. Boxing - Stalling or Faking.

(1) A referee shall warn a contestant if the referee believes the contestant is stalling or faking. If after proper warning, the referee determines the contestant is continuing to stall or pull his punches, the referee shall stop the bout at the end of the round.

(2) A referee may consult the judges as to whether or not the contestant is stalling or faking and shall abide by a majority decision of the judges.

(3) If the referee determines that either or both contestants are stalling or faking, or if a contestant refuses to fight, the referee shall terminate the contest and announce a no contest.

(4) A contestant who, in the opinion of the referee, intentionally falls down without being struck shall be immediately examined by a physician. After conferring with the physician, the referee may disqualify the contestant.

R859-1-611. Boxing - Injuries and Cuts.

(1) When an injury or cut is produced by a fair blow and because of the severity of the blow the contest cannot continue, the injured boxing contestant shall be declared the loser by technical knockout.

(2) If a contestant intentionally fouls his opponent and an injury or cut is produced, and due to the severity of the injury the contestant cannot continue, the contestant who commits the foul shall be declared the loser by disqualification.

(3) If a contestant receives an intentional butt or foul and the contest can continue, the referee shall penalize the contestant who commits the foul by deducting two points. The referee shall notify the judges that the injury or cut has been produced by an intentional unfair blow so that if in the subsequent rounds the same injury or cut becomes so severe that the contest has to be suspended, the decision will be awarded as follows:

(a) a technical draw if the injured contestant is behind on

points or even on a majority of scorecards; and

(b) a technical decision to the injured contestant if the injured contestant is ahead on points on a majority of the scorecards.

(4) If a contestant injures himself trying to foul his opponent, the referee shall not take any action in his favor, and the injury shall be considered as produced by a fair blow from his opponent.

(5) If a contestant is fouled accidentally during a contest and can continue, the referee shall stop the action to inform the judges and acknowledge the accidental foul. If in subsequent rounds, as a result of legal blows, the accidental foul injury worsens and the contestant cannot continue, the referee shall stop the contest and declare a technical decision with the winner being the contestant who is ahead on points on a majority of the scorecards. The judges shall score partial rounds. If a contestant is accidentally fouled in a contest and due to the severity of the injury the contestant cannot continue, the referee shall rule as follows:

(a) if the injury occurs before the completion of four rounds, declare the contest a technical draw; or

(b) if the injury occurs after the completion of four rounds, declare that the winner is the contestant who has a lead in points on a majority of the scorecards before the round of injury. The judges shall score partial rounds.

(6) If in the opinion of the referee, a contestant has suffered a dangerous cut or injury, or other physical or mental condition, the referee may stop the bout temporarily to summon the physician. If the physician recommends that the contest should not continue, the referee shall order the contest to be terminated.

(7) A fight shall not be terminated because of a low blow. The referee may give a contestant not more than five minutes if the referee believes a foul has been committed. Each contestant shall be instructed to return to his or her respective corner by the referee. The contestants may sit in their respective corners with their mouthpiece removed. After removing their contestant's mouthpiece, the seconds must return to their seats. The seconds may not coach, administer water, or in any other way attend to their contestant, except to replace the mouthpiece when the round is ready to resume.

(8) If a contestant is knocked down or given a standing mandatory count of eight or a combination of either occurs three times in one round, the contest shall be stopped and a technical knockout shall be awarded to the opponent. The physician shall immediately enter the ring and examine the losing contestant.

(9) A physician shall immediately examine and administer aid to a contestant who is knocked out or injured.

(10) When a contestant is knocked out or rendered incapacitated, the referee or second shall not handle the contestant, except for the removal of a mouthpiece, unless directed by the physician to do so.

(11) A contestant shall not refuse to be examined by a physician.

(12) A contestant who has been knocked out shall not leave the site of the contest until one hour has elapsed from the time of the examination or until released by the physician.

(13) A physician shall file a written report with the Commission on each contestant who has been knocked out or injured.

R859-1-612. Boxing - Knockouts.

(1) A boxing contestant who is knocked down shall take a minimum mandatory count of eight.

(2) If a boxing contestant is dazed by a blow and, in the referee's opinion, is unable to defend himself, the referee shall give a standing mandatory count of eight or stop the contest. If on the count of eight the boxing contestant, in the referee's opinion, is unable to continue, the referee may count him out on his feet or stop the contest on the count of eight.

(3) In the event of a knockdown, the timekeeper shall immediately start the count loud enough to be heard by the referee, who, after waving the opponent to the farthest neutral corner, shall pick up the count from the timekeeper and proceed from there. The referee shall stop the count if the opponent fails to remain in the corner. The count shall be resumed when the opponent has returned to the corner.

(4) The timekeeper shall signal the count to the referee.

(5) If the boxing contestant taking the count is still down when the referee calls the count of ten, the referee shall wave both arms to indicate that the boxing contestant has been knocked out. The referee shall summon the physician and shall then raise the opponent's hand as the winner. The referee's count is the official count.

(6) If at the end of a round a boxing contestant is down and the referee is in the process of counting, the gong indicating the end of the round shall not be sounded. The gong shall only be sounded when the referee gives the command to box indicating the continuation of the bout.

(7) In the final round, the timekeeper's gong shall terminate the fight.

(8) A technical knockout decision shall be awarded to the opponent if a boxing contestant is unable or refuses to continue when the gong sounds to begin the next round. The decision shall be awarded in the round started by the gong.

(9) The referee and timekeeper shall resume their count at the point it was suspended if a boxing contestant arises before the count of ten is reached and falls down again immediately without being struck.

(10) If both boxing contestants go down at the same time, counting will be continued as long as one of them is still down or until the referee or the ringside physician determines that one or both of the boxing contestants needs immediate medical attention. If both boxing contestants remain down until the count of ten, the bout will be stopped and the decision will be scored as a double knockout.

R859-1-613. Boxing - Procedure After Knockout or Contestant Sustaining Damaging Head Blows.

(1) A boxing contestant who has lost by a technical knockout shall not fight again for a period of 30 calendar days or until the contestant has submitted to a medical examination. The Commission may require such physical exams as necessary.

(2) A ringside physician shall examine a boxing contestant who has been knocked out in a contest or a contestant whose fight has been stopped by the referee because the contestant received hard blows to the head that made him defenseless or incapable of continuing immediately after the knockout or stoppage. The ringside physician may order post-fight neurological examinations, which may include computerized axial tomography (CAT) scans or magnetic resonance imaging (MRI) to be performed on the contestant immediately after the contestant leaves the location of the contest. Post-fight neurological examination results shall be forwarded to the Commission by the ringside physician as soon as possible.

(3) A report that records the amount of punishment a fighter absorbed shall be submitted to the Commission by the ringside physician within 24 hours of the end of the fight.

(4) A ringside physician may require any boxing contestant who has sustained a severe injury or knockout in a bout to be thoroughly examined by a physician within 24 hours of the bout. The physician shall submit his findings to the Commission. Upon the physician's recommendation, the Commission may prohibit the contestant from boxing until the contestant is fully recovered and may extend any such suspension imposed.

(5) All medical reports that are submitted to the Commission relative to a physical examination or the condition

of a boxing contestant shall be confidential and shall be open for examination only by the Commission and the licensed contestant upon the contestant's request to examine the records or upon the order of a court of competent jurisdiction.

(6) A boxing contestant who has been knocked out or who received excessive hard blows to the head that made him defenseless or incapable of continuing shall not be permitted to take part in competitive or noncompetitive boxing for a period of not less than 60 days. Noncompetitive boxing shall include any contact training in the gymnasium. It shall be the responsibility of the boxing contestant's manager and seconds to assure that the contestant complies with the provisions of this Rule. Violation of this Rule could result in the indefinite suspension of the contestant and the contestant's manager or second.

(7) A contestant may not resume boxing after any period of rest prescribed in Subsections R859-1-613(1) and (6), unless following a neurological examination, a physician certifies the contestant as fit to take part in competitive boxing. A boxing contestant who fails to secure an examination prior to resuming boxing shall be automatically suspended until the results of the examination have been received by the Commission and the contestant is certified by a physician as fit to compete.

(8) A boxing contestant who has lost six consecutive fights shall be prohibited from boxing again until the Commission has reviewed the results of the six fights or the contestant has submitted to a medical examination by a physician.

(9) A boxing contestant who has suffered a detached retina shall be automatically suspended and shall not be reinstated until the contestant has submitted to a medical examination by an ophthalmologist and the Commission has reviewed the results of the examination.

(10) A boxing contestant who is prohibited from boxing in other states or jurisdictions due to medical reasons shall be prohibited from boxing in accordance with this Rule. The Commission shall consider the boxing contestant's entire professional record regardless of the state or country in which the contestant's fights occurred.

(11) A boxing contestant or the contestant's manager shall report any change in the contestant's medical condition which may affect the contestant's ability to fight safely. The Commission may, at any time, require current medical information on any contestant.

R859-1-614. Boxing - Waiting Periods.

(1) The number of days that shall elapse before a boxing contestant who has competed anywhere in a bout may participate in another bout shall be as follows:

TABLE

Length of Bout (In scheduled Rounds)	Required Interval (In Days)
4	3
5-9	5
10-12	7

R859-1-615. Boxing - Fouls.

(1) A referee may disqualify or penalize a boxing contestant by deducting one or more points from a round for the following fouls:

(a) holding an opponent or deliberately maintaining a clinch;

(b) hitting with the head, shoulder, elbow, wrist, inside or butt of the hand, or the knee.

(c) hitting or gouging with an open glove;

(d) wrestling, spinning or roughing at the ropes;

(e) causing an opponent to fall through the ropes by means other than a legal blow;

(f) gripping at the ropes when avoiding or throwing punches;

(g) intentionally striking at a part of the body that is over the kidneys;

(h) using a rabbit punch or hitting an opponent at the base of the opponent's skull;

(i) hitting on the break or after the gong has sounded;

(j) hitting an opponent who is down or rising after being down;

(k) hitting below the belt line;

(l) holding an opponent with one hand and hitting with the other;

(m) purposely going down without being hit or to avoid a blow;

(n) using abusive language in the ring;

(o) un-sportsmanlike conduct on the part of the boxing contestant or a second whether before, during, or after a round;

(p) intentionally spitting out a mouthpiece;

(q) any backhand blow; or

(r) biting.

R859-1-616. Boxing - Penalties for Fouling.

(1) A referee who penalizes a boxing contestant pursuant to this Rule shall notify the judges at the time of the infraction to deduct one or more points from their scorecards.

(2) A boxing contestant committing a deliberate foul, in addition to the deduction of one or more points, may be subject to disciplinary action by the Commission.

(3) A judge shall not deduct points unless instructed to do so by the referee.

(4) The designated Commission member shall file a complaint with the Commission against a boxing contestant disqualified on a foul. The Commission shall withhold the purse until the complaint is resolved.

R859-1-617. Boxing - Contestant Outside the Ring Ropes.

(1) A boxing contestant who has been knocked, wrestled, pushed, or has fallen through the ropes during a contest shall not be helped back into the ring, nor shall the contestant be hindered in any way by anyone when trying to reenter the ring.

(2) When one boxing contestant has fallen through the ropes, the other contestant shall retire to the farthest neutral corner and stay there until ordered to continue the contest by the referee.

(3) The referee shall determine if the boxing contestant has fallen through the ropes as a result of a legal blow or otherwise. If the referee determines that the boxing contestant fell through the ropes as a result of a legal blow, he shall warn the contestant that the contestant must immediately return to the ring. If the contestant fails to immediately return to the ring following the warning by the referee, the referee shall begin the count that shall be loud enough to be heard by the contestant.

(4) If the boxing contestant enters the ring before the count of ten, the contest shall be resumed.

(5) If the boxing contestant fails to enter the ring before the count of ten, the contestant shall be considered knocked out.

(6) When a contestant has accidentally slipped or fallen through the ropes, the contestant shall have 20 seconds to return to the ring.

R859-1-618. Boxing - Scoring.

(1) Officials who score a boxing contest shall use the 10-point must system.

(2) For the purpose of this Rule, the "10-point must system" means the winner of each round received ten points as determined by clean hitting, effective aggressiveness, defense, and ring generalship. The loser of the round shall receive less than ten points. If the round is even, each boxing contestant shall receive not less than ten points. No fraction of points may be given.

(3) Officials who score the contest shall mark their cards

in ink or in indelible pencil at the end of each round.

(4) Officials who score the contest shall sign their scorecards.

(5) When a contest is scored on the individual score sheets for each round, the referee shall, at the end of each round, collect the score sheet for the round from each judge and shall give the score sheets to the designated Commission member for computation.

(6) Referees and judges shall be discreet at all times and shall not discuss their decisions with anyone during a contest.

(7) A decision that is rendered at the termination of a boxing contest shall not be changed without a hearing, unless it is determined that the computation of the scorecards of the referee and judges shows a clerical or mathematical error giving the decision to the wrong contestant. If such an error is found, the Commission may change the decision.

(8) After a contest, the scorecards collected by the designated Commission member shall be maintained by the Commission.

(9) If a referee becomes incapacitated, a time-out shall be called and the other referee who is assigned to the contest shall assume the duties of the referee.

(10) If a judge becomes incapacitated and is unable to complete the scoring of a contest, a time-out shall be called and an alternate licensed judge shall immediately be assigned to score the contest from the point at which he assumed the duties of a judge. If the incapacity of a judge is not noticed during a round, the referee shall score that round and the substitute judge shall score all subsequent rounds.

R859-1-619. Boxing - Seconds.

(1) A boxing contestant shall not have more than four seconds, one of whom shall be designated as the chief second. The chief second shall be responsible for the conduct in the corner during the course of a contest. During the rest period, one second shall be allowed inside the ring, two seconds shall be allowed on the apron and one second shall be allowed on the floor.

(2) All seconds shall remain seated during the round.

(3) A second shall not spray or throw water on a boxing contestant during a round.

(4) A boxing contestant's corner shall not heckle or in any manner annoy the contestant's opponent or the referee, or throw any object into the ring.

(5) A second shall not enter the ring until the timekeeper has indicated the end of a round.

(6) A second shall leave the ring at the timekeeper's whistle and shall clear the ring platform of all obstructions at the sound of the gong indicating the beginning of a round. Articles shall not be placed on the ring floor until the round has ended or the contest has terminated.

(7) A referee may eject a second from a ring corner for violations of the provisions of Subsections R859-1-609(6) and R859-1-608(4) of this Rule (stepping into the ring and disruptive behavior) and may have the judges deduct points from a contestant's corner.

(8) A second may indicate to the referee that the second's boxing contestant cannot continue and that the contest should be stopped. Only verbal notification or hand signals may be used; the throwing of a towel into the ring does not indicate the defeat of the second's boxing contestant.

(9) A second shall not administer alcoholic beverages, narcotics, or stimulants to a contestant, pour excessive water on the body of a contestant, or place ice in the trunks or protective cup of a contestant during the progress of a contest.

R859-1-620. Boxing - Managers.

A manager shall not sign a contract for the appearance of a boxing contestant if the manager does not have the boxing contestant under contract.

R859-1-621. Boxing. Identification - Photo Identification Cards.

(1) Each boxing contestant shall provide two pieces of identification to the designated Commission member before participation in a fight. One of the pieces of identification shall be a recent photo identification card issued or accepted by the Commission at the time the boxing contestant receives his original license.

(2) The photo identification card shall contain the following information:

(a) the contestant's name and address;

(b) the contestant's social security number;

(c) the personal identification number assigned to the contestant by a boxing registry;

(d) a photograph of the boxing contestant; and

(e) the contestant's height and weight.

(3) The Commission shall honor similar photo identification cards from other jurisdictions.

(4) Unless otherwise approved by the Commission, a boxing contestant will not be allowed to compete if his or her photo identification card is incomplete or if the boxing contestant fails to present the photo identification card to the designated Commission member prior to the bout.

R859-1-622. Boxing - Dress for Contestants.

(1) Boxing contestants shall be required to wear the following:

(a) trunks that are belted at the contestant's waistline. For the purposes of this Subsection, the waistline shall be defined as an imaginary horizontal line drawn through the navel to the top of the hips. Trunks shall not have any buckles or other ornaments on them that might injure a boxing contestant or referee;

(b) a foul-proof protector for male boxing contestants and a pelvic area protector and breast protector for female boxing contestants;

(c) shoes that are made of soft material without spikes, cleats, or heels;

(d) a fitted mouthpiece; and

(e) gloves meeting the requirements specified in Section R859-1-604.

(2) In addition to the clothing required pursuant to Subsections R859-1-622(1)(a) through (e), a female boxing contestant shall wear a body shirt or blouse without buttons, buckles, or ornaments.

(3) A boxing contestant's hair shall be cut or secured so as not to interfere with the contestant's vision.

(4) A boxing contestant shall not wear corrective lenses other than soft contact lenses into the ring. A bout shall not be interrupted for the purposes of replacing or searching for a soft contact lens.

R859-1-623. Boxing - Failure to Compete.

A boxing contestant's manager shall immediately notify the Commission if the contestant is unable to compete in a contest due to illness or injury. A physician may be selected as approved by the Commission to examine the contestant.

R859-1-701. Elimination Tournaments.

(1) In general. The provisions of Title 63C, Chapter 11, and Rule R859-1 apply to elimination tournaments, including provisions pertaining to licenses, fees, stopping contests, impounding purses, testing requirements for contestants, and adjudicative proceedings. For purposes of identification, an elimination tournament contestant shall provide any form of identification that contains a photograph of the contestant, such as a state driver's license, passport, or student identification

card.

(2) Official rules of the sport. Upon requesting the Commission's approval of an elimination tournament in this State, the sponsoring organization or promoter of an elimination tournament may submit the official rules for the particular sport to the Commission and request the Commission to apply the official rules in the contest.

(3) The Commission shall not approve the official rules of the particular sport and shall not allow the contest to be held if the official rules are inconsistent, in any way, with the purpose of the Pete Suazo Utah Athletic Commission Act, Title 63C, Chapter 11, or with the Rule adopted by the Commission for the administration of that Act, Rule R859-1.

R859-1-702. Restrictions on Elimination Tournaments.

Elimination tournaments shall comply with the following restrictions:

(1) An elimination tournament must begin and end within a period of 48 hours.

(2) All matches shall be scheduled for no more than three rounds. A round must be one minute in duration.

(3) A contestant shall wear 16 oz. boxing gloves, training headgear, a mouthpiece and a large abdominal groin protector during each match.

(4) A contestant may participate in more than one match, but a contestant shall not compete more than a total of 12 rounds.

(5) The promoter of the elimination tournament shall be required to supply at the time of the weigh-in of contestants, a physical examination on each contestant, conducted by a physician not more than 60 days prior to the elimination tournament in a form provided by the Commission, certifying that the contestant is free from any physical or mental condition that indicates the contestant should not engage in activity as a contestant.

(6) The promoter of the elimination tournament shall be required to supply at the time of the weigh-in of the contestants HIV test results for each contestant pursuant to Subsection R859-1-507 of this Rule and Subsection 63C-11-317(1).

(7) The Commission may impose additional restrictions in advance of an elimination tournament.

R859-1-801. Martial Arts Contests and Exhibitions.

(1) In general. All full-contact martial arts are forms of unarmed combat. Therefore, the provisions of Title 63C, Chapter 11, and Rule R859-1 apply to contests or exhibitions of such martial arts, including provisions pertaining to licenses, fees, stopping contests, impounding purses, testing requirements for contestants, and adjudicative proceedings. For purposes of identification, a contestant in a martial arts contest or exhibition shall provide any form of identification that contains a photograph of the contestant, such as a state driver's license, passport, or student identification card.

(2) Official rules of the art. Upon requesting the Commission's approval of a contest or exhibition of a martial art in this State, the sponsoring organization or promoter may submit the official rules for the particular art to the Commission and request the Commission to apply the official rules in the contest or exhibition.

(3) The Commission shall not approve the official rules of the particular art and shall not allow the contest or exhibition to be held if the official rules are inconsistent, in any way, with the purpose of the Pete Suazo Utah Athletic Commission Act, Title 63C, Chapter 11, or with the Rule adopted by the Commission for the administration of that Act, Rule R859-1.

R859-1-901. Authority - Purpose.

These rules are adopted to enable the Commission to implement the provisions of Section 63C-11-311 to facilitate the distribution of General Fund monies to Organizations Which Promote Amateur Boxing in the State.

R859-1-902. Definitions.

Pursuant to Section 63C-11-311, the Commission adopts the following definitions:

(1) For purposes of Subsection 63C-11-311, "amateur boxing" means a live boxing contest conducted in accordance with the standards and regulations of USA Boxing, Inc., and in which the contestants participate for a non-cash purse.

(2) "Applicant" means an Organization Which Promotes Amateur Boxing in the State as defined in this section.

(3) "Grant" means the Commission's distribution of monies as authorized under Section 63C-11-311(3).

(4) "Organization Which Promotes Amateur Boxing in the State" means an amateur boxing club located within the state, registered with USA Boxing Incorporated.

(5) "State Fiscal Year" means the annual financial reporting period of the State of Utah, beginning July 1 and ending June 30.

R859-1-903. Qualifications for Applications for Grants for Amateur Boxing.

(1) In accordance with Section 63C-11-311, each applicant for a grant shall:

(a) submit an application in a form prescribed by the Commission;

(b) provide documentation that the applicant is an "organization which promotes amateur boxing in the State";

(c) Upon request from the Commission, document the following:

(i) the financial need for the grant;

(ii) how the funds requested will be used to promote amateur boxing; and

(iii) receipts for expenditures for which the applicant requests reimbursement.

(2) Reimbursable Expenditures - The applicant may request reimbursement for the following types of eligible expenditures:

(a) costs of travel, including meals, lodging and transportation associated with participation in an amateur boxing contest for coaches and contestants;

(b) Maintenance costs; and

(c) Equipment costs.

(3) Eligible Expenditures - In order for an expenditure to be eligible for reimbursement, an applicant must:

(a) submit documentation supporting such expenditure to the Commission showing that the expense was incurred during the State Fiscal Year at issue; and

(b) submit such documentation no later than June 30 of the current State Fiscal Year at issue.

(4) the Commission will review applicants and make a determination as to which one(s) will best promote amateur boxing in the State of Utah.

R859-1-904. Criteria for Awarding Grants.

The Commission may consider any of the following criteria in determining whether to award a grant:

(1) whether any funds have been collected for purposes of amateur boxing grants under Section 63C-11-311;

(2) the applicant's past participation in amateur boxing contests;

(3) the scope of the applicant's current involvement in amateur boxing;

(4) demonstrated need for the funding; or

(5) the involvement of adolescents including rural and minority groups in the applicant's amateur boxing program.

KEY: licensing, boxing, contests

November 8, 2006 63C-11-101 et seq.
Notice of Continuation May 10, 2007

R861. Tax Commission, Administration.
R861-1A. Administrative Procedures.
R861-1A-1. Administrative Procedures Pursuant to Utah Code Ann. Section 59-1-210.

A. Definitions as used in this rule:

1. "Agency" means the Tax Commission of the state of Utah.

2. "Agency head" means the Tax Commission of the state of Utah, or one or more tax commissioners.

3. "Appeal" means appeal from an order of the Commission to an appropriate judicial authority.

4. "Commission" means the Tax Commission of the state of Utah.

5. "Conference" means an informal meeting of a party or parties with division heads, officers, or employees designated by division heads and informal meetings between parties to an adjudicative proceeding and a presiding officer.

6. "Division" means any division of the Tax Commission, including but not restricted to the Auditing Division, Property Tax Division, Motor Vehicle Division, Motor Vehicle Business Administration Division, Data Processing Division, and the Operations Division.

7. "Hearing" means a proceeding, formal or informal, at which the parties may present evidence and arguments to the presiding officer in relation to a particular order or rule.

8. "Officer" means an employee of the Commission in a supervisory or responsible capacity.

9. "Order" means the final disposition by the Commission of any particular controversy or factual matter presented to it for its determination.

10. "Presiding officer" means one or more tax commissioners, administrative law judge, hearing officer, and other persons designated by the agency head to preside at hearings and adjudicative proceedings.

11. "Quorum" means three or more members of the Commission.

12. "Record" means that body of documents, transcripts, recordings, and exhibits from a hearing submitted for review on appeal.

13. "Rule" means an officially adopted Commission rule.

14. "Rulemaking Power" means the Commission's power to adopt rules and to administer the laws relating to the numerous divisions.

15. All definitions contained in the Administrative Procedures Act, Utah Code Ann. Section 63-46b-2 as amended, are hereby adopted and incorporated herein.

R861-1A-2. Rulemaking Power Pursuant to Utah Code Ann. Section 59-1-210 and 63-46a-4.

A. Policy and Scope. In accordance with the responsibility placed upon it by law, the Commission shall enact appropriate rules. These rules shall prescribe practices and procedures for the Commission and other state and county officials and agencies over which the Commission has supervisory power and shall interpret laws the Commission is charged with administering when such interpretation is deemed necessary and in the public interest.

B. Preparation. In the preparation of rules the Commission may refer to appropriate materials and consult such parties as it deems advisable, whether or not such persons are employees of the Commission. Drafts of proposed rules may be submitted to the Office of the Attorney General for examination as to legality and form.

C. Notice and Hearing. The Commission may publish, by means of local communication, notice of its intent to exercise its rulemaking power in a particular area. Notice therein will be given of a scheduled hearing or hearings not sooner than 15 days after such notice, at which hearing or hearings any party who would be substantially affected by such exercise may present argument in support thereof or in objection thereto. Such notice and hearing or hearings will be instituted when the Commission deems them to be of substantial value and in the public interest or in accordance with Utah Code Ann. Section 63-46a-5. Such notice and hearing or hearings shall not be a prerequisite to the validity of any rule.

D. Adoption. Rules will be adopted by the Commission at formal meetings with a quorum present. Adopted rules will be written and entered into the official minutes of the Commission, which minutes are a public record available for examination by interested members of the public at the Commission offices. This proceeding and no other will be necessary for validity, unless otherwise required by the rulemaking procedures.

E. Effective Date. In accordance with Utah Code Ann. Section 63-46a-4.

F. Publication. Copies of adopted rules will be prepared and made available to interested parties requesting the same. Such rules may also be published periodically in booklets and bulletins. It shall be the policy of the Commission to provide for publication of all new rules at the time of each compilation of rules in the particular area. No rule, however, shall be deemed invalid by failure to prepare copies for distribution or to provide for publication in the manner herein described.

G. Petitions for Exercise of Rulemaking Power. The Commission may be petitioned to exercise its power to adopt a rule of general application. Such petition shall be submitted in writing by any party who would be substantially and directly affected by such rule. The Commission will have wide discretion in this area and will exercise this rulemaking power upon petition only when it deems that such exercise would be of substantial value to the citizens of Utah. If the Commission accepts such a petition, it may adopt such rule as it deems appropriate; however, the petitioning party may submit a proposed rule for the consideration of the Commission. If the Commission acts favorably upon such a petition, it will adopt and publish the rule in the manner hereinabove described, and in addition notify the petitioner of such adoption by mail at his last known address. If the Commission declines to act on such petition, it will so notify the petitioning party in the same manner.

H. Repeal and Amendment. The procedure above described for the enactment of rules shall also be followed for the amendment or repeal of existing rules.

R861-1A-3. Division and Prehearing Conferences Pursuant to Utah Code Ann. Section 59-1-210 and 63-46b-1.

A. Division Conferences. Any party directly affected by a Commission action or contemplated action may request a conference with the supervisor or designated officer of the division involved in relation to such action. Such request may be either oral or written, and such conference will be conducted in an informal manner in an effort to clarify and narrow the issues and problems involved. The party requesting such conference will be notified of the result of the same, either orally or in writing, in person or through counsel, at the conclusion of such conference or within a reasonable time thereafter. Such conference may be held at any time prior to a hearing, whether or not a petition for such hearing, appeal, or other commencement of an adjudicative proceeding has been filed.

B. Prehearing Conferences. In any matter pending before the Tax Commission, the presiding officer may, after prior written notice, require the parties to appear for a prehearing conference. Such prehearing conferences may be by telephone if the presiding officer determines that it will be more expeditious and will not adversely affect the rights of any party. Prehearing conferences will be for the purposes of encouraging settlement, clarifying the issues, simplifying the evidence,

facilitating discovery, and expediting the proceedings. In furthering those purposes, the presiding officer may request that the parties make proffers of proof or written prehearing conference statements as to what they believe the evidence will show at the hearing. After hearing such proffers of proof and reviewing written statements, the presiding officer may then advise the parties how he views each side of the evidence and state how he believes the Commission may rule if evidence at the hearing is as proffered at the prehearing conference, and then invite the parties to see if a stipulation can be reached which would settle the matter. If a settlement is reached by way of stipulation, the presiding officer may sign and enter an order in the proceeding. If a settlement is not reached, the presiding officer shall enter an order on the prehearing conference which clarifies the issues, simplifies the evidence, facilitates and limits discovery, and expedites the proceedings to a reasonable extent.

R861-1A-9. Tax Commission as Board of Equalization Pursuant to Utah Code Ann. Sections 59-2-212, 59-2-1004, and 59-2-1006.

A. Equalization Responsibilities. The Commission will sit as the State Board of Equalization in discharge of the equalization responsibilities given it by law. The Commission may sit on its own initiative to correct the valuation of property that has been overassessed, underassessed, or nonassessed as described in Section 59-2-212, and as a board of appeal from the various county boards of equalization described in Section 59-2-1004.

B. Proceedings. In all cases, appeals to the Commission shall be scheduled for hearing pursuant to Commission rules.

C. Appeals from county boards of equalization.

1. A notice of appeal filed by the taxpayer with the auditor pursuant to Section 59-2-1006 shall be presumed to have been timely filed unless the county provides convincing evidence to the contrary. In the absence of evidence of the date of mailing of the county board of equalization decision by the county auditor to the taxpayer, it shall be presumed that the decision was mailed three days after the meeting of the county board of equalization at which the decision was made.

2. If the county has not formally adopted board of equalization rules and procedures under Section 59-2-1001 that have been approved by the Commission, the procedures contained in this rule must be followed.

3. An appeal from a decision of a county board must be presented upon the same issues as were submitted to the county board in the first instance. The Commission shall consider, but is not limited to, the facts and evidence submitted to the county board.

4. The county board of equalization or county hearing officer shall prepare minutes of hearings held before them on property tax appeals. The minutes shall constitute the record on appeal.

a) For appeals concerning property value, the record shall include:

(1) the name and address of the property owner;

(2) the identification number, location, and description of the property;

(3) the value placed on the property by the assessor;

(4) the basis stated in the taxpayer's appeal;

(5) facts and issues raised in the hearing before the county board that are not clearly evident from the assessor's records; and

(6) the decision of the county board of equalization and the reasons for the decision.

b) Exempt Property. With respect to a decision affecting the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.

5. Appeals from dismissal by the county boards of equalization.

a) Decisions by the county board of equalization are final orders on the merits, and appeals to the Commission shall be on the merits except for the following:

(1) dismissal for lack of jurisdiction;

(2) dismissal for lack of timeliness;

(3) dismissal for lack of evidence to support a claim for relief.

b) On an appeal from a dismissal by a county board for the exceptions under C.5.a), the only matter that will be reviewed by the Commission is the dismissal itself, not the merits of the appeal.

c) An appeal may be dismissed for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.

6. An appeal filed with the Commission may be remanded to the county board of equalization for further proceedings if the Commission determines that:

a) dismissal under C.5.a)(1) or (3) was improper;

b) the taxpayer failed to exhaust all administrative remedies at the county level; or

c) in the interest of administrative efficiency, the matter can best be resolved by the county board.

7. An appeal filed with the Commission shall be remanded to the county board of equalization for further proceedings if the Commission determines that dismissal under C.5.a)(2) is improper under R884-24P-66.

8. To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:

a) the name and address of the property owner;

b) the identification number, location, and description of the property;

c) the value placed on the property by the assessor;

d) the taxpayer's estimate of the fair market value of the property; and

e) a signed statement providing evidence or documentation that supports the taxpayer's claim for relief.

9. If no signed statement is attached, the county will notify the taxpayer of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.

10. If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation under C.8.e), the county shall send the taxpayer a notice of intent to dismiss, and permit the taxpayer at least 20 calendar days to supply the evidence or documentation. If the taxpayer fails to provide the evidence or documentation within 20 days, the county board of equalization may dismiss the matter for lack of evidence to support a claim for relief.

11. If the minimum information required under C.8. is supplied and the taxpayer produces the evidence or documentation described in the taxpayer's signed statement under C.8.e), the county board of equalization shall render a decision on the merits of the case.

R861-1A-10. Miscellaneous Provisions Pursuant to Utah Code Ann. Section 59-1-210.

A. Rights of Parties. Nothing herein shall be construed to remove or diminish any right of any party under the Constitution of the United States, the Constitution of the state of Utah, or any existing law.

B. Effect of Partial Invalidation. If any part of these rules be declared unconstitutional or in conflict with existing statutory law by a court of competent jurisdiction, the remainder shall not be affected thereby and shall continue in full force and effect.

C. Enactment of Inconsistent Legislation. Any statute

passed by the Utah Legislature inconsistent with these rules or any part thereof will effect a repeal of that part of these rules with which it is inconsistent, but of no other part.

D. Presumption of Familiarity. It will be presumed that parties dealing with the Commission are familiar with:

1. these rules and the provisions thereof,

2. the revenue laws of the state of Utah, and

3. all rules enacted by the Commission in its administration thereof.

R861-1A-11. Appeal of Corrective Action Order Pursuant to Utah Code Ann. Section 59-2-704.

A. Appeal of Corrective Action Order. Any county appealing a corrective action order issued pursuant to Section 59-2-704, shall, within 10 days of the mailing of the order, request in writing a hearing before the Commission. The Commission shall immediately set the time and place of the hearing, which shall be held no later than June 30 of the tax year to which the corrective action order applies.

B. Hearings. Hearings on corrective action order appeals shall be conducted as formal hearings and shall be governed by the procedures contained in these rules. If the parties are able to stipulate to a modification of the corrective action order, and it is evident that there is a reasonable basis for modifying the corrective action order, an amended corrective action order may be executed by the Commission. One or more commissioners may preside at a hearing under this rule with the same force and effect as if a quorum of the Commission were present. However, a decision must be made and an order signed by a quorum of the Commission.

C. Decisions and Orders. The Commission shall render its decision and order no later than July 10 of the tax year to which the corrective action order applies. Upon reaching a decision, the Commission shall immediately notify the clerk of the county board of equalization and the county assessor of that decision.

D. Sales Information. Access to Commission property sales information shall be available by written agreement with the Commission to any clerk of the county board of equalization and county assessor appealing under this rule. All other reasonable and necessary information shall be available upon request, according to Commission guidelines.

E. Conflict with Other Rules. This rule supersedes all other rules that may otherwise govern these proceedings before the Commission.

R861-1A-12. Policies and Procedures Regarding Public Disclosure Pursuant to Utah Code Ann. Section 59-1-210.

This rule outlines the policies and procedures of the Commission regarding the public disclosure of and access to documents, workpapers, decisions, and other information prepared by the Commission under provisions of Utah Code Ann. Section 59-1-210.

A. Property Tax Orders. Property tax orders signed by the Commission will be mailed to the appropriately named parties in accordance with the Commission's rules of procedure. Property tax orders may also be made available to persons other than the named parties upon written request to the Commission. Nonparty requests will be subject to the following limitations.

1. If, upon consultation with the taxpayer, the Commission determines that a particular property tax order contains information which, if disclosed, would constitute a significant competitive disadvantage to the taxpayer, the Commission may either prohibit the disclosure of the order or require that applicable information be removed from the order prior to it being made publicly available.

2. The limitation in subsection 1. does not apply if the taxpayer affirmatively waives protection against disclosure of the information.

B. Other Tax Orders. Written orders signed by the Commission relating to all tax appeals other than property tax matters will also be mailed to the appropriately named parties in accordance with the Commission rules of procedure. Copies of these orders or information about them will not be provided to any person other than the named parties except for the following circumstances:

1. if the Commission determines that the parties have affirmatively waived any claims to confidentiality; or

2. if the Commission determines that the orders may be effectively sanitized through the deletion of references to the parties, specific tax amounts, or any other information attributable to a return filed with the Commission.

C. Imposition and Waiver of Penalty and Interest.

1. All facts surrounding the imposition of penalty and interest charges as well as requests for waiver of penalty and interest charges are considered confidential and will not be disclosed to any persons other than the parties specifically involved. These facts include the names of the involved parties, the amount of penalty and interest, type of tax involved, amount of the tax owed, reasons for the imposition of the penalty and interest, and any other information relating to imposition of the penalty and interest, except as follows:

(a) if the Commission affirmatively determines that a finding of fraud is involved and seeks the imposition of the appropriate fraud penalties, the Commission may make all pertinent facts available to the public once legal action against the parties has been commenced; or

(b) if the Commission determines that the parties have affirmatively waived their rights to confidentiality, the Commission will make all pertinent facts available to the public.

D. Commission Notes and Workpapers.

1. All workpapers, notes, and other material prepared by the commissioners, as well as staff and employees of the Commission, are to be considered confidential, and access to the specific material is restricted to employees of the Commission and its legal counsel only. Examples of this restricted material include audit workpapers and notes, ad valorem appraisal worksheets, and notes taken during hearings and deliberations. In the case of information prepared as part of an audit, the auditing division will, upon request, provide summary information of the findings to the taxpayer. These items will not be available to any person or party by discovery carried out pursuant to these rules or the Utah Rules of Civil Procedure.

2. Relevant workpapers of the property tax division prepared in connection with the assessment of property by the Commission, pursuant to the provisions of Utah Code Ann. Section 59-2-217, shall be provided to the owner of the property to which the assessment relates, at the owner's request.

E. Reciprocal Agreements. Pursuant to Utah Code Ann. Sections 59-7-537, 59-10-545 and 59-12-109, the Commission may enter into individual reciprocal agreements to share specific tax information with authorized representatives of the United States Internal Revenue Service, tax officials of other states, and representatives of local governments within the state of Utah; provided, however, that no information will be provided to any governmental entity if providing such information would violate any statute or any agreement with the Internal Revenue Service.

F. Other Agreements. Pursuant to Utah Code Ann. Section 59-12-109, the Commission may provide departments and political subdivisions of the state of Utah with copies of returns and other information required by Chapter 12 of Title 59. This information is available only in official matters and must be requested in writing by the head of the department or political subdivision. The request must specifically indicate the information being sought and how the information will be used. The Commission will respond in writing to the request and shall impose conditions of confidentiality on the use of the information disclosed.

G. Multistate Tax Commission. The Commission is

authorized to share specific tax information for audit purposes with the Multistate Tax Commission.

H. Statistical Information. The Commission authorizes the preparation and publication of statistical information regarding the payment and collection of state taxes. The information will be prepared by the various divisions of the Commission and made available after review and approval of the Commission.

I. Public Record Information. Pursuant to Utah Code Ann. 59-1-403(3)(c), the Commission may publicize the name and other appropriate information, as contained in the public record, concerning delinquent taxpayers, including their addresses, the amount of money owed by tax type, as well as any legal action taken by the Commission, including charges filed, property seized, etc. No information will be released which is not part of the existing public record.

R861-1A-13. Requests for Accommodation and Grievance Procedures Pursuant to Utah Code Ann. Section 63-46a-3(2), 28 CFR 35.107 1992 edition, and 42 USC 12201.

A. Disabled individuals may request reasonable accommodations to services, programs, or activities, or a job or work environment in the following manner.

1. Requests shall be directed to:
Accommodations Coordinator
Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134
Telephone: 801-297-3811 TDD: 801-297-3819 or relay at 711

2. Requests shall be made at least three working days prior to any deadline by which the accommodation is needed.

3. Requests shall include the following information:

a) the individual's name and address;

b) a notation that the request is made in accordance with the Americans with Disabilities Act;

c) a description of the nature and extent of the individual's disability;

d) a description of the service, program, activity, or job or work environment for which an accommodation is requested; and

e) a description of the requested accommodation if an accommodation has been identified.

B. The accommodations coordinator shall review all requests for accommodation with the applicable division director and shall issue a reply within two working days.

1. The reply shall advise the individual that:

a) the requested accommodation is being supplied; or

b) the requested accommodation is not being supplied because it would cause an undue hardship, and shall suggest alternative accommodations. Alternative accommodations must be described; or

c) the request for accommodation is denied. A reason for the denial must be included; or

d) additional time is necessary to review the request. A projected response date must be included.

2. All denials of requests under Subsections (1)(b) and (1)(c) shall be approved by the executive director or designee.

3. All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

C. Disabled individuals who are dissatisfied with the reply to their request for accommodation may file a request for review with the executive director in the following manner.

1. Requests for review shall be directed to:
Executive Director
Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134
Telephone: 801-297-3841 TDD: 801-297-3819 or relay at 711

2. A request for review must be filed within 180 days of the accommodations coordinator's reply.

3. The request for review shall include:

a) the individual's name and address;

b) the nature and extent of the individual's disability;

c) a copy of the accommodation coordinator's reply;

d) a statement explaining why the reply to the individual's request for accommodation was unsatisfactory;

e) a description of the accommodation desired; and

f) the signature of the individual or the individual's legal representative.

D. The executive director shall review all requests for review and shall issue a reply within 15 working days after receipt of the request for review.

1. If unable to reach a decision within the 15 working day period, the executive director shall notify the individual with a disability that the decision is being delayed and the amount of additional time necessary to reach a decision.

2. All replies shall be made in a suitable format. If the suitable format is a format other than writing, the reply shall also be made in writing.

E. The record of each request for review, and all written records produced or received as part of each request for review, shall be classified as protected under Section 63-2-304 until the executive director issues a decision.

F. Once the executive director issues a decision, any portions of the record that pertain to the individual's medical condition shall remain classified as private under Section 63-2-302 or controlled under Section 63-2-303, whichever is appropriate. All other information gathered as part of the appeal shall be classified as private information. Only the written decision of the executive director shall be classified as public information.

G. Disabled individuals who are dissatisfied with the executive director's decision may appeal that decision to the Tax Commission in the manner provided in Sections 63-46b-1 through 63-46b-22.

R861-1A-15. Requirement of Social Security and Federal Identification Numbers Pursuant to Utah Code Ann. Section 59-1-210.

A. Taxpayers shall provide the Tax Commission with their social security number or federal identification number, as required by the Tax Commission.

B. Sole proprietor and partnership applicants shall provide the Tax Commission with the following information for every owner or partner of the applying entity:

1. name;

2. home address;

3. social security number and federal identification number, as required by the Tax Commission.

C. Corporation and limited liability applicants shall provide the Tax Commission with the following information for every officer or managing member of the applying entity:

1. name;

2. home address; and

3. social security number and federal identification number, as required by the Tax Commission.

D. Business trust applicants shall provide the Tax Commission with the following information for the responsible trustees:

1. name;

2. home address; and

3. social security number and federal identification number, as required by the Tax Commission.

R861-1A-16. Utah State Tax Commission Management Plan Pursuant to Utah Code Ann. Section 59-1-207.

A. The executive director reports to the commission. The executive director shall meet with the commission periodically to report on the status and progress of this agreement, update the commission on the affairs of the agency and seek policy guidance. The chairman of the commission shall designate a liaison of the commission to coordinate with the executive director in the execution of this agreement.

B. The structure of the agency is as follows:

1. The Office of the Commission, including the commissioners and the following units that report to the commission:

a) Internal Audit;

b) Appeals;

c) Economic and Statistical; and

d) Public Information.

2. The Office of the Executive Director, including the executive director's staff and the following divisions that report to the executive director:

a) Administration;

b) Taxpayer Services;

c) Motor Vehicle;

d) Auditing;

e) Property Tax;

f) Technology Management;

g) Processing; and

h) Motor Vehicle Enforcement.

C. The commission hereby delegates full authority for the following functions to the executive director:

1. general supervision and management of the day to day operations and business of the agency conducted through the Office of the Executive Director and through the divisions set out in B.2;

2. management of the day to day relationships with the customers of the agency;

3. all original assessments, including adjustments to audit, assessment, and collection actions, except as provided in C.4. and D;

4. waivers of penalty and interest or offers in compromise agreements in amounts under $10,000, in conformance with standards established by the commission;

5. except as provided in D.7., voluntary disclosure agreements with companies, including multilevel marketers;

6. determination of whether a county or taxing entity has satisfied its statutory obligations with respect to taxes and fees administered by the Tax Commission;

7. human resource management functions, including employee relations, final agency action on employee grievances, and development of internal policies and procedures; and

8. administration of Title 63, Chapter 2, Government Records Access and Management Act.

D. The executive director shall prepare and, upon approval by the commission, implement the following actions, agreements, and documents:

1. the agency budget;

2. the strategic plan of the agency;

3. administrative rules and bulletins;

4. waivers of penalty and interest in amounts of $10,000 or more as per the waiver of penalty and interest policy;

5. offer in compromise agreements that abate tax, penalty and interest over $10,000 as per the offer in compromise policy;

6. stipulated or negotiated agreements that dispose of matters on appeal; and

7. voluntary disclosure agreements that meet the following criteria:

a) the company participating in the agreement is not licensed in Utah and does not collect or remit Utah sales or corporate income tax; and

b) the agreement forgives a known past tax liability of $10,000 or more.

E. The commission shall retain authority for the following functions:

1. rulemaking;

2. adjudicative proceedings;

3. private letter rulings issued in response to requests from individual taxpayers for guidance on specific facts and circumstances;

4. internal audit processes;

5. liaison with the governor's office;

a) Correspondence received from the governor's office relating to tax policy will be directed to the Office of the Commission for response. Correspondence received from the governor's office that relates to operating issues of the agency will be directed to the Office of the Executive Director for research and appropriate action. The executive director shall prepare a timely response for the governor with notice to the commission as appropriate.

b) The executive director and staff may have other contact with the governor's office upon appropriate notice to the commission; and

6. liaison with the Legislature.

a) The commission will set legislative priorities and communicate those priorities to the executive director.

b) Under the direction of the executive director, staff may be assigned to assist the commission and the executive director in monitoring legislative meetings and assisting legislators with policy issues relating to the agency.

F. Correspondence that has been directed to the commission or individual commissioners that relates to matters delegated to the executive director shall be forwarded to a staff member of the Office of the Executive Director for research and appropriate action. A log shall be maintained of all correspondence and periodically the executive director will review with the commission the volume, nature, and resolution of all correspondence from all sources.

G. The executive director's staff may occasionally act as support staff to the commission for purposes of conducting research or making recommendations on tax issues.

1. Official communications or assignments from the commission or individual commissioners to the staff reporting to the executive director shall be made through the executive director.

2. The commissioners and the Office of the Commission staff reserve the right to contact agency staff directly to facilitate a collegial working environment and maintain communications within the agency. These contacts will exclude direct commands, specific policy implementation guidance, or human resource administration.

H. The commission shall meet with the executive director periodically for the purpose of exchanging information and coordinating operations.

1. The commission shall discuss with the executive director all policy decisions, appeal decisions or other commission actions that affect the day to day operations of the agency.

2. The executive director shall keep the commission apprised of significant actions or issues arising in the course of the daily operation of the agency.

3. When confronted with circumstances that are not covered by established policy or by instances of real or potential conflicts of interest, the executive director shall refer the matter to the commission.

R861-1A-18. Allocations of Remittances Pursuant to Utah Code Ann. Sections 59-1-210 and 59-1-705.

A. Remittances received by the commission shall be applied first to penalty, then interest, and then to tax for the filing period and account designated by the taxpayer.

B. If no designation for period is made, the commission

shall allocate the remittance so as to satisfy all penalty, interest, and tax for the oldest period before applying any excess to other periods.

C. Fees associated with Tax Commission collection activities shall be allocated from remittances in the manner designated by statute. If a statute does not provide for the manner of allocating those fees from remittances, the commission shall apply the remittance first to the collection activity fees, then to penalty, then interest, and then to tax for the filing period.

R861-1A-20. Time of Appeal Pursuant to Utah Code Ann. Sections 59-1-301, 59-1-501, 59-2-1007, 59-7-517, 59-10-532, 59-10-533, 59-10-535, 59-12-114, 59-13-210, 63-46b-3, and 63-46b-14.

(1) A request for a hearing to correct a property tax assessment pursuant to Section 59-2-1007 must be in writing. The request is deemed to be timely if:

(a) it is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(b) the date of the postmark on the envelope or cover indicates that the request was mailed on or before June 1.

(2) Except as provided in Subsection (3), a petition for redetermination must be received in the commission offices no later than 30 days from the date of a notice that creates the right to appeal. The petition is deemed to be timely if:

(a) the petition is received in the commission offices on or before the close of business of the last day of the 30-day period; or

(b) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the 30-day period.

(3) A petition for redetermination filed in accordance with Sections 59-10-532 or 59-10-533 is deemed to be timely if:

(a) the petition is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(b) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the time frame provided by statute.

(4) Any party adversely affected by an order of the commission may seek judicial review within the time frame provided by statute. Copies of the appeal shall be served upon the commission and upon the Office of the Attorney General.

R861-1A-22. Petitions for Commencement of Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501, and 63-46b-3.

A. Time for Petition. Unless otherwise provided by Utah statute, petitions for adjudicative actions shall be filed within the time frames specified in R861-1A-20. If the last day of the 30-day period falls on a Saturday, Sunday, or legal holiday, the period shall run until the end of the next Tax Commission business day.

B. Contents. A petition for adjudicative action need not be in any particular form, but shall be in writing and, in addition to the requirements of Utah Code Ann. Section 63-46b-3, shall contain the following:

1. name and street address and, if available, a fax number or e-mail address of petitioner or the petitioner's representative;

2. a telephone number where the petitioning party or that party's representative can be reached during regular business hours;

3. petitioner's tax identification, social security number or other relevant identification number, such as real property parcel number or vehicle identification number;

4. particular tax or issue involved, period of alleged liability, amount of tax in dispute, and, in the case of a property tax issue, the lien date;

5. if the petition results from a letter or notice, the petition will include the date of the letter or notice and the originating division or officer; and

6. in the case of property tax cases, the assessed value sought.

C. Effect of Nonconformance. The commission will not reject a petition because of nonconformance in form or content, but may require an amended or substitute petition meeting the requirements of this section when such defects are present. An amended or substitute petition must be filed within 15 days after notice of the defect from the commission.

R861-1A-23. Designation of Adjudicative Proceedings Pursuant to Utah Code Ann. Section 63-46b-4.

A. All matters shall be designated as formal proceedings and set for a prehearing conference, an initial hearing, or a scheduling conference pursuant to R861-1A-26.

B. A matter may be diverted to a mediation process pursuant to R861-1A-32 upon agreement of the parties and the presiding officer.

R861-1A-24. Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-502.5, 63-46b-8, and 63-46b-10.

A. At a formal proceeding, an administrative law judge appointed by the commission or a commissioner may preside.

1. Assignment of a presiding officer to a case will be made pursuant to agency procedures and not at the request of any party to the appeal.

2. Once assigned, the presiding officer will preside at all steps of the formal proceeding except as otherwise indicated in these rules or as internal staffing requirements dictate.

B. Unless waived by the petitioner, a formal proceeding includes an initial hearing pursuant to Section 59-1-502.5, and may also involve a formal hearing on the record.

1. Initial Hearing.

a) An initial hearing pursuant to Section 59-1-502.5 shall be in the form of a conference.

b) Any issue may be settled in the initial hearing, but any party has a right to a formal hearing on matters that remain in dispute at the conclusion of the initial hearing. As to those matters, a party must pursue a formal hearing and final agency action before pursuing judicial review of unsettled matters.

2. Formal Hearing on the Record.

a) Formal hearings on the record shall be conducted by a presiding officer under 2.b) or by the commission sitting as panel under 2.c).

b) Except as provided in 2.c., all formal hearings will be heard by the presiding officer.

(1) Within the time period specified by statute, the presiding officer shall sign a decision and order in accordance with Section 63-46b-10 and forward the decision to the Commission for automatic agency review.

(2) A quorum of the commission shall review the decision. If a majority of the participating commissioners concur with the decision, a statement affirming the decision shall be affixed to the decision and signed by the concurring commissioners to indicate that the decision represents final agency action. The order is subject to petition for reconsideration or to judicial review.

(3) If, on agency review, a majority of the commissioners disagree with the decision, the case may be remanded to the presiding officer for further action, amended or reversed. If the presiding officer's decision is amended or reversed, the commission shall issue its decision and order, and that decision and order shall represent final agency action on the matter.

c) The commission, on its own motion, upon petition by a party to the appeal, or upon recommendation of the presiding

officer, may sit as a panel at the formal hearing on the record if the case involves an important issue of first impression, complex testimony and evidence, or testimony requiring a prolonged hearing.

(1) A panel of the commission shall consist of two or more commissioners

(2) An order issued from a hearing before a panel of commissioners shall constitute final agency action, and it is subject to petition for reconsideration or to judicial review.

R861-1A-26. Procedures for Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501 and 63-46b-6 through 63-46b-11.

A. Prehearing and Scheduling Conference.

1. At the conference, the parties and the presiding officer shall:

a) establish ground rules for discovery;

b) discuss scheduling;

c) clarify other issues;

d) determine whether to divert the action to a mediation process; and

e) determine whether the initial hearing will be waived and whether the commission will preside as a panel at the formal hearing on the record pursuant to R861-1A-24.

2. The prehearing and scheduling conference may be converted to an initial hearing upon agreement of the parties.

B. Notice of Hearing. At least ten days prior to a hearing date, the Commission shall notify the petitioning party or the petitioning party's representative by mail, e-mail, or facsimile of the date, time and place of any hearing or proceeding.

C. Proceedings Conducted by Telephone. Any proceeding may be held with one or more of the parties on the telephone if the presiding officer determines that it will be more convenient or expeditious for one or more of the parties and does not unfairly prejudice the rights of any party. Each party to the proceeding is responsible for notifying the presiding officer of the telephone number where contact can be made for purposes of conducting the hearing.

D. Representation.

1. A party may pursue a petition without assistance of counsel or other representation. However, a party may be represented by legal counsel or other representation at every stage of adjudication. Failure to obtain legal representation shall not be grounds for complaint at a later stage in the adjudicative proceeding or for relief on appeal from an order of the commission.

a) Legal counsel must enter an appearance.

b) Any representative other than legal counsel must submit a signed power of attorney authorizing the representative to act on the party's behalf and binding the party by the representative's action.

c) All documents will be directed to the party's representative. Documents may be transmitted by facsimile number, e-mail address or other electronic means if such transmission does not breach confidentiality. Otherwise, documents will be mailed to or served upon the representative's street address as shown in the petition for agency action.

2. Any division of the commission named as party to the proceeding may be represented by the Attorney General's Office.

E. Subpoena Power.

1. The presiding officer may issue subpoenas to secure the attendance of witnesses or the production of evidence.

a) The party requesting the subpoena must prepare it and submit it to the presiding officer for signature.

b) Service of the subpoena shall be made by the party requesting it in a manner consistent with the Utah Rules of Civil Procedure.

F. Motions.

1. Consolidation. The presiding officer has discretion to consolidate cases when the same tax assessment, series of assessments, or issues are involved in each, or where the fact situations and the legal questions presented are virtually identical.

2. Continuance. A continuance may be granted at the discretion of the presiding officer.

3. Default. The presiding officer may enter an order of default against a party in accordance with Section 63-46b-11.

a) The default order shall include a statement of the grounds for default and shall be delivered to all parties by electronic means or, if electronic transmission is unavailable, by U.S. mail.

b) A defaulted party may seek to have the default set aside according to procedures set forth in the Utah Rules of Civil Procedure.

4. Ruling on Procedural Motions. Procedural motions may be made during the hearing or by written motion.

a) Each motion shall include the grounds upon which it is based and the relief or order sought. Copies of written motions shall be served upon all other parties to the proceeding.

b) Upon the filing of any motion, the presiding officer may:

(1) grant or deny the motion; or

(2) set the matter for briefing, hearing, or further proceedings.

R861-1A-27. Discovery Pursuant to Utah Code Ann. Section 63-46b-7.

A. Discovery procedures in formal proceedings shall be established during the prehearing and scheduling conference in accordance with the Utah Rules of Civil Procedure and other applicable statutory authority.

B. The party requesting information or documents may be required to pay in advance the costs of obtaining or reproducing such information or documents.

R861-1A-28. Evidence in Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-210, 76-8-502, 76-8-503, 63-46b-8.

A. Except as otherwise stated in this rule, formal proceedings shall be conducted in accordance with the Utah Rules of Evidence, and the degree of proof in a hearing before the commission shall be the same as in a judicial proceeding in the state courts of Utah.

B. Every party to an adjudicative proceeding has the right to introduce evidence. The evidence may be oral or written, real or demonstrative, direct or circumstantial.

1. The presiding officer may admit any reliable evidence possessing probative value which would be accepted by a reasonably prudent person in the conduct of his affairs.

2. The presiding officer may admit hearsay evidence. However, no decision of the commission will be based solely on hearsay evidence.

3. If a party attempts to introduce evidence into a hearing, and that evidence is excluded, the party may proffer the excluded testimony or evidence to allow the reviewing judicial authority to pass on the correctness of the ruling of exclusion on appeal.

C. At the discretion of the presiding officer or upon stipulation of the parties, the parties may be required to reduce their testimony to writing and to prefile the testimony.

1. Prefiled testimony may be placed on the record without being read into the record if the opposing parties have had reasonable access to the testimony before it is presented. Except upon finding of good cause, reasonable access shall be not less than ten working days.

2. Prefiled testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness.

3. The presiding officer may require the witness to present a summary of the prefiled testimony. In that case, the witness shall reduce the summary to writing and either file it with the prefiled testimony or serve it on all parties within 10 days after filing the testimony.

4. If an opposing party intends to cross-examine the witness on prefiled testimony or the summary of prefiled testimony, that party must file a notice of intent to cross-examine at least 10 days prior to the date of the hearing so that witness can be scheduled to appear or within a time frame agreed upon by the parties.

D. The presiding officer shall rule and sign orders on matters concerning the evidentiary and procedural conduct of the proceeding.

E. Oral testimony at a formal hearing will be sworn. The oath will be administered by the presiding officer or a person designated by him. Anyone testifying falsely under oath may be subject to prosecution for perjury in accordance with the provisions of Sections 76-8-502 and 76-8-503.

F. Any party appearing in an adjudicative proceeding may submit a memorandum of authorities. The presiding officer may request a memorandum from any party if deemed necessary for a full and informed consideration of the issues.

R861-1A-29. Agency Review and Reconsideration Pursuant to Utah Code Ann. Section 63-46b-13.

A. Agency Review.

1. All written decisions and orders shall be submitted by the presiding officer to the commission for agency review before the decision or order is issued. Agency review is automatic, and no petition is required.

B. Reconsideration. Within 20 days after the date that an order is issued, any party may file a written request for reconsideration alleging mistake of law or fact, or discovery of new evidence.

1. The commission shall respond to the petition within 20 days after the date that it was received in the appeals unit to notify the petitioner whether the reconsideration is granted or denied.

(a) If no notice is issued within the 20-day period, the commission's lack of action on the request shall be deemed to be a denial and a final order.

(b) For purposes of calculating the 30 day limitation period for pursuing judicial review, the date of the commission's order on the reconsideration or the order of denial is the date of the final agency action.

2. If no petition for reconsideration is made, the 30 day limitation period for pursuing judicial review begins to run from the date of the final agency action.

R861-1A-30. Ex Parte Communications Pursuant to Utah Code Ann. Sections 63-46b-5 and 63-46b-8.

A. No commissioner or administrative law judge shall make or knowingly cause to be made to any party to an appeal any communication relevant to the merits of a matter under appeal unless notice and an opportunity to be heard are afforded to all parties.

B. No party shall make or knowingly cause to be made to any commissioner or administrative law judge an ex parte communication relevant to the merits of a matter under appeal for the purpose of influencing the outcome of the appeal. Discussion of procedural matters are not considered ex parte communication relevant to the merits of the appeal.

C. A presiding officer may receive aid from staff assistants if:

1. the assistants do not receive ex parte communications of a type that the presiding officer is prohibited from receiving, and,

2. in an instance where assistants present information which augments the evidence in the record, all parties shall have reasonable notice and opportunity to respond to that information.

D. Any commissioner or administrative law judge who receives an ex parte communication relevant to the merits of a matter under appeal shall place the communication into the case file and afford all parties an opportunity to comment on the information.

R861-1A-31. Declaratory Orders Pursuant to Utah Code Ann. Section 63-46b-21.

A. A party has standing to bring a declaratory action if that party is directly and adversely affected or aggrieved by an agency action within the meaning of the relevant statute. A party with standing may petition for a declaratory order to challenge:

1. the commission's interpretation of statutory language as stated in an administrative rule; or

2. the commission's grant of authority under a statute.

B. The commission shall not accept a petition for declaratory order on matters pending before the commission in an audit assessment, refund request, collections action or other agency action, or on matters pending before the court on judicial review of a commission decision.

C. The commission may refuse to render a declaratory order if the order will not completely resolve the controversy giving rise to the proceeding or if the petitioner has other remedies through the administrative appeals processes. The commission's decision to accept or reject a petition for declaratory order rests in part on the petitioner's standing to raise the issue and on a determination that the petitioner has not already incurred tax liability under the statutes or rules challenged.

D. A declaratory order that invalidates all or part of an administrative rule shall trigger the rulemaking process to amend the rule.

R861-1A-32. Mediation Process Pursuant to Utah Code Section 63- 46b-1.

A. Except as otherwise precluded by law, a resolution to any matter of dispute may be pursued through mediation.

1. The parties may agree to pursue mediation any time before the formal hearing on the record.

2. The choice of mediator and the apportionment of costs shall be determined by agreement of the parties.

B. If mediation produces a settlement agreement, the agreement shall be submitted to the presiding officer pursuant to R861-1A-33.

1. The settlement agreement shall be prepared by the parties or by the mediator, and promptly filed with the presiding officer.

2. The settlement agreement shall be adopted by the commission if it is not contrary to law.

3. If the mediation does not resolve all of the issues, the parties shall prepare a stipulation that identifies the issues resolved and the issues that remain in dispute.

4. If any issues remain unresolved, the appeal will be scheduled for a formal hearing pursuant to R861-1A-23.

R861-1A-33. Settlement Agreements Pursuant to Utah Code Sections 59-1-210 and 59-1- 502.5.

A. "Settlement agreement" means a stipulation, consent decree, settlement agreement or any other legally binding document or representation that resolves a dispute or issue between the parties.

B. Procedure:

1. Parties with an interest in a matter pending before a division of the Tax Commission may submit a settlement agreement for review and approval, whether or not a petition for

hearing has been filed.

2. Parties to an appeal pending before the commission may submit a settlement agreement to the presiding officer for review and approval.

3. Each settlement agreement shall be in writing and executed by each party or each party's legal representative, if any, and shall contain:

a) the nature of the claim being settled and any claims remaining in dispute;

b) a proposed order for commission approval; and

c) a statement that each party has been notified of, and allowed to participate in settlement negotiations.

4. A settlement agreement terminates the administrative action on the issues settled before all administrative remedies are exhausted, and, therefore, precludes judicial review of the issues. Each settlement agreement shall contain a statement that the agreement is binding and constitutes full resolution of all issues agreed upon in the settlement agreement.

5. The signed agreement shall stay further proceedings on the issues agreed upon in the settlement until the agreement is accepted or rejected by the commission or the commission's designee.

a) If approved, the settlement agreement shall take effect by its own terms.

b) If rejected, action on the claim shall proceed as if no settlement agreement had been reached. Offers made during the negotiation process will not be used as an admission against that party in further adjudicative proceedings.

R861-1A-34. Private Letter Rulings Pursuant to Utah Code Ann. Section 59-1-210.

A. Private letter rulings are written, informational statements of the commission's interpretation of statutes or administrative rules, or informational statements concerning the application of statutes and rules to specific facts and circumstances.

1. Private letter rulings address questions that have not otherwise been addressed in statutes, rules, or decisions issued by the commission.

2. The commission shall not knowingly issue a private letter ruling on a matter pending before the commission in an audit assessment, refund request, or other agency action, or regarding matters that are pending before the court on judicial review of a commission decision. Any private letter ruling inadvertently issued on a matter pending agency or judicial action shall be set aside until the conclusion of that action.

3. Requests for private letter rulings must be addressed to the commission in writing. If the requesting party is dissatisfied with the ruling, that party may resubmit the request along with new facts or information for commission review.

B. The weight afforded a private letter ruling in a subsequent audit or administrative appeal depends upon the degree to which the underlying facts addressed in the ruling were adequate to allow thorough consideration of the issues and interests involved.

C. A private letter ruling is not a final agency action. Petitioner must use the designated appeal process to address judiciable controversies arising from the issuance of a private letter ruling.

1. If the private letter ruling leads to a denial of a claim, an audit assessment, or some other agency action at a divisional level, the taxpayer must use the appeals procedures to challenge that action within 30 days of the final division decision.

2. If the only matter at issue in the private letter ruling is a challenge to the commission's interpretation of statutory language or a challenge to the commission's authority under a statute, the matter may come before the commission as a petition for declaratory order submitted within 30 days of the date of the ruling challenged.

R861-1A-35. Manner of Retaining Records Pursuant to Utah Code Ann. Sections 59-1-210, 59-5-104, 59-5-204, 59-6-104, 59-7-506, 59-8-105, 59-8a-105, 59-10-501, 59-12-111, 59-13-211, 59-13-312, 59-13-403, 59-14-303, and 59-15-105.

A. Definitions.

1. "Database Management System" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

2. "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized, structured electronic format.

3. "Hard copy" means any documents, records, reports, or other data printed on paper.

4. "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

5. "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

6. "Taxpayer" means the person required, under Title 59 or other statutes administered by the Tax Commission, to collect, remit, or pay the tax or fee to the Tax Commission.

B. If a taxpayer retains records in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the commission in machine-sensible format upon request by the commission.

C. Nothing in this rule shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not the taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this rule. However, this does not relieve the taxpayer of the obligation to comply with B.

D. Recordkeeping requirements for machine-sensible records.

1. Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the commission upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this rule are met.

2. At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format.

3. Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

4. Electronic Data Interchange Requirements.

a) Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record.

b) For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, and shipping detail. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method that allows the commission to interpret the coded information.

c) The taxpayer may capture the information necessary to satisfy D.4.b) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name, i.e., they contain only codes for that information, the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the commission. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

5. Electronic data processing systems requirements.

a) The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this rule.

6. Business process information.

a) Upon the request of the commission, the taxpayer shall provide a description of the business process that created the retained records. The description shall include the relationship between the records and the tax documents prepared by the taxpayer, and the measures employed to ensure the integrity of the records.

b) The taxpayer shall be capable of demonstrating:

(1) the functions being performed as they relate to the flow of data through the system;

(2) the internal controls used to ensure accurate and reliable processing; and

(3) the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

c) The following specific documentation is required for machine-sensible records retained pursuant to this rule:

(1) record formats or layouts;

(2) field definitions, including the meaning of all codes used to represent information;

(3) file descriptions, e.g., data set name; and

(4) detailed charts of accounts and account descriptions.

E. Records maintenance requirements.

1. The commission recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records. The NARA standards may be found at 36 C.F.R., Section 1234,(1995).

2. The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

F. Access to machine-sensible records.

1. The manner in which the commission is provided access to machine-sensible records as required in B. may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

2. Access will be provided in one or more of the following manners:

a) The taxpayer may arrange to provide the commission with the hardware, software, and personnel resources necessary to access the machine-sensible records.

b) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

c) The taxpayer may convert the machine-sensible records to a standard record format specified by the commission, including copies of files, on a magnetic medium that is agreed to by the commission.

d) The taxpayer and the commission may agree on other means of providing access to the machine-sensible records.

G. Taxpayer responsibility and discretionary authority.

1. In conjunction with meeting the requirements of D., a taxpayer may create files solely for the use of the commission. For example, if a data base management system is used, it is consistent with this rule for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and meets the requirements of D. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

2. A taxpayer may contract with a third party to provide custodial or management services of the records. The contract shall not relieve the taxpayer of its responsibilities under this rule.

H. Alternative storage media.

1. For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this rule to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents that may be stored on these media include general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

2. Microfilm, microfiche and other storage-only imaging systems shall meet the following requirements:

a) Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche, or other storage-only imaging system must be maintained and made available on request. This documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

b) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained.

c) Upon request by the commission, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche, or other storage-only imaging system.

d) When displayed on equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

e) All data stored on microfilm, microfiche, or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.

f) There is no substantial evidence that the microfilm, microfiche or other storage-only imaging system lacks authenticity or integrity.

I. Effect on hard-copy recordkeeping requirements.

1. Except as otherwise provided in this section, the provisions of this rule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by

existing law and regulations. Hard-copy records may be retained on a recordkeeping medium as provided in H.

2. Hard-copy records not produced or received in the ordinary course of transacting business, e.g., when the taxpayer uses electronic data interchange technology, need not be created.

3. Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this rule. These details include those listed in D.4.a) and D.4.b).

4. Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

5. Nothing in this section shall prevent the commission from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

R861-1A-36. Signatures Defined Pursuant to Utah Code Ann. Sections 41-1a-209, 59-10-512, 59-12-107, 59-13-206, and 59-13-307.

A. "TaxExpress" means the filing of tax returns and tax payment information by telephone and Internet web site.

B. Taxpayers who file tax return information, other than electronic funds transfers, through the Tax Commission's TaxExpress system shall use the Tax Commission assigned personal identification number as their signature for all tax return information filed through that system.

C. Individuals who submit an application to renew their vehicle registration on the Internet web site authorized by the Tax Commission shall use the Tax Commission assigned personal identification number included with their registration renewal information as their signature for the renewal application submitted over the Internet.

D. Taxpayers who use the Tax Commission authorized Internet web site to file tax return information for tax types that may be filed on that web site shall use the personal identification number provided by the Tax Commission as their signature for the tax return information filed on that web site.

E. Taxpayers who file an individual income tax return electronically and who met the signature requirement of the Internal Revenue Service shall be deemed to meet the signature requirement of Section 59-10-512.

R861-1A-37. Provisions Relating to Disclosure of Commercial Information Pursuant to Utah Code Ann. Section 59-1-404.

(1) The provisions of this rule apply to the disclosure of commercial information under Section 59-1-404. For disclosure of information other than commercial information, see rule R861-1A-12.

(2) For purposes of Section 59-1-404, "assessed value of the property" includes any value proposed for a property.

(3) For purposes of Subsection 59-1-404(2), "disclosure" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

(a) named party of a decision or order;

(b) party requesting a private letter ruling; or

(c) designated representative of a party described in (3)(a) or (3)(b).

(4) For purposes of Subsection 59-1-404(6), "published decision" does not include the issuance by the commission of a decision, order, or private letter ruling containing commercial information to a:

(a) named party of a decision or order;

(b) party requesting a private letter ruling; or

(c) designated representative of a party described in (4)(a) or (4)(b).

(5) Information that may be disclosed under Section 59-1-404(3) includes:

(a) the following information related to the property's tax exempt status:

(i) information provided on the application for property tax exempt status;

(ii) information used in the determination of whether a property tax exemption should be granted or revoked; and

(iii) any other information related to a property's property tax exemption;

(b) the following information related to penalty or interest relating to property taxes that the commission or county legislative body determines should be abated:

(i) the amount of penalty or interest that is abated;

(ii) information provided on an application or request for abatement of penalty or interest;

(iii) information used in the determination of the abatement of penalty or interest; and

(iv) any other information related to the amount of penalty or interest that is abated; and

(c) the following information related to the amount of property tax due on property:

(i) the amount of taxes refunded or deducted as an erroneous or illegal assessment under Section 59-2-1321;

(ii) information provided on an application or request that property has been erroneously or illegally assessed under Section 59-2-1321; and

(iii) any other information related to the amount of taxes refunded or deducted under (5)(c)(i).

(6)(a) Except as provided in (6)(b), commercial information disclosed during an action or proceeding may not be disclosed outside the action or proceeding by any person conducting or participating in the action or proceeding.

(b) Notwithstanding (6)(a), commercial information contained in a decision issued by the commission may be disclosed outside the action or proceeding if all of the parties named in the decision agree in writing to the disclosure.

(7) The commission may disclose commercial information in a published decision as follows.

(a) If the property taxpayer that provided the commercial information does not respond in writing to the commission within 30 days of the decision's issuance, requesting that the commercial information not be published and identifying the specific commercial information the taxpayer wants protected, the commission may publish the entire decision.

(b) If the property taxpayer that provided the commercial information indicates to the commission in writing the specific commercial information that the taxpayer wants protected, the commission may publish a version of the decision that contains commercial information not identified by the taxpayer under (7)(a).

(8) The commission may share commercial information gathered from returns and other written statements with the federal government, any other state, any of the political subdivisions of another state, or any political subdivision of this state, if these political subdivisions, or the federal government grant substantially similar privileges to this state.

R861-1A-38. Class Actions Pursuant to Utah Code Ann. Section 59-1-304.

A. Unless the limitations of Section 59-1-304(2) apply, the commission may expedite the exhaustion of administrative remedies required by individuals desiring to be included as a member of the class.

B. In expediting exhaustion of administrative remedies, the commission may take any of the following actions:

1. publish sample claim forms that provide the information necessary to process a claim in a form that will reduce the burden on members of the putative class and expedite processing by the commission;

2. provide for waiver of initial hearings where requested by any party;

3. provide for expedited rulings on motions for summary judgment where the facts are not contested and the legal issues have been previously determined by the commission in ruling on the case brought by class representatives. The parties may waive oral hearing and have final orders issued based upon information submitted in the claims and division responses;

4. consolidate the cases for hearing at the commission, where a group of claims presents identical legal issues and it is agreed by the parties that the resolution of the legal issues would be dispositive of the claims;

5. designate a claim as a test or sample claim with any rulings on that test or sample claim to be applicable to all other similar claims, upon agreement of the claiming parties; or

6. any other action not listed in this rule if that action is not contrary to procedures required by statute.

R861-1A-39. Penalty for Failure to File a Return Pursuant to Utah Code Ann. Sections 10-1-405, 59-1-401, 59-12-118, and 69-2-5.

(1)(a) Subject to Subsection (1)(b), "failure to file a tax return," for purposes of the penalty for failure to file a tax return under Subsection 59-1-401(1) includes a tax return that does not contain information necessary for the commission to make a correct distribution of tax revenues to counties, cities, and towns.

(b) Subsection (1)(a) applies to a tax return filed under:

(i) Chapter 12, Sales and Use Tax Act;

(ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or

(iii) Title 69, Chapter 2, Emergency Telephone Service Law.

(2)(a) "Unpaid tax," for purposes of the penalty for failure to file a tax return under Subsection 59-1-401(1) includes tax remitted to the commission under Subsection (2)(b) that is:

(i) not accompanied by a tax return; or

(ii) accompanied by a tax return that is subject to the penalty for failure to file a tax return.

(b) Subsection (2)(a) applies to a tax remitted under:

(i) Chapter 12, Sales and Use Tax Act;

(ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act; or

(iii) Title 69, Chapter 2, Emergency Telephone Service Law.

R861-1A-40. Waiver of Requirement to Post Security Prior to Judicial Review Pursuant to Utah Code Ann. Section 59-1-611.

(1) "Post security" is as defined in Section 59-1-611.

(2)(a) A taxpayer that seeks judicial review of a final commission determination of a deficiency may apply for a waiver of the requirement to post security with the commission by completing the financial statement provided by the commission.

(b) The financial statement described in Subsection (2)(a) shall be signed by the taxpayer under penalties of perjury.

(3) Upon review of the financial statement described in Subsection (2), the commission shall:

(a) determine whether the taxpayer qualifies for a waiver of the requirement to post security with the commission; or

(b) if unable to make the determination under Subsection (3)(a) from the financial statement, request additional information from the taxpayer as necessary to make that determination.

R861-1A-41. Date of Assessment Pursuant to Utah Code Ann. Sections 59-1-302.1 and 59-1-706.

(1) Except as provided in Subsections (2) and (3), "assessment date" means the date the tax liability is posted to the records of the commission.

(2) For purposes of a tax liability determined through an audit and for which a notice of deficiency has been mailed to the taxpayer, "assessment date" means:

(a) if a petition for redetermination has not been filed, the date:

(i) 30 days after a notice of deficiency has been mailed to the taxpayer;

(ii) 90 days after a notice of deficiency has been mailed to the taxpayer if the notice is addressed to a person outside the United States or District of Columbia; or

(iii) the taxpayer agrees with the commission, in writing, on the existence and amount of a tax liability, and consents to the assessment of the tax liability; or

(b) if a petition for redetermination has been filed, the date a tax liability resulting from a final commission decision is posted to the records of the commission.

(3) In the case of interest charged to a taxpayer, "assessment date" means the assessment date of the underlying tax liability.

(4) For purposes of Subsection (2), "deficiency" is defined as:

(a) provided in Section 59-7-516 in the case of a tax imposed under Title 59, Chapter 7, Corporate Franchise and Income Taxes;

(b) provided in Section 59-10-523 in the case of a tax imposed under Title 59, Chapter 10, Individual Income Tax Act; or

(c) unless otherwise provided in statute, the amount by which the tax imposed exceeds the excess of:

(I) the sum of:

(A)(i) the amount shown as the tax by the taxpayer upon his return, if the return was made by the taxpayer and if an amount was shown on the return as the tax by the taxpayer; or

(ii) zero, if no return is filed, or the return does not show any tax; and

(B) amounts previously assessed (or collected without assessment) as a deficiency; less

(II) amounts previously abated, refunded, or otherwise repaid in respect of that tax.

(5) For purposes of Subsection (2), a notice of deficiency shall:

(a) be mailed by the commission as provided in Subsection 59-7-517(1)(a) in the case of a tax imposed under Title 59, Chapter 7, Corporate Franchise and Income Taxes;

(b) be mailed by the commission as provided in Subsections 59-10-524(1) and (2) in the case of a tax imposed under Title 59, Chapter 10, Individual Income Tax Act; or

(c)(i)(A) unless otherwise required by statute, be mailed to the taxpayer at the taxpayer's last-known address if the commission determines that there is a deficiency in a tax; and

(ii) set forth the details of the deficiency and the manner of its computation.

(6) The commission may, at any time within the period prescribed for assessment, make a supplemental assessment if it is ascertained that an assessment is imperfect or incomplete in any material respect.

(7) The provisions of this rule apply to all taxes and fees collected by the commission unless otherwise provided by statute.

KEY: developmentally disabled, grievance procedures, taxation, disclosure requirements

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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-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-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.

(1) The lessor shall compute sales or use tax on all amounts received or charged in connection with a lease or rental of tangible personal property.

(2) 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.

(3) 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.

(4) A person that furnishes tangible personal property along with an operator, as described in the definition of lease or rental in Section 59-12-102, provides a service and shall:

(a) pay sales and use tax at the time that person purchases the tangible personal property that is furnished under this Subsection (4); and

(b) collect sales and use tax at the time that person provides the service if the service is subject to sales and 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.

(1)(a) The amount paid for admission is subject to sales and use tax, even though that amount includes the right of the purchaser to participate in some activity.

(b) For example, the sale of a ticket for a ride upon a mechanical device is an admission to a place of amusement.

(2)(a) Additional charges for the rental of tangible personal property are subject to sales and use tax as the sale of tangible personal property.

(b) For example:

(i) towel rentals and swimming suit rentals at a swimming pool are subject to sales and use tax;

(ii) locker rental fees at a swimming pool 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.

(1)(a) 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.

(b) 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.

(2) 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:

(a) to produce or care for agricultural products that are for sale;

(b) to feed or care for working dogs and working horses in agricultural use;

(c) to feed or care for animals that are marketed.

(3) Fur-bearing animals that are kept for breeding or for their products are agricultural products.

(4) 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.

(5) Poultry, eggs, and dairy products are not seasonal products for purposes of the sales and use tax exemption for the exclusive sale of seasonal crops, seedling plants, or garden, farm, or other agricultural produce sold 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.

(1) 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.

(a) "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.

(b) 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.

(2) 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.

(a) 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.

(b) Except as otherwise provided in Subsection (2)(d), 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.

(c) Sales of construction materials or fixtures made to religious or charitable institutions are exempt only if the items are sold as tangible personal property.

(d) Sales of materials are considered made to religious or charitable institutions and, therefore, exempt from sales tax, if:

(i) the religious or charitable institution makes payment for the materials directly to the vendor; or

(ii)(A) the materials are purchased on behalf of the religious or charitable institution.

(B) 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.

(e) Purchases not made pursuant to Subsection (2)(d) are assumed to have been made by the contractor and are subject to sales tax.

(3) 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.

(a) 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.

(b) 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.

(4) 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:

(a) moveable items that are attached to real property merely for stability or for an obvious temporary purpose;

(b) manufacturing equipment and machinery and essential accessories appurtenant to the manufacturing equipment and machinery;

(c) 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 and

(d) telephone or communications equipment and associated wire and lines if the equipment, wire, and lines:

(i) are provided as part of a single transaction;

(ii) that are part of real property are an incidental portion of the transaction;

(iii) are primarily used for the operation of a telephone system or a communications system;

(iv) are installed for the benefit of the trade or business conducted on the property; and

(v) are attached to real property in a manner such that their removal from the real property does not cause substantial damage to the equipment, wire, or lines or to the real property to which they are attached.

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, and Car Washers Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

(1) Sales of paint, wax, or other material to persons engaged in the business of painting and polishing of tangible personal property are exempt as sales for resale if the paint, wax, or other material becomes a part of the customer's tangible personal property. However, the vendor of these items must be given a resale certificate as provided for in Rule R865-19S-23.

(2) Sales of soap, washing mitts, polishing cloths, spray equipment, sand paper, and similar items to painters, polishers, and car washes are sales to the final consumer and are subject to tax.

R865-19S-78. Charges for Labor and Repair Under an Extended Warranty Agreement Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.

(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.

(1) Definitions.

(a)(i) "Pre-press materials" means materials that:

(B) are reusable;

(C) are used in the production of printed matter;

(D) do not become part of the final printed matter; and
(E) are sold to the customer.
(ii) Pre-press materials include film, magnetic media, compact disks, typesetting paper, and printing plates.
(b)(i) "Printer" means a person that reproduces multiple copies of images, regardless of the process employed or the name by which that person is designated.
(ii) A printer includes a person that employs the processes of letterpress, offset, lithography, gravure, engraving, duplicating, silk screen, bindery, or lettership.
(2) Purchases by a printer.
(a)(i) 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.
(ii) Examples of tangible personal property used or consumed by the printer include conditioners, solvents, developers, and cleaning agents.
(b)(i) A printer may purchase tax free for resale any tangible personal property that becomes a component part of the finished goods for resale.
(ii) Examples of tangible personal property that becomes a component part of the finished goods for resale include glue, stitcher wire, paper, and ink.
(c) 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.
(d) The tax treatment of a printer's purchase of graphic design services shall be determined in accordance with rule R865-19S-111.
(3) Sales by a printer.
(a) Except as provided in this Subsection (3), a printer shall collect sales and use tax on the following:
(i) charges for printed material, even though the paper may be furnished by the customer;
(ii) charges for envelopes;
(iii) charges for services performed in connection with the printing or the sale of printed matter, such as cutting, folding, and binding;
(iv) charges for pre-press materials purchased tax exempt by the printer; and
(v) charges for reprints and proofs.
(b) Charges for postage are not subject to sales and use tax.
(c) Sales by a printer are exempt from sales and use tax if:
(i) the sale qualifies for exemption under Section 59-12-104; and
(ii) the printer obtains from the purchaser a certificate as set forth in rule R865-19S-23.
(d) 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.
(e) 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.
(4) 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 Certain Purchases by a Manufacturing Facility Pursuant to Utah Code Ann. Section 59-12-104.

(1) Definitions:

(a) "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.

(b) "Machinery and equipment" means:

(i) 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

(ii) any accessory that is essential to a continuous manufacturing process. Accessories essential to a continuous manufacturing process include:

(A) bits, jigs, molds, or devices that control the operation of machinery and equipment; and

(B) 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.

(c) "Manufacturer" means a person who functions within a manufacturing facility.

(2) The sales and use tax exemption for the purchase or lease of machinery and equipment by a manufacturing facility applies only to purchases or leases of tangible personal property used in the actual manufacturing process.

(a) 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.

(b) Purchases of qualifying machinery and equipment are treated as purchases of tangible personal property under R865-19S-58, even if the item is affixed to real property upon installation.

(3) Machinery and equipment used for a nonmanufacturing activity qualify for the exemption if the machinery and equipment are primarily used in manufacturing activities. Examples of nonmanufacturing activities include:

(a) research and development;

(b) refrigerated or other storage of raw materials, component parts, or finished product; or

(c) shipment of the finished product.

(4) Where manufacturing activities and nonmanufacturing activities are performed at a single physical location, machinery and equipment purchased for use in the manufacturing operation are eligible for the sales and use tax exemption if the manufacturing operation constitutes a separate and distinct manufacturing establishment.

(a) Each activity is treated as a separate and distinct establishment if:

(i) no single SIC code includes those activities combined; or

(ii) each activity comprises a separate legal entity.

(b) Machinery and equipment used in both manufacturing activities and nonmanufacturing activities qualify for the exemption only if the machinery and equipment are primarily used in manufacturing activities.

(5) The manufacturer shall retain records to support the claim that the machinery and equipment are qualified for exemption from sales and use tax under the provisions of this rule and Section 59-12-104.

(6) 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.

The following definitions apply to the sales and use tax exemption for sales of certain tooling, special tooling, support equipment, and special test equipment.

(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.

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) 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 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 and Use Tax Exemption for Vehicles, Off-highway Vehicles, and Boats Required to be Registered, and Boat Trailers and Outboard Motors Pursuant to Utah Code Ann. Section 59-12-104.

(1) "Use" means mooring, slipping, and dry storage as well as the actual operation of vehicles.

(2) An owner of a vehicle described in Subsections 59-12-104(9) or (31) 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.

(3) A vehicle is deemed not used in this state beyond the necessity of transporting it to the borders of this state if the vehicle is:

(a) inspected in this state; or

(b) tested for functionality in this state.

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-113. Sales Tax Obligations of Jeep, Snowmobile, Aircraft, 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.

(1) "Federal airway" shall be identical to the definition of Class E airspace in 14 C.F.R. 71.71 (2006), which is incorporated by reference.

(2) Except as provided in Subsections (3) and (4), the provisions of this rule apply to the imposition of sales and use tax under Section 59-12-103 on amounts paid or charged as admission or user fees by jeep, snowmobile, aircraft and boat tour operators, river runners, outfitters, and other sellers providing similar services.

(3) Amounts paid or charged for helicopter, airplane, or other aircraft tours that enter into airspace designated by the Federal Aviation Administration as a federal airway during the tour are exempt from the sales and use tax.

(a) The exemption described in Subsection (3) does not apply if the only time the aircraft enters a federal airway is prior to the commencement of the tour or after the tour ends.

(b) A tour is deemed to occur from the time a paying customer is picked up to the time the paying customer is dropped off at the final destination point.

(4) Amounts paid or charged for boat tours, scenic cruises, or other similar activities on the waters of the state are exempt from sales and use tax if the waters on which the tour, cruise, or other similar activity operates are used, by themselves or in connection with other waters, as highways for interstate commerce.

(5) If payment for a service provided by a seller described

in (2) 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.

(6) If payment for a service provided by a seller described in (2) 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.

(7) If payment for a service provided by a seller described in (2) 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.

(8) Payment occurs in Utah if the purchaser:

(a) while at a business location of the seller in the state, presents payment to the seller; or

(b) does not meet the criteria under (8)(a) and is billed for the service at an address within the state.

(9) For purposes of this rule, there is a rebuttable presumption that payment for a service provided by a seller described in (2) 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.

R865-19S-120. Sales and Use Tax Exemption Relating to Film, Television, and Video Pursuant to Utah Code Ann. Section 59-12-104.

(1) The provisions of this rule apply to the sales and use tax exemption authorized under Section 59-12-104 for the purchase, lease, or rental of machinery or equipment by certain establishments related to film, television, and video if those purchases, leases, or rentals are primarily used in the production or postproduction of film, television, video, or similar media for commercial distribution.

(2) "Machinery or equipment" means tangible personal property eligible for capitalization under accounting standards.

(3)(a) "Tangible personal property eligible for capitalization under accounting standards" means tangible personal property with an economic life greater than one year.

(b) "Tangible personal property eligible for capitalization under accounting standards" does not include tangible personal property with an economic life of one year or less, even if that property is capitalized on the establishment's financial records.

(c) There is a rebuttable presumption that an item of tangible personal property is not eligible for capitalization if that property is not shown as a capitalized asset on the financial records of the establishment.

(4) Transactions that do not qualify for the sales tax exemption referred to in Subsection (1) include purchases, leases, or rentals of:

(a) land;
(b) buildings;
(c) raw materials;
(d) supplies;
(e) film;
(f) services;
(g) transportation;
(h) gas, electricity, and other fuels;
(i) admissions or user fees; and
(j) accommodations.

(5) If a transaction is composed of machinery or equipment and items that are not machinery or equipment, the items that are not machinery or equipment are exempt from sales and use tax if the items are:

(a) an incidental component of a transaction that is a purchase, lease, or rental of machinery or equipment; and

(b) not billed as a separate component of the transaction.

(6)(a) Except as provided in Subsection (6)(b), an item used for administrative purposes does not qualify for the exemption.

(b) Notwithstanding Subsection (6)(a), if an item is used both in the production or postproduction process and for administrative purposes, the item qualifies for the exemption if the primary use of the item is in the production or postproduction process.

KEY: charities, tax exemptions, religious activities, sales tax
July 16, 2007 9-2-1702
Notice of Continuation March 13, 2007 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
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

R865. Tax Commission, Auditing.
R865-20T. Tobacco Tax.
R865-20T-1. Assessment of Cigarette and Tobacco Products Tax Pursuant to Utah Code Ann. Sections 59-14-204 and 59-14-302.

A. The cigarette tax is a tax on the first purchase, use, storage, or consumption of cigarettes by a manufacturer, jobber, wholesaler, distributor, retailer, user, or consumer within the state.

B. If cigarettes are purchased outside the state for use, storage, or consumption within the state, the tax must be paid by the user, storer, or consumer.

C. The tobacco products tax is a tax on the first purchase, use, storage, or consumption of tobacco products by a manufacturer, wholesaler, jobber, distributor, retailer, user, storer, or consumer within the state.

D. No tax is due from nonresidents or tourists who import cigarettes or tobacco products for their own use while in the state.

R865-20T-3. Licensing of Cigarette and Tobacco-Products Dealers Pursuant to Utah Code Ann. Sections 59-14-202 and 59-14-301.

A. Each cigarette vending machine shall be licensed as a separate place of business, provided that only one machine needs to be licensed at any place of business where the licensee has more than one machine in operation.

1. The license shall be posted in a conspicuous place on the vending machine.

2. If a licensee operates more than one place of business, the application shall contain the required information about each place of business.

3. The application must be accompanied by the required fee for each place of business.

B. If a licensee's place of business changes, the licensee shall forward the license to the Tax Commission with a request for notation of the change in location.

C. A license under which business has been transacted has no redeemable value when the licensee ceases to transact business.

R865-20T-5. Bonding Requirements For Tobacco-Products Dealers Pursuant to Utah Code Ann. Section 59-14-301.

A. Dealers selling tobacco products upon which the taxes imposed by this act have been paid by a previous seller are not required to post a bond.

R865-20T-6. Purchase of Cigarette Stamps Pursuant to Utah Code Ann. Section 59-14-206.

(1) Cigarette revenue stamps are sold only to licensed and bonded dealers, except in cases where confiscated merchandise is sold to a person who does not intend to resell the merchandise but purchases it for consumption or use.

(2) Stamps may be delivered to a licensee on credit, provided that the following two conditions are met:

(a) A written request is made naming the person to whom the stamps are to be delivered, and identifying that person by means of signature, and including the address to which the stamps should be delivered.

(b) Only a responsible person of mature age is designated as the agent to whom the stamps are delivered.

(3) In addition to satisfying the conditions of Subsection (2), the licensee shall also comply with Subsection (3)(a), (3)(b), or (3)(c), whichever is appropriate.

(a) In the case of individual ownership, the request for stamps shall be signed by the licensee in the same manner that the signature appears on the licensee's bond.

(b) In the case of a partnership, the request shall be signed by a partner whose signature appears on the bond.

(c) In the case of a corporation, the request shall be signed by a duly authorized officer of the corporation.

R865-20T-7. Export Sales of Cigarette and Tobacco Products Pursuant to Utah Code Ann. Sections 59-14-205 and 59-14-401.

A. Sales of cigarettes and tobacco products to jobbers dealers outside the state are not subject to the taxes imposed by this act provided that physical delivery of the goods is made outside the state.

B. All export sales for which an exemption or refund is claimed must be supported by invoices and delivery tickets or bills of lading showing all of the following:

1. date of sale;
2. name and address of customer;
3. address to which delivered;
4. quantity and type of product sold.

R865-20T-8. Records Pertaining To Cigarette and Tobacco-Product Sales Pursuant to Utah Code Ann. Section 59-14-404.

A. It is the duty of manufacturers, jobbers, distributors, wholesalers, retailers, users, or consumers of cigarettes or tobacco products to keep records necessary to determine the amount of tax due on the sale, purchase, or consumption of those products.

B. All pertinent records must be preserved for a period of three years.

C. The records shall be available for inspection by the Tax Commission or its authorized agents at all times during normal business hours or at other times determined by mutual agreement.

R865-20T-9. Cigarette-Manufacturer Inventory Requirements Pursuant to Utah Code Ann. Section 59-14-205.

A. Inventories of cigarettes held by manufacturers in warehouses located in Utah may be delivered to wholesalers or jobbers without being stamped. A record of those deliveries must be kept by the manufacturer at its place of business in this state or at the warehouse. The record shall contain all of the following:

1. date of delivery;
2. the person to whom the cigarettes were delivered;
3. place of delivery;
4. quantity delivered.

B. The record must be available for inspection by the Tax Commission or its agents at any reasonable time.

C. If the merchandise is sold to retailers, consumers or persons other than wholesalers or jobbers, the manufacturer must qualify as a licensed dealer.

R865-20T-10. Procedures for the Revocation, Renewal, and Reinstatement of Licenses Issued Pursuant to Utah Code Ann. Sections 59-14-202, 59-14-203.5, and 59-14-301.5.

A. In order to renew a license issued under Sections 59-14-202 and 59-14-301, a licensee shall file form TC-38B, Cigarette and Tobacco Products License Renewal Application, with the Tax Commission on or before the last day of the month prior to the month in which the license expires.

1. The form shall be accompanied by the statutory renewal fee.

B. A license revoked pursuant to Section 26-42-103 shall be revoked for a period of one year commencing on the date the commission receives notification to revoke by the enforcing agency.

C. In order to reinstate a license revoked or suspended, or allowed to expire, a licensee shall file form TC-69, Utah State Business and Tax Registration, with the Tax Commission.

1. The form shall be accompanied by the statutory reinstatement fee.

D. A revoked or suspended license may not be reinstated prior to the expiration of the revocation or suspension period.

R865-20T-11. Reporting of Imported Cigarettes Pursuant to Utah Code Ann. Section 59-14-212.

A. A manufacturer, distributor, wholesaler, or retail dealer required by Section 59-14-212 to provide the Tax Commission, on a quarterly basis, a copy of the importer's federal import permit and the customs form showing the tax information required by federal law:

1. is not required to enclose that information with the quarterly report;

2. shall retain that information in its records; and

3. at the request of the Tax Commission, provide copies of that information to the Tax Commission.

R865-20T-12. Definition of Counterfeit Tax Stamp Pursuant to Utah Code Ann. Section 59-14-102.

"Counterfeit tax stamp," for purposes of the definition of a counterfeit cigarette in Section 59-14-102, includes a cigarette stamp that has previously been affixed to another pack of cigarettes.

KEY: taxation, tobacco products
July 16, 2007
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59-14-102
59-14-202
59-14-203.5
59-14-204
through
59-14-206
59-14-212
59-14-301
through
59-14-303
59-14-401
59-14-404

R877. Tax Commission, Motor Vehicle Enforcement.
R877-23V. Motor Vehicle Enforcement.
R877-23V-3. Salesperson Licensed For One Dealer Only Pursuant to Utah Code Ann. Section 41-3-202.

A. The holder of a dealer's license may not hold an additional license to engage in the activities of a salesperson for another dealer.

B. The requirement that a salesperson may be licensed with only one dealer at a time does not preclude dealership owners from being no-fee salespersons for their own dealerships.

R877-23V-5. Temporary Motor Vehicle Registration Permits and Extension Permits Issued by Dealers Pursuant to Utah Code Ann. Section 41-3-302.

(1) Every dealer desiring to issue temporary permits for the operation of motor vehicles shall make application to the Motor Vehicle Enforcement Division. If the privilege is extended, the dealer will receive a series of permits, consecutively numbered. The numbers shall be recorded by the division and charged to the dealer.

(2) If a vehicle purchaser requests a temporary permit, the dealer shall issue no more than one temporary registration permit, in numerical sequence, for each motor vehicle sold.

(3) The expiration date on the original permit shall be legible from a distance of 30 feet.

(4) The permit shall be displayed at the rear of the motor vehicle, in a place where the printed information on the permit and the expiration date may be easily seen.

(5) Temporary permits must not be placed in rear windows or permit holders with less than seventy percent light transparency.

(a) If a permit holder is used, it must not cover any of the printed information on the permit, including the expiration date.

(b) If a license plate frame is used in conjunction with a permit holder, it must not cover any printed information or expiration date on the permit.

(c) Temporary permits must be protected from exposure to the weather and conditions that would render them illegible.

(6) If a temporary permit is filled out incorrectly, the sale of the vehicle is rescinded, or for some other reason the permit is unusable, the dealer must return the permit to the Motor Vehicle Enforcement Division, together with the stub, and it will not be considered issued. If the permit is placed on a vehicle and the sale has not been rescinded, the permit will be considered issued and the dealer is liable for the registration fee for the vehicle together with any applicable penalties.

(7) A dealer's temporary permits may be audited at any time and the dealer required to pay for all outstanding permits. The registration fee charged will be for a passenger car unless the dealer is licensed to sell only motorcycles or small trailers.

(a) If the dealer's records indicate that the permit was issued for a vehicle other than that for which the dealer was billed, the dealer must submit the proper fee and penalty.

(b) If the records disclose that the permit was cleared properly, the dealer must furnish the license number of the vehicle for which the permit was issued and the date of issue.

(c) A dealer shall resolve any outstanding permit billings by payment of fees and penalties or by reconciling the permits before any additional permits will be issued to the dealer. This action will not be construed to be a cancellation of a dealer's privilege of issuing temporary permits, but merely a function of the division's routine audit and billing procedure.

(8) The dealer shall keep a written record in numerical sequence of every temporary registration permit issued. This record shall include all of the following information:

(a) the name and address of the person or firm to whom the permit is issued;

(b) a description of the motor vehicle for which it was issued, including year, make, model, and identification number;

(c) date of issue;

(d) license number;

(e) in the case of a commercial vehicle, the gross laden weight for which it was issued.

(9) In exceptional circumstances a dealer as agent for the division may issue an additional temporary permit for a vehicle by following the procedures outlined below:

(a) The dealer must contact the division and request an extension permit for a particular vehicle. If the request is denied, no extension permit will be issued.

(b) If the extension permit is approved, the division shall issue the dealer an approval number. This number must be recorded by the dealer in its temporary permit record and on the permit and stub in the space provided for the license number. The space provided on the permit and stub for the dealer name must be completed with the words "State Tax Commission" and the dealer's license number. The remainder of the permit and stub will be completed as usual.

(c) The dealer must return the permit stub to the division within 45 days from the date it is issued.

(d) A dealer may not issue an extension permit if it is determined that the dealer has been granted extensions for more than 2% of the permits issued to the dealership during the past three months. This percentage is calculated by dividing the number of extensions granted the dealer during the past three months by the permits issued by the dealer during the past three months.

(10) All extension permits issued by dealers under this rule are considered issued by the division.

(11) When a motor vehicle is sold for registration in another state, the stub portion of the temporary permit shall be filed with the division within ten days from the date of issue, accompanied by the required fee. The sale must be reported in the dealer's monthly report of sale required by Section 41-3-301(2)(b). If the permit stub and the required fee are not postmarked or received by the division within 45 days, a penalty equal to the required fee shall be collected pursuant to Section 41-3-302.

(12) The temporary registration card, attached to the temporary permit, must be detached and given to the customer at the time the temporary permit is issued. This temporary registration card must be kept in the vehicle while the temporary permit is displayed.

R877-23V-6. Issuance of In-Transit Permits Pursuant to Utah Code Ann. Section 41-3-305.

A. Transported semitractors are piggy-backed when all of the semitractors being transported are touching the ground.

B. In-transit permits may not be issued for loaded motor vehicles over 12,000 pounds gross laden weight.

C. Each piggy-backed vehicle must have a separate in-transit permit or be properly registered for operation in Utah.

D. A semitractor hauling unlicensed trailers must obtain an in-transit permit for any trailer in contact with the ground.

R877-23V-7. Misleading Advertising Pursuant to Utah Code Ann. Section 41-3-210.

A. Violation of any of the following standards of practice for the advertising and selling of motor vehicles is a violation of Section 41-3-210.

1. Accuracy. Any advertised statements and offers about a vehicle as to year, make, model, type, condition, equipment, price, trade-in-allowance, terms, and so forth, shall be clearly set forth and based upon facts.

2. Bait. Bait advertising and selling practices may not be used. A vehicle advertised at a specific price shall be in the possession of the advertiser at the address given. It shall be willingly shown, demonstrated and sold, or, in the case of a new

vehicle floor model, orders shall be taken for future delivery of the identical model at the advertised price and terms. If sold, the advertiser shall, upon request of any prospective purchaser, peace officer, or employee of the division, show sales records of the advertised vehicle.

3. Price. When the price of a vehicle is quoted, the vehicle shall be clearly identified as to make, year, model and if new or used. In addition, the stated price must include all charges that the customer must pay for the vehicle, including freight or destination charges, dealer preparation, dealer handling, additional dealer profit, document fees, and undercoating or rustproofing.

a) The advertised price need not include sales tax, or titling and registration fees required by the state or a county.

b) In addition to other advertisements, this pertains to price statements such as "$..... Buys".

c) When "list", "sticker", or words of similar import are used in an advertisement, they may refer only to the manufacturer's suggested retail price. If a supplementary price sticker is used, the advertised price must include all items listed on the supplementary sticker.

d) If the customer requests and receives a temporary permit, the temporary permit fee need not be included in the advertised price. Documentation fees are not required by the state or counties.

4. Savings and Discount Claims. Because the intrinsic value of a used vehicle is difficult to establish, specific claims of savings may not be used in an advertisement. This includes statements such as, "Was priced at $....., now priced at $.....

a) The word "wholesale" may not be used in retail automobile advertising.

b) When an automotive advertisement contains an offer of a discount on a new vehicle, the amount of the discount must be stated by reference to the manufacturer's suggested retail price of the vehicle.

5. Down Payments. The amount of the down payment may not be stated in a manner that suggests that it is the selling price of the vehicle. If an advertisement states "You can buy with no money down", or terms of similar import, the customer must be able to leave the dealership with the vehicle without making any outlay of money.

6. Trade-in Allowance. Statements representing that no other dealer grants greater allowances for trade-ins may not be used. A specific trade-in amount or range of trade-in amounts may not be used in advertising.

7. Finance. The phrases, "no finance charge", "no carrying charge", or similar expressions may not be used when there is a charge for placing the transaction on a time payment basis. Statements representing or implying that no prospective credit purchaser will be rejected because of inability to qualify for credit may not be used.

8. Unpaid Balance and Repossessions. The term "repossessed" may be used only to describe vehicles that have actually been repossessed from a purchaser. Advertisers offering repossessed vehicles for sale may be required to offer proof of those repossessions. The unpaid balance shall be the full selling price unless otherwise stated.

9. Current Used. When a used motor vehicle, as defined by Section 41-3-102, of a current series is advertised, the first line of the advertisement must contain the word "used" or the text must clearly indicate that the vehicle offered is used.

10. Demonstrators, Executives' and Officials' Cars.

a) "Demonstrator" means a vehicle that has never been sold or leased to a member of the public.

b) Demonstrator vehicles include vehicles used by new vehicle dealers or their personnel for demonstrating performance ability but not vehicles purchased or leased by dealers or their personnel and used as their personal vehicles.

c) A demonstrator vehicle may be advertised for sale only by a dealer franchised for the sale of that make of new vehicle.

d) An executive's or official's vehicle shall have been used exclusively by an executive of the dealer's franchising manufacturer or distributor, or by an executive of the franchised dealership. These vehicles may not have been sold or leased to a member of the public prior to the appearance of the advertisement.

e) Demonstrator's, executive's and official's vehicles shall be clearly and prominently advertised as such. Advertisements shall include the year, make, and model of the vehicle offered for sale.

11. Taxi-cabs, Police, Sheriff, and Highway Patrol Vehicles. Taxi-cabs, police, sheriff, and highway patrol vehicles shall be so identified. These vehicles may not be described by an ambiguous term such as "commercial".

12. Mileage Statements. When an advertisement quotes the number of miles or a range of miles a vehicle has been driven, the licensee must have written evidence that the vehicle has not been operated in excess of the advertised mileage.

a) The evidence required by this section shall be the properly completed odometer statement required by Section 41-1a-902.

b) If a licensee chooses to advertise specific mileage or a range of miles a vehicle has been driven, the licensee shall upon request of any prospective purchaser, peace officer, or employee of the division produce all documents in its possession pertaining to that vehicle so that the mileage can be readily verified.

13. Underselling Claims. Unsupported underselling claims may not be used. Underselling claims include the following: "our prices are guaranteed lower than elsewhere", "money refunded if you can duplicate our values", "we guarantee to sell for less", "we sell for less", "we purchase vehicles for less so we can sell them for less", "highest trade-in allowance", "we give $300 more in trade than any other dealers". Evidence of supported underselling claims must be contained in the advertisement.

14. Would You Take $..... Use of cards, circulars, or other advertising containing such offers as "would you take $....., if I could get you $..... for your car", may not be used.

15. Free. "Free" may be used in advertising only when the advertiser is offering an unconditional gift. If receipt of the merchandise or service is conditional on a purchase the following conditions must be satisfied:

a) The normal price of the merchandise or service to be purchased may not have been increased nor its quantity reduced;

b) The advertiser must disclose this condition clearly and conspicuously together with the offer and not by placing an asterisk or symbol next to the word "free" and then referring to the condition in a footnote; and

c) The offer must be temporary. For purposes of this subsection, "temporary" means that the offer is made for no more than 30 days during any 12-month period.

16. Driving Trial. A free driving trial means that the purchaser may drive the vehicle during the trial period and return it to the dealer within the specified period and obtain a refund of all moneys, signed agreements, or other considerations deposited and a return of any vehicle traded in. The exact terms and conditions of the free driving trial shall be set forth in writing and a copy given to the purchaser at the time of the sale.

17. Guaranteed. When words such as "guarantee", "warranty", or other terms implying protection are used in advertising, an explanation of the time and coverage of the guarantee or warranty shall be given in clear and concise language. The purchaser shall be provided with a written document stating the specific terms and coverage.

18. Name Your Own Deal. Statements such as "write your own deal", "name your own price", "name your own monthly payments", "appraise your own vehicle", and phrases of similar

import may not be used.

19. Disclosure of Material Facts. Disclosures of material facts that are contained in advertisements and that involve types of vehicles and transactions shall be made in a clear and conspicuous manner.

a) Factors to be taken into consideration include advertisement layout, headlines, illustrations, type size, contrast, crawl speed and editing.

b) Fine print, and mouse print are not acceptable methods of disclosing material facts.

c) The disclosure must be made in a typeface and point size comparable to the typeface and point size of the text used throughout the body of the advertisement.

d) An asterisk may be used to give additional information about a word or term, however, asterisks or other reference symbols may not be used as a means of contradicting or substantially changing the meaning of any advertising statements.

20. Lease. When an advertisement relates to a lease, the advertisement must make it readily apparent that the transaction advertised is a lease.

a) The word "lease" must appear in a prominent position in the advertisement in a typeface and point size comparable to the largest text used to directly advertise the vehicle.

b) Statements that do not use the term "lease" do not constitute adequate disclosure of a lease.

c) Lease advertisements may not contain the phrase "no down payment" or words of similar import if an outlay of money is required to lease the vehicle.

d) Lease terms that are not available to the general public may not be included in advertisements directed at the general public.

e) Limitations and qualifications applicable to the lease terms advertised shall be clearly and conspicuously disclosed.

21. Television Disclosures. A disclosure appearing in television advertisements must clearly and conspicuously feature all necessary information in a manner that can be read and understood if type is used, or that can be heard and understood if audio is used. Fine print and mouse print do not constitute clear and conspicuous disclosure.

22. Invoice or Cost. The terms "invoice" or "factory invoice" may be used as long as the dealer is willing to show the factory invoice to the prospective buyer. The term "cost" may not be used.

23. Rebate Offers. "Rebate", "cash rebate", or similar terms may be used only when it is clearly and conspicuously stated who is offering the rebate.

24. Buy-down Interest Rates. No buy-down interest rate may be advertised unless the dealer discloses the amount of dealer contribution and states that the contribution by the dealership may increase the negotiated price of the vehicle.

25. Special Status of Dealership. An automotive advertisement may not falsely imply that the dealer has a special sponsorship, approval status, affiliation, or connection with the manufacturer that is greater or more direct than any other like dealer.

26. Price Equaling. An advertisement that expresses a policy of matching or bettering competitor's prices shall fully disclose any conditions that apply and specify the evidence a consumer must present to take advantage of the offer. The evidence requirement may not place an unreasonable burden on the consumer by, for example requiring the consumer to produce a signed contract from another dealer or to find a vehicle with the identical features.

27. Van Conversion Advertisements. A dealer may advertise a modified vehicle using the conversion firm's name and may refer to the chassis manufacturer in a less prominent manner, but may not advertise a modified vehicle solely by a chassis manufacturer's name unless enfranchised to sell that make of vehicle.

28. Auction. "Auction" or "auction special" and other terms of similar import may be used only in connection with vehicles offered or sold at a bona fide auction.

29. Layout and Type Size. The layout, headlines, illustrations, or type size of a printed advertisement and the broadcast words or pictures of radio or television advertisements may not convey or permit an erroneous or misleading impression as to which vehicle or vehicles are offered at featured prices.

a) When an advertisement contains a picture of a vehicle along with a quoted price, the vehicle pictured must be the exact model with identical options and accessories as the vehicle advertised.

b) No advertised offer, expression, or display of price, terms, down payment, trade-in allowances, cash difference, savings, or other material terms may be misleading and any necessary qualifications shall be clearly, conspicuously, and accurately set forth to prevent misunderstanding.

c) Qualifying terms and phrases shall be clearly, conspicuously, and accurately set forth as follows:

(1) in bold print and in type of a size that is capable of being read without unreasonable extra effort;

(2) in terms that are understandable to the buying public; and

(3) in close proximity to the qualified representation and not separated or buried by asterisk in some other part of the advertisement.

R877-23V-8. Signs and Identification Pursuant to Utah Code Ann. Section 41-3-105.

(1) Every dealer, dismantler, manufacturer, remanufacturer, transporter, crusher, and body shop must post a sign at its principal place of business.

(2) The sign required under Subsection (1) shall:

(a) plainly display in a permanent manner the name under which the business is licensed;

(b) be at least 24 square feet in size, unless required otherwise, in writing, by a government entity; and

(c) be painted on the building, attached to the building with nails or bolts, or affixed to posts that have been securely anchored in the ground.

(3) A similar sign must be conspicuously posted at each additional place of business and must show, in addition, the address of the principal place of business. All signs must remain posted at each place of business and on the office. If the office is not located at the site on which the motor vehicles are displayed or offered for sale or exchange, the bonded dealer number, dismantler number, or manufacturer number must also be conspicuously displayed either on the sign or on the building.

(4) If the additional place of business is an auto show or similar business that will conduct business for ten days or less, the sign need only show the licensee's name as licensed by the division and be of a size that reasonably identifies the licensee.

(5) No place of business may be operated under a name other than that by which the licensee is licensed by the division. No sign may be posted at a place of business that shows a business name other than the one licensed by the division or gives the impression that the business is other than the one licensed by the division. However, a sign containing a variation of the licensee's name, if a variation of the licensee's name is required by a manufacturer in writing, may be posted as long as the sign containing the licensed name is more prominent.

(6) Documents submitted by a licensee to a government entity shall be identified only by the name under which the licensee is licensed by the division. All documents used by the licensee to promote or transact a sale or lease of a vehicle shall identify that licensee only by the name under which the licensee is licensed with the division.

R877-23V-10. Uniform Vehicle Identification Numbering System for Licensed Manufacturers Pursuant to Utah Code Ann. Section 41-3-202.

A. Except as provided in subsection (B), all manufacturers of motor vehicles licensed under Section 41-3-202 shall comply with the National Highway Traffic and Safety Administration's Standard No. 115, 49 C.F.R. Section 571.115 (1992), regarding 17-character vehicle identification number (VIN) requirements.

B. Manufacturers involved only in the second stage of a multi-stage vehicle are not required to comply with subsection (A) if the manufacturer of the first stage has complied with subsection (A).

R877-23V-11. License Information Update Pursuant to Utah Code Ann. Section 41-3-201.

A. Every person licensed under Section 41-3-202 shall notify the Motor Vehicle Enforcement Division (division) immediately of any change in ownership, address, or circumstance relating to its fitness to be licensed.

B. The division may request the licensee to review information contained in the division's files and notify the division of any corrections that must be made.

R877-23V-12. Documents Required Prior to Issue of a License Pursuant to Utah Code Ann. Section 41-3-105.

A. The following items must be properly completed and presented to the Motor Vehicle Enforcement Division (division) before a license is issued.

1. New motor vehicle dealer or new motorcycle and small trailer dealer license:

a) application for license;

b) dealer bond in the amount prescribed by Section 41-3-205;

c) evidence that a Utah sales tax license has been issued to the dealership;

d) franchise verification from the manufacturer of each make of new motor vehicle to be offered for sale;

e) picture of the dealership, clearly showing the office, display space, and required sign;

f) pictures of the owner, partners, or corporate officers who will act as no-fee salespersons;

g) the fee required by Section 41-3-601;

h) evidence that the place of business has been inspected by an authorized division employee or agent;

i. fingerprints of the owner, partners, or corporate officers who will act as no-fee salespersons, and the fees and waiver required by the Department of Public Safety for the processing of fingerprints.

2. Used motor vehicle dealer or used motorcycle and small trailer dealer license:

a) application for license;

b) dealer bond in the amount prescribed by Section 41-3-205;

c) evidence that a Utah sales tax license has been issued to the dealership;

d) picture of the dealership, clearly showing the office, display space, and required sign;

e) pictures of the owner, partners, or corporate officers who will act as no-fee salespersons;

f) the fee required by law;

g) evidence that the place of business has been inspected by an authorized division employee or agent;

h) fingerprints of the owner, partners, or corporate officers who will act as no-fee salespersons, and the fees and waiver required by the Department of Public Safety for the processing of fingerprints.

3. Manufacturer or remanufacturer license:

a) application for license;

b) evidence that the applicant has complied with the National Highway Traffic and Safety Administration's Motor Vehicle Safety Standard No. 115, regarding 17 character vehicle identification number (VIN) requirements;

c) picture of the principal place of business;

d) the fee required by Section 41-3-601;

e) evidence that a Utah sales tax license has been issued to the manufacturer or remanufacturer;

f) evidence that the place of business has been inspected by an authorized division employee or agent.

4. Transporter license:

a) application for license;

b) picture of the principal place of business;

c) the fee required by Section 41-3-601;

d) evidence that a Utah sales tax license has been issued to the transporter;

e) evidence that the place of business has been inspected by an authorized division employee or agent.

5. Dismantler license:

a) application for license;

b) evidence that a Utah sales tax license has been issued for the dismantler;

c) picture of the principal place of business, clearly showing the office, sign, and display space;

d) the fee required by Section 41-3-601;

e) evidence that the place of business has been inspected by an authorized division employee or agent.

6. Crusher license:

a) application for license;

b) crusher bond as prescribed in Section 41-3-205;

c) picture of the principal place of business, clearly showing the office;

d) the fee required by Section 41-3-601;

e) evidence that a Utah sales tax license has been issued for the crusher;

f) evidence that the place of business has been inspected by an authorized division employee or agent.

7. Salesperson license:

a) application for license;

b) picture of the applicant;

c) fingerprints of the applicant and the fees and waiver required by the Department of Public Safety for the processing of fingerprints;

d) the fee required by Section 41-3-601.

8. Distributor, factory branch, distributor branch, or representative license:

a) application for license;

b) the fee required by Section 41-3-601.

9. Body shop license:

a) application for license;

b) body shop bond as prescribed in Section 41-3-205;

c) picture of the principal place of business, clearly showing the office, sign, and display space;

d) the fee required by Section 41-3-601;

e) evidence that a Utah sales tax license has been issued for the body shop;

f) evidence that the place of business has been inspected by an authorized division employee or agent.

10. New applicants may also be required to attend an orientation class on motor vehicle laws and motor vehicle business laws before their license is issued.

R877-23V-14. Dealer Identification of Fees Associated with Issuance of Temporary Permits Pursuant to Utah Code Ann. Sections 41-3-301 and 41-3-302.

(1) Only fees required by Title 41, Chapter 1a, may be identified as state-mandated fees.

(2) A dealer that charges the purchaser or lessee of a motor vehicle a fee for preparing or processing any state-mandated documents or services ("dealer documentary service fees") must,

in addition to the requirements set forth in Subsection (1), prominently display a sign on the dealer premises in a location that is readily discernable by all purchasers and lessees. The sign shall contain the language set forth in Subsection (2)(a).

(a) The (dealer documentary service fee) ( ) as set forth in your contract represents costs and profit to the dealer for preparing and processing documents and other services related to the sale or lease of your vehicle. These fees are not set or state mandated by state statute or rule.

(b) The blank in Subsection (2)(a) may be wording selected by the dealer to describe the fee charged for document preparation and processing and other services, but must be, in all cases, the actual wording used in the dealer's contract of sale or lease agreement.

R877-23V-16. Replacement or Renewal of Lost or Stolen Special Plates Pursuant to Utah Code Ann. Section 41-3-507.

A. A lost or stolen dealer, dismantler, manufacturer, remanufacturer, or transporter plate may be replaced only after it has expired.

B. The replaced special plate shall be included in the calculation of special plates a dealer may be issued under Section 41-3-503.

R877-23V-18. Qualifications for a Salvage Vehicle Buyer License Pursuant to Utah Code Ann. Section 41-3-202.

A. An applicant for a salvage vehicle buyer license shall provide to the division:

1. evidence that the applicant is licensed in any state as a motor vehicle dealer, dismantler, or body shop;

2. a list of any previous motor vehicle related businesses in which the applicant was involved;

3. evidence that the applicant has business experience in buying, selling, or otherwise working with salvage vehicles;

4. evidence that the applicant understands and complies with statutes and rules relating to the handling and disposal of environmental hazardous materials associated with salvage vehicles under Title 19, Chapter 6, Hazardous Substances; and

5. evidence that the applicant has complied with the provisions of Title 41, Chapter 3, Motor Vehicle Business Regulation Act, or similar laws of another state.

R877-23V-19. Disclosure of Vehicles Initially Delivered for Sale in a Country Other than the United States Pursuant to Utah Code Ann. Section 41-1a-712.

The written notice required under Section 41-1a-712 for a vehicle sold or offered for sale in this state that was initially delivered for sale in a country other than the United States shall contain language substantially similar to the following statements.

A. The odometer for this vehicle may have been converted to miles.

B. This vehicle meets U.S. Department of Transportation safety standards.

C. This vehicle may have manufacturer warranty exclusions if sold or offered for sale in this country.

KEY: taxation, motor vehicles
July 16, 2007 **41-1a-712**
Notice of Continuation March 14, 2007 **41-3-105**
41-3-201
41-3-202
41-3-210
41-3-301
41-3-302
41-3-305
41-3-503
41-3-505
41-3-506

R884. Tax Commission, Property Tax.
R884-24P. Property Tax.
R884-24P-5. Abatement or Deferral of Property Taxes of Indigent Persons Pursuant to Utah Code Ann. Sections 59-2-1107 through 59-2-1109 and 59-2-1202(5).

A. "Household income" includes net rents, interest, retirement income, welfare, social security, and all other sources of cash income.

B. Absence from the residence due to vacation, confinement to hospital, or other similar temporary situation shall not be deducted from the ten-month residency requirement of Section 59-2-1109(3)(a)(ii).

C. Written notification shall be given to any applicant whose application for abatement or deferral is denied.

R884-24P-7. Assessment of Mining Properties Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Allowable costs" means those costs reasonably and necessarily incurred to own and operate a productive mining property and bring the minerals or finished product to the customary or implied point of sale.

a) Allowable costs include: salaries and wages, payroll taxes, employee benefits, workers compensation insurance, parts and supplies, maintenance and repairs, equipment rental, tools, power, fuels, utilities, water, freight, engineering, drilling, sampling and assaying, accounting and legal, management, insurance, taxes (including severance, property, sales/use, and federal and state income taxes), exempt royalties, waste disposal, actual or accrued environmental cleanup, reclamation and remediation, changes in working capital (other than those caused by increases or decreases in product inventory or other nontaxable items), and other miscellaneous costs.

b) For purposes of the discounted cash flow method, allowable costs shall include expected future capital expenditures in addition to those items outlined in A.1.a).

c) For purposes of the capitalized net revenue method, allowable costs shall include straight- line depreciation of capital expenditures in addition to those items outlined in A.1.a).

d) Allowable costs does not include interest, depletion, depreciation other than allowed in A.1.c), amortization, corporate overhead other than allowed in A.1.a), or any expenses not related to the ownership or operation of the mining property being valued.

e) To determine applicable federal and state income taxes, straight line depreciation, cost depletion, and amortization shall be used.

2. "Asset value" means the value arrived at using generally accepted cost approaches to value.

3. "Capital expenditure" means the cost of acquiring property, plant, and equipment used in the productive mining property operation and includes:

a) purchase price of an asset and its components;
b) transportation costs;
c) installation charges and construction costs; and
d) sales tax.

4. "Constant or real dollar basis" means cash flows or net revenues used in the discounted cash flow or capitalized net revenue methods, respectively, prepared on a basis where inflation or deflation are adjusted back to the lien date. For this purpose, inflation or deflation shall be determined using the gross domestic product deflator produced by the Congressional Budget Office, or long-term inflation forecasts produced by reputable analysts, other similar sources, or any combination thereof.

5. "Discount rate" means the rate that reflects the current yield requirements of investors purchasing comparable properties in the mining industry, taking into account the industry's current and projected market, financial, and economic conditions.

6. "Economic production" means the ability of the mining property to profitably produce and sell product, even if that ability is not being utilized.

7. "Exempt royalties" means royalties paid to this state or its political subdivisions, an agency of the federal government, or an Indian tribe.

8. "Expected annual production" means the economic production from a mine for each future year as estimated by an analysis of the life-of-mine mining plan for the property.

9. "Fair market value" is as defined in Section 59-2-102.

10. "Federal and state income taxes" mean regular taxes based on income computed using the marginal federal and state income tax rates for each applicable year.

11. "Implied point of sale" means the point where the minerals or finished product change hands in the normal course of business.

12. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.

13. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts from the sale of minerals (or if self - consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.

14. "Non-operating mining property" means a mine that has not produced in the previous calendar year and is not currently capable of economic production, or land held under a mineral lease not reasonably necessary in the actual mining and extraction process in the current mine plan.

15. "Productive mining property" means the property of a mine that is either actively producing or currently capable of having economic production. Productive mining property includes all taxable interests in real property, improvements and tangible personal property upon or appurtenant to a mine that are used for that mine in exploration, development, engineering, mining, crushing or concentrating, processing, smelting, refining, reducing, leaching, roasting, other processes used in the separation or extraction of the product from the ore or minerals and the processing thereof, loading for shipment, marketing and sales, environmental clean-up, reclamation and remediation, general and administrative operations, or transporting the finished product or minerals to the customary point of sale or to the implied point of sale in the case of self-consumed minerals.

16. "Product price" for each mineral means the price that is most representative of the price expected to be received for the mineral in future periods.

a) Product price is determined using one or more of the following approaches:

(1) an analysis of average actual sales prices per unit of production for the minerals sold by the taxpayer for up to five years preceding the lien date; or,

(2) an analysis of the average posted prices for the minerals, if valid posted prices exist, for up to five calendar years preceding the lien date; or,

(3) the average annual forecast prices for each of up to five years succeeding the lien date for the minerals sold by the taxpayer and one average forecast price for all years thereafter for those same minerals, obtained from reputable forecasters, mutually agreed upon between the Property Tax Division and the taxpayer.

b) If self-consumed, the product price will be determined by one of the following two methods:

(1) Representative unit sales price of like minerals. The representative unit sales price is determined from:

(a) actual sales of like mineral by the taxpayer;
(b) actual sales of like mineral by other taxpayers; or
(c) posted prices of like mineral; or
(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate to adjust to a cost that includes profit, and dividing the resulting figure by the number of units mined.

17. "Related revenue cash flows" mean non-product related cash flows related to the ownership or operation of the mining property being valued. Examples of related revenue cash flows include royalties and proceeds from the sale of mining equipment.

18. "Self consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilizes for the manufacture or construction of other goods and services.

19. "Straight line depreciation" means depreciation computed using the straight line method applicable in calculating the regular federal tax. For this purpose, the applicable recovery period shall be seven years for depreciable tangible personal mining property and depreciable tangible personal property appurtenant to a mine, and 39 years for depreciable real mining property and depreciable real property appurtenant to a mine.

B. Valuation.

1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by:

a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and

b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.

2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and review for reasonableness by the Property Tax Division.

3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method. This method is outlined as follows:

a) Determine annual net revenue, both net losses and net gains, from the productive mining property for each of the immediate past five years, or years in operation, if less than five years. Each year's net revenue shall be adjusted to a constant or real dollar basis.

b) Determine the average annual net revenue by summing the values obtained in B.3.a) and dividing by the number of operative years, five or less.

c) Divide the average annual net revenue by the discount rate to determine the fair market value of the entire productive mining property.

d) Subtract from the fair market value of the entire productive mining property the fair market value, as of the lien date, of licensed vehicles and nontaxable items, to determine the taxable value of the productive mining property.

4. The discount rate shall be determined by the Property Tax Division.

a) The discount rate shall be determined using the weighted average cost of capital method, a survey of reputable mining industry analysts, any other accepted methodology, or any combination thereof.

b) If using the weighted average cost of capital method, the Property Tax Division shall include an after-tax cost of debt and of equity. The cost of debt will consider market yields. The cost of equity shall be determined by the capital asset pricing model, arbitrage pricing model, risk premium model, discounted cash flow model, a survey of reputable mining industry analysts, any other accepted methodology, or a combination thereof.

5. Where the discount rate is derived through the use of publicly available information of other companies, the Property Tax Division shall select companies that are comparable to the productive mining property. In making this selection and in determining the discount rate, the Property Tax Division shall consider criteria that includes size, profitability, risk, diversification, or growth opportunities.

6. A non-operating mine will be valued at fair market value consistent with other taxable property.

7. If, in the opinion of the Property Tax Division, these methods are not reasonable to determine the fair market value, the Property Tax Division may use other valuation methods to estimate the fair market value of a mining property.

8. The fair market value of a productive mining property may not be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property. The mine value shall include all equipment, improvements and real estate upon or appurtenant to the mine. All other tangible property not appurtenant to the mining property will be separately valued at fair market value.

9. Where the fair market value of assets upon or appurtenant to the mining property is determined under the cost method, the Property Tax Division shall use the replacement cost new less depreciation approach. This approach shall consider the cost to acquire or build an asset with like utility at current prices using modern design and materials, adjusted for loss in value due to physical deterioration or obsolescence for technical, functional and economic factors.

C. When the fair market value of a productive mining property in more than one tax area exceeds the asset value, the fair market value will be divided into two components and apportioned as follows:

1. Asset value that includes machinery and equipment, improvements, and land surface values will be apportioned to the tax areas where the assets are located.

2. The fair market value less the asset value will give an income increment of value. The income increment will be apportioned as follows:

a) Divide the asset value by the fair market value to determine a quotient. Multiply the quotient by the income increment of value. This value will be apportioned to each tax area based on the percentage of the total asset value in that tax area.

b) The remainder of the income increment will be apportioned to the tax areas based on the percentage of the known mineral reserves according to the mine plan.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1998.

R884-24P-8. Security for Property Tax on Uranium and Vanadium Mines Pursuant to Utah Code Ann. Section 59-2-211.

A. The security deposit allowed by Section 59-2-211 shall be requested from the mine owners or operators by giving notice in the manner required by Section 59-2-211. A list of mine owners and operators who have made lump sum security deposits with the Tax Commission will be furnished annually by the Tax Commission to any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah.

B. At the option of the mine owner or operator, within 30 days after receiving proper notice from the Tax Commission, or if the mine owner or operator has not complied with the request within the 30 day period, the Tax Commission may implement the following procedure:

1. Any person, mill, buying station, or other legal entity receiving uranium or vanadium ore mined, produced, or received from within Utah shall withhold 4 percent, or any higher amount set by the Tax Commission, of the gross proceeds due to the mine operator or owner.

2. All amounts withheld shall be remitted to the Tax Commission by the last day of April, July, October, and January for the immediately preceding calendar quarter, in the manner set forth by the Tax Commission.

3. Not later than the last day of February, owners or operators of uranium and vanadium mines who have not made lump sum security deposits with the Tax Commission shall be provided with a statement from the Tax Commission showing all security deposit amounts withheld from their gross proceeds during the previous calendar year.

4. The Tax Commission shall provide the county treasurers with a list of all uranium and vanadium mine owners and operators who have had security deposit amounts withheld. The county treasurers shall then advise the Tax Commission in writing of the amount of taxes due from each mine owner or operator on the Tax Commission's list.

5. Once all county treasurers have responded, the Tax Commission shall forward to each county treasurer the taxes due, or the pro rata portion thereof, to the extent taxes have been withheld and remitted to the Tax Commission.

a. Any amount withheld in excess of the total taxes due to all counties shall be refunded to the appropriate mine owner or operator by the Tax Commission.

b. If the amount withheld is not sufficient to pay the full amount of taxes due, the county treasurers shall collect the balance of taxes directly from the mine owner or operator.

R884-24P-10. Taxation of Underground Rights in Land That Contains Deposits of Oil or Gas Pursuant to Utah Code Ann. Sections 59-2-201 and 59-2-210.

A. Definitions.

1. "Person" is as defined in Section 68-3-12.

2. "Working interest owner" means the owner of an interest in oil, gas, or other hydrocarbon substances burdened with a share of the expenses of developing and operating the property.

3. "Unit operator" means a person who operates all producing wells in a unit.

4. "Independent operator" means a person operating an oil or gas producing property not in a unit.

5. One person can, at the same time, be a unit operator, a working interest owner, and an independent operator and must comply with all requirements of this rule based upon the person's status in the respective situations.

6. "Expected annual production" means the future economic production of an oil and gas property as estimated by the Property Tax Division using decline curve analysis. Expected annual production does not include production used on the same well, lease, or unit for the purpose of repressuring or pressure maintenance.

7. "Product price" means:

a) Oil: The weighted average posted price for the calendar year preceding January 1, specific for the field in which the well is operating as designated by the Division of Oil, Gas, and Mining. The weighted average posted price is determined by weighing each individual posted price based on the number of days it was posted during the year, adjusting for gravity, transportation, escalation, or deescalation.

b) Gas:

(1) If sold under contract, the price shall be the stated price as of January 1, adjusted for escalation and deescalation.

(2) If sold on the spot market or to a direct end-user, the price shall be the average price received for the 12-month period immediately preceding January 1, adjusted for escalation and deescalation.

8. "Future net revenue" means annual revenues less costs of the working interests and royalty interest.

9. "Revenue" means expected annual gross revenue, calculated by multiplying the product price by expected annual production for the remaining economic life of the property.

10. "Costs" means expected annual allowable costs applied against revenue of cost-bearing interests:

a) Examples of allowable costs include management salaries; labor; payroll taxes and benefits; workers' compensation insurance; general insurance; taxes (excluding income and property taxes); supplies and tools; power; maintenance and repairs; office; accounting; engineering; treatment; legal fees; transportation; miscellaneous; capital expenditures; and the imputed cost of self consumed product.

b) Interest, depreciation, or any expense not directly related to the unit will shall not be included as allowable costs.

11. "Production asset" means any asset located at the well site that is used to bring oil or gas products to a point of sale or transfer of ownership.

B. The discount rate shall be determined by the Property Tax Division using methods such as the weighted cost of capital method.

1. The cost of debt shall consider market yields. The cost of equity shall be determined by the capital asset pricing model, risk premium model, discounted cash flow model, a combination thereof, or any other accepted methodology.

2. The discount rate shall reflect the current yield requirements of investors purchasing similar properties, taking into consideration income, income taxes, risk, expenses, inflation, and physical and locational characteristics.

3. The discount rate shall contain the same elements as the expected income stream.

C. Assessment Procedures.

1. Underground rights in lands containing deposits of oil or gas and the related tangible property shall be assessed by the Property Tax Division in the name of the unit operator, the independent operator, or other person as the facts may warrant.

2. The taxable value of underground oil and gas rights shall be determined by discounting future net revenues to their present value as of the lien date of the assessment year and then subtracting the value of applicable exempt federal, state, and Indian royalty interests.

3. The reasonable taxable value of productive underground oil and gas rights shall be determined by the methods described in C.2. of this rule or such other valuation method that the Tax Commission believes to be reasonably determinative of the property's fair market value.

4. The value of the production assets shall be considered in the value of the oil and gas reserves as determined in C.2. above. Any other tangible property shall be separately valued at fair market value by the Property Tax Division.

5. The minimum value of the property shall be the value of the production assets.

D. Collection by Operator.

1. The unit operator may request the Property Tax Division to separately list the value of the working interest, and the value of the royalty interest on the Assessment Record. When such a request is made, the unit operator is responsible to provide the Property Tax Division with the necessary information needed to compile this list. The unit operator may make a reasonable estimate of the ad valorem tax liability for a given period and may withhold funds from amounts due to royalty. Withheld funds shall be sufficient to ensure payment of

the ad valorem tax on each fractional interest according to the estimate made.

a) If a unit operating agreement exists between the unit operator and the fractional working interest owners, the unit operator may withhold or collect the tax according to the terms of that agreement.

b) In any case, the unit operator and the fractional interest owner may make agreements or arrangements for withholding or otherwise collecting this tax. This may be done whether or not that practice is consistent with the preceding paragraphs so long as all requirements of the law are met. When a fractional interest owner has had funds withheld to cover the estimated ad valorem tax liability and the operator fails to remit such taxes to the county when due, the fractional interest owner shall be indemnified from any further ad valorem tax liability to the extent of the withholding.

c) The unit operator shall compare the amount withheld to the taxes actually due, and return any excess amount to the fractional interest owner within 60 days after the delinquent date of the tax. At the request of the fractional interest owner the excess may be retained by the unit operator and applied toward the fractional interest owner's tax liability for the subsequent year.

2. The penalty provided for in Section 59-2-210 is intended to ensure collection by the county of the entire tax due. Any unit operator who has paid this county imposed penalty, and thereafter collects from the fractional interest holders any part of their tax due, may retain those funds as reimbursement against the penalty paid.

3. Interest on delinquent taxes shall be assessed as set forth in Section 59-2-1331.

4. Each unit operator may be required to submit to the Property Tax Division a listing of all fractional interest owners and their interests upon specific request of the Property Tax Division. Working interest owners, upon request, shall be required to submit similar information to unit operators.

R884-24P-14. Valuation of Real Property Encumbered by Preservation Easements Pursuant to Utah Code Ann. Section 59-2-303.

A. The assessor shall take into consideration any preservation easements attached to historically significant real property and structures when determining the property's value.

B. After the preservation easement has been recorded with the county recorder, the property owner of record shall submit to the county assessor and the Tax Commission a notice of the preservation easement containing the following information:

1. the property owner's name;
2. the address of the property; and
3. the serial number of the property.

C. The county assessor shall review the property and incorporate any value change due to the preservation easement in the following year's assessment roll.

R884-24P-16. Assessment of Interlocal Cooperation Act Project Entity Properties Pursuant to Utah Code Ann. Section 11-13-302.

(1) Definitions:

(a) "Utah fair market value" means the fair market value of that portion of the property of a project entity located within Utah upon which the fee in lieu of ad valorem property tax may be calculated.

(b) "Fee" means the annual fee in lieu of ad valorem property tax payable by a project entity pursuant to Section 11-13-302.

(c) "Energy supplier" means an entity that purchases any capacity, service or other benefit of a project to provide electrical service.

(d) "Exempt energy supplier" means an energy supplier whose tangible property is exempted by Article XIII, Sec. 3 of the Constitution of Utah from the payment of ad valorem property tax.

(e) "Optimum operating capacity" means the capacity at which a project is capable of operating on a sustained basis taking into account its design, actual operating history, maintenance requirements, and similar information from comparable projects, if any. The determination of the projected and actual optimum operating capacities of a project shall recognize that projects are not normally operated on a sustained basis at 100 percent of their designed or actual capacities and that the optimum level for operating a project on a sustained basis may vary from project to project.

(f) "Property" means any electric generating facilities, transmission facilities, distribution facilities, fuel facilities, fuel transportation facilities, water facilities, land, water or other existing facilities or tangible property owned by a project entity and required for the project which, if owned by an entity required to pay ad valorem property taxes, would be subject to assessment for ad valorem tax purposes.

(g) "Sold," for the purpose of interpreting Subsection (4), means the first sale of the capacity, service, or other benefit produced by the project without regard to any subsequent sale, resale, or lay-off of that capacity, service, or other benefit.

(h) "Taxing jurisdiction" means a political subdivision of this state in which any portion of the project is located.

(i) All definitions contained in Section 11-13-103 apply to this rule.

(2) The Tax Commission shall determine the fair market value of the property of each project entity. Fair market value shall be based upon standard appraisal theory and shall be determined by correlating estimates derived from the income and cost approaches to value described below.

(a) The income approach to value requires the imputation of an income stream and a capitalization rate. The income stream may be based on recognized indicators such as average income, weighted income, trended income, present value of future income streams, performance ratios, and discounted cash flows. The imputation of income stream and capitalization rate shall be derived from the data of other similarly situated companies. Similarity shall be based on factors such as location, fuel mix, customer mix, size and bond ratings. Estimates may also be imputed from industry data generally. Income data from similarly situated companies will be adjusted to reflect differences in governmental regulatory and tax policies.

(b) The cost approach to value shall consist of the total of the property's net book value of the project's property. This total shall then be adjusted for obsolescence if any.

(c) In addition to, and not in lieu of, any adjustments for obsolescence made pursuant to Subsection (2)(b), a phase-in adjustment shall be made to the assessed valuation of any new project or expansion of an existing project on which construction commenced by a project entity after January 1, 1989 as follows:

(i) During the period the new project or expansion is valued as construction work in process, its assessed valuation shall be multiplied by the percentage calculated by dividing its projected production as of the projected date of completion of construction by its projected optimum operating capacity as of that date.

(ii) Once the new project or expansion ceases to be valued as construction work in progress, its assessed valuation shall be multiplied by the percentage calculated by dividing its actual production by its actual optimum operating capacity. After the new project or expansion has sustained actual production at its optimum operating capacity during any tax year, this percentage shall be deemed to be 100 percent for the remainder of its useful life.

(3) If portions of the property of the project entity are located in states in addition to Utah and those states do not apply a unit valuation approach to that property, the fair market value of the property allocable to Utah shall be determined by computing the cost approach to value on the basis of the net book value of the property located in Utah and imputing an estimated income stream based solely on the value of the Utah property as computed under the cost approach. The correlated value so determined shall be the Utah fair market value of the property.

(4) Before fixing and apportioning the Utah fair market value of the property to the respective taxing jurisdictions in which the property, or a portion thereof is located, the Utah fair market value of the property shall be reduced by the percentage of the capacity, service, or other benefit sold by the project entity to exempt energy suppliers.

(5) For purposes of calculating the amount of the fee payable under Section 11-13-302(3), the percentage of the project that is used to produce the capacity, service or other benefit sold shall be deemed to be 100 percent, subject to adjustments provided by this rule, from the date the project is determined to be commercially operational.

(6) In computing its tax rate pursuant to the formula specified in Section 59-2-924(2), each taxing jurisdiction in which the project property is located shall add to the amount of its budgeted property tax revenues the amount of any credit due to the project entity that year under Section 11-13-302(3), and shall divide the result by the sum of the taxable value of all property taxed, including the value of the project property apportioned to the jurisdiction, and further adjusted pursuant to the requirements of Section 59-2-924.

(7) Subsections (2)(a) and (2)(b) are retroactive to the lien date of January 1, 1984. Subsection (2)(c) is effective as of the lien date of January 1, 1989. The remainder of this rule is retroactive to the lien date of January 1, 1988.

R884-24P-17. Reappraisal of Real Property by County Assessors Pursuant to Utah Constitution, Article XIII, Subsection 11, and Utah Code Ann. Sections 59-2-303, 59-2-302, and 59-2-704.

A. The following standards shall be followed in sequence when performing a reappraisal of all classes of locally-assessed real property within a county.

1. Conduct a preliminary survey and plan.

a) Compile a list of properties to be appraised by property class.

b) Assemble a complete current set of ownership plats.

c) Estimate personnel and resource requirements.

d) Construct a control chart to outline the process.

2. Select a computer-assisted appraisal system and have the system approved by the Property Tax Division.

3. Obtain a copy of all probable transactions from the recorder's office for the three-year period ending on the effective date of reappraisal.

4. Perform a use valuation on agricultural parcels using the most recent set of aerial photographs covering the jurisdiction.

a) Perform a field review of all agricultural land, dividing up the land by agricultural land class.

b) Transfer data from the aerial photographs to the current ownership plats, and compute acreage by class on a per parcel basis.

c) Enter land class information and the calculated agricultural land use value on the appraisal form.

5. Develop a land valuation guideline.

6. Perform an appraisal on improved sold properties considering the three approaches to value.

7. Develop depreciation schedules and time-location modifiers by comparing the appraised value with the sale price of sold properties.

8. Organize appraisal forms by proximity to each other and by geographical area. Insert sold property information into the appropriate batches.

9. Collect data on all nonsold properties.

10. Develop capitalization rates and gross rent multipliers.

11. Estimate the value of income-producing properties using the appropriate capitalization method.

12. Input the data into the automated system and generate preliminary values.

13. Review the preliminary figures and refine the estimate based on the applicable approaches to value.

14. Develop an outlier analysis program to identify and correct clerical or judgment errors.

15. Perform an assessment/sales ratio study. Include any new sale information.

16. Make a final review based on the ratio study including an analysis of variations in ratios. Make appropriate adjustments.

17. Calculate the final values and place them on the assessment role.

18. Develop and publish a sold properties catalog.

19. Establish the local Board of Equalization procedure.

20. Prepare and file documentation of the reappraisal program with the local Board of Equalization and Property Tax Division.

B. The Tax Commission shall provide procedural guidelines for implementing the above requirements.

R884-24P-19. Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702.

(1) "State certified general appraiser," "state certified residential appraiser," and "state licensed appraiser" are as defined in Section 61-2b-2.

(2) The ad valorem training and designation program consists of several courses and practica.

(a) Certain courses must be sanctioned by either the Appraiser Qualification Board of the Appraisal Foundation (AQB) or the Western States Association of Tax Administrators (WSATA).

(b) The courses comprising the basic designation program are:

(i) Course A - Assessment Practice in Utah;

(ii) Course B - Fundamentals of Real Property Appraisal ;

(iii) Course C - Mass Appraisal of Land;

(iv) Course D - Building Analysis and Valuation;

(v) Course E - Income Approach to Valuation ;

(vi) Course G - Development and Use of Personal Property Schedules;

(vii) Course H - Appraisal of Public Utilities and Railroads (WSATA); and

(viii) Course J - Uniform Standards of Professional Appraisal Practice (AQB).

(c) The Tax Commission may allow equivalent appraisal education to be submitted in lieu of Course B, Course D, Course E, and Course J.

(3) Candidates must attend 90 percent of the classes in each course and pass the final examination for each course with a grade of 70 percent or more to be successful.

(4) There are four recognized ad valorem designations: ad valorem residential appraiser, ad valorem general real property appraiser, ad valorem personal property auditor/appraiser, and ad valorem centrally assessed valuation analyst.

(a) These designations are granted only to individuals working as appraisers, review appraisers, valuation auditors, or analysts/administrators providing oversight and direction to appraisers and auditors.

(b) An assessor, county employee, or state employee must hold the appropriate designation to value property for ad

valorem taxation purposes.

(5) Ad valorem residential appraiser.

(a) To qualify for this designation, an individual must:

(i) successfully complete:

(A) Courses A, B, C, D, and J; or

(B) equivalent appraisal education as allowed under Subsection (2)(c);

(ii) successfully complete a comprehensive residential field practicum; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the appraiser may value residential, vacant, and agricultural property for ad valorem taxation purposes.

(6) Ad valorem general real property appraiser.

(a) In order to qualify for this designation, an individual must:

(i) successfully complete:

(A) Courses A, B, C, D, E, and J; or

(B) equivalent appraisal education as allowed under Subsection (2)(c);

(ii) successfully complete a comprehensive field practicum including residential and commercial properties; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the appraiser may value all types of locally assessed real property for ad valorem taxation purposes.

(7) Ad valorem personal property auditor/appraiser.

(a) To qualify for this designation, an individual must:

(i) successfully complete:

(A) Courses A, B, G, and J; or

(B) equivalent appraisal education as allowed under Subsection (2)(c); and

(ii) successfully complete a comprehensive auditing practicum.

(b) Upon designation, the auditor/appraiser may value locally assessed personal property for ad valorem taxation purposes.

(8) Ad valorem centrally assessed valuation analyst.

(a) In order to qualify for this designation, an individual must:

(i) successfully complete:

(A) Courses A, B, E, H, and J; or

(B) equivalent appraisal education as allowed under Subsection (2)(c);

(ii) successfully complete a comprehensive valuation practicum; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the analyst may value centrally assessed property for ad valorem taxation purposes.

(9) If a candidate fails to receive a passing grade on a final examination, one re-examination is allowed. If the re-examination is not successful, the individual must retake the failed course. The cost to retake the failed course will not be borne by the Tax Commission.

(10) A practicum involves the appraisal or audit of selected properties. The candidate's supervisor must formally request that the Property Tax Division administer a practicum.

(a) Emphasis is placed on those types of properties the candidate will most likely encounter on the job.

(b) The practicum will be administered by a designated appraiser assigned from the Property Tax Division.

(11) An appraiser trainee referred to in Section 59-2-701 shall be designated an ad valorem associate if the appraiser trainee:

(a) has completed all Tax Commission appraiser education and practicum requirements for designation under Subsections (5), (6), and (8); and

(b) has not completed the requirements for licensure or certification under Title 71, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(12) An individual holding a specified designation can qualify for other designations by meeting the additional requirements outlined above.

(13) Maintaining designated status requires completion of 28 hours of Tax Commission approved classroom work every two years.

(14) Upon termination of employment from any Utah assessment jurisdiction, or if the individual no longer works primarily as an appraiser, review appraiser, valuation auditor, or analyst/administrator in appraisal matters, designation is automatically revoked.

(a) Ad valorem designation status may be reinstated if the individual secures employment in any Utah assessment jurisdiction within four years from the prior termination.

(b) If more than four years elapse between termination and rehire, and:

(i) the individual has been employed in a closely allied field, then the individual may challenge the course examinations. Upon successfully challenging all required course examinations, the prior designation status will be reinstated; or

(ii) if the individual has not been employed in real estate valuation or a closely allied field, the individual must retake all required courses and pass the final examinations with a score of 70 percent or more.

(15) All appraisal work performed by Tax Commission designated appraisers shall meet the standards set forth in section 61-2b-27.

(16) If appropriate Tax Commission designations are not held by assessor's office personnel, the appraisal work must be contracted out to qualified private appraisers. An assessor's office may elect to contract out appraisal work to qualified private appraisers even if personnel with the appropriate designation are available in the office. If appraisal work is contracted out, the following requirements must be met:

(a) The private sector appraisers contracting the work must hold the state certified residential appraiser or state certified general appraiser license issued by the Division of Real Estate of the Utah Department of Commerce. Only state certified general appraisers may appraise nonresidential properties.

(b) All appraisal work shall meet the standards set forth in Section 61-2b-27.

(17) The completion and delivery of the assessment roll required under Section 59-2-311 is an administrative function of the elected assessor.

(a) There are no specific licensure, certification, or educational requirements related to this function.

(b) An elected assessor may complete and deliver the assessment roll as long as the valuations and appraisals included in the assessment roll were completed by persons having the required designations.

R884-24P-20. Construction Work in Progress Pursuant to Utah Constitution Art. XIII, Section 2 and Utah Code Ann. Sections 59-2-201 and 59-2-301.

A. For purposes of this rule:

1. Construction work in progress means improvements as defined in Section 59-2-102, and personal property as defined in Section 59-2-102, not functionally complete as defined in A.6.

2. Project means any undertaking involving construction, expansion or modernization.

3. "Construction" means:

a) creation of a new facility;

b) acquisition of personal property; or

c) any alteration to the real property of an existing facility other than normal repairs or maintenance.

4. Expansion means an increase in production or capacity as a result of the project.

5. Modernization means a change or contrast in character or quality resulting from the introduction of improved techniques, methods or products.

6. Functionally complete means capable of providing economic benefit to the owner through fulfillment of the purpose for which it was constructed. In the case of a cost-regulated utility, a project shall be deemed to be functionally complete when the operating property associated with the project has been capitalized on the books and is part of the rate base of that utility.

7. Allocable preconstruction costs means expenditures associated with the planning and preparation for the construction of a project. To be classified as an allocable preconstruction cost, an expenditure must be capitalized.

8. Cost regulated utility means a power company, oil and gas pipeline company, gas distribution company or telecommunication company whose earnings are determined by a rate of return applied to rate base. Rate of return and rate base are set and approved by a state or federal regulatory commission.

9. Residential means single-family residences and duplex apartments.

10. Unit method of appraisal means valuation of the various physical components of an integrated enterprise as a single going concern. The unit method may employ one or more of the following approaches to value: the income approach, the cost approach, and the stock and debt approach.

B. All construction work in progress shall be valued at "full cash value" as described in this rule.

C. Discount Rates

For purposes of this rule, discount rates used in valuing all projects shall be determined by the Tax Commission, and shall be consistent with market, financial and economic conditions.

D. Appraisal of Allocable Preconstruction Costs.

1. If requested by the taxpayer, preconstruction costs associated with properties, other than residential properties, may be allocated to the value of the project in relation to the relative amount of total expenditures made on the project by the lien date. Allocation will be allowed only if the following conditions are satisfied by January 30 of the tax year for which the request is sought:

a) a detailed list of preconstruction cost data is supplied to the responsible agency;

b) the percent of completion of the project and the preconstruction cost data are certified by the taxpayer as to their accuracy.

2. The preconstruction costs allocated pursuant to D.1. of this rule shall be discounted using the appropriate rate determined in C. The discounted allocated value shall either be added to the values of properties other than residential properties determined under E.1. or shall be added to the values determined under the various approaches used in the unit method of valuation determined under F.

3. The preconstruction costs allocated under D. are subject to audit for four years. If adjustments are necessary after examination of the records, those adjustments will be classified as property escaping assessment.

E. Appraisal of Properties not Valued under the Unit Method.

1. The full cash value, projected upon completion, of all properties valued under this section, with the exception of residential properties, shall be reduced by the value of the allocable preconstruction costs determined D. This reduced full cash value shall be referred to as the "adjusted full cash value."

2. On or before January 1 of each tax year, each county assessor and the Tax Commission shall determine, for projects not valued by the unit method and which fall under their respective areas of appraisal responsibility, the following:

a) The full cash value of the project expected upon completion.

b) The expected date of functional completion of the project currently under construction.

(1) The expected date of functional completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

c) The percent of the project completed as of the lien date.

(1) Determination of percent of completion for residential properties shall be based on the following percentage of completion:

(a) 10 - Excavation-foundation

(b) 30 - Rough lumber, rough labor

(c) 50 - Roofing, rough plumbing, rough electrical, heating

(d) 65 - Insulation, drywall, exterior finish

(e) 75 - Finish lumber, finish labor, painting

(f) 90 - Cabinets, cabinet tops, tile, finish plumbing, finish electrical

(g) 100 - Floor covering, appliances, exterior concrete, misc.

(2) In the case of all other projects under construction and valued under this section the percent of completion shall be determined by the county assessor for locally assessed properties and by the Tax Commission for centrally-assessed properties.

3. Upon determination of the adjusted full cash value for nonresidential projects under construction or the full cash value expected upon completion of residential projects under construction, the expected date of completion, and the percent of the project completed, the assessor shall do the following:

a) multiply the percent of the residential project completed by the total full cash value of the residential project expected upon completion; or in the case of nonresidential projects,

b) multiply the percent of the nonresidential project completed by the adjusted full cash value of the nonresidential project;

c) adjust the resulting product of E.3.a) or E.3.b) for the expected time of completion using the discount rate determined under C.

F. Appraisal of Properties Valued Under the Unit Method of Appraisal.

1. No adjustments under this rule shall be made to the income indicator of value for a project under construction that is owned by a cost-regulated utility when the project is allowed in rate base.

2. The full cash value of a project under construction as of January 1 of the tax year, shall be determined by adjusting the cost and income approaches as follows:

a) Adjustments to reflect the time value of money in appraising construction work in progress valued under the cost and income approaches shall be made for each approach as follows:

(1) Each company shall report the expected completion dates and costs of the projects. A project expected to be completed during the tax year for which the valuation is being determined shall be considered completed on January 1 or July 1, whichever is closest to the expected completion date. The Tax Commission shall determine the expected completion date for any project whose completion is scheduled during a tax year subsequent to the tax year for which the valuation is being made.

(2) If requested by the company, the value of allocable preconstruction costs determined in D. shall then be subtracted from the total cost of each project. The resulting sum shall be referred to as the adjusted cost value of the project.

(3) The adjusted cost value for each of the future years prior to functional completion shall be discounted to reflect the

present value of the project under construction. The discount rate shall be determined under C.

(4) The discounted adjusted cost value shall then be added to the values determined under the income approach and cost approach.

b) No adjustment will be made to reflect the time value of money for a project valued under the stock and debt approach to value.

G. This rule shall take effect for the tax year 1985.

R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918 through 59-2-924.

(1) The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

(a) If a county desires to use a modified version of the Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

(i) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax changes.

(ii) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-22.

(b) The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property description may be included at the option of the county.

(2) The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

(a) New property is created by a new legal description; or

(b) The status of the improvements on the property has changed.

(c) In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of the Notice of Property Valuation and Tax Changes.

(d) If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in Subsection (1).

(3) Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value based upon Farmland Assessment Act rates shown parenthetically.

(4)(a) All completion dates specified for the disclosure of property tax information must be strictly observed.

(b) Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in Subsection (1).

(5) If the proposed rate exceeds the certified rate, jurisdictions in which the fiscal year is the calendar year are required to hold public hearings even if budget hearings have already been held for that fiscal year.

(6) If the cost of public notice required under Sections 59-2-918 and 59-2-919 is greater than one percent of the property tax revenues to be received, an entity may combine its advertisement with other entities, or use direct mail notification.

(7) Calculation of the amount and percentage increase in property tax revenues required by Sections 59-2-918 and 59-2-919, shall be computed by comparing property taxes levied for the current year with property taxes collected the prior year, without adjusting for revenues attributable to new growth.

(8) If a taxing district has not completed the tax rate setting process as prescribed in Sections 59-2-919 and 59-2-920 by August 17, the county auditor must seek approval from the Tax Commission to use the certified rate in calculating taxes levied.

(9) The value of property subject to the uniform fee under Section 59-2-405 is excluded from taxable value for purposes of calculating new growth, the certified tax rate, and the proposed tax rate.

(10) The value and taxes of property subject to the uniform fee under Section 59-2-405, as well as tax increment distributions and related taxable values of redevelopment agencies, are excluded when calculating the percentage of property taxes collected as provided in Section 59-2-913.

(11) The following formulas and definitions shall be used in determining new growth:

(a) Actual new growth shall be computed as follows:

(i) the taxable value for the current year adjusted for redevelopment minus year-end taxable value for the previous year adjusted for redevelopment; then

(ii) plus or minus changes in value as a result of factoring; then

(iii) plus or minus changes in value as a result of reappraisal; then

(iv) plus or minus any change in value resulting from a legislative mandate or court order.

(b) Net annexation value is the taxable value for the current year adjusted for redevelopment of all properties annexed into an entity during the previous calendar year minus the taxable value for the previous year adjusted for redevelopment for all properties annexed out of the entity during the previous calendar year.

(c) New growth is equal to zero for an entity with:

(i) an actual new growth value less than zero; and

(ii) a net annexation value greater than or equal to zero.

(d) New growth is equal to actual new growth for:

(i) an entity with an actual new growth value greater than or equal to zero; or

(ii) an entity with:

(A) an actual new growth value less than zero; and

(B) the actual new growth value is greater than or equal to the net annexation value.

(e) New growth is equal to the net annexation value for an entity with:

(i) a net annexation value less than zero; and

(ii) the actual new growth value is less than the net annexation value.

(f) Adjusted new growth equals new growth multiplied by the mean collection rate for the previous five years.

(12)(a) For purposes of determining the certified tax rate, ad valorem property tax revenues budgeted by a taxing entity for the prior year are calculated by:

(i) increasing or decreasing the adjustable taxable value from the prior year Report 697 by the average of the percentage net change in the value of taxable property for the equalization period for the three calendar years immediately preceding the current calendar year; and

(ii) multiplying the result obtained in Subsection (12)(a)(i) by:

(A) the percentage of property taxes collected for the five calendar years immediately preceding the current calendar year; and

(B) the prior year approved tax rate.

(b) If a taxing entity levied the prior year approved tax rate, the budgeted revenues determined under Subsection (12)(a) are reflected in the budgeted revenue column of the prior year Report 693.

(13) Entities required to set levies for more than one fund must compute an aggregate certified rate. The aggregate

certified rate is the sum of the certified rates for individual funds for which separate levies are required by law. The aggregate certified rate computation applies where:

(a) the valuation bases for the funds are contained within identical geographic boundaries; and

(b) the funds are under the levy and budget setting authority of the same governmental entity.

(14) For purposes of determining the certified tax rate of a municipality incorporated on or after July 1, 1996, the levy imposed for municipal-type services or general county purposes shall be the certified tax rate for municipal-type services or general county purposes, as applicable.

(15) No new entity, including a new city, may have a certified tax rate or levy a tax for any particular year unless that entity existed on the first day of that calendar year.

R884-24P-27. Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Sections 59-2-704 and 59-2-704.5.

A. Definitions.

1. "Coefficient of dispersion (COD)" means the average deviation of a group of assessment ratios taken around the median and expressed as a percent of that measure.

2. "Coefficient of variation (COV)" means the standard deviation expressed as a percentage of the mean.

3. "Division" means the Property Tax Division of the State Tax Commission.

4. "Nonparametric" means data samples that are not normally distributed.

5. "Parametric" means data samples that are normally distributed.

6. "Urban counties" means counties classified as first or second class counties pursuant to Section 17-50-501.

B. The Tax Commission adopts the following standards of assessment performance.

1. For assessment level in each property class, subclass, and geographical area in each county, the measure of central tendency shall meet one of the following measures.

a) The measure of central tendency shall be within 10 percent of the legal level of assessment.

b) The 95 percent confidence interval of the measure of central tendency shall contain the legal level of assessment.

2. For uniformity of the property being appraised under the cyclical appraisal plan for the current year, the measure of dispersion shall be within the following limits.

a) In urban counties:

(1) a COD of 15 percent or less for primary residential and commercial property, and 20 percent or less for vacant land and secondary residential property; and

(2) a COV of 19 percent or less for primary residential and commercial property, and 25 percent or less for vacant land and secondary residential property.

b) In rural counties:

(1) a COD of 20 percent or less for primary residential and commercial property, and 25 percent or less for vacant land and secondary residential property; and

(2) a COV of 25 percent or less for primary residential and commercial property, and 31 percent or less for vacant land and secondary residential property.

3. Statistical measures.

a) The measure of central tendency shall be the mean for parametric samples and the median for nonparametric samples.

b) The measure of dispersion shall be the COV for parametric samples and the COD for nonparametric samples.

c) To achieve statistical accuracy in determining assessment level under B.1. and uniformity under B.2. for any property class, subclass, or geographical area, the minimum sample size shall consist of 10 or more ratios.

C. Each year the Division shall conduct and publish an assessment-to-sale ratio study to determine if each county complies with the standards in B.

1. To meet the minimum sample size, the study period may be extended.

2. A smaller sample size may be used if:

a) that sample size is at least 10 percent of the class or subclass population; or

b) both the Division and the county agree that the sample may produce statistics that imply corrective action appropriate to the class or subclass of property.

3. If the Division, after consultation with the counties, determines that the sample size does not produce reliable statistical data, an alternate performance evaluation may be conducted, which may result in corrective action. The alternate performance evaluation shall include review and analysis of the following:

a) the county's procedures for collection and use of market data, including sales, income, rental, expense, vacancy rates, and capitalization rates;

b) the county-wide land, residential, and commercial valuation guidelines and their associated procedures for maintaining current market values;

c) the accuracy and uniformity of the county's individual property data through a field audit of randomly selected properties; and

d) the county's level of personnel training, ratio of appraisers to parcels, level of funding, and other workload and resource considerations.

4. All input to the sample used to measure performance shall be completed by March 31 of each study year.

5. The Division shall conduct a preliminary annual assessment-to-sale ratio study by April 30 of the study year, allowing counties to apply adjustments to their tax roll prior to the May 22 deadline.

6. The Division shall complete the final study immediately following the closing of the tax roll on May 22.

D. The Division shall order corrective action if the results of the final study do not meet the standards set forth in B.

1. Assessment level adjustments, or factor orders, shall be calculated by dividing the legal level of assessment by one of the following:

a) the measure of central tendency, if the uniformity of the ratios meets the standards outlined in B.2.; or

b) the 95 percent confidence interval limit nearest the legal level of assessment, if the uniformity of the ratios does not meet the standards outlined in B.2.

2. Uniformity adjustments, or reappraisal orders, shall only apply to the property being appraised under the cyclical appraisal plan for the current year. A reappraisal order shall be issued if the property fails to meet the standards outlined in B.2. Prior to implementation of reappraisal orders, counties shall submit a preliminary report to the Division that includes the following:

a) an evaluation of why the standards of uniformity outlined in B.2. were not met; and

b) a plan for completion of the reappraisal that is approved by the Division.

3. A corrective action order may contain language requiring a county to create, modify, or follow its cyclical appraisal plan.

4. All corrective action orders shall be issued by June 10 of the study year.

E. The Tax Commission adopts the following procedures to insure compliance and facilitate implementation of ordered corrective action.

1. Prior to the filing of an appeal, the Division shall retain authority to correct errors and, with agreement of the affected county, issue amended orders or stipulate with the affected county to any appropriate alternative action without Tax

Commission approval. Any stipulation by the Division subsequent to an appeal is subject to Tax Commission approval.

2. A county receiving a corrective action order resulting from this rule may file and appeal with the Tax Commission pursuant to Tax Commission rule R861-1A-11.

3. A corrective action order will become the final Tax Commission order if the county does not appeal in a timely manner, or does not prevail in the appeals process.

4. The Division may assist local jurisdictions to ensure implementation of any corrective action orders by the following deadlines.

a) Factor orders shall be implemented in the current study year prior to the mailing of valuation notices.

b) Other corrective action, including reappraisal orders, shall be implemented prior to May 22 of the year following the study year. The preliminary report referred to in D.2. shall be completed by November 30 of the current study year.

5. The Division shall complete audits to determine compliance with corrective action orders as soon after the deadlines set forth in E.4. as practical. The Division shall review the results of the compliance audit with the county and make any necessary adjustments to the compliance audit within 15 days of initiating the audit. These adjustments shall be limited to the analysis performed during the compliance audit and may not include review of the data used to arrive at the underlying factor order. After any adjustments, the compliance audit will then be given to the Tax Commission for any necessary action.

6. The county shall be informed of any adjustment required as a result of the compliance audit.

R884-24P-28. Reporting Requirements For Leased or Rented Personal Property, Pursuant to Utah Code Ann. Section 59-2-306.

A. The procedure set forth herein is required in reporting heavy equipment leased or rented during the tax year.

1. On forms or diskette provided by the Tax Commission, the owner of leased or rented heavy equipment shall file semi-annual reports with the Tax Commission for the periods January 1 through June 30, and July 1 through December 31 of each year. The reports shall contain the following information:

a) a description of the leased or rented equipment;

b) the year of manufacture and acquistion cost;

c) a listing, by month, of the counties where the equipment has situs; and

d) any other information required.

2. For purposes of this rule, situs is established when leased or rented equipment is kept in an area for thirty days. Once situs is established, any portion of thirty days during which that equipment stays in that area shall be counted as a full month of situs. In no case may situs exceed twelve months for any year.

3. The completed report shall be submitted to the Property Tax Division of the Tax Commission within thirty days after each reporting period.

a) Noncompliance will require accelerated reporting.

R884-24P-29. Taxable Household Furnishings Pursuant to Utah Code Ann. Section 59-2-1113.

A. Household furnishings, furniture, and equipment are subject to property taxation if:

1. the owner of the abode commonly receives legal consideration for its use, whether in the form of rent, exchange, or lease payments; or

2. the abode is held out as available for the rent, lease, or use by others.

R884-24P-32. Leasehold Improvements Pursuant to Utah Code Ann. Section 59-2-303.

A. The value of leasehold improvements shall be included in the value of the underlying real property and assessed to the owner of the underlying real property.

B. The combined valuation of leasehold improvements and underlying real property required in A. shall satisfy the requirements of Section 59-2-103(1).

C. The provisions of this rule shall not apply if the underlying real property is owned by an entity exempt from tax under Section 59-2-1101.

D. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2000.

R884-24P-33. 2007 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301.

(1) Definitions.

(a) "Acquisition cost" means all costs required to put an item into service, including purchase price, freight and shipping costs; installation, engineering, erection or assembly costs; and excise and sales taxes.

(i) Indirect costs such as debugging, licensing fees and permits, insurance or security are not included in the acquisition cost.

(ii) Acquisition cost may correspond to the cost new for new property, or cost used for used property.

(b)(i) "Actual cost" includes the value of components necessary to complete the vehicle, such as tanks, mixers, special containers, passenger compartments, special axles, installation, engineering, erection, or assembly costs.

(ii) Actual cost does not include sales or excise taxes, maintenance contracts, registration and license fees, dealer charges, tire tax, freight, or shipping costs.

(c) "Cost new" means the actual cost of the property when purchased new.

(i) Except as otherwise provided in this rule, the Tax Commission and assessors shall rely on the following sources to determine cost new:

(A) documented actual cost of the new or used vehicle; or

(B) recognized publications that provide a method for approximating cost new for new or used vehicles.

(ii) For the following property purchased used, the taxing authority may determine cost new by dividing the property's actual cost by the percent good factor for that class:

(A) class 6 heavy and medium duty trucks;

(B) class 13 heavy equipment;

(C) class 14 motor homes;

(D) class 17 vessels equal to or greater than 31 feet in length;

(E) class 21 commercial trailers; and

(F) class 23 aircraft subject to the aircraft uniform fee and not listed in the aircraft bluebook price digest.

(d) "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds.

(i) The percent good factor is applied against the acquisition cost or the cost new to derive taxable value for the property.

(ii) Percent good schedules are derived from an analysis of the Internal Revenue Service Class Life, the Marshall and Swift Cost index, other data sources or research, and vehicle valuation guides such as Primedia Price Digests.

(2) Each year the Property Tax Division shall update and publish percent good schedules for use in computing personal property valuation.

(a) Proposed schedules shall be transmitted to county assessors and interested parties for comment before adoption.

(b) A public comment period will be scheduled each year and a public hearing will be scheduled if requested by ten or more interested parties or at the discretion of the Commission.

(c) County assessors may deviate from the schedules when

warranted by specific conditions affecting an item of personal property. When a deviation will affect an entire class or type of personal property, a written report, substantiating the changes with verifiable data, must be presented to the Commission. Alternative schedules may not be used without prior written approval of the Commission.

(d) A party may request a deviation from the value established by the schedule for a specific item of property if the use of the schedule does not result in the fair market value for the property at the retail level of trade on the lien date, including any relevant installation and assemblage value.

(3) The provisions of this rule do not apply to:

(a) a vehicle subject to the age-based uniform fee under Section 59-2-405.1;

(b) the following personal property subject to the age-based uniform fee under Section 59-2-405.2:

(i) an all-terrain vehicle;

(ii) a camper;

(iii) an other motorcycle;

(iv) an other trailer;

(v) a personal watercraft;

(vi) a small motor vehicle;

(vii) a snowmobile;

(viii) a street motorcycle;

(ix) a tent trailer;

(x) a travel trailer; and

(xi) a vessel, including an outboard motor of the vessel, that is less than 31 feet in length.

(4) Other taxable personal property that is not included in the listed classes includes:

(a) Supplies on hand as of January 1 at 12:00 noon, including office supplies, shipping supplies, maintenance supplies, replacement parts, lubricating oils, fuel and consumable items not held for sale in the ordinary course of business. Supplies are assessed at total cost, including freight-in.

(b) Equipment leased or rented from inventory is subject to ad valorem tax. Refer to the appropriate property class schedule to determine taxable value.

(c) Property held for rent or lease is taxable, and is not exempt as inventory. For entities primarily engaged in rent-to-own, inventory on hand at January 1 is exempt and property out on rent-to-own contracts is taxable.

(5) Personal property valuation schedules may not be appealed to, or amended by, county boards of equalization.

(6) All taxable personal property, other than personal property subject to an age-based uniform fee under Section 59-2-405.1 or 59-2-405.2, is classified by expected economic life as follows:

(a) Class 1 - Short Life Property. Property in this class has a typical life of more than one year and less than four years. It is fungible in that it is difficult to determine the age of an item retired from service.

(i) Examples of property in the class include:

(A) barricades/warning signs;

(B) library materials;

(C) patterns, jigs and dies;

(D) pots, pans, and utensils;

(E) canned computer software;

(F) hotel linen;

(G) wood and pallets;

(H) video tapes, compact discs, and DVDs; and

(I) uniforms.

(ii) With the exception of video tapes, compact discs, and DVDs, taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii) A licensee of canned computer software shall use one of the following substitutes for acquisition cost of canned computer software if no acquisition cost for the canned computer software is stated:

(A) retail price of the canned computer software;

(B) if a retail price is unavailable, and the license is a nonrenewable single year license agreement, the total sum of expected payments during that 12-month period; or

(C) if the licensing agreement is a renewable agreement or is a multiple year agreement, the present value of all expected licensing fees paid pursuant to the agreement.

(iv) Video tapes, compact discs, and DVDs are valued at $15.00 per tape or disc for the first year and $3.00 per tape or disc thereafter.

TABLE 1

Year of Acquisition	Percent Good of Acquisition Cost
06	72%
05	42%
04 and prior	11%

(b) Class 2 - Computer Integrated Machinery.

(i) Machinery shall be classified as computer integrated machinery if all of the following conditions are met:

(A) The equipment is sold as a single unit. If the invoice breaks out the computer separately from the machine, the computer must be valued as Class 12 property and the machine as Class 8 property.

(B) The machine cannot operate without the computer and the computer cannot perform functions outside the machine.

(C) The machine can perform multiple functions and is controlled by a programmable central processing unit.

(D) The total cost of the machine and computer combined is depreciated as a unit for income tax purposes.

(E) The capabilities of the machine cannot be expanded by substituting a more complex computer for the original.

(ii) Examples of property in this class include:

(A) CNC mills;

(B) CNC lathes;

(C) MRI equipment;

(D) CAT scanners; and

(E) mammography units.

(iii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 2

Year of Acquisition	Percent Good of Acquisition Cost
06	90%
05	75%
04	67%
03	58%
02	49%
01	39%
00	29%
99 and prior	18%

(c) Class 3 - Short Life Trade Fixtures. Property in this class generally consists of electronic types of equipment and includes property subject to rapid functional and economic obsolescence or severe wear and tear.

(i) Examples of property in this class include:

(A) office machines;

(B) alarm systems;

(C) shopping carts;

(D) ATM machines;

(E) small equipment rentals;

(F) rent-to-own merchandise;

(G) telephone equipment and systems;

(H) music systems;

(I) vending machines;

(J) video game machines; and

(K) cash registers and point of sale equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 3

Year of Acquisition	Percent Good of Acquisition Cost
06	86%
05	71%
04	57%
03	39%
02 and prior	20%

(d) Class 5 - Long Life Trade Fixtures. Class 5 property is subject to functional obsolescence in the form of style changes.

(i) Examples of property in this class include:

(A) furniture;

(B) bars and sinks:

(C) booths, tables and chairs;

(D) beauty and barber shop fixtures;

(E) cabinets and shelves;

(F) displays, cases and racks;

(G) office furniture;

(H) theater seats;

(I) water slides; and

(J) signs, mechanical and electrical.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 5

Year of Acquisition	Percent Good of Acquisition Cost
06	93%
05	85%
04	80%
03	70%
02	59%
01	47%
00	36%
99	24%
98 and prior	12%

(e) Class 6 - Heavy and Medium Duty Trucks.

(i) Examples of property in this class include:

(A) heavy duty trucks;

(B) medium duty trucks;

(C) crane trucks;

(D) concrete pump trucks; and

(E) trucks with well-boring rigs.

(ii) Taxable value is calculated by applying the percent good factor against the cost new.

(iii) Cost new of vehicles in this class is defined as follows:

(A) the documented actual cost of the vehicle for new vehicles; or

(B) 75 percent of the manufacturer's suggested retail price.

(iv) For state assessed vehicles, cost new shall include the value of attached equipment.

(v) The 2007 percent good applies to 2007 models purchased in 2006.

(vi) Trucks weighing two tons or more have a residual taxable value of $1,750.

TABLE 6

Model Year	Percent Good of Cost New
07	90%
06	80%
05	74%
04	67%
03	61%
02	55%
01	49%
00	43%
99	36%
98	30%
97	24%
96	18%
95	12%
94 and prior	5%

(f) Class 7 - Medical and Dental Equipment. Class 7 property is subject to a high degree of technological development by the health industry.

(i) Examples of property in this class include:

(A) medical and dental equipment and instruments;

(B) exam tables and chairs;

(C) high-tech hospital equipment;

(D) microscopes; and

(E) optical equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 7

Year of Acquisition	Percent Good of Acquisition Cost
06	95%
05	86%
04	84%
03	77%
02	69%
01	59%
00	50%
99	41%
98	30%
97	21%
96 and prior	10%

(g) Class 8 - Machinery and Equipment. Property in this class is subject to considerable functional and economic obsolescence created by competition as technologically advanced and more efficient equipment becomes available.

(i) Examples of property in this class include:

(A) manufacturing machinery;

(B) amusement rides;

(C) bakery equipment;

(D) distillery equipment;

(E) refrigeration equipment;

(F) laundry and dry cleaning equipment;

(G) machine shop equipment;

(H) processing equipment;

(I) auto service and repair equipment;

(J) mining equipment;

(K) ski lift machinery;

(L) printing equipment;

(M) bottling or cannery equipment;

(N) packaging equipment; and

(O) pollution control equipment.

(ii) Except as provided in Subsection (6)(g)(iii), taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

(iii)(A) Notwithstanding Subsection (6)(g)(ii), the taxable value of the following oil refinery pollution control equipment required by the federal Clean Air Act shall be calculated pursuant to Subsection (6)(g)(iii)(B):

(I) VGO (Vacuum Gas Oil) reactor;

(II) HDS (Diesel Hydrotreater) reactor;

(III) VGO compressor;

(IV) VGO furnace;

(V) VGO and HDS high pressure exchangers;

(VI) VGO, SRU (Sulfur Recovery Unit), SWS (Sour Water Stripper), and TGU; (Tail Gas Unit) low pressure exchangers;

(VII) VGO, amine, SWS, and HDS separators and drums;

(VIII) VGO and tank pumps;
(IX) TGU modules; and
(X) VGO tank and air coolers.
(B) The taxable value of the oil refinery pollution control equipment described in Subsection (6)(g)(iii)(A) shall be calculated by:
(I) applying the percent good factor in Table 8 against the acquisition cost of the property; and
(II) multiplying the product described in Subsection (6)(g)(iii)(B)(I) by 50%.

TABLE 8

Year of Acquisition	Percent Good of Acquisition Cost
06	95%
05	86%
04	84%
03	77%
02	69%
01	59%
00	50%
99	41%
98	30%
97	21%
96 and prior	10%

(h) Class 9 - Off-Highway Vehicles.
(i) Because Section 59-2-405.2 subjects Class 9 property to an age-based uniform fee, a percent good schedule is not necessary for this class.
(i) Class 10 - Railroad Cars. The Class 10 schedule was developed to value the property of railroad car companies. Functional and economic obsolescence is recognized in the developing technology of the shipping industry. Heavy wear and tear is also a factor in valuing this class of property.
(i) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 10

Year of Acquisition	Percent Good of Acquisition Cost
06	97%
05	91%
04	88%
03	83%
02	77%
01	70%
00	64%
99	57%
98	49%
97	41%
96	33%
95	26%
94	18%
93 and prior	9%

(j) Class 11 - Street Motorcycles.
(i) Because Section 59-2-405.2 subjects Class 11 property to an age-based uniform fee, a percent good schedule is not necessary for this class.
(k) Class 12 - Computer Hardware.
(i) Examples of property in this class include:
(A) data processing equipment;
(B) personal computers;
(C) main frame computers;
(D) computer equipment peripherals;
(E) cad/cam systems; and
(F) copiers.
(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 12

Year of Acquisition	Percent Good of Acquisition Cost
06	62%
05	46%
04	21%
03	9%
02 and prior	7%

(l) Class 13 - Heavy Equipment.
(i) Examples of property in this class include:
(A) construction equipment;
(B) excavation equipment;
(C) loaders;
(D) batch plants;
(E) snow cats; and
(F) pavement sweepers.
(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.
(iii) 2007 model equipment purchased in 2006 is valued at 100 percent of acquisition cost.

TABLE 13

Year of Acquisition	Percent Good of Acquisition Cost
06	62%
05	59%
04	55%
03	51%
02	48%
01	44%
00	41%
99	37%
98	33%
97	30%
96	26%
95	22%
94	19%
93 and prior	15%

(m) Class 14 - Motor Homes.
(i) Taxable value is calculated by applying the percent good against the cost new.
(ii) The 2007 percent good applies to 2007 models purchased in 2006.
(iii) Motor homes have a residual taxable value of $1,000.

TABLE 14

Model Year	Percent Good of Cost New
07	90%
06	65%
05	61%
04	58%
03	55%
02	51%
01	48%
00	45%
99	41%
98	38%
97	35%
96	32%
95	28%
94	25%
93	22%
92	18%
91 and prior	15%

(n) Class 15 - Semiconductor Manufacturing Equipment. Class 15 applies only to equipment used in the production of semiconductor products. Equipment used in the semiconductor manufacturing industry is subject to significant economic and functional obsolescence due to rapidly changing technology and economic conditions.
(i) Examples of property in this class include:
(A) crystal growing equipment;
(B) die assembly equipment;
(C) wire bonding equipment;
(D) encapsulation equipment;

(E) semiconductor test equipment;
(F) clean room equipment;
(G) chemical and gas systems related to semiconductor manufacturing;
(H) deionized water systems;
(I) electrical systems; and
(J) photo mask and wafer manufacturing dedicated to semiconductor production.
(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 15

Year of Acquisition	Percent Good of Acquisition Cost
06	47%
05	34%
04	24%
03	15%
02 and prior	6%

(o) Class 16 - Long-Life Property. Class 16 property has a long physical life with little obsolescence.
(i) Examples of property in this class include:
(A) billboards;
(B) sign towers;
(C) radio towers;
(D) ski lift and tram towers;
(E) non-farm grain elevators; and
(F) bulk storage tanks.
(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 16

Year of Acquisition	Percent Good of Acquisition Cost
06	98%
05	93%
04	91%
03	87%
02	83%
01	78%
00	74%
99	71%
98	65%
97	61%
96	56%
95	51%
94	47%
93	41%
92	35%
91	28%
90	21%
89	15%
88 and prior	8%

(p) Class 17 - Vessels Equal to or Greater Than 31 Feet in Length.
(i) Examples of property in this class include:
(A) houseboats equal to or greater than 31 feet in length;
(B) sloops equal to or greater than 31 feet in length; and
(C) yachts equal to or greater than 31 feet in length.
(ii) A vessel, including an outboard motor of the vessel, under 31 feet in length:
(A) is not included in Class 17;
(B) may not be valued using Table 17; and
(C) is subject to an age-based uniform fee under Section 59-2-405.2.
(iii) Taxable value is calculated by applying the percent good factor against the cost new of the property.
(iv) The Tax Commission and assessors shall rely on the following sources to determine cost new for property in this class:
(A) the following publications or valuation methods:
(I) the manufacturer's suggested retail price listed in the ABOS Marine Blue Book;
(II) for property not listed in the ABOS Marine Blue Book but listed in the NADA Marine Appraisal Guide, the NADA average value for the property divided by the percent good factor; or
(III) for property not listed in the ABOS Marine Blue Book or the NADA Appraisal Guide:
(aa) the manufacturer's suggested retail price for comparable property; or
(bb) the cost new established for that property by a documented valuation source; or
(B) the documented actual cost of new or used property in this class.
(v) The 2007 percent good applies to 2007 models purchased in 2006.
(vi) Property in this class has a residual taxable value of $1,000.

TABLE 17

Model Year	Percent Good of Cost New
07	90%
06	68%
05	66%
04	64%
03	62%
02	59%
01	57%
00	55%
99	53%
98	50%
97	48%
96	46%
95	44%
94	42%
93	39%
92	37%
91	35%
90	33%
89	31%
88	28%
87	26%
86 and prior	24%

(q) Class 18 - Travel Trailers/Truck Campers.
(i) Because Section 59-2-405.2 subjects Class 18 property to an age-based uniform fee, a percent good schedule is not necessary for this class.
(r) Class 20 - Petroleum and Natural Gas Exploration and Production Equipment. Class 20 property is subject to significant functional and economic obsolescence due to the volatile nature of the petroleum industry.
(i) Examples of property in this class include:
(A) oil and gas exploration equipment;
(B) distillation equipment;
(C) wellhead assemblies;
(D) holding and storage facilities;
(E) drill rigs;
(F) reinjection equipment;
(G) metering devices;
(H) cracking equipment;
(I) well-site generators, transformers, and power lines;
(J) equipment sheds;
(K) pumps;
(L) radio telemetry units; and
(M) support and control equipment.
(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 20

Year of Acquisition	Percent Good of Acquisition Cost

06	97%
05	95%
04	94%
03	87%
02	80%
01	72%
00	64%
99	55%
98	46%
97	38%
96	29%
95	20%
94 and prior	10%

(s) Class 21 - Commercial Trailers.

(i) Examples of property in this class include:

(A) dry freight van trailers;

(B) refrigerated van trailers;

(C) flat bed trailers;

(D) dump trailers;

(E) livestock trailers; and

(F) tank trailers.

(ii) Taxable value is calculated by applying the percent good factor against the cost new of the property. For state assessed vehicles, cost new shall include the value of attached equipment.

(iii) The 2007 percent good applies to 2007 models purchased in 2006.

Commercial trailers have a residual taxable value of $1,000.

TABLE 21

Model Year	Percent Good of Cost New
07	95%
06	81%
05	76%
04	71%
03	65%
02	60%
01	55%
00	50%
99	44%
98	39%
97	34%
96	29%
95	24%
94	18%
93	13%
92	8%
91 and prior	3%

(t) Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans.

a) Class 22 vehicles fall within four subcategories: domestic passenger cars, foreign passenger cars, light trucks, including utility vehicles, and vans.

b) Because Section 59-2-405.1 subjects Class 22 property to an age-based uniform fee, a percent good schedule is not necessary for this class.

(u) Class 23 - Aircraft Subject to the Aircraft Uniform Fee and Not Listed in the Aircraft Bluebook Price Digest.

(i) Examples of property in this class include:

(A) kit-built aircraft;

(B) experimental aircraft;

(C) gliders;

(D) hot air balloons; and

(E) any other aircraft requiring FAA registration.

(ii) Aircraft subject to the aircraft uniform fee, but not listed in the Aircraft Bluebook Price Digest, are valued by applying the percent good factor against the acquisition cost of the aircraft.

(iii) Aircraft requiring Federal Aviation Agency registration and kept in Utah must be registered with the Motor Vehicle Division of the Tax Commission.

TABLE 23

Year of Acquisition	Percent Good of Acquisition Cost
06	75%
05	71%
04	67%
03	63%
02	59%
01	55%
00	51%
99	47%
98	43%
97	39%
96	35%
95 and prior	31%

(v) Class 24 - Leasehold Improvements.

(i) This class includes leasehold improvements to real property installed by a tenant. The Class 24 schedule is to be used only with leasehold improvements that are assessed to the lessee of the real property pursuant to Tax Commission rule R884-24P-32. Leasehold improvements include:

(A) walls and partitions;

(B) plumbing and roughed-in fixtures;

(C) floor coverings other than carpet;

(D) store fronts;

(E) decoration;

(F) wiring;

(G) suspended or acoustical ceilings;

(H) heating and cooling systems; and

(I) iron or millwork trim.

(ii) Taxable value is calculated by applying the percent good factor against the cost of acquisition, including installation.

(iii) The Class 3 schedule is used to value short life leasehold improvements.

TABLE 24

Year of Installation	Percent of Installation Cost
06	94%
05	88%
04	82%
03	77%
02	71%
01	65%
00	59%
99	54%
98	48%
97	42%
96	36%
95 and prior	30%

(w) Class 25 - Aircraft Parts Manufacturing Tools and Dies. Property in this class is generally subject to rapid physical, functional, and economic obsolescence due to rapid technological and economic shifts in the airline parts manufacturing industry. Heavy wear and tear is also a factor in valuing this class of property.

(i) Examples of property in this class include:

(A) aircraft parts manufacturing jigs and dies;

(B) aircraft parts manufacturing molds;

(C) aircraft parts manufacturing patterns;

(D) aircraft parts manufacturing taps and gauges;

(E) aircraft parts manufacturing test equipment; and

(F) aircraft parts manufacturing fixtures.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 25

Year of Acquisition	Percent Good of Acquisition Cost
06	86%

05	71%
04	58%
03	40%
02	21%
01 and prior	4%

(x) Class 26 - Personal Watercraft.

(i) Because Section 59-2-405.2 subjects Class 26 property to an age-based uniform fee, a percent good schedule is not necessary for this class.

(y) Class 27 - Electrical Power Generating Equipment and Fixtures

(i) Examples of property in this class include:

(A) electrical power generators; and

(B) control equipment.

(ii) Taxable value is calculated by applying the percent good factor against the acquisition cost of the property.

TABLE 27

Year of Acquisition	Percent Good of Acquisition Cost
06	97%
05	95%
04	92%
03	90%
02	87%
01	84%
00	82%
99	79%
98	77%
97	74%
96	71%
95	69%
94	66%
93	64%
92	61%
91	58%
90	56%
89	53%
88	51%
87	48%
86	45%
85	43%
84	40%
83	38%
82	35%
81	32%
80	30%
79	27%
78	25%
77	22%
76	19%
75	17%
74	14%
73	12%
72 and prior	9%

F. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 2007.

R884-24P-34. Use of Sales or Appraisal Information Gathered in Conjunction With Assessment/Sales Ratio Studies Pursuant to Utah Code Ann. Section 59-2-704.

A. Market data gathered for purposes of an assessment/sales ratio study may be used for valuation purposes only as part of a systematic reappraisal program whereby all similar properties are given equitable and uniform treatment.

B. Sales or appraisal data gathered in conjunction with a ratio study shall not be used for an isolated reappraisal of the sold or appraised properties.

C. Information derived from ratio studies regarding the values assigned to real property and personal property shall not be used to establish the apportionment between real and personal property in future assessments.

R884-24P-35. Annual Statement for Certain Exempt Uses of Property Pursuant to Utah Code Ann. Section 59-2-1102.

A. The purpose of this rule is to provide guidance to property owners required to file an annual statement under Section 59-2-1102 in order to claim a property tax exemption under Section 59-2-1101 (2)(d) or (e).

B. The annual statement filed pursuant to Section 59-2-1102 shall contain the following information for the specific property for which an exemption is sought:

1. the owner of record of the property;

2. the property parcel, account, or serial number;

3. the location of the property;

4. the tax year in which the exemption was originally granted;

5. a description of any change in the use of the real or personal property since January 1 of the prior year;

6. the name and address of any person or organization conducting a business for profit on the property;

7. the name and address of any organization that uses the real or personal property and pays a fee for that use that is greater than the cost of maintenance and utilities associated with the property;

8. a description of any personal property leased by the owner of record for which an exemption is claimed;

9. the name and address of the lessor of property described in B.8.;

10. the signature of the owner of record or the owner's authorized representative; and

11. any other information the county may require.

C. The annual statement shall be filed:

1. with the county legislative body in the county in which the property is located;

2. on or before March 1; and

3. using:

a) Tax Commission form PT-21, Annual Statement for Continued Property Tax Exemption; or

b) a form that contains the information required under B.

R884-24P-36. Contents of Real Property Tax Notice Pursuant to Utah Code Ann. Section 59-2-1317.

A. In addition to the information required by Section 59-2-1317, the tax notice for real property shall specify the following:

1. the property identification number;

2. the appraised value of the property and, if applicable, any adjustment for residential exemptions expressed in terms of taxable value;

3. if applicable, tax relief for taxpayers eligible for blind, veteran, or poor abatement or the circuit breaker, which shall be shown as credits to total taxes levied; and

4. itemized tax rate information for each taxing entity and total tax rate.

R884-24P-37. Separate Values of Land and Improvements Pursuant to Utah Code Ann. Sections 59-2-301 and 59-2-305.

A. The county assessor shall maintain an appraisal record of all real property subject to assessment by the county. The record shall include the following information:

1. owner of the property;

2. property identification number;

3. description and location of the property; and

4. full market value of the property.

B. Real property appraisal records shall show separately the value of the land and the value of any improvements.

R884-24P-38. Nonoperating Railroad Properties Pursuant to Utah Code Ann. Section 59-2-201(4).

A. Definitions.

1. "Railroad right of way" (RR-ROW) means a strip of land upon which a railroad company constructs the road bed.

a. RR-ROW within incorporated towns and cities shall consist of 50 feet on each side of the main line main track, branch line main track or main spur track. Variations to the 50-

foot standard shall be approved on an individual basis.

b. RR-ROW outside incorporated towns and cities shall consist of the actual right-of-way owned if not in excess of 100 feet on each side of the center line of the main line main track, branch line main track, or main spur track. In cases where unusual conditions exist, such as mountain cuts, fills, etc., and more than 100 feet on either side of the main track is required for ROW and where small parcels of land are otherwise required for ROW purposes, the necessary additional area shall be reported as RR-ROW.

B. Assessment of nonoperating railroad properties. Railroad property formerly assessed by the unitary method which has been determined to be nonoperating, and which is not necessary to the conduct of the business, shall be assessed separately by the local county assessor. For purposes of this rule:

C. Assessment procedures.

1. Properties charged to nonoperating accounts are reviewed by the Property Tax Division, and if taxable, are assessed and placed on the local county assessment rolls separately from the operating properties.

2. RR-ROW is considered as operating and as necessary to the conduct and contributing to the income of the business. Any revenue derived from leasing of property within the RR-ROW is considered as railroad operating revenues.

3. Real property outside of the RR-ROW which is necessary to the conduct of the railroad operation is considered as part of the unitary value. Some examples are: company homes occupied by superintendents and other employees on 24-hour call, storage facilities for railroad operations, communication facilities, and spur tracks outside of RR-ROW.

4. Abandoned RR-ROW is considered as nonoperating and shall be reported as such by the railroad companies.

5. Real property outside of the RR-ROW which is not necessary to the conduct of the railroad operations is classified as nonoperating and therefore assessed by the local county assessor. Some examples are: land leased to service station operations, grocery stores, apartments, residences, and agricultural uses.

6. RR-ROW obtained by government grant or act of Congress is deemed operating property.

D. Notice of Determination. It is the responsibility of the Property Tax Division to provide a notice of determination to the owner of the railroad property and the assessor of the county where the railroad property is located immediately after such determination of operating or nonoperating status has been made. If there is no appeal to the notice of determination, the Property Tax Division shall notify the assessor of the county where the property is located so the property may be placed on the roll for local assessment.

E. Appeals. Any interested party who wishes to contest the determination of operating or nonoperating property may do so by filing a request for agency action within ten days of the notice of determination of operating or nonoperating properties. Request for agency action may be made pursuant to Utah Code Ann. Title 63, Chapter 46b.

R884-24P-40. Exemption of Parsonages, Rectories, Monasteries, Homes and Residences Pursuant to Utah Code Annotated 59-2-1101(d) and Article XIII, Section 2 of the Utah Constitution.

A. Parsonages, rectories, monasteries, homes and residences if used exclusively for religious purposes, are exempt from property taxes if they meet all of the following requirements:

1. The land and building are owned by a religious organization which has qualified with the Internal Revenue Service as a Section 501(c)(3) organization and which organization continues to meet the requirements of that section.

2. The building is occupied only by persons whose full time efforts are devoted to the religious organization and the immediate families of such persons.

3. The religious organization, and not the individuals who occupy the premises, pay all payments, utilities, insurance, repairs, and all other costs and expenses related to the care and maintenance of the premises and facilities.

B. The exemption for one person and the family of such person is limited to the real estate that is reasonable for the residence of the family and which remains actively devoted exclusively to the religious purposes. The exemption for more than one person, such as a monastery, is limited to that amount of real estate actually devoted exclusively to religious purposes.

C. Vacant land which is not actively used by the religious organization, is not deemed to be devoted exclusively to religious purposes, and is therefore not exempt from property taxes.

1. Vacant land which is held for future development or utilization by the religious organization is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt.

2. Vacant land is tax exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes.

R884-24P-41. Adjustment or Deferral of Property Taxes Pursuant to Utah Code Ann. Section 59-2-1347.

A. Requested adjustments to taxes for past years may not be made under Utah Code Ann. Section 59-2-1347 if the requested adjustment is based only on property valuation.

B. Utah Code Ann. Section 59-2-1347 applies only to taxes levied but unpaid and may not serve as the basis for refunding taxes already paid.

C. Utah Code Ann. Section 59-2-1347 may only be applied to taxes levied for the five most recent tax years except where taxes levied remain unpaid as a result of administrative action or litigation.

R884-24P-42. Farmland Assessment Audits and Personal Property Audits Pursuant to Utah Code Ann. Subsection 59-2-508(2), and Section 59-2-705.

A. The Tax Commission is responsible for auditing the administration of the Farmland Assessment Act to verify proper listing and classification of all properties assessed under the act. The Tax Commission also conducts routine audits of personal property accounts.

1. If an audit reveals an incorrect assignment of property, or an increase or decrease in value, the county assessor shall correct the assessment on the assessment roll and the tax roll.

2. A revised assessment notice or tax notice or both shall be mailed to the taxpayer for the current year and any previous years affected.

3. The appropriate tax rate for each year shall be applied when computing taxes due for previous years.

B. Assessors shall not alter results of an audit without first submitting the changes to the Tax commission for review and approval.

C. The Tax Commission shall review assessor compliance with this rule. Noncompliance may result in an order for corrective action.

R884-24P-44. Farm Machinery and Equipment Exemption Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-1101.

A. The use of the machinery and equipment, whether by the claimant or a lessee, shall determine the exemption.

1. For purposes of this rule, the term owner includes a purchaser under an installment purchase contract or capitalized lease where ownership passes to the purchaser at the end of the

contract without the exercise of an option on behalf of the purchaser or seller.

B. Farm machinery and equipment is used primarily for agricultural purposes if it is used primarily for the production or harvesting of agricultural products.

C. The following machinery and equipment is used primarily for the production or harvesting of agricultural products:

1. Machinery and equipment used on the farm for storage, cooling, or freezing of fruits or vegetables;

2. Except as provided in C.3., machinery and equipment used in fruit or vegetable growing operations if the machinery and equipment does not physically alter the fruit or vegetables; and

3. Machinery and equipment that physically alters the form of fruits or vegetables if the operations performed by the machinery or equipment are reasonable and necessary in the preparation of the fruit or vegetables for wholesale marketing.

D. Machinery and equipment used for processing of agricultural products are not exempt.

R884-24P-47. Uniform Tax on Aircraft Pursuant to Utah Code Ann. Sections 59-2-404, 59-2-1005, 59-2-1302, and 59-2-1303.

A. Registration of aircraft requires payment of a uniform tax in lieu of ad valorem personal property tax. This tax shall be collected by the county assessor at the time of registration at the rate prescribed in Section 59-2-404.

B. The average wholesale market value of the aircraft is the arithmetic mean of the average low wholesale book value and the average high wholesale book value. This average price will be used as the basis for the initial assessment. These amounts are obtained from the fall edition of the Aircraft Bluebook Price Digest in the year preceding the year of registration for all aircraft listed in that publication.

1. The average wholesale market value of aircraft subject to registration but not shown in the Aircraft Bluebook Price Digest will be assessed according to the annual depreciation schedule for aircraft valuation set forth in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules."

2. Instructions for interpretation of codes are found inside the Aircraft Bluebook Price Digest.

a) Average low wholesale values are found under the heading "Average equipped per base avg change/invtry."

b) Average high wholesale values are found under the heading "change mktbl."

c) Aircraft values not in accordance with "average" may be adjusted by the assessor following the instructions in the Bluebook. Factors that have the greatest impact on value include: high engine time, air worthiness directives not complied with, status of annual inspection, crash damage, paint condition, and interior condition.

C. The uniform tax is due each year the aircraft is registered in Utah. If the aircraft is sold within the same registration period, no additional uniform tax shall be due. However, the purchaser shall pay any delinquent tax as a condition precedent to registration.

D. If an aircraft is purchased or moved to Utah during the year and newly registered in Utah, the uniform tax shall be prorated based on the number of months remaining in the registration period.

1. Any portion of a month shall be counted as a full month. For example, if registration is required during July, 50 percent of the uniform tax shall be paid as a condition of registration.

2. If the aircraft is moved to Utah during the year, and property tax was paid to another state prior to moving the aircraft into Utah, any property tax paid shall be allowed as a credit against the prorated uniform tax due in Utah.

a) This credit may not be refunded if the other state property tax exceeds the uniform tax due in Utah for the comparable year.

b) Proof of payment shall be submitted before credit is allowed.

E. The uniform tax collected by county assessors shall be distributed to the taxing districts of the county in which the aircraft is located as shown on the registration application. If the aircraft is registered in a county other than the county of the aircraft location, the tax collected shall be forwarded to the appropriate county within five working days.

F. The Tax Commission shall supply registration forms and numbered decals to the county assessors. Forms to assess the uniform tax shall be prepared by the counties each year. The Tax Commission shall maintain an owners' data base and supply the counties with a list of registrations by county after the first year and shall also supply registration renewal forms preprinted with the prior year's registration information.

G. The aircraft owner or person or entity in possession thereof shall immediately provide access to any aircraft hangar or other storage area or facility upon request by the assessor or the assessor's designee in order to permit the determination of the status of registration of the aircraft, and the performance of any other act in furtherance of the assessor's duties.

H. The provisions applicable to securing or collecting personal property taxes set forth in Sections 59-2-1302 and 59-2-1303 shall apply to the collection of delinquent uniform taxes.

I. If the aircraft owner and the county assessor cannot reach agreement concerning the aircraft valuation, the valuation may be appealed to the county board of equalization under Section 59-2-1005.

R884-24P-49. Calculating the Utah Apportioned Value of a Rail Car Fleet Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Average market value per rail car" means the fleet rail car market value divided by the number of rail cars in the fleet.

2. "Fleet rail car market value" means the sum of:

a)(1) the yearly acquisition costs of the fleet's rail cars;

(2) multiplied by the appropriate percent good factors contained in Class 10 of R884-24P- 33, Personal Property Valuation Guides and Schedules; and

b) the sum of betterments by year.

(1) Except as provided in A.2.b)(2), the sum of betterments by year shall be depreciated on a 14-year straight line method.

(2) Notwithstanding the provisions of A.2.b)(1), betterments shall have a residual value of two percent.

3. "In-service rail cars" means the number of rail cars in the fleet, adjusted for out-of- service rail cars.

4. a) "Out-of-service rail cars" means rail cars:

(1) out-of-service for a period of more than ten consecutive hours; or

(2) in storage.

b) Rail cars cease to be out-of-service once repaired or removed from storage.

c) Out-of-service rail cars do not include rail cars idled for less than ten consecutive hours due to light repairs or routine maintenance.

5. "System car miles" means both loaded and empty miles accumulated in the U.S., Canada, and Mexico during the prior calendar year by all rail cars in the fleet.

6. "Utah car miles" mean both loaded and empty miles accumulated within Utah during the prior calendar year by all rail cars in the fleet.

7. "Utah percent of system factor" means the Utah car miles divided by the system car miles.

B. The provisions of this rule apply only to private rail car

companies.

C. To receive an adjustment for out-of-service rail cars, the rail car company must report the number of out-of-service days to the commission for each of the company's rail car fleets.

D. The out-of-service adjustment is calculated as follows.

1. Divide the out-of-service days by 365 to obtain the out-of-service rail car equivalent.

2. Subtract the out-of-service rail car equivalent calculated in D.1. from the number of rail cars in the fleet.

E. The taxable value for each rail car fleet apportioned to Utah, for which the Utah percent of system factor is more than 50 percent, shall be determined by multiplying the Utah percent of system factor by the fleet rail car market value.

F. The taxable value for each rail car company apportioned to Utah, for which the Utah percent of system factor is less than or equal to 50 percent, shall be determined in the following manner.

1. Calculate the number of fleet rail cars allocated to Utah under the Utah percent of system factor. The steps for this calculation are as follows.

a) Multiply the Utah percent of system factor by the in-service rail cars in the fleet.

b) Multiply the product obtained in F.1.a) by 50 percent.

2. Calculate the number of fleet rail cars allocated to Utah under the time speed factor. The steps for this calculation are as follows.

a) Divide the fleet's Utah car miles by the average rail car miles traveled in Utah per year. The Commission has determined that the average rail car miles traveled in Utah per year shall equal 200,000 miles.

b) Multiply the quotient obtained in F.2.a) by the percent of in-service rail cars in the fleet.

c) Multiply the product obtained in F.2.b) by 50 percent.

3. Add the number of fleet rail cars allocated to Utah under the Utah percent of system factor, calculated in F.1.b), and the number of fleet rail cars allocated to Utah under the time speed factor, calculated in F.2.c), and multiply that sum by the average market value per rail car.

R884-24P-50. Apportioning the Utah Proportion of Commercial Aircraft Valuations Pursuant to Utah Code Ann. Section 59-2-201.

A. Definitions.

1. "Commercial air carrier" means any air charter service, air contract service or airline as defined by Section 59-2-102.

2. "Ground time" means the time period beginning at the time an aircraft lands and ending at the time an aircraft takes off.

B. The commission shall apportion to a tax area the assessment of the mobile flight equipment owned by a commercial air carrier in the proportion that the ground time in the tax area bears to the total ground time in the state.

C. The provisions of this rule shall be implemented and become binding on taxpayers beginning with the 1999 calendar year.

R884-24P-52. Criteria for Determining Primary Residence Pursuant to Utah Code Ann. Sections 59-2-102, 59-2-103, and 59-2-103.5.

A. "Household" is as defined in Section 59-2-1202.

B. "Primary residence" means the location where domicile has been established.

C. Except as provided in D. and F.3., the residential exemption provided under Section 59-2- 103 is limited to one primary residence per household.

D. An owner of multiple properties may receive the residential exemption on all properties for which the property is the primary residence of the tenant.

E. Factors or objective evidence determinative of domicile include:

1. whether or not the individual voted in the place he claims to be domiciled;

2. the length of any continuous residency in the location claimed as domicile;

3. the nature and quality of the living accommodations that an individual has in the location claimed as domicile as opposed to any other location;

4. the presence of family members in a given location;

5. the place of residency of the individual's spouse or the state of any divorce of the individual and his spouse;

6. the physical location of the individual's place of business or sources of income;

7. the use of local bank facilities or foreign bank institutions;

8. the location of registration of vehicles, boats, and RVs;

9. membership in clubs, churches, and other social organizations;

10. the addresses used by the individual on such things as:

a) telephone listings;

b) mail;

c) state and federal tax returns;

d) listings in official government publications or other correspondence;

e) driver's license;

f) voter registration; and

g) tax rolls;

11. location of public schools attended by the individual or the individual's dependents;

12. the nature and payment of taxes in other states;

13. declarations of the individual:

a) communicated to third parties;

b) contained in deeds;

c) contained in insurance policies;

d) contained in wills;

e) contained in letters;

f) contained in registers;

g) contained in mortgages; and

h) contained in leases.

14. the exercise of civil or political rights in a given location;

15. any failure to obtain permits and licenses normally required of a resident;

16. the purchase of a burial plot in a particular location;

17. the acquisition of a new residence in a different location.

F. Administration of the Residential Exemption.

1. Except as provided in F.2., F.4., and F.5., the first one acre of land per residential unit shall receive the residential exemption.

2. If a parcel has high density multiple residential units, such as an apartment complex or a mobile home park, the amount of land, up to the first one acre per residential unit, eligible to receive the residential exemption shall be determined by the use of the land. Land actively used for residential purposes qualifies for the exemption.

3. If the county assessor determines that a property under construction will qualify as a primary residence upon completion, the property shall qualify for the residential exemption while under construction.

4. A property assessed under the Farmland Assessment Act shall receive the residential exemption only for the homesite.

5. A property with multiple uses, such as residential and commercial, shall receive the residential exemption only for the percentage of the property that is used as a primary residence.

6. If the county assessor determines that an unoccupied property will qualify as a primary residence when it is occupied, the property shall qualify for the residential exemption while unoccupied.

7.a) An application for the residential exemption required by an ordinance enacted under Section 59-2-103.5 shall contain the following information for the specific property for which the exemption is requested:

(1) the owner of record of the property;

(2) the property parcel number;

(3) the location of the property;

(4) the basis of the owner's knowledge of the use of the property;

(5) a description of the use of the property;

(6) evidence of the domicile of the inhabitants of the property; and

(7) the signature of all owners of the property certifying that the property is residential property.

b) The application under F.7.a) shall be:

(1) on a form provided by the county; or

(2) in a writing that contains all of the information listed in F.7.a).

R884-24P-53. 2007 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.

A. Each year the Property Tax Division shall update and publish schedules to determine the taxable value for land subject to the Farmland Assessment Act on a per acre basis.

1. The schedules shall be based on the productivity of the various types of agricultural land as determined through crop budgets and net rents.

2. Proposed schedules shall be transmitted by the Property Tax Division to county assessors for comment before adoption.

3. County assessors may not deviate from the schedules.

4. Not all types of agricultural land exist in every county. If no taxable value is shown for a particular county in one of the tables, that classification of agricultural land does not exist in that county.

B. All property defined as farmland pursuant to Section 59-2-501 shall be assessed on a per acre basis as follows:

1. Irrigated farmland shall be assessed under the following classifications.

a) Irrigated I. The following counties shall assess Irrigated I property based upon the per acre values listed below:

TABLE 1
Irrigated I

1)	Box Elder	820
2)	Cache	690
3)	Carbon	540
4)	Davis	850
5)	Emery	520
6)	Iron	815
7)	Kane	460
8)	Millard	810
9)	Salt Lake	700
10)	Utah	745
11)	Washington	650
12)	Weber	800

b) Irrigated II. The following counties shall assess Irrigated II property based upon the per acre values listed below:

TABLE 2
Irrigated II

1)	Box Elder	720
2)	Cache	590
3)	Carbon	440
4)	Davis	750
5)	Duchesne	490
6)	Emery	420
7)	Grand	410
8)	Iron	715
9)	Juab	450
10)	Kane	360
11)	Millard	710
12)	Salt Lake	600
13)	Sanpete	550
14)	Sevier	580
15)	Summit	470
16)	Tooele	460
17)	Utah	645
18)	Wasatch	500
19)	Washington	550
20)	Weber	700

c) Irrigated III. The following counties shall assess Irrigated III property based upon the per acre values listed below:

TABLE 3
Irrigated III

1)	Beaver	560
2)	Box Elder	570
3)	Cache	440
4)	Carbon	290
5)	Davis	600
6)	Duchesne	340
7)	Emery	270
8)	Garfield	210
9)	Grand	260
10)	Iron	565
11)	Juab	300
12)	Kane	210
13)	Millard	560
14)	Morgan	390
15)	Piute	350
16)	Rich	200
17)	Salt Lake	450
18)	San Juan	180
19)	Sanpete	400
20)	Sevier	430
21)	Summit	320
22)	Tooele	310
23)	Uintah	375
24)	Utah	495
25)	Wasatch	350
26)	Washington	400
27)	Wayne	340
28)	Weber	550

d) Irrigated IV. The following counties shall assess Irrigated IV property based upon the per acre values listed below:

TABLE 4
Irrigated IV

1)	Beaver	460
2)	Box Elder	470
3)	Cache	340
4)	Carbon	190
5)	Daggett	210
6)	Davis	500
7)	Duchesne	240
8)	Emery	170
9)	Garfield	110
10)	Grand	160
11)	Iron	465
12)	Juab	200
13)	Kane	110
14)	Millard	460
15)	Morgan	290
16)	Piute	250
17)	Rich	100
18)	Salt Lake	350
19)	San Juan	80
20)	Sanpete	300
21)	Sevier	330
22)	Summit	220
23)	Tooele	210
24)	Uintah	275
25)	Utah	395
26)	Wasatch	250
27)	Washington	300
28)	Wayne	240
29)	Weber	450

2. Fruit orchards shall be assessed per acre based upon the following schedule:

TABLE 5

	Fruit Orchards	
1)	Beaver	630
2)	Box Elder	685
3)	Cache	630
4)	Carbon	630
5)	Davis	685
6)	Duchesne	630
7)	Emery	630
8)	Garfield	630
9)	Grand	630
10)	Iron	630
11)	Juab	630
12)	Kane	630
13)	Millard	630
14)	Morgan	630
15)	Piute	630
16)	Salt Lake	630
17)	San Juan	630
18)	Sanpete	630
19)	Sevier	630
20)	Summit	630
21)	Tooele	630
22)	Uintah	630
23)	Utah	690
24)	Wasatch	630
25)	Washington	750
26)	Wayne	630
27)	Weber	685

3. Meadow IV property shall be assessed per acre based upon the following schedule:

TABLE 6
Meadow IV

1)	Beaver	250
2)	Box Elder	250
3)	Cache	265
4)	Carbon	130
5)	Daggett	165
6)	Davis	270
7)	Duchesne	165
8)	Emery	130
9)	Garfield	100
10)	Grand	125
11)	Iron	250
12)	Juab	150
13)	Kane	115
14)	Millard	200
15)	Morgan	180
16)	Piute	175
17)	Rich	105
18)	Salt Lake	225
19)	Sanpete	195
20)	Sevier	205
21)	Summit	200
22)	Tooele	185
23)	Uintah	190
24)	Utah	240
25)	Wasatch	210
26)	Washington	220
27)	Wayne	170
28)	Weber	300

4. Dry land shall be classified as one of the following two categories and shall be assessed on a per acre basis as follows:

a) Dry III. The following counties shall assess Dry III property based upon the per acre values listed below:

TABLE 7
Dry III

1)	Beaver	45
2)	Box Elder	65
3)	Cache	70
4)	Carbon	45
5)	Davis	45
6)	Duchesne	45
7)	Garfield	45
8)	Grand	45
9)	Iron	50
10)	Juab	45
11)	Kane	45
12)	Millard	45
13)	Morgan	45
14)	Rich	45
15)	Salt Lake	50
16)	San Juan	45
17)	Sanpete	45
18)	Summit	45
19)	Tooele	45
20)	Uintah	45
21)	Utah	45
22)	Wasatch	45
23)	Washington	45
24)	Weber	55

b) Dry IV. The following counties shall assess Dry IV property based upon the per acre values listed below:

TABLE 8
Dry IV

1)	Beaver	10
2)	Box Elder	30
3)	Cache	35
4)	Carbon	10
5)	Davis	10
6)	Duchesne	10
7)	Garfield	10
8)	Grand	10
9)	Iron	15
10)	Juab	10
11)	Kane	10
12)	Millard	10
13)	Morgan	10
14)	Rich	10
15)	Salt Lake	15
16)	San Juan	10
17)	Sanpete	10
18)	Summit	10
19)	Tooele	10
20)	Uintah	10
21)	Utah	10
22)	Wasatch	10
23)	Washington	10
24)	Weber	20

5. Grazing land shall be classified as one of the following four categories and shall be assessed on a per acre basis as follows:

a) Graze 1. The following counties shall assess Graze I property based upon the per acre values listed below:

TABLE 9
GR I

1)	Beaver	80
2)	Box Elder	67
3)	Cache	72
4)	Carbon	59
5)	Daggett	63
6)	Davis	64
7)	Duchesne	69
8)	Emery	73
9)	Garfield	81
10)	Grand	78
11)	Iron	71
12)	Juab	70
13)	Kane	90
14)	Millard	85
15)	Morgan	56
16)	Piute	83
17)	Rich	68
18)	Salt Lake	73
19)	San Juan	75
20)	Sanpete	70
21)	Sevier	73
22)	Summit	74
23)	Tooele	75
24)	Uintah	72
25)	Utah	58
26)	Wasatch	54
27)	Washington	63
28)	Wayne	92
29)	Weber	70

b) Graze II. The following counties shall assess Graze II property based upon the per acre values listed below:

TABLE 10

GR II

1)	Beaver	23
2)	Box Elder	20
3)	Cache	22
4)	Carbon	18
5)	Daggett	19
6)	Davis	20
7)	Duchesne	21
8)	Emery	22
9)	Garfield	25
10)	Grand	23
11)	Iron	21
12)	Juab	21
13)	Kane	28
14)	Millard	26
15)	Morgan	17
16)	Piute	26
17)	Rich	22
18)	Salt Lake	22
19)	San Juan	23
20)	Sanpete	21
21)	Sevier	22
22)	Summit	21
23)	Tooele	23
24)	Uintah	22
25)	Utah	19
26)	Wasatch	17
27)	Washington	21
28)	Wayne	28
29)	Weber	21

c) Graze III. The following counties shall assess Graze III property based upon the per acre values below:

TABLE 11
GR III

1)	Beaver	16
2)	Box Elder	13
3)	Cache	14
4)	Carbon	12
5)	Daggett	12
6)	Davis	13
7)	Duchesne	14
8)	Emery	14
9)	Garfield	16
10)	Grand	15
11)	Iron	14
12)	Juab	14
13)	Kane	18
14)	Millard	17
15)	Morgan	11
16)	Piute	17
17)	Rich	14
18)	Salt Lake	14
19)	San Juan	15
20)	Sanpete	14
21)	Sevier	14
22)	Summit	14
23)	Tooele	15
24)	Uintah	14
25)	Utah	12
26)	Wasatch	11
27)	Washington	13
28)	Wayne	18
29)	Weber	14

d) Graze IV. The following counties shall assess Graze IV property based upon the per acre values listed below:

TABLE 12
GR IV

1)	Beaver	6
2)	Box Elder	5
3)	Cache	5
4)	Carbon	5
5)	Daggett	6
6)	Davis	5
7)	Duchesne	5
8)	Emery	5
9)	Garfield	6
10)	Grand	5
11)	Iron	6
12)	Juab	5
13)	Kane	6
14)	Millard	6
15)	Morgan	5
16)	Piute	6
17)	Rich	5
18)	Salt Lake	5
19)	San Juan	5
20)	Sanpete	5
21)	Sevier	5
22)	Summit	5
23)	Tooele	5
24)	Uintah	5
25)	Utah	5
26)	Wasatch	5
27)	Washington	5
28)	Wayne	6
29)	Weber	5

6. Land classified as nonproductive shall be assessed as follows on a per acre basis:

TABLE 13
Nonproductive Land

a)	Nonproductive Land	
1)	All Counties	5

R884-24P-55. Counties to Establish Ordinance for Tax Sale Procedures Pursuant to Utah Code Ann. Section 59-2-1351.1.

A. "Collusive bidding" means any agreement or understanding reached by two or more parties that in any way alters the bids the parties would otherwise offer absent the agreement or understanding.

B. Each county shall establish a written ordinance for real property tax sale procedures.

C. The written ordinance required under B. shall be displayed in a public place and shall be available to all interested parties.

D. The tax sale ordinance shall address, as a minimum, the following issues:

1. bidder registration procedures;
2. redemption rights and procedures;
3. prohibition of collusive bidding;
4. conflict of interest prohibitions and disclosure requirements;
5. criteria for accepting or rejecting bids;
6. sale ratification procedures;
7. criteria for granting bidder preference;
8. procedures for recording tax deeds;
9. payments methods and procedures;
10. procedures for contesting bids and sales;
11. criteria for striking properties to the county;
12. procedures for disclosing properties withdrawn from the sale for reasons other than redemption; and
13. disclaimers by the county with respect to sale procedures and actions.

R884-24P-56. Assessment, Collection, and Apportionment of Property Tax on Commercial Transportation Property Pursuant to Utah Code Ann. Sections 41-1a-301 and 59-2-801.

A. For purposes of Section 59-2-801, the previous year's statewide rate shall be calculated as follows:

1. Each county's overall tax rate is multiplied by the county's percent of total lane miles of principal routes.

2. The values obtained in A.1. for each county are summed to arrive at the statewide rate.

B. The assessment of vehicles apportioned under Section 41-1a-301 shall be apportioned at the same percentage ratio that has been filed with the Motor Vehicle Division of the State Tax Commission for determining the proration of registration fees.

C. For purposes of Section 59-2-801(2), principal route means lane miles of interstate highways and clover leafs, U.S. highways, and state highways extending through each county as determined by the Commission from current state Geographic

Information System databases.

R884-24P-57. Judgment Levies Pursuant to Utah Code Ann. Sections 59-2-918.5, 59-2-924, 59-2-1328, and 59-2-1330.

A. Definitions.

1. "Issued" means the date on which the judgment is signed.

2. "One percent of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year" includes any revenues collected by a judgment levy imposed in the prior year.

B. A taxing entity's share of a judgment or order shall include the taxing entity's share of any interest that must be paid with the judgment or order.

C. The judgment levy public hearing required by Section 59- 2-918.5 shall be held as follows:

1. For taxing entities operating under a July 1 through June 30 fiscal year, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

2. For taxing entities operating under a January 1 through December 31 fiscal year:

a) for judgments issued from the prior June 1 through December 15, the public hearing shall be held at the same time as the hearing at which the annual budget is adopted;

b) for judgments issued from the prior December 16 through May 31, the public hearing shall be held at least 10 days after the Notice of Property Valuation and Tax Changes is mailed.

3. If the taxing entity is required to hold a hearing under Section 59-2-919, the judgment levy hearing required by C.1. and C.2.b) shall be held at the same time as the hearing required under Section 59-2-919.

D. If the Section 59-2-918.5 advertisement is combined with the Section 59-2-918 or 59-2-919 advertisement, the combined advertisement shall aggregate the general tax increase and judgment levy information.

E. In the case of taxing entities operating under a January 1 through December 31 fiscal year, the advertisement for judgments issued from the previous December 16 through May 31 shall include any judgments issued from the previous June 1 through December 15 that the taxing entity advertised and budgeted for at its December budget hearing.

F. All taxing entities imposing a judgment levy shall file with the Tax Commission a signed statement certifying that all judgments for which the judgment levy is imposed have met the statutory requirements for imposition of a judgment levy.

1. The signed statement shall contain the following information for each judgment included in the judgment levy:

a) the name of the taxpayer awarded the judgment;

b) the appeal number of the judgment; and

c) the taxing entity's pro rata share of the judgment.

2. Along with the signed statement, the taxing entity must provide the Tax Commission the following:

a) a copy of all judgment levy newspaper advertisements required;

b) the dates all required judgment levy advertisements were published in the newspaper;

c) a copy of the final resolution imposing the judgment levy;

d) a copy of the Notice of Property Valuation and Tax Changes, if required; and

e) any other information required by the Tax Commission.

G. The provisions of House Bill 268, Truth in Taxation - Judgment Levy (1999 General Session), do not apply to judgments issued prior to January 1, 1999.

R884-24P-58. One-Time Decrease in Certified Rate Based on Estimated County Option Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated sales tax revenue to be distributed to a county under Section 59-12-1102 shall be determined based on the following formula:

1. sharedown of the commission's sales tax econometric model based on historic patterns, weighted 40 percent;

2. time series models, weighted 40 percent; and

3. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Title 59, Chapter 12, Part 11, County Option Sales and Use Tax, weighted 20 percent.

R884-24P-59. One-Time Decrease in Certified Rate Based on Estimated Additional Resort Communities Sales Tax Pursuant to Utah Code Ann. Section 59-2-924.

A. The estimated additional resort communities sales tax revenue to be distributed to a municipality under Section 59-12-402 shall be determined based on the following formula:

1. time series model, econometric model, or simple average, based upon the availability of and variation in the data, weighted 75 percent; and

2. growth rate of actual taxable sales occurring from January 1 through March 31 of the year a tax is initially imposed under Section 59-12-402, weighted 25 percent.

R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.

A. For purposes of Section 59-2-405.1, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

B. The uniform fee established in Section 59-2-405.1 is levied against motor vehicles and state-assessed commercial vehicles classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P- 33.

C. Personal property subject to the uniform fee imposed in Section 59-2-405 is not subject to the Section 59-2-405.1 uniform fee.

D. The following classes of personal property are not subject to the Section 59-2-405.1 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. mobile and manufactured homes;

5. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles or state-assessed commercial vehicles.

E. The age of a motor vehicle or state-assessed commercial vehicle, for purposes of Section 59-2-405.1, shall be determined by subtracting the vehicle model year from the current calendar year.

F. The only Section 59-2-405.1 uniform fee due upon registration or renewal of registration is the uniform fee calculated based on the age of the vehicle under E. on the first day of the registration period for which the registrant:

1. in the case of an original registration, registers the vehicle; or

2. in the case of a renewal of registration, renews the registration of the vehicle in accordance with Section 41-1a-216.

G. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed motor vehicles that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine

the market to book ratio.

2. Multiply the market to book ratio by the book value of motor vehicles registered in Utah and subject to Section 59-2-405.1 to determine the value of motor vehicles that may be subtracted from the allocated unit value.

H. The motor vehicle of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405.1 uniform fee.

I. A motor vehicle belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405.1 uniform fee at the time of registration or renewal of registration as long as the motor vehicle is kept in the other state.

J. The situs of a motor vehicle or state-assessed commercial vehicle subject to the Section 59-2-405.1 uniform fee is determined in accordance with Section 59-2-104. Situs of purchased motor vehicles or state-assessed commercial vehicles shall be the tax area of the purchaser's domicile, unless the motor vehicle or state-assessed commercial vehicle will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers a motor vehicle or state-assessed commercial vehicle that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the vehicle is kept in that county to the assessor of the county in which the vehicle is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of a motor vehicle or state-assessed commercial vehicle registered in Utah is domiciled outside of Utah, the taxable situs of the vehicle is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all motor vehicles and state-assessed commercial vehicles subject to state registration and their corresponding taxable situs.

4. Section 59-2-405.1 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405.1 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405.1 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405.1 uniform fee.

M. The value of motor vehicles and state-assessed commercial vehicles to be considered part of the tax base for purposes of determining debt limitations pursuant to Article XIII, Section 14 of the Utah Constitution, shall be determined by dividing the Section 59-2-405.1 uniform fee collected by .015.

N. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-61. 1.5 Percent Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.

A. Definitions.

1. For purposes of Section 59-2-405, "motor vehicle" is as defined in Section 41-1a-102, except that motor vehicle does not include motorcycles as defined in Section 41-1a-102.

2. "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, which is either self-propelled or pulled by another vehicle.

a) Recreational vehicle includes a travel trailer, a camping trailer, a motor home, and a fifth wheel trailer.

b) Recreational vehicle does not include a van unless specifically designed or modified for use as a temporary dwelling.

B. The uniform fee established in Section 59-2-405 is levied against the following types of personal property, unless specifically excluded by Section 59-2-405:

1. motor vehicles that are not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans, in Tax Commission rule R884-24P-33;

2. watercraft required to be registered with the state;

3. recreational vehicles required to be registered with the state; and

4. all other tangible personal property required to be registered with the state before it is used on a public highway, on a public waterway, on public land, or in the air.

C. The following classes of personal property are not subject to the Section 59-2-405 uniform fee, but remain subject to the ad valorem property tax:

1. vintage vehicles;

2. state-assessed commercial vehicles not classified under Class 22 - Passenger Cars, Light Trucks/Utility Vehicles, and Vans;

3. any personal property that is neither required to be registered nor exempt from the ad valorem property tax;

4. machinery or equipment that can function only when attached to or used in conjunction with motor vehicles.

D. The fair market value of tangible personal property subject to the Section 59-2-405 uniform fee is based on depreciated cost new as established in Tax Commission rule R884-24P-33, "Personal Property Valuation Guides and Schedules," published annually by the Tax Commission.

E. Centrally assessed taxpayers shall use the following formula to determine the value of locally assessed personal property that may be deducted from the allocated unit valuation:

1. Divide the system value by the book value to determine the market to book ratio.

2. Multiply the market to book ratio by the book value of personal property registered in Utah and subject to Section 59-2- 405 to determine the value of personal property that may be subtracted from the allocated unit value.

F. If a property's valuation is appealed to the county board of equalization under Section 59-2-1005, the property shall become subject to a total revaluation. All adjustments are made on the basis of their effect on the property's average retail value as of the January 1 lien date and according to Tax Commission rule R884-24P-33.

G. The county assessor may change the fair market value of any individual item of personal property in his jurisdiction for any of the following reasons:

1. The manufacturer's suggested retail price ("MSRP") or the cost new was not included on the state printout, computer tape, or registration card;

2. The MSRP or cost new listed on the state records was inaccurate; or

3. In the assessor's judgment, an MSRP or cost new adjustment made as a result of a property owner's informal request will continue year to year on a percentage basis.

H. If the personal property is of a type subject to annual registration, the Section 59-2-405 uniform fee is due at the time the registration is due. If the personal property is not registered during the year, the owner remains liable for payment of the Section 59-2-405 uniform fee to the county assessor.

1. No additional uniform fee may be levied upon personal property transferred during a calendar year if the Section 59-2-405 uniform fee has been paid for that calendar year.

2. If the personal property is of a type registered for

periods in excess of one year, the Section 59-2-405 uniform fee shall be due annually.

3. The personal property of a nonresident member of the armed forces stationed in Utah may be registered in Utah without payment of the Section 59-2-405 uniform fee.

4. Personal property belonging to a Utah resident member of the armed forces stationed in another state is not subject to the Section 59-2-405 uniform fee as long as the personal property is kept in another state.

5. Noncommercial trailers weighing 750 pounds or less are not subject to the Section 59-2-405 uniform fee or ad valorem property tax but may be registered at the request of the owner.

I. If the personal property is of a type subject to annual registration, registration of that personal property may not be completed unless the Section 59-2-405 uniform fee has been paid, even if the taxpayer is appealing the uniform fee valuation. Delinquent fees may be assessed in accordance with Sections 59-2- 217 and 59-2-309 as a condition precedent to registration.

J. The situs of personal property subject to the Section 59-2-405 uniform fee is determined in accordance with Section 59-2- 104. Situs of purchased personal property shall be the tax area of the purchaser's domicile, unless the personal property will be kept in a tax area other than the tax area of the purchaser's domicile for more than six months of the year.

1. If an assessor discovers personal property that is kept in the assessor's county but registered in another, the assessor may submit an affidavit along with evidence that the property is kept in that county to the assessor of the county in which the personal property is registered. Upon agreement, the assessor of the county of registration shall forward the fee collected to the county of situs within 30 working days.

2. If the owner of personal property registered in Utah is domiciled outside of Utah, the taxable situs of the property is presumed to be the county in which the uniform fee was paid, unless an assessor's affidavit establishes otherwise.

3. The Tax Commission shall, on an annual basis, provide each county assessor information indicating all personal property subject to state registration and its corresponding taxable situs.

4. Section 59-2-405 uniform fees received by a county that require distribution to a purchaser's domicile outside of that county shall be deposited into an account established by the Commission, pursuant to procedures prescribed by the Commission.

5. Section 59-2-405 uniform fees received by the Commission pursuant to J.4. shall be distributed to the appropriate county at least monthly.

K. The blind exemption provided in Section 59-2-1106 is applicable to the Section 59-2-405 uniform fee.

L. The veteran's exemption provided in Section 59-2-1104 is applicable to the Section 59-2-405 uniform fee.

M. The provisions of this rule shall be implemented and become binding on taxpayers beginning January 1, 1999.

R884-24P-62. Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201.

A. Purpose. The purpose of this rule is to:

1. specify consistent mass appraisal methodologies to be used by the Property Tax Division (Division) in the valuation of tangible property assessable by the Commission; and

2. identify preferred valuation methodologies to be considered by any party making an appraisal of an individual unitary property.

B. Definitions:

1. "Cost regulated utility" means any public utility assessable by the Commission whose allowed revenues are determined by a rate of return applied to a rate base set by a state or federal regulatory commission.

2. "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value reflects the value of property at its highest and best use, subject to regulatory constraints.

3. "Rate base" means the aggregate account balances reported as such by the cost regulated utility to the applicable state or federal regulatory commission.

4. "Unitary property" means operating property that is assessed by the Commission pursuant to Section 59-2-201(1)(a) through (c).

a) Unitary properties include:

(1) all property that operates as a unit across county lines, if the values must be apportioned among more than one county or state; and

(2) all property of public utilities as defined in Section 59-2-102.

b) These properties, some of which may be cost regulated utilities, are defined under one of the following categories.

(1) "Telecommunication properties" include the operating property of local exchange carriers, local access providers, long distance carriers, cellular telephone or personal communication service (PCS) providers and pagers, and other similar properties.

(2) "Energy properties" include the operating property of natural gas pipelines, natural gas distribution companies, liquid petroleum products pipelines, and electric corporations, including electric generation, transmission, and distribution companies, and other similar entities.

(3) "Transportation properties" include the operating property of all airlines, air charter services, air contract services, including major and small passenger carriers and major and small air freighters, long haul and short line railroads, and other similar properties.

C. All tangible operating property owned, leased, or used by unitary companies is subject to assessment and taxation according to its fair market value as of January 1, and as provided in Utah Constitution Article XIII, Section 2. Intangible property as defined under Section 59-2-102 is not subject to assessment and taxation.

D. General Valuation Principles. Unitary properties shall be assessed at fair market value based on generally accepted appraisal theory as provided under this rule.

1. The assemblage or enhanced value attributable to the tangible property should be included in the assessed value. See Beaver County v. WilTel, Inc., 995 P.2d 602 (Utah 2000). The value attributable to intangible property must, when possible, be identified and removed from value when using any valuation method and before that value is used in the reconciliation process.

2. The preferred methods to determine fair market value are the cost approach and a yield capitalization income indicator as set forth in E.

a) Other generally accepted appraisal methods may also be used when it can be demonstrated that such methods are necessary to more accurately estimate fair market value.

b) Direct capitalization and the stock and debt method typically capture the value of intangible property at higher levels than other methods. To the extent intangible property cannot be identified and removed, relatively less weight shall be given to such methods in the reconciliation process, as set forth in E.4.

c) Preferred valuation methods as set forth in this rule are, unless otherwise stated, rebuttable presumptions, established for purposes of consistency in mass appraisal. Any party challenging a preferred valuation method must demonstrate, by a preponderance of evidence, that the proposed alternative establishes a more accurate estimate of fair market value.

3. Non-operating Property. Property that is not necessary to the operation of unitary properties and is assessed by a local

county assessor, and property separately assessed by the Division, such as registered motor vehicles, shall be removed from the correlated unit value or from the state allocated value.

E. Appraisal Methodologies.

1. Cost Approach. Cost is relevant to value under the principle of substitution, which states that no prudent investor would pay more for a property than the cost to construct a substitute property of equal desirability and utility without undue delay. A cost indicator may be developed under one or more of the following methods: replacement cost new less depreciation (RCNLD), reproduction cost less depreciation (reproduction cost), and historic cost less depreciation (HCLD).

a) "Depreciation" is the loss in value from any cause. Different professions recognize two distinct definitions or types of depreciation.

(1) Accounting. Depreciation, often called "book" or "accumulated" depreciation, is calculated according to generally accepted accounting principles or regulatory guidelines. It is the amount of capital investment written off on a firm's accounting records in order to allocate the original or historic cost of an asset over its life. Book depreciation is typically applied to historic cost to derive HCLD.

(2) Appraisal. Depreciation, sometimes referred to as "accrued" depreciation, is the difference between the market value of an improvement and its cost new. Depreciation is typically applied to replacement or reproduction cost, but should be applied to historic cost if market conditions so indicate. There are three types of depreciation:

(a) Physical deterioration results from regular use and normal aging, which includes wear and tear, decay, and the impact of the elements.

(b) Functional obsolescence is caused by internal property characteristics or flaws in the structure, design, or materials that diminish the utility of an improvement.

(c) External, or economic, obsolescence is an impairment of an improvement due to negative influences from outside the boundaries of the property, and is generally incurable. These influences usually cannot be controlled by the property owner or user.

b) Replacement cost is the estimated cost to construct, at current prices, a property with utility equivalent to that being appraised, using modern materials, current technology and current standards, design, and layout. The use of replacement cost instead of reproduction cost eliminates the need to estimate some forms of functional obsolescence.

c) Reproduction cost is the estimated cost to construct, at current prices, an exact duplicate or replica of the property being assessed, using the same materials, construction standards, design, layout and quality of workmanship, and embodying any functional obsolescence.

d) Historic cost is the original construction or acquisition cost as recorded on a firm's accounting records. Depending upon the industry, it may be appropriate to trend HCLD to current costs. Only trending indexes commonly recognized by the specific industry may be used to adjust HCLD.

e) RCNLD may be impractical to implement; therefore the preferred cost indicator of value in a mass appraisal environment for unitary property is HCLD. A party may challenge the use of HCLD by proposing a different cost indicator that establishes a more accurate cost estimate of value.

2. Income Capitalization Approach. Under the principle of anticipation, benefits from income in the future may be capitalized into an estimate of present value.

a) Yield Capitalization. The yield capitalization formula is CF/(k-g), where "CF" is a single year's normalized cash flow, "k" is the nominal, risk adjusted discount or yield rate, and "g" is the expected growth rate of the cash flow.

(1) Cash flow is restricted to the operating property in existence on the lien date, together with any replacements intended to maintain, but not expand or modify, existing capacity or function. Cash flow is calculated as net operating income (NOI) plus non-cash charges (e.g., depreciation and deferred income taxes), less capital expenditures and additions to working capital necessary to achieve the expected growth "g". Information necessary for the Division to calculate the cash flow shall be summarized and submitted to the Division by March 1 on a form provided by the Division.

(a) NOI is defined as net income plus interest.

(b) Capital expenditures should include only those necessary to replace or maintain existing plant and should not include any expenditure intended primarily for expansion or productivity and capacity enhancements.

(c) Cash flow is to be projected for the year immediately following the lien date, and may be estimated by reviewing historic cash flows, forecasting future cash flows, or a combination of both.

i) If cash flows for a subsidiary company are not available or are not allocated on the parent company's cash flow statements, a method of allocating total cash flows must be developed based on sales, fixed assets, or other reasonable criteria. The subsidiary's total is divided by the parent's total to derive the allocation percentage to estimate the subsidiary's cash flow.

ii) If the subject company does not provide the Commission with its most recent cash flow statements by March 1 of the assessment year, the Division may estimate cash flow using the best information available.

(2) The discount rate (k) shall be based upon a weighted average cost of capital (WACC) considering current market debt rates and equity yields. WACC should reflect a typical capital structure for comparable companies within the industry.

(a) The cost of debt should reflect the current market rate (yield to maturity) of debt with the same credit rating as the subject company.

(b) The cost of equity is estimated using standard methods such as the capital asset pricing model (CAPM), the Risk Premium and Dividend Growth models, or other recognized models.

i) The CAPM is the preferred method to estimate the cost of equity. More than one method may be used to correlate a cost of equity, but only if the CAPM method is weighted at least 50% in the correlation.

ii) The CAPM formula is k(e) = R(f) + (Beta x Risk Premium), where k(e) is the cost of equity and R(f) is the risk free rate.

a. The risk free rate shall be the current market rate on 20-year Treasury bonds.

b. The beta should reflect an average or value-weighted average of comparable companies and should be drawn consistently from Value Line or an equivalent source. The beta of the specific assessed property should also be considered.

c. The risk premium shall be the arithmetic average of the spread between the return on stocks and the income return on long term bonds for the entire historical period contained in the Ibbotson Yearbook published immediately following the lien date.

(3) The growth rate "g" is the expected future growth of the cash flow attributable to assets in place on the lien date, and any future replacement assets.

(a) If insufficient information is available to the Division, either from public sources or from the taxpayer, to determine a rate, "g" will be the expected inflationary rate in the Gross Domestic Product Price Deflator obtained in Value Line. The growth rate and the methodology used to produce it shall be disclosed in a capitalization rate study published by the Commission by February 15 of the assessment year.

b) A discounted cash flow (DCF) method is impractical to implement in a mass appraisal environment, but may be used to

value individual properties.

c) Direct Capitalization is an income technique that converts an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the normalized income estimate by a capitalization rate or by multiplying the normalized income estimate by an income factor.

3. Market or Sales Comparison Approach. The market value of property is directly related to the prices of comparable, competitive properties. The market approach is estimated by comparing the subject property to similar properties that have recently sold.

a) Sales of comparable property must, to the extent possible, be adjusted for elements of comparison, including market conditions, financing, location, physical characteristics, and economic characteristics. When considering the sales of stock, business enterprises, or other properties that include intangible assets, adjustments must be made for those intangibles.

b) Because sales of unitary properties are infrequent, a stock and debt indicator may be viewed as a surrogate for the market approach. The stock and debt method is based on the accounting principle which holds that the market value of assets equal the market value of liabilities plus shareholder's equity.

4. Reconciliation. When reconciling value indicators into a final estimate of value, the appraiser shall take into consideration the availability, quantity, and quality of data, as well as the strength and weaknesses of each value indicator. Weighting percentages used to correlate the value approaches will generally vary by industry, and may vary by company if evidence exists to support a different weighting. The Division must disclose in writing the weighting percentages used in the reconciliation for the final assessment. Any departure from the prior year's weighting must be explained in writing.

F. Property Specific Considerations. Because of unique characteristics of properties and industries, modifications or alternatives to the general value indicators may be required for specific industries.

1. Cost Regulated Utilities.

a) HCLD is the preferred cost indicator of value for cost regulated utilities because it represents an approximation of the basis upon which the investor can earn a return. HCLD is calculated by taking the historic cost less depreciation as reflected in the utility's net plant accounts, and then:

(1) subtracting intangible property;

(2) subtracting any items not included in the utility's rate base (e.g., deferred income taxes and, if appropriate, acquisition adjustments); and

(3) adding any taxable items not included in the utility's net plant account or rate base.

b) Deferred Income Taxes, also referred to as DFIT,is an accounting entry that reflects the difference between the use of accelerated depreciation for income tax purposes and the use of straight-line depreciation for financial statements. For traditional rate base regulated companies, regulators generally exclude deferred income taxes from rate base, recognizing it as ratepayer contributed capital. Where rate base is reduced by deferred income taxes for rate base regulated companies, they shall be removed from HCLD.

c) Items excluded from rate base under F.1.a)(2) or b) should not be subtracted from HCLD to the extent it can be shown that regulators would likely permit the rate base of a potential purchaser to include a premium over existing rate base.

2. Railroads.

a. The cost indicator should generally be given little or no weight because there is no observable relationship between cost and fair market value.

R884-24P-63. Performance Standards and Training Requirements Pursuant to Utah Code Ann. Section 59-2-406.

A. The party contracting to perform services shall develop a written customer service performance plan within 60 days after the contract for performance of services is signed.

1. The customer service performance plan shall address:

a) procedures the contracting party will follow to minimize the time a customer waits in line; and

b) the manner in which the contracting party will promote alternative methods of registration.

2. The party contracting to perform services shall provide a copy of its customer service performance plan to the party for whom it provides services.

3. The party for whom the services are provided may, no more often than semiannually, audit the contracting party's performance based on its customer service performance plan, and may report the results of the audit to the county commission or the state tax commissioners, as applicable.

B. Each county office contracting to perform services shall conduct initial training of its new employees.

C. The Tax Commission shall provide regularly scheduled training for all county offices contracting to perform motor vehicle functions.

R884-24P-64. Determination and Application of Taxable Value for Purposes of the Property Tax Exemptions for Disabled Veterans and the Blind Pursuant to Utah Code Ann. Sections 59-2-1104 and 59-2-1106.

For purposes of Sections 59-2-1104 and 59-2-1106, the taxable value of tangible personal property subject to a uniform fee under Sections 59-2-405.1 or 59-2-405.2 shall be calculated by dividing the uniform fee the tangible personal property is subject to by .015.

R884-24P-65. Assessment of Transitory Personal Property Pursuant to Utah Code Ann. Section 59-2-402.

A. "Transitory personal property"means tangible personal property that is used or operated primarily at a location other than a fixed place of business of the property owner or lessee.

B. Transitory personal property in the state on January 1 shall be assessed at 100 percent of fair market value.

C. Transitory personal property that is not in the state on January 1 is subject to a proportional assessment when it has been in the state for 90 consecutive days in a calendar year.

1. The determination of whether transitory personal property has been in the state for 90 consecutive days shall include the days the property is outside the state if, within 10 days of its removal from the state, the property is:

a) brought back into the state; or

b) substituted with transitory personal property that performs the same function.

D. Once transitory personal property satisfies the conditions under C., tax shall be proportionally assessed for the period:

1. beginning on the first day of the month in which the property was brought into Utah; and

2. for the number of months remaining in the calendar year.

E. An owner of taxable transitory personal property who removes the property from the state prior to December and who qualifies for a refund of taxes assessed and paid, shall receive a refund based on the number of months remaining in the calendar year at the time the property is removed from the state and for which the tax has been paid.

1. The refund provisions of this subsection apply to transitory personal property taxes assessed under B. and C.

2. For purposes of determining the refund under this subsection, any portion of a month remaining shall be counted as a full month.

F. If tax has been paid for transitory personal property and

that property is subsequently moved to another county in Utah:

1. No additional assessment may be imposed by any county to which the property is subsequently moved; and

2. No portion of the assessed tax may be transferred to the subsequent county.

R884-24P-66. Appeal to County Board of Equalization Pursuant to Utah Code Ann. Section 59-2-1004.

A.1. "Factual error" means an error that is:

a) objectively verifiable without the exercise of discretion, opinion, or judgment, and

b) demonstrated by clear and convincing evidence.

2. Factual error includes:

a) a mistake in the description of the size, use, or ownership of a property;

b) a clerical or typographical error in reporting or entering the data used to establish valuation or equalization;

c) an error in the classification of a property that is eligible for a property tax exemption under:

(1) Section 59-2-103; or

(2) Title 59, Chapter 2, Part 11;

d) valuation of a property that is not in existence on the lien date; and

e) a valuation of a property assessed more than once, or by the wrong assessing authority.

B. Except as provided in D., a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the time period prescribed by Section 59-2-1004(2)(a) if any of the following conditions apply:

1. During the period prescribed by Section 59-2-1004(2)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.

2. During the period prescribed by Section 59-2-1004(2)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was capable of filing an appeal.

3. The county did not comply with the notification requirements of Section 59-2-919(4).

4. A factual error is discovered in the county records pertaining to the subject property.

5. The property owner was unable to file an appeal within the time period prescribed by Section 59-2-1004(2)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Section 59-2-1004(2)(a), and no co-owner of the property was capable of filing an appeal.

C. Appeals accepted under B.4. shall be limited to correction of the factual error and any resulting changes to the property's valuation.

D. The provisions of B. apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

E. The provisions of this rule apply only to appeals to the county board of equalization. For information regarding appeals of county board of equalization decisions to the Commission, please see Section 59-2-1006 and R861-1A-9.

R884-24P-67. Information Required for Valuation of Low-Income Housing Pursuant to Utah Code Ann. Sections 59-2-102 and 59-2-301.3.

A. The purpose of this rule is to provide an annual reporting mechanism to assist county assessors in gathering data necessary for accurate valuation of low-income housing projects.

B. The Utah Housing Corporation shall provide the following information that it has obtained from the owner of a low-income housing project to the commission:

1. for each low-income housing project in the state that is eligible for a low-income housing tax credit:

a) the Utah Housing Corporation project identification number;

b) the project name;

c) the project address;

d) the city in which the project is located;

e) the county in which the project is located;

f) the building identification number assigned by the Internal Revenue Service for each building included in the project;

g) the building address for each building included in the project;

h) the total apartment units included in the project;

i) the total apartment units in the project that are eligible for low-income housing tax credits;

j) the period of time for which the project is subject to rent restrictions under an agreement described in B.2.;

k) whether the project is:

(1) the rehabilitation of an existing building; or

(2) new construction;

l) the date on which the project was placed in service;

m) the total square feet of the buildings included in the project;

n) the maximum annual federal low-income housing tax credits for which the project is eligible;

o) the maximum annual state low-income housing tax credits for which the project is eligible; and

p) for each apartment unit included in the project:

(1) the number of bedrooms in the apartment unit;

(2) the size of the apartment unit in square feet; and

(3) any rent limitation to which the apartment unit is subject; and

2. a recorded copy of the agreement entered into by the Utah Housing Corporation and the property owner for the low-income housing project; and

3. construction cost certifications for the project received from the low-income housing project owner.

C. The Utah Housing Corporation shall provide the commission the information under B. by January 31 of the year following the year in which a project is placed into service.

D. 1. Except as provided in D.2., by April 30 of each year, the owner of a low-income housing project shall provide the county assessor of the county in which the project is located the following project information for the prior year:

a) operating statement;

b) rent rolls; and

c) federal and commercial financing terms and agreements.

2. Notwithstanding D.1., the information a low-income project housing owner shall provide by April 30, 2004 to a county assessor shall include a 3-year history of the information required under D.1.

E. A county assessor shall assess and list the property described in this rule using the best information obtainable if the property owner fails to provide the information required under D.

R884-24P-68. Property Tax Exemption for Taxable Tangible Personal Property With a Total Aggregate Fair Market Value of $3,500 or Less Pursuant to Utah Code Ann. Section 59-2-1115.

(1) The purpose of this rule is to provide for the administration of the property tax exemption for a taxpayer whose taxable tangible personal property has a total aggregate fair market value of $3,500 or less.

(a) Total aggregate fair market value is determined by aggregating the fair market value of all taxable tangible personal property owned by a taxpayer within a county.

(b) If taxable tangible personal property is required to be

apportioned among counties, the determination of whether taxable tangible personal property has a total aggregate fair market value of $3,500 or less shall be made after apportionment.

(2) A taxpayer shall apply for the exemption provided under Section 59-2-1115:

(a) if the county assessor has requested a signed statement from the taxpayer under Section 59-2-306, within the time frame set forth under Section 59-2-306 for filing the signed statement; or

(b) if the county assessor has not requested a signed statement from the taxpayer under Section 59-2-306, within 30 days from the day the taxpayer is requested to indicate whether the taxpayer has $3,500 or less of taxable tangible personal property in the county.

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59-2-102
59-2-103
59-2-103.5
59-2-104
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59-2-210
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59-2-1002
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59-2-1101
59-2-1102
59-2-1104
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59-2-1107 through 59-2-1109
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R912. Transportation, Motor Carrier, Ports of Entry.
R912-9. Pilot/Escort Requirements and Certification Program.
R912-9-1. Authority.

This rule is enacted under the authority of Section 72-7-406.

R912-9-2. Purpose.

This rule establishes procedures for pilot/escort driver certification and vehicle equipment requirements for pilot/escort services.

R912-9-3. Definitions.

"Department" means the Utah Department of Transportation.

"Division" means the Motor Carrier Division.

"Authorized Personnel" means a Certified Pilot/Escort Driver as described in MUTCD 6C.02, and also classified as a "Flagger" as set forth in Chapter 6E of the MUTCD.

"MUTCD" means Manual on Uniform Traffic Control Devices.

"Special Event" means the movement of an over-dimensional load/vehicle as described in MUTCD 6C.02, and also the movement of an over-dimensional load/vehicle shall be classified as an "emergency road user occurrence" as described in MUTCD 6I.01.

R912-9-4. Pilot/Escort Driver Requirements.

Individuals who operate a pilot/escort vehicle must meet the following requirements:

(1) Must be a minimum of 18 years of age.

(2) Possess a valid drivers license for the state jurisdiction in which he/she resides.

(3) Pilot/Escort driver's will be issued a certification card by an authorized Qualified Certification Program as outlined in R912-10, and shall have it in their possession at all times while in pilot/escort operations.

(4) Initial certification will be valid for four years from the date of issue. One additional four-year certification may be obtained through a mail in or on-line recertification process provided by a Qualified Pilot/Escort Training Entity/Institution.

(5) Pilot/escort drivers must provide a current (within 30 days) Motor Vehicle Record (MVR) certification to the Qualified Certification Program at the time of the course.

(6) Current certification for pilot/escort operators will be honored through expiration date. Prior to expiration of pilot/escort certification it will be the responsibility of the operator to attend classroom instruction provided by an authorized Pilot/Escort Qualified Certification Program. A list of these providers can be obtained by calling (801) 965-4508.

(7) No passengers under 16 years of age are allowed in pilot/escort vehicles during movement of oversize loads.

(8) A Pilot/escort driver may not perform as a tillerman while performing pilot escort operations.

(9) A pilot /escort driver must meet the requirements of 49 CFR 391.11 if using a vehicle for escort operations in excess of 10,000 lbs GVWR.

R912-9-5. Driver Certification Process.

(1) Drivers domiciled in Utah must complete a pilot/escort certification course authorized by the Department. A list of authorized instructors may be obtained by contacting (801) 965-4508.

(2) Pilot/ Escort drivers domiciled outside of Utah may operate as a certified pilot/escort driver with another State's certification credential, provided the course meets the minimum requirements outlined in the Pilot/ Escort Training Manual - Best Practices Guidelines as endorsed by the Specialized Carriers and Rigging Association, Federal Highway Administration, and the Commercial Vehicle Safety Alliance; and/or

(3) The Department may enter into a reciprocal agreement with other states provided they can demonstrate that course materials are comprehensive and meet minimum requirements outlined by the Department. For a current listing of these states, contact the Central Permit Office at 801-965-4302.

(4) Pilot/escort driver certification expires four years from the date issued. It will be the responsibility of the driver to maintain certification.

R912-9-6. Suspensions and Revocations of Pilot/Escort Driver Certification.

Pilot/escort drivers may have their certification denied, suspended, or revoked by the Department if it is determined that a disqualifying offense has occurred within the previous 4 years.

(1) Drivers convicted of serious traffic violations such as excessive speed, reckless driving and driving maneuvers reserved for emergency vehicles, driving under the influence of alcohol or controlled substances may have their certification denied, suspended, or revoked by the Department.

(2) The Department may suspend for first offenses up to one year. Subsequent offenses may result in permanent revocation of driver certification.

R912-9-7. Steering Committee. Appeal Process.

When a driver is denied pilot/escort-driving privileges for reasons other than the conditions set forth in R912-9-6, the individual may file an appeal. The appeals shall be handled by a steering committee created by the 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 Act.

R912-9-8. Pilot/Escort Vehicle Standards.

(1) Pilot/Escort vehicles may be either a passenger vehicle or a two-axle truck with a 95 inch minimum wheelbase and a maximum gross vehicle weight of 12,000 lbs and properly registered and licensed as required under Sections 41-1a-201 and 41-1a-401.

(2) Equipment shall not reduce visibility or mobility of pilot/escort vehicle while in operation.

(3) Trailers may not be towed at any time while in pilot/escort operations.

(4) Pilot/escort vehicles shall be equipped with a two-way radio capable of transmitting and receiving voice messages over a minimum distance of one-half mile. Radio communications must be compatible with accompanying pilot/escort vehicles, utility company vehicles, permitted vehicle operator and police escort, when necessary. When operating with police escorts a CB radio is required.

(5) Pilot/Escort vehicles may not carry a load.

R912-9-9. Pilot/Escort Vehicle Signing Requirements.

(1) Sign requirements on pilot/escort vehicles are as follows:

(a) Pilot escort vehicles must display an "Oversize Load" sign, which must be mounted on the top of the pilot/escort vehicle.

(b) Signs must be a minimum of 5 feet wide by 10 inch high visible surface space, with a solid yellow background and 8 inch high by 1-inch wide black letters. Solid defined as: when being viewed from the front or rear at a 90-degree angle, no light can transmit through.

(c) The sign for the front/pilot escort vehicle shall be displayed so as to be clearly legible and readable by oncoming traffic at all times.

(d) The rear pilot/escort vehicle shall display its sign so as to be readable by traffic overtaking from the rear and clearly legible at all times.

R912-9-10. Pilot/Escort Vehicle Lighting Requirements.

(1) Two methods of lighting are authorized by the Department. Requirements are as follows:

(a) Two AAMVA approved amber flashing lights mounted with one on each side of the required sign. These shall be a minimum of 6 inches in diameter with a capacity of 60 flashes per minute with warning lights illuminated at all times during operation, or

(b) An AAMVA approved amber rotating, oscillating, or flashing beacon/light bar mounted on top of the pilot/escort vehicle. This beacon/light bar must be unobstructed and visible for 360 degrees with warning lights illuminated at all times during operation.

(2) Incandescent, strobe or diode (LED) lights may be used provided they meet the above criteria.

R912-9-11. Pilot/Escort Vehicle Equipment Requirements.

(1) Pilot/Escort vehicles shall be equipped with the following safety items:

(a) Standard 18-inch or 24-inch red/white "STOP" and black/orange "SLOW" paddle signs. Construction zone flagging requires the 24-inch sign. For nighttime travel moves signs must be reflective in accordance with MUTCD standards

(b) Nine reflective triangles or 18-inch reflective orange traffic cones (not to replace items (c) or (d).

(c) Eight red-burning flares, glow sticks or equivalent illumination device approved by the Department.

(d) Three orange, 18 inch high cones.

(e) Flashlight. With a minimum 1 1/2-inch lens diameter, with extra batteries or charger (emergency type shake or crank -- will not be allowed).

(f) 6-inch minimum length red or orange cone or traffic wand for use when directing traffic.

(g) Orange hardhat and Class 2 safety vest for personnel involved in pilot/escort operations. Class 3 safety vests are required for nighttime moves.

(h) A height-measuring pole made of a non-conductive, non-destructive, flexible or frangible material, only required when escorting a load exceeding 16 feet in height.

(i) Fire extinguisher.

(j) First aid kit must be clearly marked.

(k) One spare "oversize load" sign, 7 feet by 18 inches.

(l) Serviceable Spare tire, tire jack and lug wrench.

(m) Handheld two way simplex radio or other compatible form of communication for operations outside pilot/escort vehicles.

(2) Vehicles shall not have unauthorized equipment on the vehicle such as those generally reserved for law enforcement personnel.

R912-9-12. Police Escort Vehicle Equipment and Safety Requirements.

(1) Police escort vehicles shall be equipped with the following safety items:

(a) All officers must have a CB radio to communicate with the pilot and transport vehicles.

(b) Officers shall complete a Utah Law Enforcement Check List and Reporting Criteria Form.

(c) Officers shall verify that all pilot/escorts are in possession of current pilot/escort inspections, or they shall complete an inspection prior to load movement.

(d) Police vehicles must be clearly marked with emergency lighting visible 360 degrees;

(e) Officers shall be in uniform while conducting police escort moves.

R912-9-13. Insurance.

(1) Driver shall posses a current certificate of insurance or endorsement which indicates that the operator, or the operator's employer, has in full force and effect not less than $750,000 combined single limit coverage for bodily injury and/or property damage as a result of the operation of the escort vehicle, the escort vehicle operator, or both causing the bodily injury and/or property damage arising out of an act or omission by the pilot/escort vehicle operator of the escort duties required by the Rules. Such insurance or endorsement, as applicable, must be maintained at all times during the term of the pilot/escort certification.

(2) Pilot/escort vehicles shall have a minimum amount of $750,000 liability. This is not a cumulative amount.

R912-9-14. Operating Conditions Requiring Pilot/Escort Vehicles.

(1) One pilot vehicle is required for vehicles/loads, which exceed the following dimensional conditions;

(a) 12 feet in width on secondary highways (non-interstate) and 14 feet in width on divided highways (interstates).

(b) 105 feet in length on secondary highways and 120 feet in length on divided highways.

(c) Overhangs in excess of 20 feet shall have pilot/escort vehicle positioned to the front for front overhangs and to the rear for rear overhangs.

(2) Two pilot/escort vehicles are required for vehicles/loads which exceed the following dimensional conditions:

(a) 14 feet in width on secondary highways and 16 feet in width on divided highways, except for

(i) Mobile and manufactured homes with eaves 12 inches or less on either roadside or curbside shall be measured for box width only and assigned escort vehicles as specified above in R912-9-1.

(ii) Mobile and manufactured homes with eaves greater than 12 inches shall be measured for overall width including eaves and pilot/escort vehicles assigned as specified above R912-9-2; or

(b) 120 feet in length on secondary highways.

(c) 16 feet in height on all highways.

(d) When otherwise required by the Department.

R912-9-15. Convoy Allowances For Permitted Vehicles.

The movement of more than one permitted vehicle is allowed provided prior authorization is obtained from the Motor Carrier Division with the following conditions:

(1) The number of permitted vehicles in the convoy shall not exceed two.

(2) Load may not exceed 12-inches or 150' overall length.

(3) Distance between vehicles shall not be less than 500 feet or more than 700 feet.

(4) Distance between convoys shall be a minimum of one mile.

(5) All convoys shall have a certified pilot/escort in the front and rear with proper signs.

(6) Police escorts or Utah Department of Transportation personnel may be required.

(7) Convoys must meet all lighting requirements set forth in 49 CFR 393.11 and in the lighting section for nighttime travel.

(8) Convoys are restricted to freeway and interstate systems.

(9) Nighttime travel is encouraged with Motor Carrier Division authorization.

(10) Approval for convoys and/or nighttime travel may be obtained by contacting the Central Permit Office at (801) 965-4508 or the nearest Port of Entry.

R912-9-16. Pre-Trip Planning and Coordination Requirements.

(1) A coordination and planning meeting shall be held prior to load movement. The driver(s) carrying or pulling the oversize load(s), the pilot/escort vehicle driver(s), law enforcement officers (if assigned), Department personnel (if involved), and public utilities company representatives (if involved) shall attend. When police escorts are present, a Utah Law Enforcement Check List and Reporting Criteria Form must be completed. This meeting shall include discussion and coordination on the conduct of the move, including at least the following topics:

(a) The person designated as being in charge (usually a Department representative or a law enforcement officer).

(b) Authorized routing and permit conditions. Ensure that all documentation is distributed to all appropriate individuals involved in the move.

(c) Communication and signals coordination.

(d) Verification/measurement of load dimensions. Compare with permitted dimensions

(e) Copies of permit and routing documents shall be provided to all parties involved with the permitted load movement.

R912-9-17. Permitted Vehicle Restrictions on Certain Highways.

Certified pilot/escort operators must refer to highway restrictions specified in R912-11 prior to all load movements.

R912-9-18. Flagging Requirements.

(1) During the movement of an over-dimensional load/vehicle, the pilot/escort driver, in the performance of the flagging duties required by these rules, may control and direct traffic to stop, slow or proceed in any situation(s) where it is deemed necessary to protect the motoring public from the hazards associated with the movement of the over-dimensional load/vehicle. The pilot/escort driver, acting as a flagger, may aid the over-dimensional load/vehicle in the safe movement along the highway designated on the over-dimensional load permit and shall:

(a) Assume the proper flagger position outside the pilot/escort vehicle, and as a minimum standard, have in use the necessary safety equipment as defined in 6E.1 of the MUTCD, and

(b) Use "STOP"/"SLOW" paddles or a 24-inch red/orange square flag to indicate emergency situations, and other equipment as described in 6E.1 of the MUTCD; and

(c) Comply with the flagging procedures and requirements as set forth in the MUTCD and the Utah Department of Transportation Flagger Training Handbook.

KEY: permitted vehicles, trucks, pilot/escort vehicles
July 27, 2007 **72-1-201**
72-7-406

R986. Workforce Services, Employment Development.
R986-200. Family Employment Program.
R986-200-201. Authority for Family Employment Program (FEP) and Family Employment Program Two Parent (FEPTP) and Other Applicable Rules.

(1) The Department provides services to eligible families under FEP and FEPTP under the authority granted in the Employment Support Act, UCA 35A-3-301 et seq. Funding is provided by the federal government through Temporary Aid to Needy Families (TANF) as authorized by PRWORA.

(2) Rule R986-100 applies to FEP and FEPTP unless expressly noted otherwise.

R986-200-202. Family Employment Program (FEP).

(1) The goal of FEP is to increase family income through employment, and where appropriate, child support and/or disability payments.

(2) FEP is for families with no more than one able bodied parent in the household. If the family has two able bodied parents in the household, the family is not eligible for FEP but may be eligible for FEPTP. Able bodied means capable of earning at least $500 per month in the Utah labor market.

(3) If a household has at least one incapacitated parent, the parent claiming incapacity must verify that incapacity in one of the following ways:

(a) receipt of disability benefits from SSA;

(b) 100% disabled by VA; or

(c) by submitting a written statement from:

(i) a licensed medical doctor;

(ii) a doctor of osteopathy;

(iii) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(iv) a licensed Advanced Practice Registered Nurse; or

(v) a licensed Physician's Assistant.

(d) the written statement in paragraph (c) of this subsection must be based on a current physical examination of the parent, not just a review of parent's medical records.

(4) Incapacity means not capable of earning $500 per month. The incapacity must be expected to last 30 days or longer.

(5) An applicant or parent must cooperate in the obtaining of a second opinion regarding incapacity if requested by the Department. Only the costs associated with a second opinion requested by the Department will be paid for by the Department. The Department will not pay the costs associated with obtaining a second opinion if the parent requests the second opinion.

(6) An incapacitated parent is included in the FEP household assistance unit and the parent's income and assets are counted toward establishing eligibility unless the parent is a SSI recipient. If the parent is a SSI recipient, that parent is not included in the household and none of the income or assets of the SSI recipient is counted.

(7) An incapacitated parent who is included in the household must still negotiate, sign and agree to participate in an employment plan. If the incapacity is such that employment is not feasible now or in the future, participation may be limited to cooperating with ORS and filing for any assistance or benefits to which the parent may be entitled. If it is believed the incapacity might not be permanent, the parent will also be required to seek assistance in overcoming the incapacity.

R986-200-203. Citizenship and Alienage Requirements.

(1) All persons in the household assistance unit who are included in the financial assistance payment, including children, must be a citizen of the United States or meet alienage criteria.

(2) An alien is not eligible for financial assistance unless the alien meets the definition of qualified alien. A qualified alien is an alien:

(a) who is paroled into the United States under section 212(d)(5) of the INA for at least one year;

(b) who is admitted as a refugee under section 207 of the INA;

(c) who is granted asylum under section 208 of the INA;

(d) who is a Cuban or Haitian entrant in accordance with the requirements of 45 CFR Part 401;

(e) who is an Amerasian from Vietnam and was admitted to the United States as an immigrant pursuant to Public Law 100-202 and Public Law 100-461;

(f) whose deportation is being withheld under sections 243(h) or 241(b)(3) of the INA;

(g) who is lawfully admitted for permanent residence under the INA,

(h) who is granted conditional entry pursuant to section 203(a)(7) of the INA;

(i) who meets the definition of certain battered aliens under Section 8 U.S.C. 1641(c); or

(j) who is a certified victim of trafficking.

(3) All aliens granted lawful temporary or permanent resident status under Sections 210, 302, or 303 of the Immigration Reform and Control Act of 1986, are disqualified from receiving financial assistance for a period of five years from the date lawful temporary resident status is granted.

(4) Aliens are required to provide proof, in the form of documentation issued by the United States Citizenship and Immigration Services (USCIS), of immigration status. Victims of trafficking can provide proof from the Office of Refugee Resettlement.

R986-200-204. Eligibility Requirements.

(1) To be eligible for financial assistance under the FEP or FEPTP a household assistance unit must include:

(a) a pregnant woman when it has been medically verified that she is in the third calendar month prior to the expected month of delivery, or later, and who, if the child were born and living with her in the month of payment, would be eligible. The unborn child is not included in the financial assistance payment; or

(b) at least one minor dependent child who is a citizen or meets the alienage criteria. All minor children age 6 to 16 must attend school, or be exempt under 53A-11-102, to be included in the household assistance unit for a financial assistance payment for that child.

(i) A minor child is defined as being under the age of 18 years and not emancipated by marriage or by court order; or

(ii) an unemancipated child, at least 18 years old but under 19 years old, with no high school diploma or its equivalent, who is a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and the school has verified a reasonable expectation the 18 year old will complete the program before reaching age 19.

(2) Households must meet other eligibility requirements of income, assets, and participation in addition to the eligibility requirements found in R986-100.

(3) Persons who are fleeing to avoid prosecution of a felony are ineligible for financial assistance.

(4) All clients who are required to complete a negotiated employment plan as provided in R986-200-206 must attend a FEP orientation meeting and sign a FEP Agreement within 30 days of submitting his or her application for assistance. Attendance at the orientation meeting can only be excused for reasonable cause as defined in R986-200-212(8). The application for assistance will not be complete until the client has attended the meeting.

R986-200-205. How to Determine Who Is Included in the Household Assistance Unit.

The amount of financial assistance for an eligible household is based on the size of the household assistance unit

and the income and assets of all people in the household assistance unit.

(1) The income and assets of the following individuals living in the same household must be counted in determining eligibility of the household assistance unit:

(a) all natural parents, adoptive parents and stepparents, unless expressly excluded in this section, who are related to and residing in the same household as an eligible dependent child. Natural parentage is determined as follows:

(i) A woman is the natural parent if her name appears on the birth record of the child.

(ii) For a man to be determined to be the natural parent, that relationship must be established or acknowledged or his name must appear on the birth record. If the parents have a solemnized marriage at the time of birth, relationship is established and can only be rebutted by a DNA test;

(b) household members who would otherwise be included but who are absent solely by reason of employment, school or training, or who will return home to live within 30 days;

(c) all minor siblings, half-siblings, and adopted siblings living in the same household as an eligible dependent child; and

(d) all spouses living in the household.

(2) The following individuals in the household are not counted in determining the household size for determining payment amount nor are the assets or income of the individuals counted in determining household eligibility:

(a) a recipient of SSI benefits. If the SSI recipient is the parent and is receiving FEP assistance for the child(ren) residing in the household, the SSI parent must cooperate with establishing paternity and child support enforcement for the household to be eligible. If the only dependent child is a SSI recipient, the parent or specified relative may receive a FEP assistance payment which does not include that child, provided the parent or specified relative is not on SSI and can meet all other requirements;

(b) a child during any month in which a foster care maintenance payment is being provided to meet the child's needs. If the only dependent child in the household is receiving a foster care maintenance payment, the parent or specified relative may still receive a FEP assistance payment which does not include the child, provided all other eligibility, income and asset requirements are met;

(c) an absent household member who is expected to be gone from the household for 180 days or more unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included.

(3) The household assistance unit can choose whether to include or exclude the following individuals living in the household. If included, all income and assets of that person are counted:

(a) all absent household members who are expected to be temporarily absent from the home for more than 30 but not more than 180 consecutive days unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included;

(b) Native American children, or deaf or blind children, who are temporarily absent while in boarding school, even if the temporary absence is expected to last more than 180 days;

(c) an adopted child who receives a federal, state or local government special needs adoption payment. If the adopted child receiving this type of payment is the only dependent child in the household and excluded, the parent(s) or specified relative may still receive a FEP or FEPTP assistance payment which does not include the child, provided all other eligibility requirements are met. If the household chooses to include the adopted child in the household assistance unit under this paragraph, the special needs adoption payment is counted as income;

(d) former stepchildren who have no blood relationship to a dependent child in the household;

(e) a specified relative. If a household requests that a specified relative be included in the household assistance unit, only one specified relative can be included in the financial assistance payment regardless of how many specified relatives are living in the household. The income and assets of all household members are counted according to the provisions of R986-200-241.

(4) In situations where there are children in the home for which there is court order regarding custody of the children, the Department will determine if the children should be included in the household assistance unit based on the actual living arrangements of the children and not on the custody order. If the child lives in the home 50% or more of the time, the child must be included in the household assistance unit and duty of support completed. It is not an option to exclude the child. This is true even if the court awarded custody to the other parent or the court ordered joint custody. If the child lives in the household less than 50% of the time, the child cannot be included in the household. It is not an option to include the child. This is true even if the parent applying for financial assistance has been awarded custody by the court or the court ordered joint custody. If financial assistance is allowed, a joint custody order might be modified by the court under the provisions of 30-3-10.2(4) and 30-3-10.4.

(5) The income and assets of the following individuals are counted in determining eligibility even though the individual is not included in the assistance payment:

(a) a household member who has been disqualified from the receipt of assistance because of an IPV, (fraud determination);

(b) a household member who does not meet the citizenship and alienage requirements; or

(c) a minor child who is not in school full time or participating in self sufficiency activities.

R986-200-206. Participation Requirements.

(1) Payment of any and all financial assistance is contingent upon all parents in the household, including adoptive and stepparents, participating, to the maximum extent possible, in:

(a) assessment and evaluation;

(b) the completion of a negotiated employment plan; and

(c) assisting ORS in good faith to:

(i) establish the paternity of all minor children; and

(ii) establish and enforce child support obligations.

(d) obtaining any and all other sources of income. If any household member is or appears to be eligible for unemployment, SSA, Workers Compensation, VA, or any other benefits or forms of assistance, the Department will refer the individual to the appropriate agency and the individual must apply for and pursue obtaining those benefits. If an individual refuses to apply for and pursue these benefits or assistance, the individual is ineligible for financial assistance. Pursuing these benefits includes cooperating fully and providing all the necessary documentation to insure receipt of benefits. If the individual is already receiving assistance from the Department and it is found he or she is not cooperating fully to obtain benefits from another source, the individual will be considered to not be participating in his or her employment plan. If the individual is otherwise eligible for FEP or FEPTP, financial assistance will be provided until eligibility for other benefits or assistance has been determined. If an individual's application for SSA benefits is denied, the individual must fully cooperate in prosecuting an appeal of that SSA denial at least to the Social Security ALJ level.

(2) Parents who have been determined to be ineligible to

be included in the financial assistance payment are still required to participate.

(3) Children at least 16 years old but under 18 years old, unless they are in school full-time or in school part-time and working less than 100 hours per month are required to participate.

R986-200-207. Participation in Child Support Enforcement.

(1) Receipt of child support is an important element in increasing a family's income.

(2) Every natural, legal or adoptive parent has a duty to support his or her children and stepchildren even if the children do not live in the parental home.

(3) A parent's duty to support continues until the child:

(a) reaches age 18;

(b) is 18 years old and enrolled in high school during the normal and expected year of graduation;

(c) is emancipated by marriage or court order;

(d) is a member of the armed forces of the United States; or

(e) is self supporting.

(4) A client receiving financial assistance automatically assigns to the state any and all rights to child support for all children who are included in the household assistance unit while receiving financial assistance. The assignment of rights occurs even if the client claims or establishes "good cause or other exception" for refusal to cooperate. The assignment of rights to support, cooperation in establishing paternity, and establishing and enforcing child support is a condition of eligibility for the receipt of financial assistance.

(5) For each child included in the financial assistance payment, the client must also assign any and all rights to alimony or spousal support from the noncustodial parent while the client receives public assistance.

(6) The client must cooperate with the Department and ORS in establishing and enforcing the spousal and child support obligation from any and all natural, legal, or adoptive non-custodial parents.

(7) If a parent is absent from the home, the client must identify and help locate the non-custodial parent.

(8) If a child is conceived or born during a marriage, the husband is considered the legal father, even if the wife states he is not the natural father.

(9) If the child is born out of wedlock, the client must also cooperate in the establishment of paternity.

(10) ORS is solely responsible for determining if the client is cooperating in identifying the noncustodial parent and with child support establishment and enforcement efforts for the purposes of receipt of financial assistance. The Department cannot review, modify, or reject a decision made by ORS.

(11) Unless good cause is shown, financial assistance will terminate if a parent or specified relative does not cooperate with ORS in establishing paternity or enforcing child support obligations.

(12) Upon notification from ORS that the client is not cooperating, the Department will commence reconciliation procedures as outlined in R986-200-212. If the client continues to refuse to cooperate with ORS at the end of the reconciliation process, financial assistance will be terminated.

(13) Termination of financial assistance for non cooperation is immediate, without a reduction period outlined in R986-200-212, if:

(a) the client is a specified relative who is not included in the household assistance unit;

(b) the client is a parent receiving SSI benefits; or

(c) the client is participating in FEPTP.

(14) Once the financial assistance has been terminated due to the client's failure to cooperate with child support enforcement, the client must then reapply for financial assistance. This time, the client must cooperate with child support collection prior to receiving any financial assistance.

(15) A specified relative, illegal alien, SSI recipient, or disqualified parent in a household receiving FEP assistance must assign rights to support of any kind and cooperate with all establishment and enforcement efforts even if the parent or relative is not included in the financial assistance payment.

R986-200-208. Good Cause for Not Cooperating With ORS.

(1) The Department is responsible for determining if the client has good cause or other exception for not cooperating with ORS.

(2) To establish good cause for not cooperating, the client must file a written request for a good cause determination and provide proof of good cause within 20 days of the request.

(3) A client has the right to request a good cause determination at any time, even if ORS or court proceedings have begun.

(4) Good cause for not cooperating with ORS can be shown if one of following circumstances exists:

(a) The child, for whom support is sought, was conceived as a result of incest or rape. To prove good cause under this paragraph, the client must provide:

(i) birth certificates;

(ii) medical records;

(iii) Department records;

(iv) records from another state or federal agency;

(v) court records; or

(vi) law enforcement records.

(b) Legal proceedings for the adoption of the child are pending before a court. Proof is established if the client provides copies of documents filed in a court of competent jurisdiction.

(c) A public or licensed private social agency is helping the client resolve the issue of whether to keep or relinquish the child for adoption and the discussions between the agency and client have not gone on for more than three months. The client is required to provide written notice from the agency concerned.

(d) The client's cooperation in establishing paternity or securing support is reasonably expected to result in physical or emotional harm to the child or to the parent or specified relative. If harm to the parent or specified relative is claimed, it must be significant enough to reduce that individual's capacity to adequately care for the child.

(i) Physical or emotional harm is considered to exist when it results in, or is likely to result in, an impairment that has a substantial effect on the individual's ability to perform daily life activities.

(ii) The source of physical or emotional harm may be from individuals other than the noncustodial parent.

(iii) The client must provide proof that the individual is likely to inflict such harm or has done so in the past. Proof must be from an independent source such as:

(A) medical records or written statements from a mental health professional evidencing a history of abuse or current health concern. The record or statement must contain a diagnosis and prognosis where appropriate;

(B) court records;

(C) records from the Department or other state or federal agency; or

(D) law enforcement records.

(5) If a claim of good cause is denied because the client is unable to provide proof as required under Subsection (4) (a) or (d) the client can request a hearing and present other evidence of good cause at the hearing. If the ALJ finds that evidence credible and convincing, the ALJ can make a finding of good cause under Subsections (4) (a) or (d) based on the evidence presented by the client at the hearing. A finding of good cause by the ALJ can be based solely on the sworn testimony of the

client.

(6) When the claim of good cause for not cooperating is based in whole or in part on anticipated physical or emotional harm, the Department must consider:

(a) the client's present emotional health and history;

(b) the intensity and probable duration of the resulting impairment;

(c) the degree of cooperation required; and

(d) the extent of involvement of the child in the action to be taken by ORS.

(7) The Department recognizes no other exceptions, apart from those recognized by ORS, to the requirement that a client cooperate in good faith with ORS in the establishment of paternity and establishment and enforcement of child support.

(8) If the client has exercised his or her right to an agency review or adjudicative proceeding under Utah Administrative Procedures Act on the question of non-cooperation as determined by ORS, the Department will not review, modify, or reverse the decision of ORS on the question of non-cooperation. If the client did not have an opportunity for a review with ORS, the Department will refer the request for review to ORS for determination.

(9) Once a request for a good cause determination has been made, all collection efforts by ORS will be suspended until the Department has made a decision on good cause.

(10) A client has the right to appeal a Department decision on good cause to an ALJ by following the procedures for appeal found in R986-100.

(11) If a parent requests a hearing on the basis of good cause for not cooperating, the resulting decision cannot change or modify the determination made by ORS on the question of good faith.

(12) Even if the client establishes good cause not to cooperate with ORS, if the Department supervisor determines that support enforcement can safely proceed without the client's cooperation, ORS may elect to do so. Before proceeding without the client's cooperation, ORS will give the client advance notice that it intends to commence enforcement proceedings and give the client an opportunity to object. The client must file his or her objections with ORS within 10 days.

(13) A determination that a client has good cause for non-cooperation may be reviewed and reversed by the Department upon a finding of new, or newly discovered evidence, or a change in circumstances.

R986-200-209. Participation in Obtaining an Assessment.

(1) Within 20 business days of the date the application for financial assistance has been completed and approved, the client will be assigned to an employment counselor and must complete an assessment.

(2) The assessment evaluates a client's needs and is used to develop an employment plan.

(3) Completion of the assessment requires that the client provide information about:

(a) family circumstances including health, needs of the children, support systems, and relationships;

(b) personal needs or potential barriers to employment;

(c) education;

(d) work history;

(e) skills;

(f) financial resources and needs; and

(g) any other information relevant to the client's ability to become self-sufficient.

(4) The client may be required to participate in testing or completion of other assessment tools and may be referred to another person within the Department, another agency, or to a company or individual under contract with the Department to complete testing, assessment, and evaluation.

R986-200-210. Requirements of an Employment Plan.

(1) Within 15 business days of completion of the assessment, the following individuals in the household assistance unit are required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan:

(a) All parents, including parents whose income and assets are included in determining eligibility of the household but have been determined to be ineligible or disqualified from being included in the financial assistance payment.

(b) Dependent minor children who are at least 16 years old, who are not parents, unless they are full-time students or are employed an average of 30 hours a week or more.

(2) The goal of the employment plan is obtaining marketable employment and it must contain the soonest possible target date for entry into employment consistent with the employability of the individual.

(3) An employment plan consists of activities designed to help an individual become employed. For each activity there will be:

(a) an expected outcome;

(b) an anticipated completion date;

(c) the number of participation hours agreed upon per week; and

(d) a definition of what will constitute satisfactory progress for the activity.

(4) Each activity must be directed toward the goal of increasing the household's income.

(5) Activities may require that the client:

(a) obtain immediate employment. If so, the parent client shall:

(i) promptly register for work and commence a search for employment for a specified number of hours each week; and

(ii) regularly submit a report to the Department on:

(A) how much time was spent in job search activities;

(B) the number of job applications completed;

(C) the interviews attended;

(D) the offers of employment extended; and

(E) other related information required by the Department.

(b) participate in an educational program to obtain a high school diploma or its equivalent, if the parent client does not have a high school diploma;

(c) obtain education or training necessary to obtain employment;

(d) obtain medical, mental health, or substance abuse treatment;

(e) resolve transportation and child care needs;

(f) relocate from a rural area which would require a round trip commute in excess of two hours in order to find employment;

(g) resolve any other barriers identified as preventing or limiting the ability of the client to obtain employment, and/or

(h) participate in rehabilitative services as prescribed by the State Office of Rehabilitation.

(6) The client must meet the performance expectations of, and provide verification for, each eligible activity in the employment plan in order to stay eligible for financial assistance. A list of what will be considered acceptable documentation is available at each employment center.

(7) The client must cooperate with the Department's efforts to monitor and evaluate the client's activities and progress under the employment plan, which includes providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(8) Where available, supportive services will be provided as needed for each activity.

(9) The client agrees, as part of the employment plan, to cooperate with other agencies, or with individuals or companies under contract with the Department, as outlined in the

employment plan.

(10) An employment plan may, at the discretion of the Department, be amended to reflect new information or changed circumstances.

(11) The number of hours of participation in subsection (3)(c) of this section will not be lower than 30 hours per week. All 30 hours must be in eligible activities. 20 of those 30 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center.

(12) In the event a client has barriers which prevent the client from 30 hours of participation per week, or 20 hours in priority activities, a lower number of hours of participation can be approved if:

(a) the Department identifies and documents the barriers which prevent the client from full participation; and

(b) the client agrees to participate to the maximum extent possible to resolve the barriers which prevent the client from participating.

R986-200-211. Education and Training As Part of an Employment Plan.

(1) A parent client's participation in education or training beyond that required to obtain a high school diploma or its equivalent is limited to the lesser of:

(a) 24 months which need not be continuous; or

(b) the completion of the education and training requirements of the employment plan.

(2) Post high school education or training will only be approved if all of the following are met:

(a) The client can demonstrate that the education or training would substantially increase the income level that the client would be able to achieve without the education and training, and would offset the loss of income the household incurs while the education or training is being completed.

(b) The client does not already have a degree or skills training certificate in a currently marketable occupation.

(c) An assessment specific to the client's education and training aptitude has been completed showing the client has the ability to be successful in the education or training.

(d) The mental and physical health of the client indicates the education or training could be completed successfully and the client could perform the job once the schooling is completed.

(e) The specific employment goal that requires the education or training is marketable in the area where the client resides or the client has agreed to relocate for the purpose of employment once the education/training is completed.

(f) The client, when determined appropriate, is willing to complete the education/training as quickly as possible, such as attending school full time which may include attending school during the summer.

(g) The client can realistically complete the requirements of the education or training program within the required time frames or time limits of the financial assistance program, including the 36-month lifetime limit for FEP and FEPTP, for which the client is eligible.

(3) A parent client may participate in education or training for up to six months beyond the 24-month limit if:

(a) the parent client is employed for 80 or more hours per month during each month of the extension;

(b) circumstances beyond the control of the client prevented completion within 24 months; and

(c) the Department director or designee determines that extending the 24-month limit is prudent because other employment, education, or training options do not enable the family to meet the objective of the program.

(4) A parent client with a high school diploma or equivalent who has received 24 months of education or training while receiving financial assistance must participate a minimum of 30 hours per week in eligible activities. Twenty of those 30 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center.

(5) Graduate work can never be approved or supported as part of an employment plan.

R986-200-212. Reconciling Disputes and Termination of Financial Assistance for Failure to Comply.

If a client who is required to participate in an employment plan consistently fails, without reasonable cause, to show good faith in complying with the employment plan, the Department will terminate all or part of the financial assistance. This will apply if the Department is notified that the client has failed to cooperate with ORS as provided in R986-200-207. A termination for the reasons mentioned in this paragraph will occur only after the Department attempts reconciliation through the following process:

(1) The employment counselor will attempt to discuss compliance with the client and explore solutions. If compliance is not resolved the counselor will move to the second phase.

(2) In the second phase, the employment counselor will request a meeting with the client, the employment counselor, the counselor's supervisor and any other Department or allied entity representatives, if appropriate, who might assist in encouraging participation. If the client does not attend the meeting, the meeting will be held in the client's absence. A formal meeting with the client is not required for a third or subsequent occurrence. If a resolution cannot be reached, one of the following will occur:

(a) for the first occurrence, the client's financial assistance payment will be reduced by $100 for one month. The reduction will occur in the month following the month the determination was made. If the client does not participate during the $100 reduction month, financial assistance will be terminated beginning the month following the $100 reduction month.

(b) for the second occurrence, the client's financial assistance payment will be terminated and the client will be ineligible for financial assistance for one month. If the client re-applies during the one month termination period, the new application will be denied for non-participation. If the client re-applies after the one month termination period, the client must successfully complete a two week trial participation period before financial assistance will be approved.

(c) for the third and subsequent occurrences the client's financial assistance will be terminated beginning with the month following the determination by the employment counselor that the client is not participating. The client will be ineligible for financial assistance for two months and if the client re-applies during the two month period, the new application will be denied for non-participation. If the client re-applies after the two month termination period, the client must successfully complete a two week trial participation period before financial assistance will be approved.

(3) A client must demonstrate a genuine willingness to participate during the two week trial period.

(4) The occurrences are life-time occurrences and it does not matter how much time elapses between occurrences. If a client's assistance was reduced as provided in (2)(a) of this section three years ago, for example, the next occurrence will be treated as a second occurrence.

(5) The two week trial period may be waived only if the client has cured all previous participation issues prior to re-application.

(6) The provisions of this section apply to clients who are eligible for and receiving financial assistance during an extension period as provided in R986-200-218.

(7) A child age 16-18 who is not a parent and who is not participating will be removed from the financial assistance grant on the first and all subsequent occurrences. The financial

assistance will continue for other household members provided they are participating. If the child successfully completes a two week trial period, the child will be added back on to the financial assistance grant.

(8) Reasonable cause under this section means the client was prevented from participating through no fault of his or her own or failed to participate for reasons that are reasonable and compelling.

(9) Reasonable cause can also be established, as provided in 45 CFR 261.56, by a client who is a single custodial parent caring for a child under age six who refuses to engage in required work because he or she is unable to obtain needed child care because appropriate and affordable child care arrangements are not available within a reasonable distance from the home or work site.

(10) If a client is also receiving food stamps and the client's is disqualified for non-participation under this section, the client will also be subject to the food stamp sanctions found in 7CFR 273.7(f)(2) unless the client meets an exemption under food stamp regulations.

R986-200-213. Financial Assistance for a Minor Parent.

(1) Financial assistance may be provided to a single minor parent who resides in a place of residence maintained by a parent, legal guardian, or other adult relative of the single minor parent, unless the minor parent is exempt.

(2) The single minor parent may be exempt when:

(a) The minor parent has no living parent or legal guardian whose whereabouts is known;

(b) No living parent or legal guardian of the minor parent allows the minor parent to live in his or her home;

(c) The minor parent lived apart from his or her own parent or legal guardian for a period of at least one year before either the birth of the dependent child or the parent's having made application for FEP and the minor parent was self supporting during this same period of time; or

(d) The physical or emotional health or safety of the minor parent or dependent child would be jeopardized if they resided in the same residence with the minor parent's parent or legal guardian. A referral will be made to DCFS if allegations are made under this paragraph.

(3) Prior to authorizing financial assistance, the Department must approve the living arrangement of all single minor parents exempt under section (2) above. Approval of the living arrangement is not a certification or guarantee of the safety, quality, or condition of the living arrangements of the single minor parent.

(4) All minor parents regardless of the living arrangement must participate in education for parenting and life skills in infant and child wellness programs operated by the Department of Health and, for not less than 20 hours per week:

(a) attend high school or an alternative to high school, if the minor parent does not have a high school diploma;

(b) participate in education and training; and/or

(c) participate in employment.

(5) If a single minor parent resides with a parent, the Department shall include the income of the parent of the single minor parent in determining the single minor parent's eligibility for financial assistance.

(6) If a single minor parent resides with a parent who is receiving financial assistance, the single minor parent is included in the parent's household assistance unit.

(7) If a single minor parent receives financial assistance but does not reside with a parent, the Department shall seek an order requiring that the parent of the single minor parent financially support the single minor parent.

R986-200-214. Assistance for Specified Relatives.

(1) Specified relatives include:

(a) grandparents;

(b) brothers and sisters;

(c) stepbrothers and stepsisters;

(d) aunts and uncles;

(e) first cousins;

(f) first cousins once removed;

(g) nephews and nieces;

(h) people of prior generations as designated by the prefix grand, great, great-great, or great- great-great;

(i) brothers and sisters by legal adoption;

(j) the spouse of any person listed above;

(k) the former spouse of any person listed above; and

(l) individuals who can prove they met one of the above mentioned relationships via a blood relationship even though the legal relationship has been terminated.

(2) The Department shall require compliance with Section 30-1-4.5

(3) A specified relative may apply for financial assistance for the child. If the child is otherwise eligible, the FEP rules apply with the following exceptions:

(a) The child must have a blood or a legal relationship to the specified relative even if the legal relationship has been terminated,

(b) Both parents must be absent from the home where the child lives. This is true even for a parent who has had his or her parental rights terminated;

(c) The child must be currently living with, and not just visiting, the specified relative;

(d) The parents' obligation to financially support their child will be enforced and the specified relative must cooperate with child support enforcement; and

(e) If the parent(s) state they are willing to support the child if the child would return to live with the parent(s), the child is ineligible unless there is a court order removing the child from the parent(s)' home.

(4) If the specified relative is currently receiving FEP or FEPTP, the child must be included in that household assistance unit.

(5) The income and resources of the specified relative are not counted unless the specified relative requests inclusion in the household assistance unit.

(6) If the specified relative is not currently receiving FEP or FEPTP, and the specified relative does not want to be included in the financial assistance payment, the specified relative shall be paid, on behalf of the child, the full standard financial assistance payment for one person. The size of the financial assistance payment shall be increased accordingly for each additional eligible child in the household assistance unit excluding the dependent child(ren) of the specified relative. Since the specified relative is not included in the household assistance unit, the income and assets of the specified relative, or the relative's spouse, are not counted.

(7) The specified relative may request to be included in the household assistance unit. If the specified relative is included in the household assistance unit, the household must meet all FEP eligibility requirements including participation requirements and asset limits.

(8) Income eligibility for a specified relative who wants to be included in the household assistance unit is calculated according to R986-200-241.

R986-200-215. Family Employment Program Two Parent Household (FEPTP).

(1) FEPTP is for households otherwise eligible for FEP but with two able-bodied parents in the household.

(2) Families may only participate in this program for seven months out of any 13-month period. Months of participation count toward the 36-month time limit in Sections 35A-3-306 and R986-200-217.

(3) Both parents must participate in eligible activities for a combined total of 60 hours per week, as defined in the employment plan. At least 50 of those hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. Parents in a FEPTP household who are refugees are not restricted to those activities on the approved priority or eligible activities list for the first three months of FEPTP eligibility but the parents are still required to participate for a combined total of 60 hours per week.

(4) Both parents are required to participate every week as defined in the employment plan, unless the parent can establish reasonable cause for not participating. Reasonable cause is defined in rule R986-200-212(8),

(5) Payment is made twice per month and only after proof of participation. Payment is based on the number of hours of participation by both parents. The amount of assistance is equal to the FEP payment for the household size prorated based on the number of hours which the parents participated up to a maximum of 60 hours of participation per week. In no event can the financial assistance payment per month for a FEPTP household be more than for the same size household participating in FEP.

(6) If it is determinated by the employment counselor that either one of the parents has failed to participate to the maximum extent possible assistance for the entire household unit will terminate immediately.

(7) Because payment is made after performance, advance notice is not required to terminate or reduce assistance payments for households participating in FEPTP. However, if the client requests a hearing within ten days of the termination, payment of financial assistance based on participation of both parents in eligible activities can continue during the hearing process as provided in R986-100-134.

(8) The parents must meet all other requirements of FEP including but not limited to, income and asset limits, cooperation with ORS if there are legally responsible persons outside of the household assistance unit, signing a participation agreement and employment plan and applying for all other assistance or benefits to which they might be entitled.

R986-200-216. Diversion.

(1) Diversion is a one-time financial assistance payment provided to help a client avoid receiving extended cash assistance.

(2) In determining whether a client should receive diversion assistance, the Department will consider the following:

(a) the applicant's employment history;

(b) the likelihood that the applicant will obtain immediate full-time employment;

(c) the applicant's housing stability; and

(d) the applicant's child care needs, if applicable.

(3) To be eligible for diversion the applicant must;

(a) have a need for financial assistance to pay for housing or substantial and unforseen expenses or work related expenses which cannot be met with current or anticipated resources;

(b) show that within the diversion period, the applicant will be employed or have other specific means of self support, and

(c) meet all eligibility criteria for a FEP financial assistance payment except the applicant does not need to cooperate with ORS in obtaining support. If the client is applying for other assistance such as medical or child care, the client will have to follow the eligibility rules for that type of assistance which may require cooperation with ORS.

(4) If the Department and the client agree diversion is appropriate, the client must sign a diversion agreement listing conditions, expectations and participation requirements.

(5) The diversion payment may not exceed three times the monthly financial assistance payment for the household size. All income expected to be received during the three-month period including wages and child support must be considered when negotiating the appropriate diversion payment amount.

(6) Child support will belong to the client during the three-month period, whether received by the client directly or collected by ORS. ORS will not use the child support to offset or reimburse the diversion payment.

(7) The client must agree to have the financial assistance portion of the application for assistance denied.

(8) If a diversion payment is made and the client later decides to reapply for financial assistance within three months of the date of the original application, the initial application date will be used and the amount of the diversion payment previously issued will be prorated over the three months and subtracted from the payment(s) to which the household unit is eligible.

(9) Diversion assistance is not available to clients participating in FEPTP. This is because FEPTP is based on performance and payment can only be made after performance.

R986-200-217. Time Limits.

(1) Except as provided in R986-200-218 and in Section 35A-3-306, a family cannot receive financial assistance under the FEP or FEPTP for more than 36 months.

(2) The following months count toward the 36-month time limit regardless of whether the financial assistance payment was made in this or any other state:

(a) each month when a parent client received financial assistance beginning with the month of January, 1997;

(b) each month beginning with January, 1997, where a parent resided in the household, the parent's income and assets were counted in determining the household's eligibility, but the parent was disqualified from being included in the financial payment. Disqualification occurs when a parent has been determined to have committed fraud in the receipt of public assistance or when the parent is an ineligible alien; and

(c) each month when financial assistance was reduced or a partial financial assistance payment was received beginning with the month of January, 1997.

(3) Months which do not count toward the 36 month time limit are:

(a) months where both parents were absent from the home and dependent children were cared for by a specified relative who elected to be excluded from the household unit;

(b) months where the client received financial assistance as a minor child and was not the head of a household or married to the head of a household;

(c) months during which the parent lived in Indian country, as defined in Title 18, Section 1151, United States Code 1999, or an Alaskan Native village, if the most reliable data available with respect to the month, or a period including the month, indicate that at least 50% of the adults living in Indian country or in the village were not employed;

(d) months when a parent resided in the home but were excluded from the household assistance unit. A parent is excluded when they receive SSI benefits;

(e) the first diversion period in any 12 month period of time is not counted toward the 36 month time limit. A second and all subsequent diversion periods within 12 months will count as one month toward the 36 month time limit. If a client has already used 36 months of financial assistance, the client is not eligible for diversion assistance unless the client meets one of the extension criteria in R986-200-218 in addition to all other eligibility criteria of diversion assistance; or

(f) months when a parent client received transitional assistance.

R986-200-218. Exceptions to the Time Limit.

Exceptions to the time limit may be allowed for up to 20% of the average monthly number of families receiving financial assistance from FEP and FEPTP during the previous Federal fiscal year for the following reasons:

(1) A hardship under Section 35A-3-306 is determined to exist when a parent:

(a) is determined to be medically unable to work. The client must provide proof of inability to work in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) receipt of VA Disability benefits based on the parent being 100% disabled;

(iii) placement on the Division of Services to People with Disabilities' waiting list. Being on the waiting list indicates the person has met the criteria for a disability; or

(iv) is currently receiving Temporary Total or Permanent Total disability Workers' Compensation benefits;

(v) a medical statement completed by a medical doctor, a licensed Advanced Practice Registered Nurse, a licensed Physician's Assistant, or a doctor of osteopathy, stating the parent has a medical condition supported by medical evidence, which prevents the parent from engaging in work activities capable of generating income of at least $500 a month. The statement must be completed by a professional skilled in both the diagnosis and treatment of the condition; or

(vi) a statement completed by a licensed clinical social worker, licensed psychologist, licensed Mental Health Therapist as defined in UCA Section 58-60-102, or psychiatrist stating that the parent has been diagnosed with a mental health condition that prevents the parent from engaging in work activities capable of generating income of at least $500 a month. Substance abuse is considered the same as mental health condition;

(b) is under age 19 through the month of their nineteenth birthday;

(c) is currently engaged in an approved full-time job preparation, educational or training activity which the parent was expected to complete within the 36 month time limit but completion within the 36 months was not possible through no fault of the parent. Additionally, if the parent has previously received, beginning with the month of January 1997, 24 months of financial assistance while attending educational or training activities, good cause for additional months must be shown and approved;

(d) was without fault and a delay in the delivery of services provided by the Department occurred. The delay must have had an adverse effect on the parent causing a hardship and preventing the parent from obtaining employment. An extension under this section cannot be granted for more than the length of the delay;

(e) moved to Utah after exhausting 36 months of assistance in another state or states and the parent did not receive supportive services in that state or states as required under the provisions of PRWORA. To be eligible for an extension under this section, the failure to receive supportive services must have occurred through no fault of the parent and must contribute to the parent's inability to work. An extension under this section can never be for longer than the delay in services;

(f) completed an educational or training program at the 36th month and needs additional time to obtain employment;

(g) is unable to work because the parent is required in the home to meet the medical needs of a dependent. Dependent for the purposes of this paragraph means a person who the parent claims as a dependent on his or her income tax filing. Proof, consisting of a medical statement from a health care professional listed in subparagraph (1)(a)(v) or (vi) of this section is required unless the dependent is on the Travis C medicaid waiver program. The medical statement must include all of the following:

(i) the diagnosis of the dependent's condition,

(ii) the recommended treatment needed or being received for the condition,

(iii) the length of time the parent will be required in the home to care for the dependent, and

(iv) whether the parent is required to be in the home full-time or part-time; or

(h) is currently receiving assistance under one of the exceptions in this section and needs additional time to obtain employment. A client can only receive assistance for one month under this subparagraph. If the Department determines that granting an exception under this subparagraph adversely impacts its federally mandated participation rate requirements or might otherwise jeopardize its funding, the one month exception will not be granted.

(2) Additional months of financial assistance may be provided if the family includes an individual who has been battered or subjected to extreme cruelty which is a barrier to employment and the implementation of the time limit would make it more difficult to escape the situation. Battered or subjected to extreme cruelty means:

(a) physical acts which resulted in, or threatened to result in, physical injury to the individual;

(b) sexual abuse;

(c) sexual activity involving a dependent child;

(d) threats of, or attempts at, physical or sexual abuse;

(e) mental abuse which includes stalking and harassment; or

(f) neglect or deprivation of medical care.

(3) An exception to the time limit can be granted for a maximum of an additional 24 months if:

(a) during the previous two months, the parent client was employed for no less than 20 hours per week. The employment can consist of self-employment if the parent's net income from that self-employment is at or above minimum wage; and

(b) If, at the end of the 24-month extension, the parent client qualifies for an extension under Sections (1) or (2) of this rule, an additional extension can be granted under the provisions of those sections.

(4) All clients receiving an extension must continue to participate, to the maximum extent possible, in an employment plan. This includes cooperating with ORS in the collection, establishment, and enforcement of child support and the establishment of paternity, if necessary.

(5) If a household filing unit contains more than one parent, and one parent has received at least 36 months of assistance as a parent, then the entire filing unit is ineligible unless both parents meet one of the exceptions listed above. Both parents need not meet the same exception.

(6) A family in which the only parent or both parents are ineligible aliens cannot be granted an extension under Section (3) above or for any of the reasons in Subsections (1)(c), (d), (e) or (f). This is because ineligible aliens are not legally able to work and supportive services for work, education and training purposes are inappropriate.

(7) A client who is no longer eligible for financial assistance may be eligible for other kinds of public assistance including food stamps, Child Care Assistance and medical coverage. The client must follow the appropriate application process to determine eligibility for assistance from those other programs.

(8) Exceptions are subject to a review at least once every six months.

R986-200-219. Emergency Assistance (EA) for Needy Families With Dependent Children.

(1) EA is provided in an effort to prevent homelessness. It is a payment which is limited to use for utilities and rent or mortgage.

(2) To be eligible for EA the family must meet all other FEP requirements except:

(a) the client need only meet the "gross income" test. Gross income which is available to the client must be equal to or less than 185% of the standard needs budget for the client's filing unit; and

(b) the client is not required to enter into an employment plan or cooperate with ORS in obtaining support.

(3) The client must be homeless, in danger of becoming homeless or having the utilities at the home cut off due to a crisis situation beyond the client's control. The client must show that:

(a) The family is facing eviction or foreclosure because of past due rent or mortgage payments or unpaid utility bills which result from the crisis;

(b) A one-time EA payment will enable the family to obtain or maintain housing or prevent the utility shut off while they overcome the temporary crisis;

(c) Assistance with one month's rent or mortgage payment is enough to prevent the eviction, foreclosure or termination of utilities;

(d) The client has the ability to resolve past due payments and pay future months' rent or mortgage payments and utility bills after resolution of the crisis; and

(e) The client has exhausted all other resources.

(4) Emergency assistance is available for only 30 consecutive days during a year to any client or that client's household. If, for example, a client receives an EA payment of $450 for rent on April 1 and requests an additional EA payment of $300 for utilities on or before April 30 of that same year, the request for an EA payment for utilities will be considered. If the request for an additional payment for utilities is made after April 30, it cannot be considered for payment. The client will not be eligible for another EA payment until April 1 of the following year. A year is defined as 365 days following the initial date of payment of EA.

(5) Payments will not exceed $450 per family for one month's rent payment or $700 per family for one month's mortgage payment, and $300 for one month's utilities payment.

R986-200-220. Mentors.

(1) The Department will recruit and train volunteers to serve as mentors for parent clients. The Department may elect to contract for the recruitment and training of the volunteers.

(2) A mentor may advocate on behalf of a parent client and help a parent client:

(a) develop life skills;

(b) implement an employment plan; or

(c) obtain services and support from:

(i) the volunteer mentor;

(ii) the Department; or

(iii) civic organizations.

R986-200-230. Assets Counted in Determining Eligibility.

(1) All available assets, unless exempt, are counted in determining eligibility. An asset is available when the applicant or client owns it and has the ability and the legal right to sell it or dispose of it. An item is never counted as both income and an asset in the same month.

(2) The value of an asset is determined by its equity value. Equity value is the current market value less any debts still owing on the asset. Current market value is the asset's selling price on the open market as set by current standards of appraisal.

(3) Both real and personal property are considered assets. Real property is an item that is fixed, permanent, or immovable. This includes land, houses, buildings, mobile homes and trailer homes. Personal property is any item other than real property.

(4) If an asset is potentially available, but a legal impediment to making it available exists, it is exempt until it can be made available. The applicant or client must take appropriate steps to make the asset available unless:

(a) Reasonable action would not be successful in making the asset available; or

(b) The probable cost of making the asset available exceeds its value.

(5) The value of countable real and personal property cannot exceed $2,000.

(6) If the household assets are below the limits on the first day of the month the household is eligible for the remainder of the month.

R986-200-231. Assets That Are Not Counted (Exempt) for Eligibility Purposes.

The following are not counted as an asset when determining eligibility for financial assistance:

(1) the home in which the family lives, and its contents, unless any single item of personal property has a value over $1,000, then only that item is counted toward the $2,000 limit. If the family owns more than one home, only the primary residence is exempt and the equity value of the other home is counted;

(2) the value of the lot on which the home stands is exempt if it does not exceed the average size of residential lots for the community in which it is located. The value of the property in excess of an average size lot is counted if marketable;

(3) water rights attached to the home property are exempt;

(4) motorized vehicles;

(5) with the exception of real property, the value of income producing property necessary for employment;

(6) the value of any reasonable assistance received for post-secondary education;

(7) bona fide loans, including reverse equity loans;

(8) per capita payments or any asset purchased with per capita payments made to tribal members by the Secretary of the Interior or the tribe;

(9) maintenance items essential to day-to-day living;

(10) life estates;

(11) an irrevocable trust where neither the corpus nor income can be used for basic living expenses;

(12) for refugees, as defined under R986-300-303(1), assets that remain in the refugee's country of origin are not counted;

(13) one burial plot per member of the household. A burial plot is a burial space and any item related to repositories used for the remains of the deceased. This includes caskets, concrete vaults, urns, crypts, grave markers, etc. If the individual owns a grave site, the value of which includes opening and closing, the opening and closing is also exempt;

(14) a burial/funeral fund up to a maximum of $1,500 per member of the household;

(a) The value of any irrevocable burial trust is subtracted from the $1,500 burial/funeral fund exemption. If the irrevocable burial trust is valued at $1,500 or more, it reduces the burial/funeral fund exemption to zero.

(b) After deducting any irrevocable burial trust, if there is still a balance in the burial/funeral fund exemption amount, the remaining exemption is reduced by the cash value of any burial contract, funeral plan, or funds set aside for burial up to a maximum of $1,500. Any amount over $1,500 is considered an asset;

(15) any interest which is accrued on an exempt burial contract, funeral plan, or funds set aside for burial is exempt as income or assets. If an individual removes the principal or interest and uses the money for a purpose other than the individual's burial expenses, the amount withdrawn is countable income; and

(16) any other property exempt under federal law.

R986-200-232. Considerations in Evaluating Real Property.

(1) Any nonexempt real property that an applicant or client is making a bona fide effort to sell is exempt for a nine-month period provided the applicant or client agrees to repay, from the proceeds of the sale, the amount of financial and/or child care assistance received. Bona fide effort to sell means placing the property up for sale at a price no greater than the current market value. Additionally, to qualify for this exemption, the applicant or client must assign, to the state of Utah, a lien against the real property under consideration. If the property is not sold during the period of time the client was receiving financial and/or child care assistance or if the client loses eligibility for any reason during the nine-month period, the lien will not be released until repayment of all financial and/or child care assistance is made.

(2) Payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are committed to replacement of the property sold within 30 days of receipt and the purchase is completed within 90 days. If more than 90 days is needed to complete the actual purchase, one 90-day extension may be granted. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal which is counted as income.

R986-200-233. Considerations in Evaluating Household Assets.

(1) The assets of a disqualified household member are counted.

(2) The assets of a ward that are controlled by a legal guardian are considered available to the ward.

(3) The assets of an ineligible child are exempt.

(4) When an ineligible alien is a parent, the assets of that alien parent are counted in determining eligibility for other family members.

(5) Certain aliens who have been legally admitted to the United States for permanent residence must have the income and assets of their sponsors considered in determining eligibility for financial assistance under applicable federal authority in accordance with R986-200-243.

R986-200-234. Income Counted in Determining Eligibility.

(1) The amount of financial assistance is based on the household's monthly income and size.

(2) Household income means the payment or receipt of countable income from any source to any member counted in the household assistance unit including:

(a) children; and

(b) people who are disqualified from being counted because of a prior determination of fraud (IPV) or because they are an ineligible alien.

(3) The income of SSI recipients is not counted.

(4) Countable income is gross income, whether earned or unearned, less allowable exclusions listed in section R986-200-239.

(5) Money is not counted as income and an asset in the same month.

(6) If an individual has elected to have a voluntary reduction or deduction taken from an entitlement to earned or unearned income, the voluntary reduction or deduction is counted as gross income. Voluntary reductions include insurance premiums, savings, and garnishments to pay an owed obligation.

R986-200-235. Unearned Income.

(1) Unearned income is income received by an individual for which the individual performs no service.

(2) Countable unearned income includes:

(a) pensions and annuities such as Railroad Retirement, Social Security, VA, Civil Service;

(b) disability benefits such as sick pay and workers' compensation payments unless considered as earned income;

(c) unemployment insurance;

(d) strike or union benefits;

(e) VA allotment;

(f) income from the GI Bill;

(g) assigned support retained in violation of statute is counted when a request to do so has been generated by ORS;

(h) payments received from trusts made for basic living expenses;

(i) payments of interest from stocks, bonds, savings, loans, insurance, a sales contract, or mortgage. This applies even if the payments are from the sale of an exempt home. Payments made for the down payment or principal are counted as assets;

(j) inheritances;

(k) life insurance benefits;

(l) payments from an insurance company or other source for personal injury, interest, or destroyed, lost or stolen property unless the money is used to replace that property;

(m) cash contributions from any source including family, a church or other charitable organization;

(n) rental income if the rental property is managed by another individual or company for the owner. Income from rental property managed by someone in the household assistance unit is considered earned income;

(o) financial assistance payments received from another state or the Department from another type of financial assistance program including a diversion payment; and

(p) payments from Job Corps and Americorps living allowances.

(3) Unearned income which is not counted (exempt):

(a) cash gifts for special occasions which do not exceed $30 per quarter for each person in the household assistance unit. The gift can be divided equally among all members of the household assistance unit;

(b) bona fide loans, including reverse equity loans on an exempt property. A bona fide loan means a loan which has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment;

(c) the value of food stamps, food donated from any source, and the value of vouchers issued under the Women Infants and Children program;

(d) any per capita payments made to individual tribal members by either the secretary of interior or the tribe are excluded. Income to tribal members derived from privately owned land is not exempt;

(e) any payments made to household members that are declared exempt under federal law;

(f) the value of governmental rent and housing subsidies, federal relocation assistance, or EA issued by the Department;

(g) money from a trust fund to provide for or reimburse the household for a specific item NOT related to basic living expenses. This includes medical expenses and educational expenses. Money from a trust fund to provide for or reimburse a household member for basic living expenses is counted;

(h) travel and training allowances and reimbursements if they are directly related to training, education, work, or volunteer activities;

(i) all unearned income in-kind. In-kind means something, such as goods or commodities, other than money;

(j) thirty dollars of the income received from rental income unless greater expenses can be proven. Expenses in excess of $30 can be allowed for:

(i) taxes;

(ii) attorney fees expended to make the rental income available;

(iii) upkeep and repair costs necessary to maintain the current value of the property; and

(iv) interest paid on a loan or mortgage made for upkeep

or repair. Payment on the principal of the loan or mortgage cannot be excluded;

(k) if meals are provided to a roomer/boarder, the value of a one-person food stamp allotment for each roomer/boarder;

(l) payments for energy assistance including H.E.A.T payments, assistance given by a supplier of home energy, and in-kind assistance given by a private non-profit agency;

(m) federal and state income tax refunds and earned income tax credit payments;

(n) payments made by the Department to reimburse the client for education or work expenses, or a CC subsidy;

(o) income of an SSI recipient. Neither the payment from SSI nor any other income, including earned income, of an SSI recipient is included;

(p) payments from a person living in the household who is not included in the household assistance unit, as defined in R986-200-205, when the payment is intended and used for that person's share of the living expenses;

(q) educational assistance and college work study except Veterans Education Assistance intended for family members of the student, living stipends and money earned from an assistantship program is counted as income; and

(r) for a refugee, as defined in R986-300-303(1), any grant or assistance, whether cash or in-kind, received directly or indirectly under the Reception and Placement Programs of Department of State or Department of Justice.

R986-200-236. Earned Income.

(1) All earned income is counted when it is received even if it is an advance on wages, salaries or commissions.

(2) Countable earned income includes:

(a) wages, except Americorps*Vista living allowances are not counted;

(b) salaries;

(c) commissions;

(d) tips;

(e) sick pay which is paid by the employer;

(f) temporary disability insurance or temporary workers' compensation payments which are employer funded and made to an individual who remains employed during recuperation from a temporary illness or injury pending the employee's return to the job;

(g) rental income only if managerial duties are performed by the owner to receive the income. The number of hours spent performing those duties is not a factor. If the property is managed by someone other than the individual, the income is counted as unearned income;

(h) net income from self-employment less allowable expenses, including income over a period of time for which settlement is made at one given time. The periodic payment is annualized prospectively. Examples include the sale of farm crops, livestock, and poultry. A client may deduct actual, allowable expenses, or may opt to deduct 40% of the gross income from self-employment to determine net income;

(i) training incentive payments and work allowances; and

(j) earned income of dependent children.

(3) Income that is not counted as earned income:

(a) income for an SSI recipient;

(b) reimbursements from an employer for any bona fide work expense;

(c) allowances from an employer for travel and training if the allowance is directly related to the travel or training and identifiable and separate from other countable income; or

(d) Earned Income Tax Credit (EITC) payments.

R986-200-237. Lump Sum Payments.

(1) Lump sum payments are one-time windfalls or retroactive payments of earned or unearned income. Lump sums include but are not limited to, inheritances, insurance settlements, awards, winnings, gifts, and severance pay, including when a client cashes out vacation, holiday, and sick pay. They also include lump sum payments from Social Security, VA, UI, Worker's Compensation, and other one-time payments. Payments from SSA that are paid out in installments are not considered lump sum payments but as income, even if paid less often than monthly.

(2) The following lump sum payments are not counted as income or assets:

(a) any kind of lump sum payment of excluded earned or unearned income. If the income would have been excluded, the lump sum payment is also excluded. This includes SSI payments and any EITC; and

(b) insurance settlements for destroyed exempt property when used to replace that property.

(3) The net lump sum payment is counted as income for the month it is received. Any amount remaining after the end of that month is considered an asset.

(4) The net lump sum is the portion of the lump sum that is remaining after deducting:

(a) legal fees expended in the effort to make the lump sum available;

(b) payments for past medical bills if the lump sum was intended to cover those expenses; and

(c) funeral or burial expenses, if the lump sum was intended to cover funeral or burial expenses.

(5) A lump sum paid to an SSI recipient is not counted as income or an asset except for those recipients receiving financial assistance from GA or WTE.

R986-200-238. How to Calculate Income.

(1) To determine if a client is eligible for, and the amount of, a financial assistance payment, the Department estimates the anticipated income, assets and household size for each month in the certification period.

(2) The methods used for estimating income are:

(a) income averaging or annualizing which means using a history of past income that is representative of future income and averaging it to determine anticipated future monthly income. It may be necessary to evaluate the history of past income for a full year or more; and

(b) income anticipating which means using current facts such as rate of pay and hourly wage to anticipate future monthly income when no reliable history is available.

(3) Monthly income is calculated by multiplying the average weekly income by 4.3 weeks. If a client is paid every two weeks, the income for those two weeks is multiplied by 2.15 weeks to determine monthly income.

(4) The Department's estimate of income, when based on the best available information at the time it was made, will be determined to be an accurate reflection of the client's income. If it is later determined the actual income was different than the estimate, no adjustment will be made. If the client notifies the Department of a change in circumstances affecting income, the estimated income can be adjusted prospectively but not retrospectively.

R986-200-239. How to Determine the Amount of the Financial Assistance Payment.

(1) Once the household's size and income have been determined, the gross countable income must be less than or equal to 185% of the Standard Needs Budget (SNB) for the size of the household. This is referred to as the "gross test".

(2) If the gross countable income is less than or equal to 185% of the SNB, the following deductions are allowed:

(a) a work expense allowance of $100 for each person in the household unit who is employed;

(b) fifty percent of the remaining earned income after deducting the work expense allowance as provided in paragraph

(a) of this subsection, if the individual has received a financial assistance payment from the Department for one or more of the immediately preceding four months; and

(c) after deducting the amounts in paragraphs (a) and (b) of this subsection, if appropriate, the following deductions can be made:

(i) a dependent care deduction as described in subsection (3) of this section; and

(ii) child support paid by a household member if legally owed to someone not included in the household.

(3) The amount of the dependant care deduction is set by the Department and based on the number of hours worked by the parent and the age of the dependant needing care. It can only be deducted if the dependant care:

(a) is paid for the care of a child or adult member of the household assistance unit, or a child or adult who would be a member of the household assistance unit except that this person receives SSI. An adult's need for care must be verified by a doctor; and

(b) is not subsidized, in whole or in part, by a CC payment from the Department; and

(c) is not paid to an individual who is in the household assistance unit.

(4) After deducting the amounts allowed under paragraph (2) above, the resulting net income must be less than 100% of SNB for size of the household assistance unit. If the net income is equal to or greater than the SNB, the household is not eligible.

(5) If the net income is less than 100% of the SNB the following amounts are deducted:

(a) Fifty percent of earned countable income for all employed household assistance unit members if the household was not eligible for the 50% deduction under paragraph (2)(b) above; and/or

(b) All of the earned income of all children in the household assistance unit, if not previously deducted, who are:

(i) in school or training full-time, or

(ii) in part-time education or training if they are employed less than 100 hours per month. "Part-time education or training" means enrolled for at least one-half the number of hours or periods considered by the institution to be customary to complete the course of study within the minimum time period. If no schedule is set by the school, the course of study must be no less than an average of two class periods or two hours per day, whichever is less.

(6) The resulting net countable income is compared to the full financial assistance payment for the household size. If the net countable income is more than the financial assistance payment, the household is not eligible. If it is less, the net countable income is deducted from the financial assistance payment and the household is paid the difference.

(7) The amount of the standard financial assistance payment is set by the State Legislature and available at all Department offices.

R986-200-240. Additional Payments Available Under Certain Circumstances.

(1) Each parent eligible for financial assistance in the FEP or FEPTP programs who takes part in at least one enhanced participation activity may be eligible to receive $60 each month in addition to the standard financial assistance payment. Enhanced participation activities are limited to:

(a) work experience sites of at least 20 hours a week and other eligible activities that together total 30 hours per week;

(b) full-time attendance in an education or employment training program; or

(c) employment of 20 hours or more a week and other eligible activities that together total 30 hours per week.

(2) An additional payment of $15 per month for a pregnant woman in the third month prior to the expected month of delivery. Eligibility for the allowance begins in the month the woman provides medical proof that she is in the third month prior to the expected month of delivery. The pregnancy allowance ends at the end of the month the pregnancy ends.

(3) A limited number of funds are available to individuals for work and training expenses. The funds can only be used to alleviate circumstances which impede the individual's ability to begin or continue employment, job search, training, or education. The payment of these funds is completely discretionary by the Department. The individual does not need to meet any eligibility requirements to request or receive these funds.

(4) Limited funds are available, up to a maximum of $300, to pay for burial costs if the individual is not entitled to a burial paid for by the county.

(5) A Department Regional Director or designee may approve assistance, as funding allows, for the emergency needs of a non-resident who is transient, temporarily stranded in Utah, and who does not intend to stay in Utah.

R986-200-241. Income Eligibility Calculation for a Specified Relative Who Wants to be Included in the Assistance Payment.

(1) The income calculation for a specified relative who wants to be included in the financial assistance payment is as follows:

(a) All earned and unearned countable income is counted, as determined by FEP rules, for the specified relative and his or her spouse, less the following allowable deductions:

(i) one hundred dollars for each employed person in the household. This deduction is only allowed for the specified relative and/or spouse and not anyone else in the household even if working; and

(ii) the child care expenses paid by the specified relative and necessary for employment up to the maximum allowable deduction as set by the Department.

(2) The household size is determined by counting the specified relative, his or her spouse if living in the home, and their dependent children living in the home who are not in the household assistance unit.

(3) If the income less deductions exceeds 100% of the SNB for a household of that size, the specified relative cannot be included in the financial assistance payment. If the income is less than 100% of the SNB, the total household income is divided by the household size calculated under subsection (2) of this section. This amount is deemed available to the specified relative as countable unearned income. If that amount is less than the maximum financial assistance payment for the household assistance unit size, the specified relative may be included in the financial assistance payment.

R986-200-242. Income Calculation for a Minor Parent Living with His or Her Parent or Stepparent.

(1) All earned and unearned countable income of all parents, including stepparents living in the home, is counted when determining the eligibility of a minor parent residing in the home of the parent(s).

(2) From that income, the following deductions are allowed:

(a) one hundred dollars from income earned by each parent or stepparent living in the home, and

(b) an amount equal to 100% of the SNB for a group with the following members:

(i) the parents or stepparents living in the home;

(ii) any other person in the home who is not included in the financial assistance payment of the minor parent and who is a dependent of the parents or stepparents;

(c) amounts paid by the parents or stepparents living in the

home to individuals not living at home but who could be claimed as dependents for Federal income tax purposes; and

(d) alimony and child support paid to someone outside the home by the parents or stepparents living in the home.

(3) The resulting amount is counted as unearned income to the minor parent.

(4) If a minor parent lives in a household already receiving financial assistance, the child of the minor parent is included in the larger household assistance unit.

R986-200-243. Counting the Income of Sponsors of Eligible Aliens.

(1) Certain aliens who have been legally admitted into the United States for permanent residence must have a portion of the earned and unearned countable income of their sponsors counted as unearned income in determining eligibility and financial assistance payment amounts for the alien.

(2) The following aliens are not subject to having the income of their sponsor counted:

(a) paroled or admitted into the United States as a refugee or asylee;

(b) granted political asylum;

(c) admitted as a Cuban or Haitian entrant;

(d) other conditional or paroled entrants;

(e) not sponsored or who have sponsors that are organizations or institutions;

(f) sponsored by persons who receive public assistance or SSI;

(g) permanent resident aliens who were admitted as refugees and have been in the United States for eight months or less.

(3) Except as provided in subsection (7) of this section, the income of the sponsor of an alien who applies for financial assistance after April 1, 1983 and who has been legally admitted into the United States for permanent residence must be counted for five years after the entry date into the United States. The entry date is the date the alien was admitted for permanent residence. The time spent, if any, in the United States other than as a permanent resident is not considered as part of the five year period.

(4) The amount of income deemed available for the alien is calculated by:

(a) deducting 20% from the total earned income of the sponsor and the sponsor's spouse up to a maximum of $175 per month; then,

(b) adding to that figure all of the monthly unearned countable income of the sponsor and the sponsor's spouse; then the following deductions are allowed:

(i) an amount equal to 100% of the SNB amount for the number of people living in the sponsor's household who are or could be claimed as dependents under federal income tax policy; then,

(ii) actual payments made to people not living in the sponsor's household whom the sponsor claims or could claim as dependents under federal income tax policy; then,

(iii) actual payments of alimony and/or child support the sponsor makes to individuals not living in the sponsor's household.

(c) The remaining amount is counted as unearned income against the alien whether or not the income is actually made available to the alien.

(5) Actual payments by the sponsor to aliens will be counted as income only to the extent that the payment amount exceeds the amount of the sponsor's income already determined as countable.

(6) A sponsor can be held liable for an overpayment made to a sponsored alien if the sponsor was responsible for, or signed the documents which contained, the misinformation that resulted in the overpayment. The sponsor is not held liable for an overpayment if the alien fails to give accurate information to the Department or the sponsor is deceased, in prison, or can prove the request for information was incomplete or vague.

(7) In the case where the alien entered the United States after December 19, 1997, the sponsor's income does not count if:

(a) the alien becomes a United States citizen through naturalization;

(b) the alien has worked 40 qualifying quarters as determined by Social Security Administration; or

(c) the alien or the sponsor dies.

R986-200-244. TANF Needy Family (TNF).

(1) TNF is not a program but describes a population that can be served using TANF Surplus Funds.

(2) Eligible families must have a dependent child under the age of 18 residing in the home, and the total household income must not exceed 200% of the Federal poverty level. Income is determined as gross income without allowance for disregards.

(3) Services available vary throughout the state. Information on what is available in each region is available at each Employment Center. The Department may elect to contract out services.

(4) If TANF funded payments are made for basic needs such as housing, food, clothing, shelter, or utilities, each month a payment is received under TNF, counts as one month of assistance toward the 36 month lifetime limit. Basic needs also include transportation and child care if all adults in the household are unemployed and will count toward the 36 month lifetime limit.

(5) If a member of the household has used all 36 months of FEP assistance the household is not eligible for basic needs assistance under TNF but may be eligible for other TANF funded services.

(6) Assets are not counted when determining eligibility for TNF services.

R986-200-245. TANF Non-FEP Training (TNT).

(1) TNT is to provide skills and training to parents to help them become suitably employed and self-sufficient.

(2) The client must be unable to achieve self-sufficiency without training.

(3) Eligible families must have a dependent child under the age of 18 residing in the home and the total household income must not exceed 200% of the Federal poverty level. If the only dependent child is 18 and expected to graduate from High School before their 19th birthday the family is eligible up through the month of graduation. Income is counted and calculated the same as for WIA as found in rule R986-600.

(4) Assets are not counted when determining eligibility for TNT services.

(5) The client must show need and appropriateness of training.

(6) The client must negotiate an employment plan with the Department and participate to the maximum extent possible.

(7) The Department will not pay for supportive services such as child care, transportation or living expenses under TNT. The Department can pay for books, tools, work clothes and other needs associated with training.

R986-200-246. Transitional Cash Assistance.

(1) Transitional Cash Assistance, (TCA) is offered to help FEP and FEPTP customers stabilize employment and reduce recidivism.

(2) To be eligible for TCA a client must;

(a) have been eligible for and have received FEP or FEPTP during the month immediately preceding the month during which TCA is requested or granted. The FEP or FEPTP

assistance must have been terminated due to earned or unearned income and not for nonparticipation under R986-200-212. If the immediately preceding month was during a diversion period, the client is not eligible for TCA, and

(b) be employed an average of 30 hours per week for FEP households. The parents in a FEPTP household cannot combine hours for TCA. Each parent must be employed 30 hours per week.

(3) TCA is only available if the customer verifies employment averaging the minimum required in subparagraph (2)(b) of this section.

(4) TCA is available for a maximum of three months.

(a) The assistance payment for the first two months of TCA is based on household size. All household income, earned and unearned, is disregarded.

(b) Payment for the third month is one half of the payment available in (4)(a) of this section.

(5) If initial verification is provided and a client is paid one month of TCA but the client is unable to provide documentation to support that initial verification, no further payments will be made under TCA but the one month payment will not result in an overpayment.

(6) A client can only receive TCA once in any 24 month period. This time limit applies regardless of how many months of TCA a client received.

(7) TCA does not count toward the 36 month time limit found in R986-200-217.

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R986. Workforce Services, Employment Development.
R986-400. General Assistance and Working Toward Employment.
R986-400-401. Authority for General Assistance (GA) and Applicable Rules.

(1) The Department provides GA financial assistance pursuant to Section 35A-3-401, et seq. as funding permits.

(2) Rule R986-100 applies to GA.

(3) Applicable provisions of R986-200 apply to GA except as noted in this rule.

(4) The citizenship and alienage requirements of the Food Stamp Program apply to GA.

R986-400-402. General Provisions.

(1) GA provides temporary financial assistance to single persons and married couples who have no dependent children residing with them 50% or more of the time and who are unemployable due to a physical or mental health condition.

(2) Unemployable is defined to mean the individual is not capable of earning $500 per month in the Utah labor market. The incapacity must be expected to last 30 days after the date of application or more.

(3) Drug addiction and/or alcoholism alone is insufficient to prove the unemployable requirement for GA as defined in Public Law 104-121.

(4) For a married couple living together only one must meet the unemployable criteria. The spouse who is employable will be required to meet the work requirements of WTE unless the spouse can provide medical proof that he or she is needed at home to care for the unemployable spouse. Medical proof, consisting of a medical statement from a medical doctor, a doctor of osteopathy, a licensed Advanced Practice Registered Nurse, a licensed Physician's Assistant, a licensed Mental Health Therapist as defined in UCA 58-60-102, or a licensed psychologist, is required. The medical statement must include all of the following:

(a) the diagnosis of the spouse's condition;

(b) the recommended treatment needed or being received for the condition;

(c) the length of time the client will be required in the home to care for the spouse; and

(d) whether the client is required to be in the home full time or part time.

(5) GA is only available to a client who is at least 18 years old or legally or factually emancipated. Factual emancipation means the client has lived independently from his or her parents or guardians and has been economically self-supporting for a period of at least twelve consecutive months, and the client's parents have refused financial support.

(6) A client claiming factual emancipation must cooperate with the Department in locating his or her parents. The parents, once located, will be contacted by the Department. If the parents continue to refuse to support the client, a referral will be made to ORS to enforce the parents' child support obligations.

(7) A person eligible for Bureau of Indian Affairs assistance is not eligible for GA financial assistance.

(8) In addition to the residency requirements in R986-100-106, residents in a group home that is administered under a contract with a governmental unit or administered by a governmental unit are not eligible for financial assistance.

(9) An individual receiving SSI is not eligible for GA. This ineligibility includes persons whose SSI is in suspense status, as defined by 20 CFR Part 416.1321 through 416.1330.

R986-400-403. Proof of Unemployability.

(1) An applicant must provide current medical evidence that he or she is not capable of working and earning $500 per month due to a physical or mental health condition and that the condition is expected to last at least 30 days from the date of application. Evidence consists of a statement from a medical doctor, a doctor of osteopathy, a licensed Advanced Practice Registered Nurse, a licensed Physician's Assistant, a licensed Mental Health Therapist as defined in UCA 58-60-102.

(2) An applicant must cooperate in the obtaining of a second opinion if requested by the Department. Only the costs associated with a second opinion requested by the Department will be paid for by the Department. The Department will not pay the costs associated with obtaining a second opinion if the client requests the second opinion.

(3) If the illness or incapacity is expected to last longer than 12 months, the client must apply for SSDI/SSI benefits.

(4) Full-time or part-time participation in post-high school education or training is considered evidence of employability rendering the client ineligible for GA financial assistance. If the Department believes work readiness or occupational skills enhancement opportunities will lead to employability, those services can be offered for a maximum of three months if the client is otherwise eligible.

R986-400-404. Participation Requirements.

(1) The client and spouse must participate, to the maximum extent possible, in an assessment and an employment plan as provided in R986-200. The only education or training supported by an employment plan for GA recipients is short term skills training as described in R986-400-403.

(2) The employment plan must include obtaining appropriate medical or mental health treatment, or both, to overcome the limitations preventing the client from becoming employable. The employment plan must provide that all adults age 19 and above who do not qualify for coverage under any other category of Medicaid and who are not covered by or do not have access to private health insurance, Medicare or the Veterans Administration Health Care System must enroll in the Primary Care Network (PCN) through the Department of Health. If a client cannot enroll in PCN because the Department of Health has placed a cap on PCN enrollment, the requirement will be excused during the period enrollment is impossible. The Department may, at its discretion, develop a program whereby eligible clients will be allowed to pay the enrollment fee in installments.

(3) A client must accept any and all offers of appropriate employment as determined by the Department. "Appropriate employment" means employment that pays a wage which meets or exceeds the applicable federal or state minimum wage law and has daily and weekly hours customary to the occupation. If the minimum wage laws do not apply, the wage must equal what is normally paid for similar work and in no case less than three-fourths of the minimum wage rate. The employment is not appropriate employment if the client is unable, due to physical or mental limitations, to perform the work.

(4) A client is exempt from the requirements of paragraphs (1) and (2) of this section if the client has been approved for SSI, is waiting for the first check, and has signed an "Agreement to Repay Interim Assistance" Form.

(5) A client must cooperate in obtaining any and all other sources of income to which the client may be entitled including, but not limited to UI, SSI/SSDI, VA Benefits, and Workers' Compensation.

(6) A client who meets the eligible alien status requirements for GA but does not meet the eligible alien requirements for SSI can participate in activities that may help them to become eligible for SSI such as pursuing citizenship.

R986-400-405. Interim Aid for SSI Applicants.

(1) A client who has applied for SSI or SSDI benefits may be provided with GA financial assistance pending a determination on the application for SSI or SSDI. If the client is applying for SSI, he or she must sign an "Agreement to Repay

Interim Assistance" form and agree to reimburse, or allow SSA to reimburse, the Department for any and all GA financial assistance advanced pending a determination from SSA.

(2) Financial assistance will be immediately terminated without advance notice when SSA issues a payment or if the client fails to cooperate to the maximum extent possible in pursuing the application which includes cooperating fully with SSA and providing all necessary documentation to insure receipt of SSI or SSDI benefits.

(3) A client must fully cooperate in prosecuting an appeal of an SSI or SSDI denial at least to the Social Security ALJ level. If the ALJ issues an unfavorable decision, the client is not eligible for financial assistance unless an unrelated physical or mental health condition develops and is verified.

(4) If a client's SSI or SSDI benefits have been terminated due to a physical or mental health condition, the client is ineligible unless an unrelated physical or mental health condition develops and is verified.

R986-400-406. Failure to Comply with the Requirements of an Employment Plan.

(1) If a client fails to comply with the requirements of the employment plan without reasonable cause, financial assistance will be terminated immediately. Reasonable cause under this section means the client was prevented from participating through no fault of his or her own or failed to participate for reasons that are reasonable and compelling and may include reasons like verified illness or extraordinary transportation problems.

(2) If a client's financial assistance has been terminated under this section, the client is not eligible for further assistance as follows:

(a) the first time financial assistance is terminated, the client must reapply and participate to the maximum extent possible in all of the required activities of the employment plan;

(b) the second time financial assistance is terminated, the client will be ineligible for financial assistance for a minimum of one month and can only become eligible again upon completing a new application and participating to the maximum extent possible in the required employment activity; and

(c) the third time financial assistance is terminated, the client will be ineligible for a minimum of six months and can only become eligible again upon completing a new application and actively participating in the required employment activity.

R986-400-407. Income and Assets Limits and Amount of Assistance.

(1) The provisions of R986-200 are used for determining asset and income eligibility except;

(a) the income and assets of an SSI recipient living in the household are counted if that individual is legally responsible for the client;

(b) the total gross income of an alien's sponsor and the sponsor's spouse is counted as unearned income for the alien. If a person sponsors more than one alien, the total gross income of the sponsor and the sponsor's spouse is counted for each alien. Indigent aliens, as defined by 7 CFR 273.4(c)(3)(iv), are not exempt;

(c) one vehicle, with a maximum of $8,000 equity value, is not counted. The entire equity value of one vehicle equipped to transport a disabled individual is exempt from the asset limit even if the vehicle has a value in excess of $8,000 Beginning October 1, 2007, all motorized vehicles will be exempt.

(2) The financial assistance payment level is set by the Department and available for review at all Department local offices.

R986-400-408. Time Limits.

(1) An individual cannot receive GA financial assistance for more than 24 months out of any 60-month period. Months which count toward the 24-month limit include any and all months during which any client who currently resides in the household received a full or partial financial assistance payment beginning with the month of March, 1998.

(2) There are no exceptions or extensions to the time limit.

(3) Advanced written notice for termination of GA financial assistance due to time limits is not required.

R986-400-451. Authority for Working Toward Employment (WTE) and Other Applicable Rules.

(1) The Department provides WTE financial assistance pursuant to Section 35A-3-401 et seq. as funding permits.

(2) Rule R986-100 applies to WTE.

(3) Applicable provisions of R986-200 apply to WTE except as noted in this rule.

(4) The citizenship and alienage requirements of the Food Stamp Program apply to WTE.

R986-400-452. General Provisions.

(1) Working Toward Employment (WTE) provides financial assistance on a short term basis to single persons and married couples who have no dependent children residing with them 50% or more of the time and who are unemployable because they lack employment skills.

(2) At least one household member must be at least 18 years old or legally or factually emancipated. Factual emancipation is defined in R986-400-402.

(3) As a condition of eligibility, a client claiming factual emancipation must cooperate with the Department in locating his or her parents. The parents, once located, will be contacted by the Department. If the parents continue to refuse to support the client, a referral will be made to ORS to enforce the parents' child support obligations.

(4) All clients must cooperate in obtaining any and all other benefits or sources of income to which the client may be entitled except that a client who has applied for SSI benefits is ineligible for WTE. If a client applies for SSI, WTE financial assistance is terminated.

(5) A person eligible for Bureau of Indian Affairs assistance is not eligible for WTE financial assistance.

(6) If an applicant appears to be eligible for the Refugee Resettlement Program (RRP) the applicant must comply with the requirements of RRP and will be paid out of funds for that program. If found eligible for RRP, the applicant is ineligible for WTE.

R986-400-453. Participation Requirements.

(1) All applicants and spouses must participate in an assessment and an employment plan as found in R986-200. In addition to the requirements of an employment plan as found in R986-200-210, a client must, as a condition of receipt of financial assistance, register for work and accept any and all offers of appropriate employment, as determined by the Department. Appropriate employment is defined in R986-400-404.

(2) The employment plan of each recipient of WTE financial assistance must contain the requirement that the client participate 40 hours per week in eligible activities. A list of approved eligible activities is available at each employment center. Married couples cannot share the performance requirements and each client must participate a minimum of 40 hours per week. The 40 hours must be spent in the following activities:

(a) At least 16 hours must be spent in an approved insternship or in paid employment. Some basic educational activities are also available; and

(b) eight hours a week participating in job search activities. The Department may reduce the number of hours

spent in job search activities if it is determined the client has explored all local employment options. A reduction in the number of hours of job search will not reduce the total requirement of 40 hours of participation.

(3) Participation may be excused only if the client can show reasonable cause as defined in R986-400-406(1).

R986-400-454. Failure to Comply with the Requirements of an Employment Plan.

(1) If a client fails to comply with the requirements of the employment plan without reasonable cause as defined in R986-400-406(a), financial assistance will be terminated immediately.

(2) Advanced notice of termination is not required.

(3) If there are two clients in the household and only one client fails to comply, financial assistance for both will be terminated.

(4) Once a client or household's financial assistance has been terminated for failure to comply with the employment plan, the client is not eligible for further assistance as follows:

(a) the first time financial assistance is terminated, the client or couple must reapply and actively participate in all of the required activities of the employment plan;

(b) the second time financial assistance is terminated, the client or couple will be ineligible for financial assistance for a minimum of one month and can only become eligible again upon completing a new application and actively participating in the required employment activity;

(c) the third time financial assistance is terminated, the client will be ineligible for a minimum of six months and can only become eligible again upon completing a new application and actively participating in the required employment activity.

R986-400-455. Income and Assets Limits and Calculation of Assistance Payment.

(1) Income and asset determination and limits are the same as for FEP found in R986-200 except one vehicle with a maximum of $8,000 equity value is not counted. The entire equity value of one vehicle equipped to transport a disabled individual is exempt from the asset limit even if the vehicle has a value in excess of $8,000. Beginning October 1, 2007, all motorized vehicles will be exempt.

(2) The amount of financial assistance available for payment to a client is based on the number of hours of participation. Payment is made twice per month and only after proof of participation. The base amount of assistance is equal to the GA financial assistance payment for the household size. The base GA payment is then prorated based on the number of hours of participation for each household member, up to a maximum of 40 hours of participation per household member per week. In no event can the financial assistance payment per month for a WTE household be more than for the same size household receiving financial assistance under GA. Payment of financial assistance cannot be made for any period during which the client does not participate.

(3) The base GA financial assistance payment level is determined by the State Legislature and available upon request.

(4) Each WTE household member will receive the sum of $45 per month regardless of number of hours the client participates. This sum is intended to be used for participation expenses.

R986-400-456. Time Limits.

(1) An individual cannot receive WTE financial assistance for more than seven months out of any 18-month period.

(2) In addition to the seven months out of any 18-month period time limit, there is a 24-month life time limit for WTE financial assistance.

(3) Months which count toward the seven month time limit and the 24-month limit include any and all months during which any client who currently resides in the household received a full or partial financial assistance payment.

(4) There are no exceptions or extensions to the time limit.

(5) If WTE financial assistance is terminated due to the time limit, advanced written notice is not required.

KEY: general assistance, working toward employment
July 31, 2007 35A-3-401
Notice of Continuation September 14, 2005 35A-3-402

R986. Workforce Services, Employment Development.
R986-500. Adoption Assistance.
R986-500-501. Authority for Adoption Assistance (AA) and Other Applicable Rules.

(1) The Department administers AA pursuant to the authority granted in Section 35A-3-308.

(2) The provisions of R986-100 apply to AA.

(3) The provisions of R986-200 apply to AA, except as noted in this rule.

R986-500-502. General Provisions.

(1) AA may be provided to a birth parent who was or would have been the caretaker of a child relinquished for adoption.

(2) The relinquishment must have been voluntary. Birth parents who have had their parental rights terminated are not eligible for AA.

(3) The adoption must have met the requirements of Section 78-30-4.14.

(4) AA financial assistance can be provided to a woman who is in her third trimester of pregnancy if she is planning to relinquish custody of the child for the purpose of adoption and if she is otherwise eligible.

(5) A parent must apply for AA no later than the end of the second month after the month of relinquishment. Proof of relinquishment is required.

(6) Relinquishment can be made for any minor child, however a child age 12 or older must agree to the relinquishment.

(7) The Department will coordinate services to assist the client in:

(a) receiving appropriate educational and occupational assessment and planning, including enrolling in appropriate education or training programs, which includes high school completion and adult education programs;

(b) enrolling in programs that provide assistance with job readiness, employment counseling, finding employment, and work skills;

(c) finding suitable housing;

(d) receiving medical assistance, under Title 26, Chapter 18, Medical Assistance Act, if the client is otherwise eligible; and

(e) receiving counseling and other mental health services.

(8) If a birth parent relinquishes custody of a child, and before the adoption is finalized, takes back custody of the child, the parent is no longer eligible for AA.

(9) The rule regarding minor parents found at R986-200-213 applies if the parent seeking AA is a minor.

(10) If the minor parent seeking AA is living with her parent(s), or the parent(s) of the father of the child being relinquished, the FEP rule for counting the income of the household found in R986-200-242 applies.

R986-500-503. Services Available to All Pregnant Clients.

(1) The Department will publish and make available to all pregnant clients an easy-to-understand adoption information packet which:

(a) contains information about the public and private organizations that provide adoption assistance specific to the geographical location of the client;

(b) lists the names, addresses, and telephone numbers of licensed child placement agencies and licensed attorneys who place children for adoption;

(c) explains that private adoption is legal and that the law permits adoptive parents to reimburse the costs of prenatal care, childbirth, neonatal care, and other expenses related to pregnancy; and

(d) describes the services and supports available to the client from the Department and other state agencies.

(2) The Department will refer the client for appropriate prenatal medical care, including maternal health services provided under Title 26, Chapter 10, Family Health Services.

(3) The Department will inform the client of free counseling about adoption from licensed child placement agencies and licensed attorneys.

R986-500-504. AA Financial Assistance Eligibility and Amount.

(1) Eligibility and participation are determined by R986-200 except:

(a) the employment plan must contain the requirement that the client enroll in high school or an alternative to high school, if the client does not have a high school diploma;

(b) the child support enforcement provisions do not apply for the child being relinquished; and

(c) one vehicle with a maximum of $8,000 equity value is not counted. The entire equity value of one vehicle equipped to transport a disabled individual is exempt from the asset limit even if the vehicle has a value in excess of $8,000. Beginning October 1, 2007 all motorized vehicles will be exempt.

(2) If there are other eligible children living in the household assistance unit, the household will receive a monthly supplemental financial AA payment equal to the additional amount the household would have received had the parent(s) not relinquished the child.

(3) If there are no eligible children living in the household, financial AA will be provided equal to a household size of one even if both birth parents are living in the household.

R986-500-505. Time Limits for AA.

(1) Financial AA can be provided up to a maximum of 12 consecutive months from the date of relinquishment.

(2) Payment of financial assistance for part of a month counts as a whole month when calculating the 12 month time limit.

(3) No extensions or exceptions to the time limit will be allowed.

(4) A birth parent who is determined eligible for adoption assistance and becomes ineligible during the 12 month payment period may reestablish eligibility up to the twelfth month if the parent reapplies during the 12 month period.

(5) Months during which no payment of financial assistance was made due to ineligibility or disqualification count toward the 12 month time limit.

(6) There is no limit to the number of times a parent can apply for or be found eligible for AA, however months during which a client receives AA count toward the 36 month time limit for FEP and FEPTP found in R986-200-217. This is true even if there were no other dependent children living in the household.

R986-500-506. Safeguarding Records.

Records pertaining to the adoption will not be kept in the client's case file but will be sent to the Department of Adoption Assistance Specialist and kept private. This includes verification of relinquishment and anything that would identify any agency, organization, or individual assisting with the adoption.

KEY: adoption assistance
July 31, 2007 **35A-3-114**
Notice of Continuation September 14, 2005

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 by court order. If there is no court order, an exception can be made on a case by case basis in unusual circumstances by the Department program specialist.

(3) Child care is provided only for children living in the home and only during hours when neither parent is available to provide care for the children.

(4) If a client is eligible to receive CC, the following children, living in the household unit, are eligible:

(a) children under the age of 13; and

(b) children up to the age of 18 years if the child;

(i) meets the requirements of rule R986-700-717, and/or

(ii) is under court supervision.

(5) Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children, homeless children and FEP or FEPTP eligible children will be prioritized at the top of the list and will be served first. "Special needs child" is defined in rule R986-700-717.

(6) 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 the client has completed, signed and returned all necessary review forms to the local office. All requested verifications must be provided at the time of the review. If the Department 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 CC 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 CC 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 (3) or (4) 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 for children in licensed day care 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 a 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;

(h) a provider who has committed fraud as a provider, as determined by the Department or by a court; and

(i) any provider disqualified under R986-700-718.

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. Time and attendance records for all subsidized clients must be kept for at least one year. If a provider fails to cooperate with a Department investigation or audit, or fails to keep records for one year, the provider will no longer be an approved provider.

(4) 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.

(5) 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.

(6) Records will be kept by the Department for individuals who are not approved providers and against whom a referral or complaint is received.

R986-700-707. Subsidy Deduction and Transitional Child Care.

(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 is responsible for paying 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.

(5) There is no subsidy deduction during:

(a) the months covered by a FEP diversion payment;

(b) transitional child care. Transitional child care is availableduring;

(i) the six months immediately following the period covered by the diversion payment if the client is working a minimum of 15 hours per week and is otherwise eligible for ESCC. The subsidy deduction will resume in the seventh month after the period covered by the diversion payment; or

(ii) the six months immediately following a FEP or FEPTP termination if the termination was due to increased income and the parent is otherwise eligible for ESCC. The subsidy deduction will resume in the seventh month after the termination of FEP or FEPTP. The six month time limit is the same regardless of whether the client receives TCA or not.

(6) A client does not need to fill out a new application for child care during the six month transitional period even if there is a gap in services during those six months.

R986-700-708. 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.

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% 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. To be eligible for ES CC, a self employed parent must provide business records for the most recent three month time period to establish that the parent is likely to make at least minimum wage. If a parent has a barrier to other types of employment, exceptions can be made in extraordinary cases with the approval of the state program specialist.

(5) Americorps*Vista is not supported. Job Corps activities are considered to be training and a client in the Job Corps would also have to meet the work requirements to be eligible for ES CC.

(6) Applicants must verify identity but are not required to provide a Social Security Number (SSN) for household members. Benefits will not be denied or withheld if a customer chooses not to provide a SSN if all factors of eligibility are met. SSN's that are supplied will be verified. If an SSN is provided but is not valid, further verification will be requested to confirm identity.

R986-700-710. Income 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.

R986-700-712. CC for Certain Homeless Families.

(1) CC can be provided for homeless families with one or two parents when the family meets the following criteria:

(a) The family must present a referral for CC from an agency known by the local office to be an agency that works with homeless families, including shelters for abused women and children. This referral will serve as proof of their homeless state. Local offices will provide a list of recognized homeless agencies in local office area.

(b) The family must show a need for child care to resolve an emergency crisis.

(c) The family must meet all other relationship and income eligibility criteria.

(2) CC for homeless families is only available for up to three months in any 12-month period. When a payment is made for any part of a calendar month, that month counts as one of the three months. The months need not be consecutive.

(3) Qualifying families may use child care assistance for any activity including, but not limited to, employment, job search, training, shelter search or working through a crisis situation.

(4) If the family is eligible for a different type of CC, the family will be paid under the other type of CC.

(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 CC overpayments must be repaid to the Department.

Overpayments may be deducted from ongoing CC payments for clients who are receiving CC. If the Department is at fault in the creation of an overpayment, the Department will deduct $10 from each month's CC payment unless the client requests a larger amount.

(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 in school. For example: A client enrolled for ten hours of classes each week may not receive more than ten hours of this type of study hall or lab.

(3) CC 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 professionals listed in rule R986-700-709(3)(b)(ii) or one of the following agencies documenting the child's disability or special child care needs;

(a) Social Security Administration showing that the child is a SSI recipient,

(b) Division of Services for People with Disabilities,

(c) Division of Mental Health,

(d) State Office of Education, or

(e) 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.

R986-700-718. Provider Disqualification.

(1) A child care provider removing child care subsidy funds from a client's account by way of electronic benefit transfer (EBT), which includes the Horizon card and interactive voice response (IVR), can only remove those funds from a client's account that are authorized by the Department for that provider. All providers receiving payment for child care services through an EBT may learn the exact amount authorized for that provider for each client by accessing the Department's Provider Payment Authorization website. Providers who remove more funds than authorized will be required to reimburse the Department for the excess funds and will be disqualified from receipt of further CC subsidy funds as follows;

(a) if the provider has never removed unauthorized CC subsidy funds before, the Department will send a demand letter to the provider's last known address informing the provider of the unauthorized access and establishing an overpayment in the amount of the excess funds. If the provider repays the overpayment within six months, no further action will be taken on that overpayment,

(b) if the provider removes funds in excess of those authorized by the Department a second time, and the provider repaid the previous overpayment or is making a good faith effort to repay the overpayment, a second demand letter will be sent to the provider's last known address. The second letter will establish an overpayment in the amount of the excess funds

removed and inform the provider that any further unauthorized access will result in disqualification. If the provider removes unauthorized funds and has not repaid the first overpayment, or is not making a good faith effort to repay the first overpayment to the Department, no second demand letter will be sent and the provider will be disqualified for a period of one year from the date the Department issues its letter, or in the case of an appeal, from the date the ALJ issues his or her determination. A good faith effort to repay the overpayment means the provider is repaying at least 10% of the overpayment due each month,

(c) if a child care provider removes unauthorized funds a third time, or a second time without repayment of the first overpayment as provided in paragraph (1)(b) of this subsection, the provider will be disqualified and is ineligible for receipt of further CC subsidy funds for a period of one year from the date the Department issues its letter, or in the case of an appeal, from the date the ALJ issues his or her determination,

(d) a CC provider previously disqualified for one year from receipt of CC subsidy funds due to unauthorized removal of funds in paragraph (1)(c) of this subsection, will be disqualified for a period of two years if the provider removes unauthorized funds again. Warning letters under paragraphs (a) and (b) of this subsection will not be sent if a provider was previously disqualified for receipt of CC subsidy funds,

(e) a CC provider previously disqualified for a two year period due to unauthorized removal of funds in paragraph (1)(d) of this subsection will be permanently disqualified if the provider removes unauthorized funds again. Warning letters under paragraphs (a) and (b) of this subsection will not be sent if a provider was previously disqualified for receipt of CC subsidy funds.

(2) CC providers disqualified under subsection (1) of this section will be ineligible for receipt of quality grants awarded by the Department during the period of disqualification.

(3) A CC provider overpayment not paid in full within six months will be referred to collection and will be collected in the same manner as all public assistance overpayments. Payment of provider overpayments must be made to the Department and not to the client.

(4) A CC provider may appeal an overpayment or disqualification as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of letter establishing the overpayment or disqualification. A provider who has been found ineligible may continue to receive CC subsidy funds pending appeal until a decision is issued by the ALJ. The disqualification period will take effect even if the provider files an appeal of the decision issued by the ALJ.

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